‘SHE CHOSE TO GET RID OF HIM BY MURDER, NOT BY LEAVING HIM’: DISCURSIVE CONSTRUCTIONS OF A BATTERED WOMAN WHO KILLED IN *R v CRAIG*

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Abstract

This dissertation uses linguistic/discourse analysis to critically examine a Canadian murder trial in which a battered woman who killed her husband was unsuccessful in securing a self-defence finding—*R v Teresa Craig*, (2011 ONCA 142). The defendant's self-defence plea relied upon testimony on Battered Woman Syndrome (BWS) and theory of coercive control in order to highlight the ways in which her actions (in killing her husband) were reasonable reactions to the abuse she and her son experienced. Feminist legal scholars argue that securing self-defence findings for battered women who kill is made difficult by the androcentric nature of the legal system, including the standards by which courts determine the legitimacy of self-defence claims, and the general lack of knowledge about intimate partner violence exhibited by many legal actors. This project attempts to locate these barriers to self-defence for these women in the language/discourse of *R v Craig.* Because the defendant was unsuccessful in securing an acquittal or a conditional sentence, particular attention is devoted to the various ways participants within the case (and the news media) used discursive means to construct the defendant's identity as a woman undeserving of either a self-defence plea or leniency in sentencing.

The data for this study comes from two separate sources—institutionally produced transcripts from the case file and a corpus of newspaper reports of the trial. The study utilizes feminist critical discourse analysis, incorporating tools from discourse, conversation, and intertextual analysis. The findings indicate that discriminatory ideologies about battered women informed the way in which the defendant was represented in both the legal system and the media. The study considers the consequences of such representations for not only this trial, but also for how society comes to define battered women and those who kill. Although studies of battered women who kill occupy a significant position within feminist jurisprudence, analysis of these kinds of cases has as of yet been unexplored in linguistic scholarship. Through critical examination of the linguistic details of this case, my work provides empirical support for claims that battered women who kill may be unduly disadvantaged in the legal system.

Dedication

To the memory of my mother, Susan M. Peres Slinkard (1948-2007)

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Chapter 1: Introduction

1.1 Introduction

The impetus for this dissertation developed from my interest in what I saw as an underdeveloped area of interdisciplinary scholarship—that of linguistic approaches to legal cases involving battered women who kill their abusive partners. Feminist legal scholars have long critiqued the law as gender-biased and the 'objective' standard of self-defence as androcentric (Ogle & Jacobs, 2002; Schneider, 1996, 2000). For example, battered women are often represented in the law as autonomous individuals who are unimpeded in their actions and 'free' to leave abusive relationships. This interpretation discounts a number of material and symbolic constraints that make exiting difficult for many battered women. Similarly, battered women's actions are often not viewed within a context of both the realities and effects of intimate partner violence. Feminist scholars have also argued that the concept of 'reasonableness' that underlies the legal category of self-defence is wholly inadequate for battered women who kill for the very reason that it is based on a reasonable *man's* experiences. Gendered self-defence laws discount women's perceptions of deadly violence, perceptions which are firmly grounded in their real-life circumstances as battered *women*. These women, who have been subjected to a pattern of unrelenting abuse and control, are in many ways able to predict when acts of violence will occur or increase in severity. Therefore, what constitutes an 'imminent threat' is likely much different for a reasonable *man* than for a woman whose daily experiences confirm her abuser could kill. Furthermore, self-defence laws were designed for situations with participants of equal size and equal force. This is an unlikely situation for women, who are normally smaller than their male counterparts, and who thus often rely on weapons to stop an attack. While the prototypical

reasonable 'man' may be able to leave a relationship, or to utilize equal force in fending off a violent encounter, these scenarios are not the reality for most battered women.

In fact, these kinds of scenarios are largely foreign to men because they are highly unlikely to find themselves in situations where they need to utilize lethal force against their partners in order to defend themselves or their children. Women are significantly more likely to be abused and oppressed by their male partners than they are to be the perpetrators. In Canada in 2016, 79% of police-reported spousal violence was committed against women (Burczycka, 2018). Canadian statistics confirm that in 2009, 71% of all homicides perpetrated by a current spouse were committed against women, 88% of all homicides perpetrated by a former spouse were committed against women, and 78% of all homicides that involved other intimate partners (but not spouses) were committed against women (Hotton Mahony, 2011). Canadian statistics for the years 2014-2016 also confirm that the rate of intimate partner homicide was four times greater for women than for men (Burczycka, 2018; Miladinovic & Mulligan, 2015; Statistics Canada, 2016). Of the 83 intimate partner homicides in 2014, 67 were committed against women (Miladinovic & Mulligan, 2015). That means, shockingly, that in 2014, one woman was killed by an intimate partner roughly every five-to-six days. The severity of intimate partner abuse against women cannot be overstated. Yet, women who take lethal action (oftentimes after exhausting all other forms of legal and social recourse) in order to stop their abuse are not always judged equitably in the eyes of the law: They are instead "judged by an inappropriate masculine yardstick" (Stark, 2007: 150). Women's experiences with violence are not men's experiences, and thus the law discriminates against women when it measures their actions against those of what a (hypothetical) man might have done, and when it determines women's fates in homicide trials based on circumstances that are skewed towards a male perspective. With feminist critiques

of the law of self-defence in mind, in this dissertation I investigate the ways in which these androcentric biases are manifested in the legal *discourse* of a case involving a battered woman who killed.

Conley and O'Barr have claimed that the law's failure "to live up to its ideals" is not only a result of legal doctrine (e.g., statutes) and legislative development, but is also a function of "the details of everyday legal practice—details that consist almost entirely of language" (2005: 3). Therefore, in order to better understand (and ultimately combat) how the legal system may fail to provide abused women who kill with fair outcomes, we must turn our attention to the *language* of cases in which women are tried for killing their abusive partners. Previous work on language and the law (much of which I will rely on to ground both my methodological approaches and theoretical arguments) has used detailed linguistic analysis to investigate how patriarchal ideals and gendered ideologies are reflected and perpetuated in legal discourse. A significant body of this scholarship focuses on rape and sexual assault trials and the discursive construction of these crimes (for example, Coates, Bavelas & Gibson, 1994; Coates & Wade, 2004; Ehrlich, 2001, 2007; Matoesian, 1993, 2001; Taslitz, 1999). There is also a growing body of linguistic and discourse analytic work that investigates intimate partner violence within the legal sphere (for example, Andrus, 2012, 2015; Eades, 1996; Hamilton, 2010; Stokoe, 2010; Trinch, 2003; Wells, 2008, 2012). However, very little of the linguistic research on intimate partner violence deals with legal trials for battered women who kill.[1] That is, while feminist legal scholarship on battered women who kill is extensive (some of which will be reviewed in Chapter 2), detailed linguistic analysis of these kinds of legal cases is lacking. In this dissertation, I hope to fill this gap by using linguistic/discourse analysis to critically examine the case of an abused woman who

[1] However, one exception is Wells's (2008, 2012) research on judicial attributions in sentencing decisions for battered women convicted of killing their partners.

killed and who was unsuccessful in securing a self-defence finding, *R v Teresa Craig*, (2011 ONCA 142).

This project attempts to locate the problems faced by battered women who kill—and, subsequently, attempt to claim self-defence—in the discourse of cases such as *R v Craig*. Like Ehrlich (2001: 1), I am interested in the role of 'talk' and 'text' in "defining and delimiting" the meanings that come to be attached to certain people and events in such cases. That is, the goal of this research is not to highlight the victimizing effects of police-interrogation or cross-examination for battered women (though this is important in its own right). Instead, my aim is to investigate how categories of 'battering' and 'battered women', and even 'abuse', and 'self-defence', are discursively constructed. What are the meanings that come to be attached to the defendant's, Teresa's, actions throughout her relationship and on the night she killed her abusive husband? And, what are the legal and social ramifications of such meanings? By addressing these kinds of questions in my analysis, I show how legal power both constitutes and is constituted by discursive practices. Importantly, my analysis highlights the consequences of such discursive constructions not only for this case but also for how society comes to view battered women and battered women who kill more generally. This study is a critical work, operating within a feminist critical discourse analysis framework, which situates the effects of linguistic practices at the local level within the larger context of battered women within the law. As such, it aims to "expose and critique existing wrongs" (Blommaert, 2005: 6) of the legal system that, arguably, deny battered women who kill opportunities for justice. By focusing on the fine-grained linguistic details of various 'texts' in this case, my analysis gives linguistically-based empirical substance to claims that the legal system fails these women.

1.2 Presentation of the Chapters

Central to *R v Craig,* and to the legal remedy for battered women who kill more generally, is the Battered Woman Syndrome (hereafter BWS) (Walker, 1984). BWS is a concept used to explain both the battering relationship between women and their abusers and women's psychosocial responses to abuse. It is not a legal defence in its own right in Canada, but rather expert testimony on BWS is typically introduced in order to dispel myths about battered women and to contextualize a woman's actions within her prior experiences of intimate partner abuse. However, BWS is not without its limitations and has been the object of much feminist critique. For example, many reject BWS because as a 'syndrome', it has the tendency to pathologize women who have killed, rather than constructing them as acting reasonably in response to violence. Even with these criticisms, it is largely one of the most effective ways for women who have killed their abusive partners to argue for self-defence or to show 'mitigating circumstances', both of which can increase the likelihood of a reduced charge or sentence. In the case under investigation in this dissertation, the defendant (Teresa) used a combination of BWS and the theory of coercive control (Stark, 2007) to support her claim of self-defence. Thus, in Chapter 2, I review BWS and its uses within the legal system, as well as the theory of coercive control. This chapter also introduces the case under investigation, *R v Teresa Craig*, (2011 ONCA 142). In Chapter 3, I introduce the linguistic dimension of this research, focusing on the theoretical and methodological frameworks used in my analysis. In particular, I explicate a feminist critical discourse perspective, which views 'discourse' as both constituting and constituted by social realities. The empirically-based analytic chapters of this dissertation begin with Chapter 4. My analysis begins by investigating the questioning practices of Teresa's defence lawyer during direct-examination, and how these practices help to bolster her claim that she is a battered

woman who killed in self-defence. Teresa's cross-examination is explored in Chapter 5. Here, I show how the Crown attorney's use of so-called *controlling* questions in the cross-examination reflects a view of battered women as autonomous and unhindered in their actions, contradicting the literature on the realities of intimate partner violence. I contend that these questioning practices make difficult Teresa's claim to a battered women's identity, and, by extension, problematize her ability to use BWS and coercive control as part of her self-defence plea, and later as a mitigating factor in sentencing. Chapter 6 focuses on the *textual trajectory* (Blommaert, 2001, 2005) of statements Teresa originally made in the police interview, as they are recontextualized within the trial and various judicial decisions. I highlight the transformations in meaning that accompany these recontextualizations and the ways in which these recontextualizations enable legal actors to construct Teresa's identity as someone guilty of first-degree murder. My final empirical chapter, Chapter 7, explores the recontextualizations of these texts (and others) in mediatized representations of the trial. I contend that the media use these recontextualizations to discursively construct Teresa in a similar manner to that of the Crown in the trial; that is, rather than adopting a neutral position, media accounts of the trial overwhelmingly portray Teresa as a 'murderer', and rarely as an abused woman who acted in self-defence. These accounts align with previous research on media portrayals of battered women who kill. My final chapter, Chapter 8, summarizes my empirical findings and their significance to both linguistic and socio-legal research.

1.3 A Note about Terms

For the purposes of this dissertation, I utilize the phrases *battering* and *Intimate Partner Violence* (IPV), both of which I acknowledge are contested terms. *Battering* is largely critiqued for an

evocation of physical violence and its focus on incidents rather than conduct (see Mahoney, 1991; Schneider, 2000). Indeed, as Walker (1990: 63) points out, the phrase *wife battering* was adopted in the 1970s from legal terminology of "assault and battery", which refers to unlawful *physical* force. While the adoption of the term better allowed feminists to name, and thus legitimize, [2] abuse committed by men against wives and other intimate partners, advocates recognize that this phenomenon is much more complex than a definition of *physical* violence suggests. For the purposes of this dissertation, I follow Sue Osthoff's (Director of the National Clearinghouse for the Defence of Battered Women) definition of *battering*: "a systematic use of violence, the threat of violence, and other coercive behaviours to exert power, induce fear, and control another" (2002: 1522). That is, I do not define *battering* in terms of physical violence alone. The definition I adopt seems to be consistent with the way the defence in the trial defined the term in that they claimed that Teresa suffered symptoms consistent with BWS, even though she never testified to any severe forms of physical or sexual violence. My decision to adopt this term is largely because it is relied upon by many in the Canadian legal sphere (see Sheehy, 2014, 2018), and is the phrase utilized by both the defence and the Court of Appeal in the *Craig* case.

I also use the term *Intimate Partner Violence*, which some have argued is problematically gender-neutral (DeKeserey & Dragiewicz, 2014). In this study, I intend *Intimate Partner Violence* to mean *Intimate Partner Violence Against Women* explicitly; that is, I am solely interested in the violence and abuse committed by men against women intimate partners or former partners. I utilize *IPV* and *domestic violence* interchangeably.

[2] Naranch (1997)

Chapter 2: Intimate Partner Violence, Battered Woman Syndrome, and The Legal System

2.1 Introduction

This chapter provides an overview of relevant scholarship on Battered Woman Syndrome and the theory of coercive control in order to situate the current study within the larger research context of battered women who kill and the legal system. It also provides an outline of the case under investigation, *R v Teresa Craig*, (2011 ONCA 142). The first half of this chapter critically examines scholarship on the BWS and its relevance to the laws of self-defence. I begin by briefly discussing intimate partner violence in Canada, before turning to the history of both BWS and expert testimony in trials for battered women who kill their abusive partners. I also discuss the explanations often provided by expert witnesses in order to dispel myths surrounding why women remain in abusive relationships, a key aspect of BWS testimony. Section 2.5 outlines feminist critiques of BWS and its feasibility in securing positive outcomes for abused women who kill. Alternatives to BWS expert testimony are presented in section 2.5.1. Finally, section 2.6 discusses a new framework for understanding intimate partner abuse, increasingly used as an alternative to (or in conjunction with) BWS testimony, that of coercive control.

The second half of this chapter provides an overview of the Teresa Craig case. Based on official court documents, it outlines both the background of the case and the trajectory of the case from Teresa's initial arrest, through her trial, conviction, and eventual appeal.

2.2 Intimate Partner Violence in Canada

Intimate partner violence is unfortunately widespread throughout Canada. Although researchers have begun to recognize the harms to both individual women and communities when male partners beat, rape, and subjugate women, the rates of gendered violence, including lethal violence, still remain high.[3] A Statistics Canada report found that, in 2015, roughly 72,000 women (compared with 19,000 men) reported to police that they experienced incidents of IPV (defined by the survey as uttering threats, harassing, physical or sexual violence committed against a current or former dating partner or spouse) (Statistics Canada, 2017).[4] In 2015, the most commonly reported crime committed by men against women were those that would fall under IPV (Burczycka, 2017). For that same year, the highest rate of police-reported intimate violence occurred in the territories, with the highest rate in Nunavut, which had rates more than five times that of Saskatchewan, the province with the highest rate of police-reported intimate violence (Burczycka, 2017). This statistic aligns with research that suggests that spousal violence is higher among Indigenous or Aboriginal communities compared with non-Aboriginal communities (Burczycka, 2016; O'Donnell & Wallace, 2011).[5] Self-report data from the Statistics Canada *General Social Survey* (GSS) 2014 indicates that 40% of women who had reported partner abuse in the preceding five years had sustained physical injuries, and women overall were significantly more likely than men to experience severe spousal abuse (sexual

[3] Researchers recognize that IPV is a public health risk, as various forms of violence and abuse have untold physical and mental consequences for women (Campbell, 2002). Therefore, it is necessary to take a multi-prong approach to address and eradicate violence against women.

[4] These statistics, of course, leave out any incidents of violence that were not reported to the police, or other examples of abuse and controlling behaviour that are not criminalized, though fall under the scope of intimate partner abuse.

[5] For an overview of IPV in First Nations, Métis, and Inuit communities see Bopp, Bopp, & Lane (2003).

assault, choking, be threatened with weapons) (Burczyzcka, 2016).[6] While the rates of intimate partner homicide have fortunately decreased in recent time, the rates of intimate partner homicide continue to be roughly four times higher for women than men (Burczycka, 2018). For the years 2005 to 2015, women between the ages of 25 to 29 were at the highest risk of intimate partner homicide, followed by women aged 35 to 39 (Burczycka, 2017).

Violence against women has historically been condoned in the Anglo-American legal system, including in the Canadian context. Wife-abuse generally fell under the purview of 'family' or 'private' affairs; that is, the state ignored (or in some cases sanctioned) violence against wives because it wasn't deemed a public harm (Schneider, 1994). Up until the mid-nineteenth century, husbands were permitted, and in some cases encouraged, to 'chastise' (i.e., *beat*) their wives in order to control them; these beatings were legal as long as they weren't deemed in excess or caused permanent injury to the woman (Sheehy, 1999: 63). Furthermore, it wasn't until 1983 in Canada that spousal rape was made illegal when spousal immunity was eliminated for those who committed sexual violence against their married partners (Randall, 2010: 401).[7]

In the 1970s, a battered women's movement (part of larger second-wave feminist movements) emerged in the United Kingdom, United States, and Canada. As part of this

[6] The GSS, conducted every five years, is an important source of information relevant to IPV in Canada. However, feminist researchers have critiqued both the methodology for the GSS and the interpretation of the findings. For example, self-reported measures may not accurately represent the prevalence of violence since victims are likely to underreport (Dragiewicz & DeKeseredy, 2012). The GSS also discounts violence and abuse from non-English/non-French speaking individuals (the languages of the survey) (Jayasuriya-Illesinghe, 2018). Additionally, the GSS has problematically been relied upon to further claims of "gender symmetry" in violence in intimate partner relationships (Kimmel, 2002). For example, the GSS reports that equal proportions of men and women experience spousal violence (4%) and that men were more likely to be kicked, bit, or hit. However, claims of equal victimization ignore the context of male violence against women in intimate relationships. Most notably, these claims ignore that women often use defensive forms of violence, that women experience more severe and injurious forms of violence, and that women are more likely to experience repeated acts of violence (DeKeseredy, 2011; DeKeseredy & Dragiewicz, 2014; Johnson, 2015).

[7] The 1983 law reform also replaced the offences of *rape* and *indecent assault* with a three-tiered offence of *sexual assault* that is based on the severity of violence used in committing the crime (Randall, 2010: 401).

movement, safe havens for abused women and their children were opened. For example, in 1972, a group of feminists in England, known as the Chiswick Women's Aid, turned an abandoned house into a women's center and refuge for those escaping violent husbands (Dobash & Dobash, 1992: 47). In the US in the 1960s, Al-Anon created shelters specifically to support women who were subjected to their partners' alcohol-related violence, but these ended up serving other battered women as well (Schechter, 1982: 55). By the 1970s, shelters for all battered women (not just those who were relatives of alcoholics) were opened in places like Minnesota, Pennsylvania, and Boston (Gagne, 1998; Schechter, 1982). In the 1970s in Canada, women's advocates opened transition houses in Toronto and Vancouver; before the development of these shelters, as in many other places, activists would often open their own homes to keep battered woman safe (Janovicek, 2007: 4). In addition to working towards securing safe havens for abused woman, feminist legal advocates fought for equal justice for all women, but especially battered women. A major achievement for feminist advocates and for Canadian law, in general, was the inclusion of expert testimony on *Battered Woman Syndrome* in a case in which a battered woman killed her abusive husband, that of *R v Lavallee,* (1990).

2.3 Battered Woman Syndrome

Battered Woman Syndrome (BWS) is a term developed by American psychologist Lenore Walker (1984) to explain the cyclic nature of the battering relationship between a woman and her abuser and the resulting psychological effects and trauma. From 1978 to 1981, with support from a U.S. National Institute of Mental Health grant, Walker and her team at the Battered Woman Research Center in Denver carried out one of the first large-scale research studies on abused

women. They collected data on roughly 400 self-referred battered women[8] in order to explore the effects of battering from the women's perspective, that is, to let the women "tell their stories in their own time" (Walker, 1984: 225). The research utilized both open-ended interviews and in-depth questionnaires to measure and evaluate the women's family demographics, relationships, history of abuse, educational and/or vocational history, attitudes towards the battering relationships, and psychological functioning (Walker, 1984: 3-4). Based on earlier research (Walker, 1979), Walker had theorized that women who have been physically, sexually, or psychologically abused and controlled by intimate or marital partners typically exhibit a similar pattern of psychological symptoms and personality characteristics.[9] In addition to locating and defining the pattern of symptoms and behaviours for battered women, the NIH research also empirically tested two other important theories of battering—the cyclical nature of violence in intimate relationships, and women's learned helplessness as a result of this cycle.

2.3.1 Cycle of Violence

Walker's Cycle Theory of Violence (1979) postulates that most battering in intimate relationships is not random, but rather follows a cycle of recurring and increasing violence. The three phases of the cycle are identified as (1) tension-building, (2) acute violent episodes, and (3) loving contrition (Walker, 1979, 2000, 2009).[10] The first phase of the cycle is marked by threats, minor incidents of violence such as slapping or hitting, and verbal abuse, taunting, and name-

[8] Walker (1984: 203) defined a *battered woman* as a woman over the age of 18, "who is or has been in an intimate relationship with a man who repeatedly subjects or subjected her to forceful physical and/or psychological abuse." For Walker's study, a woman was deemed eligible if she had been battered by an intimate partner at least twice. In the original study, Walker focused on acts of physical violence to delineate the battering incidents, but her more current research recognizes psychological abuse as well (Walker, 2009: 58).
[9] However, Walker acknowledges that not all women who experience intimate partner violence will have BWS.
[10] Walker's study found that over 65% of the relationships exhibited the tension-building phase, while 58% had evidence of loving contrition (2000: 127-128).

calling that gradually escalates as tension builds. The batterer is hostile and aggressive, but not maximally or overtly violent, and it is during this stage that the woman attempts to pacify her partner in order to avoid violence escalating. Walker reports that oftentimes a woman succeeds in temporarily placating her partner, which leads her to (falsely) believe that she can control her batterer's actions (2009: 91).

The second phase of the cycle is characterized by discharge of the tensions that have built up during the first phase of the cycle (Walker, 1979: 59). The tension reaches a breaking point and culminates in acute episodes of physical violence. The batterer may act out against perceived wrongdoings by his partner that trigger his explosions of violence and brutality. The second phase is marked by a "barrage of verbal and physical aggression" that often leaves women injured (Walker, 2009: 94). Walker maintains that because the gradually-building tension will need to be released eventually, the second phase (the battering episode) is inevitable without intervention or without the woman leaving the relationship. This phase is also when most injuries are sustained (*ibid*).

The final phase of the cycle is marked by loving contrition, or sometimes known as the 'honeymoon phase' (Walker, 1979). After the culmination of the acute event, the batterer attempts to reconcile with his partner by professing his love and pleading for forgiveness. He may act in a similar manner to when they first began their relationship, showering her with gifts or promises to change his behaviour (Walker, 2009: 95). Walker contends that oftentimes, a woman will believe that this 'loving' stage is when her partner exhibits his real nature, which allows the woman to forget the violence in the first two phases of the cycle. It is the third phase that reinforces a woman's desire to remain in her relationship. Walker also observed that this phase could be marked by the absence of violence without any overt behaviours of loving

contrition and that this too could reinforce women's decisions to stay with their partners (2009: 95).

Ultimately, the cycle repeats itself. Over time, the first phase of the cycle (i.e., the threats of danger and aggressive behaviour) increases dramatically, while the third phase (loving contrition) declines the longer the relationship continues. Walker's data showed that at the time of the first battering incident, 56% of relationships in her study exhibited a tension-building phase, while 69% had evidence of loving contrition. By the time of the last reported incident, those numbers had changed to 71% and 42%, respectively (2000: 128) Importantly, the risk of lethal violence increases when the tension remains elevated and does not return to that of the level of loving contrition (Walker, 2009: 95). As contrition fades, women no longer experience periods absent violence; that is, seemingly peaceful periods (those during the loving contrition phase) are instead supplanted by a state of tension, and thus "ongoing potentially homicidal violence becomes the *primary* characteristic of the relationship rather than just *one* characteristic of the relationship" (Ogle & Jacobs, 2002: 71, emphasis in original).

2.3.2 Learned Helplessness

As the cycle continues, Walker proposed that some women inevitably end up in a state where they believe that any attempts to escape or deter the violence are futile. Walker integrated Seligman's (1975) theory of *learned helplessness* into her theory of the battering cycle. Seligman developed his theory in his laboratory experiments with caged-dogs subjected to randomized electric shocks. After repeated shocking, the dogs became unwilling to escape their cages when the opportunity presented itself, thereby becoming 'helpless' to act even though they could escape. Walker (1979) theorized that repeated battering incidents, like the electric shocks, invoke

a state of learned helplessness and depression in the women who come to believe that they are powerless to control the violence. Women become passive and essentially paralyzed by fear, and when this fear is coupled with external barriers, the women are unable to leave abusive relationships.

Although BWS itself is not part of the Diagnostic and Statistical Manual of Mental Disorders (DSM IV), it is generally considered to be a sub-category of Post-Traumatic Stress Disorder (PTSD), a psychological anxiety disorder that is found in the DSM-IV, although the latter term was not yet diagnostically defined when Walker began her original research in the 1970s. Walker's research identified the symptoms of the syndrome as following: 1) Invasive recollection of the trauma, 2) High levels of anxiety, 3) Emotional disturbances including depression, avoidance, minimization, and denial, 4) Distorted interpersonal relationships, 5) Body image/physical complaints, and 6) Sexual intimacy issues (Walker, 2009: 42). The first three symptoms mirror those found in patients diagnosed with PTSD, while the last three are more unique to intimate partner violence. Since PTSD is an accepted psychological disorder generally acknowledged in both the medical and legal spheres, by likening BWS to PTSD, Walker gave BWS medical legitimacy. However, Walker states that while many battered women exhibit sufficient criteria to be labeled with PTSD, not all women do (2009: 68). For instance, women may not be able to pinpoint one particular event that caused them to feel terrorized; rather, it is the totality of the violent relationship, and sometimes more so the psychological abuse, that is traumatic and has a lasting impact (2009: 54). And unlike the larger category of PTSD, BWS acknowledges the gendered nature of intimate partner violence. Thus, while it has been useful to classify BWS as a sub-category of PTSD because of the legitimacy it confers upon BWS, there are ways in which BWS is distinct from PTSD.

2.4 Legal Applications of Battered Woman Syndrome Testimony

Walker's research on battered women has had a lasting impact on the legal system and its response to women who attack or kill their abusive partners in self-defence. Over the last number of decades in the U.S. and Canada, the inclusion of expert testimony on BWS has been adopted in trials in order to allow for juries to understand the reasonableness of a woman's actions given her prior history of abuse, to dispel common myths about battered women, and to explain the nature of the battering cycle and the resultant psychological symptoms women may experience (such as learned helplessness) that keeps them from leaving their abusers. Although BWS is not a legal defence in Canada or the United States, expert testimony on BWS provides a framework to help jurors and legal actors interpret women's responses to violence (such as killing their partner).

The first application of BWS testimony in the U.S. came in the 1979 case *Ibn-Tamas v. U.S* (Downs 1996). In *Ibn-Tamas*, Beverly Ibn-Tamas shot and killed her abusive husband during an attack one morning and was later convicted of second-degree murder. Lenore Walker herself attempted to give expert testimony in this case (i.e., on BWS, the cycle of battering, and why Ibn-Tamas perceived herself to be in imminent danger on that morning); however, because BWS was not recognized as a medical or psychological diagnosis at that time, her testimony was ruled inadmissible (Gagne, 1998: 46). Ibn-Tamas appealed her conviction on grounds that the inclusion of expert testimony was central to her claim of self-defence. The case was remanded back to the trial court, where during a hearing on evidentiary testimony, the judge ruled against the admission of Walker's testimony. After a second appeal, the appeals court ultimately ruled that the trial court had broad discretion to exclude the expert testimony and could not be forced to re-try the case. Although Walker's testimony on BWS was never admitted in *Ibn-Tamas*, it set

a precedent for the inclusion of BWS testimony in other trials. *Ibn-Tamas* was referred to in the appeal of another case, *Smith v. State of Georgia* (1981), where expert testimony on BWS was ruled admissible, and the appellant was acquitted of voluntary manslaughter (Gagne, 1998: 48). Since these landmark cases, BWS testimony has been used (and to some success) in trials of battered women who kill intimate partners. As of late, all 50 US states and D.C. allow for the admissibility of expert testimony about battery and domestic violence to some degree (Campbell, 1996: ii).

2.4.1 Canadian Context and *R v Lavallee* (1990)

BWS testimony was first allowed in Canada in *R v Lavallee,* ([1990] 1 S.C.R. 852). Angelique Lavallee lived with her abusive common-law partner, Kevin Rust, in Manitoba. During a party the couple hosted on August 30, 1986, Rust and Lavallee were upstairs in a bedroom when he began to beat Lavallee and threatened, "either you kill me or I'll get you" (*R v Lavallee,* 1990, at para. 3). As Rust was leaving the room to go back downstairs to the party, Lavallee shot him in the back of the head, ultimately killing him, although in her statement to police she said she was originally aiming above his head. Lavallee was charged with second-degree murder, to which she pled self-defence using then section 34(2) of the *Criminal Code* (Criminal Code of Canada, R.S.C. 1985). [11] The self-defence provision at the time required that the accused, in killing or seriously harming an assailant, meet two tests of *reasonableness*: first, she must have reasonably believed that she was in danger of death or grievous bodily harm from the assault, and second, she must have reasonably believed that the only option available to keep herself from the likely

[11] Self-defence laws under the *Criminal Code* were reformed in 2012 and came into force March 2013, after the Teresa Craig decision. See *Bill C-26* (S.C. 2012 c. 9), available at http://www.justice.gc.ca/eng/rp-pr/other-autre/rsddp-rlddp/index.html.

death or bodily harm was to take the assailant's life (Schuller et al., 2004: 127). However, the specifics of the killing meant that a self-defence plea was not straightforward. Lavallee killed Rust during non-confrontation (that is, not in the context of an immediate physical assault). Although section 34(2) does not explicitly state that the threat of harm to the accused be imminent, this requirement of imminence had been read into the law by the court; that is, self-defence was unavailable to someone who acted in anticipation of some future assault, as opposed to when an assault was actually taking place (Shaffer, 1997: 3). Another challenge for the defence was proving that Lavallee met the requirement for the second part of section 34(2), which states that lethal violence can only be used as a final resort when there are no other options available (Shaffer, 1997: 3). The defence introduced expert evidence on BWS in order to address both these concerns and to fully develop the case for self-defence.

Although Lavallee herself did not testify, the defence relied on psychiatrist Dr. Fred Shane to provide evidence on both the cycle of battering and BWS in order to explain to the jury why Lavallee reasonably believed that Rust would kill her if she did not kill him first. Dr. Shane essentially opined that Lavallee had been "terrorized by Rust to the point of feeling trapped, vulnerable, worthless and unable to escape the relationship despite the violence" (*R v Lavallee*, at para. 9). In essence, Dr. Shane testified that Lavallee suffered from learned helplessness, which led her to believe that she had no other options to escape the relationship (other than killing Rust). Relying on the BWS model, Dr. Shane testified that extreme levels of violence, and the cyclical pattern of abuse, meant that Lavallee was able to accurately predict when violence would occur; therefore, he testified that on the night in question, Lavallee believed that a deadly assault was, in fact, imminent (Shaffer, 1997: 3-4). Lavallee was acquitted of all charges. However, the Crown appealed the acquittal, arguing that Dr. Shane's testimony should have been

excluded and that without such testimony, Lavallee would not have proper grounds for a self-defence plea. The Manitoba Court of Appeal affirmed the appeal, overturned the verdict, and sent the case back to the lower court for a retrial. Lavallee took the case to the Supreme Court of Canada in 1990, where, by unanimous decision, it reaffirmed her acquittal and ruled that expert testimony on battering and Battered Woman Syndrome was admissible.

Madam Justice Wilson, writing the Opinion for the Court, stated that expert testimony is both "relevant and necessary" for a jury to fully understand a battered woman's experience and fairly evaluate her claims of self-defence (*R v Lavallee*, at para. 59). As researchers have shown, the lay public is generally unaware of the realities of abusive relationships (see Ewing & Aubrey, 1997); in this opinion, then, Wilson J. highlighted the importance of expert evidence in combatting the common myths and damaging stereotypes about battered women that it (the public) may hold, including the belief that, because battered women do not leave their abusive relationships, they must be either exaggerating the severity of the abuse, or be masochists who enjoy it. In general, the *Lavallee* ruling acknowledged that expert evidence enables juries to better comprehend the reasonableness of a battered woman's belief that she needs to kill in order to preserve her life, especially in contexts (like *Lavallee*) where there appears to be no imminent threat.

2.4.2 'Reasonableness' and the Battered Woman

Defendants must establish the *reasonableness* of their actions in order to fulfill the requirement of self-defence. It is important to note, that the hypothetical person in the assessment of

reasonableness has been historically, and linguistically, constructed as *male* (Collins, 1977).[12] That is, feminist scholars have argued that the concepts of reasonableness and justification for killing in self-defence have often been interpreted from a male perspective and have been based on male experiences. Such experiences typically include situations of imminent threat, like bar or street fights, and involve participants who are of equal size (Gillespie, 1989; Schneider, 2000). Furthermore, self-defence laws require that a defendant use force that is equal to an attacker's in combating an attack, e.g., fists against fists (Crocker, 1985: 126). The equal force requirement too is modeled on a male experience. That is, because women are usually physically at a disadvantage vis-à-vis their partners, they may have to resort to deadly weapons, such as knives or guns (as opposed to equal force), in response to a partner's attack (Chan, 1994; Russell, 2010; Schuller & Vidmar, 1992).

Many feminist scholars have decried the inherent sex bias in the 'reasonable *man*' standard,[13] arguing that it is inadequate for women defendants (especially those who kill abusive partners) who are unlikely to find themselves in situations like men's—situations of imminent threat where participants are of equal size (Cahn, 1992; Crocker, 1985; Gillespie, 1989; Ogle & Jacobs, 2002; Schneider, 1980, 1996). Take the legal notion of *imminence* as an example: As it is understood under the reasonable man standard, it does not account for the realities battered women face (Kinports, 2004). These include an ever-present perception of danger and an acute awareness of the next possible act of violence (Lazar, 2008: 6). While some research suggests

[12] As Collins argues, because language is both reflective and constitutive of our reality, a gender-biased phrase like 'reasonable man' inevitably brings with it the gender-biased notion of *reasonableness*, which historically has been based on male experiences. This has significant impact on jurisprudence such that when juries invoke the 'reasonable man standard', they are "perpetuating [...] the 'socially determined reality' handed down to us from the common law, which portrays female qualities as the antithesis of reasonableness" (Collins, 1977: 323).

[13] Even though the 'reasonable man' standard is purportedly seen as gender-neutral, the universal applicability of the standard is not borne out in reality, which leads some scholars to argue for a reasonable *woman* standard that would be more specific to a woman's perspective (Crocker, 1985; Scheppele, 2004).

that women are most likely to kill violent partners during confrontation (e.g., Krause, 2007; Maguigan, 1991; Nourse, 2001), many may act when their abusers are leaving (like in *Lavallee*), asleep (as was the case in the trial under investigation in this dissertation) or incapacitated (Schuller & Vidmar, 1992). In many cases, like *Lavallee*, the defendant acts following a battering incident that she believes may continue (and turn deadly) in the future (Schneider, 2000). These so-called 'non-confrontational' killings fall outside the time-limited requirement of *imminence* as it is typically interpreted (Ogle & Jacobs, 2002: 160). Thus, because the immediate danger for women who are subjected to systematic and habitual violence is "not so much embodied in a single attack as in the day to day experience of living under continuous threat", many have argued that a reasonable man standard of self-defence requiring an imminent threat is inappropriate for battered women (Stubbs & Tolmie, 1995: 143).

In fact, in *Lavallee,* Justice Wilson specifically recognized the need for a more contextual standard of reasonableness, one that considers the possible differences between a woman's (especially a battered woman's) and man's experience as they relate to self-defence.[14] She concluded:

> If it strains credulity to imagine what the "ordinary man" would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical "reasonable man".
>
> (*R v Lavallee*, 1990, at para. 38)

The groundbreaking judgment in *Lavallee* acknowledged the inadequacies of the 'male' standard of reasonableness for circumstances where battered women kill. Furthermore, *Lavallee*

[14] Justice Wilson also acknowledged in *Lavallee* society's history of tolerating (and in fact promoting) intimate partner abuse, and the Court's limitations in protecting women from violence in their home.

established that in order to properly assess the reasonableness of a battered *woman*'s apprehension of death or grievous bodily harm and her belief that she could not otherwise preserve herself when she killed her abusive partner, the Court must consider a "broad range of factors", including the woman's personal experiences of battering (Ratushny, 1997: 51). Expert testimony on BWS and battering more generally directly speaks to these experiences. It is important to recall that while *Lavallee* established that expert testimony on battering and BWS is permissible, BWS is itself not a defence. Rather, the success of *Lavallee* is that expert evidence can be used to provide essential background information about battering, to dispel myths about battered women and why they remain in abusive relationships, and to allow for a more comprehensive and compassionate understanding of each particular situation (See Shaffer, 1997).[15] [16]

The next section explicates the reasons why women remain with their abusive partners. Indeed, as mentioned above, a crucial element of expert testimony on BWS and battering is to address myths surrounding why these women would 'choose' to stay.

[15] Following *Lavallee*, the federal government commissioned Ontario Judge Lynn Ratushny to undertake a Self-Defence Review (SDR) of 98 cases where women were found guilty of killing abusive partners, and did not have the benefit of expert testimony or a fully-developed plea of self-defence in light of what was established in *Lavallee* (Ratushny, 1997). The Minister of Justice and the Solicitor-General of Canada ultimately granted relief to only five women, though no women were released from jail. However, Ratushny's report did recommend changes in policing and prosecutorial practices as they relate to homicide charges (especially to address the pressure for women to plead guilty to manslaughter), and she called for reform of self-defence laws to make them more comprehensive (Sheehy, 2000).

[16] Some Canadian lawyers have relied upon a 'gender-neutral' term such as "Battered Spouse Syndrome" in defending clients. This phrasing problematically obscures the relevant gendered context of intimate partner violence and the various social and cultural systems that entrap women in this violence (see Sheehy, 2014: 314).

2.4.3 Answering 'Why Women Stay?'

Many battered women exhibit patterns of leaving and returning to their abusive partners. In fact, research shows that women will often leave their partners multiple times during the course of a relationship (Baly, 2010; Griffing et al., 2002; Merritt-Gray & Wuest, 1995). In one study, it was found that women had separated from their partners an average of five times before leaving permanently (Okun, 1986). In their study of 185 survivors of abuse, Horton and Johnson (1993) found that it took women on average eight years to leave permanently. As mentioned above, one of the goals of expert testimony in trials where abused women have killed their partners is to dispel commonly held myths about battered women, especially as they pertain to their decision to remain with (or leave and return to) their partners. That is, many people who know little about the complexities of intimate partner violence grapple with the idea that women would *choose* to stay in these abusive relationships. They assume that leaving a relationship is both possible and the best option for women who experience intimate partner violence. Thus, researchers (both those working in the legal system and those who are advocates for battered women) have aimed to provide insight into the multitude of reasons why battered women remain in violent relationships [17] (see Barnett, 2000; Rhodes & Baranoff McKenzie, 1998) in order to combat the damaging stereotype that women who stay in such relationships are acting against common-sense, that the abuse was not severe or that the women enjoyed it. [18]

Much of the early research from the field of psychology theorized that women who are

[17] However, because battered women do not constitute a homogenous group, that is, IPV spans across all economic and social classes, racial and ethnic groups (Cazenave & Straus, 1990; Gondolf, Fisher, & McFerron, 1988), and age (Fisher et al., 2003), there is no single reason that could encompass the myriad of explanations for women remaining in abusive partnerships.

[18] Some scholars take issue with the research focuses on 'why women stay in violent relationships', arguing that this question overwhelmingly frames women as damaged: "Imbedded in this question is the assumption that there is something about battered women that makes them want to be abused" (Rhodes & Baranoff McKenzie, 1998: 391).

subjected to countless occurrences of physical and mental abuse may experience psychological difficulties (such as depression, lack of self-esteem, guilt, or fear) that render them incapable of leaving. This theory is consistent with Walker's (1979) idea that battered women display *learned helplessness* (Seligman, 1975). Some researchers claimed that in addition to the mental health factors listed above, the power imbalances in the relationship along with the intermittent nature of abuse (violent episodes followed episodes of contrition as professed by Walker) contributed to the creation of "traumatic bonding/attachment" (Barnett & LaViolette, 1993; Dutton & Painter, 1993).

More recently, however, researchers have shifted their focus away from the perceived psychological constraints facing abused women (which may not be present in all abusive relationships) to the various social and structural forces which make leaving difficult, if not impossible for women in contexts of IPV. Importantly, this current work recognizes that battered women are not a monolith, and as such, interpreting women's decision to stay with abusive partners requires an intersectional approach (Crenshaw, 1991) that considers the influence of multiple, intertwining aspects of identity (including gender, race, class, sexuality, language ability, immigration status, etc.). Specifically, consideration must be given to examining all systems of oppression, such as patriarchal, racial, or economic, that converge to entrap women (Collins, 2000; Crenshaw, 1991; George & Stith, 2014; Phillips, 1998; Montesanti & Thurston, 2015; Mosher, 2015; Sokoloff & Dupont, 2005).

Women's decisions to stay/leave are predicated upon the various forms of structural violence—the "invisible manifestations of violence or any harm that are built into the fabric of society [and which] creates and maintains inequalities" (Montesanti & Thurston, 2015: 2)— that individual women experience. For example, women of colour (especially African American)

may be resistant to criminal justice intervention because of previous negative treatment or any number of racist policies: a higher likelihood of mutual arrest, police brutality, institutionalized discrimination, or the overrepresentation of people of colour in incarceration (Hampton et al., 2008; Jacobs, 2017; Potter, 2008; Richie, 1996, 2012). Immigrant women are also faced with a number of significant barriers to exit violent relationships. These include cultural and language barriers and inadequate services in their native language (Lemon, 2006; Souto et al., 2016), as well as immigration policies which affect their economic circumstances and force them to be financially dependent on abusive partners (Jayasuriya-Illesinghe, 2018; Reina, Lohman, & Maldonado, 2014).[19] Immigrant women are often unfamiliar with the legal system that may be openly hostile towards them (Mosher, 2015). Furthermore, women with precarious status may also fear deportation or losing their children (Reina, Lohman, & Maldonado, 2014; Souto et al., 2016; Vidales, 2010). Finally, studies have concluded that leaving abusive relationships may place women at risk of escalating violence (inflicted upon the women themselves or on their children). And, violence may continue even after the woman has ended the relationship (Brownridge et al., 2008; Kurz, 1996; see also Zeoli et al., 2013) in what Mahoney calls *separation assault*: "the attack on the woman's body and volition in which her partner seeks to prevent her from leaving, retaliate for the separation, or force her to return" (1991: 65). In fact, some research suggests that the risk of lethal violence increases after a separation (Campbell et al., 2007;[20] Cambell, Sharps, & Glass, 2001; Hotton, 2001; Wilson & Daly, 1993; see also

[19] In fact, studies suggest that women existing abusive relationships have a higher risk of financial instability, homelessness, and poverty (Baker et al., 2010; Velonis et al., 2015).

[20] Based on previous studies of estrangement/separation and lethal violence, Campbell et al. (2007: 254) note that lethal violence against women typically occurs within the first year after a separation.

Ontario Domestic Violence Death Review Committee (DVDRC) Annual Report, 2016).[21] In sum, articulating the various reasons 'why women stay' in abusive relationships requires an in-depth analysis of not only the individual-level consequences for exiting (cf. Velonis et al., 2015), but also the intersecting structural forces which shape women's lives.

[21] The review of 289 cases involving 410 domestic violence deaths (homicides and homicide-suicides) between the years 2003-2016 found that 67% of cases involved couples with an actual or pending separation.

2.5 Feminist Critiques of BWS

Although the inclusion of BWS testimony has, to some degree, offered women a fairer outcome when they kill abusive partners in self-defence, the syndrome itself and its application to law are not without criticism. In relation to Walker's studies, the scientific validity of the findings has been called into question as critiques have been leveled at both her research design and methodology (Faigman, 1986; Faigman & Wright, 1997; McMahon, 1999). For example, Walker's (1984) research lacked a control group (i.e., women who have never been in a battering relationship) to which Walker could compare findings. Walker has also been criticized for the lack of representation in her study sample (the majority were white and middle-class), and the nature of self-reported data. Notably, the majority of the sample population did not kill their abusive partners. Walker made no comparison between the battered women in her sample who killed and those who did not (Faigman, 1986). Therefore, there are many questions as to how representative Walker's data is, and how reasonable it is to apply her findings on BWS to self-defence cases.

The main argument against BWS itself is that it pathologizes both women and their experiences (Grant, 1991; McMahon, 1999; Russell, 2010; Shaffer, 1997; Sheehy, Stubbs, & Tolmie, 1992). In representing a woman's behaviour as part of a syndrome, women are viewed as psychologically flawed and suffering from mental illness (Comack, 2002; Comack & Brickley, 2007; Finley Mangum, 1999; White-Mair, 2000). Feminist scholars take issue with 'psychologizing' women's experience because it frames women as emotionally damaged and their reactions to violence, particularly their decisions to stay in the relationship, as irrational and

in need of expert explanation[22] These scholars stress, by contrast, that battered women are rational actors whose actions can be justified as necessary, lifesaving, and reasonable responses of self-defence (Schneider, 2000; Sheehy, 2014).

The application of learned helplessness to battered women has also been criticized because it portrays women as damaged victims and fails to conceptualize women's responses to men's violence as a means of asserting power and agency (Downs, 1996; McMahon, 1999; Schneider, 1996). Learned helplessness characterizes women as inherently passive and as staying in relationships with violent men because they are psychologically impaired and 'trained' to believe they have no alternatives. This ignores the very real social and economic constraints that keep women in their relationships (Ptacek, 1999). Moreover, learned helplessness does not account for the many different coping strategies used by battered women in their relationships (Dutton, 1993). Women adopt strategies to deal with a violent partner that are not helpless at all; for example, women often negotiate situations with a set of 'survival skills' that include ways of avoiding harm to themselves and their children, and planning escapes (Dutton, 1993; Ferraro, 1998; McMahon, 1999; Moe, 2007).[23]

Furthermore, from a legal perspective, the theory of learned helplessness could potentially undermine a woman's claim to self-defence (White-Mair, 2000). That is, testimony on BWS was introduced to show why a woman's actions (i.e., killing her partner) are rational; however, "by emphasizing the cognitive limitations that stem from learned helplessness, battered

[22] Many scholars also argue that in 'psychologizing' these women, BWS inevitably shifts the blame for battering away from violent men and normalizes the patriarchal social system that supports men's battering of women (Downs, 1996: 12; Schneider, 2000). That is, a focus on the psychological reasons why women remain in violent relationships does not question the systems that protect the ability of these men to batter their partners (Comack, 2002; Sheehy, 2001).

[23] Gondolf and Fisher (1988) argue in favor of an alternative to learned helplessness—a *survivor theory* that posits that abuse does not lead to passivity; rather battered women employ help-seeking efforts that are ignored and largely unmet by the community and institutions (such as medical and legal) that are meant to protect them.

woman syndrome depicts a person who is not capable of reasonable action and, thus, is not capable of exercising self-defence" (Shaffer, 1997: 12). Finally, many caution that learned helplessness is incompatible with homicide because women are not passive when they kill their partners, but instead, they have taken the ultimate step (typically after exhausting other resources) in ending the violence perpetrated upon them (Kinports, 2004; Schuller & Hastings, 1996).

Overall, then, a number of scholars maintain that learned helplessness and the syndromization of BWS may contribute to a very narrow conception of what a battered woman is, which ultimately leads to stereotyping who is and is not a legitimate battered woman, and by extension, who 'deserves' a self-defence plea (Ferraro, 2003; Shaffer, 1997; Sheehy, 2014). A clinical definition of battered women does not include individualized responses to violence. It legitimizes only those women who fit the stereotype of women who are submissive, conform to societal gender roles as good mothers and wives, and are ultimately passive non-responders to the violence (Merry, 2003; Rothenberg, 2003). In fact, eight years after *Lavallee*, Justice L'Heureux-Dube concluded in *R v Malott* (1998) that women who do not fit the stereotype of a helpless victim may meet challenges in utilizing a self-defence plea.[24] That is, a battered woman who deviates from the stereotyped 'helpless woman' may be disadvantaged when attempting to convince a jury that she deserves to use BWS in her defence (Downs, 1996: 8). Additionally, the depiction of a battered woman as passive and helpless is typically constructed from ideals of *white* femininity, which make it harder for women of colour to overcome (Allard, 1991;

[24] There is some research on mock juries that seems to confirm that defendants are judged more harshly when they deviate from the stereotypical version of a 'battered woman' that is constructed via BWS (e.g., Terrance & Matheson, 2003; Russell & Melillo, 2006).

Stubbs & Tolmie, 2008).[25]

2.5.1 Alternatives to Battered Woman Syndrome Testimony

While the inclusion of expert testimony has afforded abused women a modicum of success in securing fair outcomes for those who kill in self-defence,[26] many feminist scholars have recognized the deficiencies of BWS and advocate for alternatives to testimony specific to the syndrome (Downs, 1996; Ferraro, 2003; Sheehy, 2014; Sheehy, Stubbs, & Tolmie, 1992; Schneider, 2000). For instance, in addressing the criticism that BWS testimony, although initially developed to counteract harmful stereotypes of women who are abused, in fact further stereotypes women, some urge that expert testimony should remove any language specific to the 'syndrome' terminology. The removal of this language would demedicalize battered women's experiences and instead emphasize these women's reasonable responses to violence (Sheehy, Stubbs, & Tolmie, 1992). Alternatively, others believe that expert testimony should instead focus on something akin to "battering and its effects."[27] In 1994, as part of the U.S. Violence Against Women Act, Congress called for a report on the effectiveness of BWS testimony in

[25] To this point, BWS has been criticized for constructing the archetypal battered woman as white, middle class, and heterosexual (Goodmark, 2008; Rothenberg, 2002) and for not taking into account the intersections of race, class, disability, age, or sexuality in relation to intimate partner violence or responses to violence (Crenshaw, 1991; Stubbs & Tolmie, 1995).

[26] As Sheehy comments, the success of *Lavallee* did not lead to a "rash of acquittals" for women who killed in self-defence (2001: 533). Overwhelming statistics suggest that women who kill their abusers are convicted or accept plea bargains (Osthoff, 2001). Post-*Lavallee* cases indicate that courts are more likely to accept plea bargains for manslaughter and impose more lenient sentences (Shaffer, 1997). Because a murder conviction in Canada carries a mandatory life sentence, battered women may be more inclined to accept manslaughter pleas rather than risk a murder trial in hope of an acquittal, even if they have a strong case for self-defence (Sheehy, 2014: 123).

[27] However, Hatcher (2003) argues that a gender-neutral term like 'battering and its effects' (or 'battered person syndrome'—a term that has been recently adopted by courts) is inadequate for battered women who kill precisely because it is gender-neutral. Expert testimony on 'battering and its effects' neglects gendered testimony that contextualizes a woman's reasonableness within the historical and societal subordination that women experience; as she argues, women lead "gendered lives" that are affected by this subordination, and therefore they "kill in self-defence under different circumstances and in different ways" (2003: 37). Therefore, a gender specific focus on *male* battering of women is necessary if women are to gain equality under the law of self-defence.

court (Rothenberg, 2003). The report, entitled *The Validity and Use of Evidence Concerning Battering and Its Effects in Criminal Trials*, opposed the use of 'Battered Woman Syndrome' as it "does not adequately reflect the breadth or nature of the empirical knowledge about battering and its effects" and implies women suffer from psychological difficulties (Campbell, 1996: vii). The progressive approach to battering testimony is that an expert witness is necessary *not* to explain how a woman suffered from BWS, but rather to speak to the specific circumstances, situations, and effects of battering, typically "beyond the ken of the average judge or jury whose perspective may be clouded by sexist stereotypes and cultural myths", that led a woman to take lethal action to defend herself (Kazan, 1997: 575).

Mock jury research has been conducted to investigate the effects of altering expert witness testimony so that it focuses less on the 'syndrome' and more on the specific circumstances of the battering and the effects of battering on individual women. In one study, Schuller and Hastings (1996) presented participants with a homicide case modeled after an abbreviated version of *Lavallee*, and they manipulated the expert testimony as well as the woman's prior response history to abuse. They contrasted a control of no-expert testimony with two other forms: 1) expert testimony on Battered Woman Syndrome, and 2) 'social/agency' (S/A) testimony that focused on the woman's particular circumstances and the challenges she might face in seeking help. The SA testimony removed the terms Battered Woman Syndrome, PTSD, and learned helplessness (Schuller & Hastings, 1996: 171). The researchers found that, compared to the no-testimony control group, expert testimony (of either type) yielded more lenient verdicts from mock jurors. They also found that there were no measurable differences between the two alternative forms of expert testimony (BWS and S/A), except that BWS testimony yielded greater success in 'jurors' rendering a verdict of insanity. The authors

hypothesize that because removing language specific to BWS did not change the effectiveness of the testimony, evidence specific to the limited choices abused women may have to end the violence and the barriers to leaving relationships (i.e., the S/A testimony) are the most important aspects of expert testimony (1996: 183).

Building on Schuller and Hastings's (1996) work, Schuller et al. (2004) investigated the manipulation of expert testimony (BWS versus S/A) in mock jury research on a homicide trial and also varied the imminence of the husband's threat prior to the woman taking lethal action. Like the previous study, the results showed that expert testimony of either type yielded more positive outcomes than a no-expert testimony control. There was, however, a noticeable difference between the two types of expert testimony as they pertained to imminence (whether or not the killing took place during direct confrontation). When participants were presented with the S/A form of testimony, the imminence aspect of the case had little impact on the mock juror's verdicts. However, participants presented with BWS evidence were more likely to render harsher verdicts in the non-confrontational killing scenarios (Schuller et al., 2004: 134). That is, BWS testimony was found to be less beneficial for situations where the woman used lethal violence outside of direct confrontation. These findings offer support to the suggestion that expert testimony be reformulated to focus less on a woman's psychological problems (as addressed by BWS) and more on the woman's specific circumstances, the effects of battering on the woman, and the realities that abused women may face in trying to leave their relationships (2004: 135). It also suggests that testimony on BWS only is not the most effective form of testimony for cases of non-confrontational killing, such as the one under investigation in this dissertation.

Sections 2.3 and 2.4 have explored BWS and battering testimony and its application to the law, specifically in answering the question *Why Women Stay*? Section 2.5 has summarized

feminist critiques of BWS, while alternatives to BWS expert testimony were explored in section 2.5.1. The next section discusses the theory of *Coercive Control* (Stark, 1995, 2007), which is another proposed alternative to BWS-focused testimony in court trials, as well as a new framework for conceptualizing male battering of women (and how it contributes to the entrapment of women). Coercive control puts the emphasis squarely on the male batterer rather than on the female's role in the battering relationship or on her psychological reaction to the abuse. In the case under investigation in this dissertation, the defence attempted to introduce expert testimony on coercive control, in addition to that of BWS, in order to fully develop the case for self-defence.[28]

2.6 Coercive Control

Currently, the legal sphere defines (and polices) intimate partner violence based on a model that prioritizes individual incidents of violence and measures abuse based on the severity of the resulting injury from these incidents (Stark, 2012: 200). While Canadian law criminalizes various forms of abuse (eg., physical assault[29], sexual violence, harassment), it still adopts an incident-based understanding of abuse. This model of abuse fails to take into account both the ongoing nature of abusive relationships and the societal inequality that sustains male violence. Furthermore, Stark argues that the focus on physical violence erases other forms of abuse (such as emotional or psychological abuse) that have devastating effects on women independently of

[28] Although, as will be explained later in the chapter, this testimony was curtailed by the trial judge.
[29] The Canadian *Criminal Code* classifies three levels of assault: *assault* (sometimes referred to as 'common assault') (s. 265), *assault with a weapon or assault which causes bodily harm* (s. 266), and *aggravated assault* (s. 268).

the physical violence in the relationship.[30]

The coercive control framework of interpersonal violence interprets abusive relationships as multidimensional, and it shifts the focus from an incident-based model of violence that overemphasizes physical assault, to one that conceptualizes men's abuse of women partners as a crime of liberty, similar to that of kidnapping (Stark, 2007: 13). Under this framework, the abusive relationship is not solely defined as such based on the amount and severity of physical abuse involved. [31] In addition to physical and sexual violence, battering can also include patterns of domination, isolation, and control. In abusive relationships, male partners deprive women the right to personhood by utilizing a "malevolent course of conduct" of controlling and coercive tactics that subordinate women and are meant to limit or impede their autonomy (Stark, 2007: 15). Such tactics can include micro-managing a woman's daily life, controlling her relationships (including those with her children), controlling her ability to work, her access to money and her sexuality, isolating her from the outside world (including, crucially, from the social or legal channels set in place to help), and using intimidation and threats, all of which deprive women of their fundamental rights, heighten their sense of fear, and may ultimately lead to their entrapment in these abusive relationships (Stark, 1995: 1024).[32] That is, ongoing physical violence may not be necessary to keep women entrapped in their abusive relationship as much as the fear of what might happen if they disobey their partners, regardless of whether any threats are actually fulfilled (Dutton & Goodman, 2005). While stopping the deadly violence of women is of paramount importance, it is also important to address losses to women's autonomy, which can be

[30] While some forms of psychological abuse are criminalized in Canada (specifically, harassment and threats), they are not contextualized within a larger framework of IPV.
[31] Coercive control may also include situations where no physical violence is present (Stark, 2007).
[32] In fact, some argue that as it denies a woman access to full citizenship, coercive control is not only a crime against the individual woman but also against the state (Hanna, 2009: 1462).

similarly devastating.

While Stark conceptualizes men's abuse of women as a crime of liberty (as described above), he also maintains that coercive control differs from other liberty crimes (such as kidnapping or prisoners of war) in that it is inherently a crime perpetrated by *men* against *women*—it is a "condition of the unfreedom (what is experienced as *entrapment*) that is 'gendered' in its construction, delivery, and consequence'' (Stark, 2007: 205, emphasis in original).[33] Stark (2007, 2013) argues that structural gender inequalities (such as those in the economic and political spheres) shape coercive controlling behaviours and that men employ these behaviours in order to expand their 'male' privileges and deny women autonomy in their personal lives. As women gain more freedom and equality in the public realm, men retaliate by asserting their dominance and power in the private one. Stark also argues that coercive control is a gender-based practice in the sense that abusers micro-regulate women's daily activities and the roles most linked to notions of femininity: motherhood, domesticity, and sexuality (Stark, 2013: 21). That is, abusers are "holding women accountable" for women's performances of gender (Arnold, 2009: 1435). Men not only police how women "do gender" (cf. West & Zimmerman, 1987), they also utilize coercive controlling techniques to legitimate their own gender identities and masculinities (Anderson, 2009; Stark, 2013).[34]

A move towards a broader conceptualization of partner abuse that contextualizes it within the framework of coercive control is grounded in empirical research. For instance, one study found that 69% of women who were physically assaulted also reported that their partners used at

[33] While not all abusive male partners will utilize tactics of coercive control, Stark argues it is the most common context for male abuse of women.

[34] Related to the theory of coercive control is M. Johnson's (1995, 2008) work on 'patriarchal' or 'intimate terrorism'. Intimate terrorism is defined as a form of intimate partner abuse that includes physical violence (often severe and escalating) along with the systematic use of controlling tactics to dominate women, all of which are sanctioned by our patriarchal culture.

least one controlling behaviour (Frye et al., 2006: 1300). Furthermore, in keeping with Stark's claim that coercive control is a better predictor of femicide than physical violence alone (Stark, 2007: 276-277), research has confirmed that women's risks of fatal violence increase if their partners exhibit highly controlling behaviour, especially if women have separated from their partners (Campbell et al., 2003; Glass, Manganello, & Campbell, 2004; DVDRC, 2016). A recent study of 68 Australian men who killed intimate partners found that while half of the men reported that they did not use physical or sexual violence against their partner within the year prior to her death, the majority of men exhibited high levels of coercive control, including varying degrees of controlling behaviours, psychological abuse, and stalking (Johnson, Eriksson, & Mazerolle, 2017). These results indicate the necessity of risk assessment to seriously consider controlling and coercive behaviour as precursors to fatal violence.

For Stark, the theory of coercive control is a better framework than BWS alone to secure justice for women who kill violent intimate partners. As mentioned previously, BWS testimony is introduced to contextualize a woman's belief in the reasonableness of her actions within the prior history of her abusive relationship. It also addresses one of the main questions jurors have—why women stay in relationships. As outlined above, the BWS model suggests that women experience trauma and learned helplessness that leaves women 'trapped' in relationships. In contrast, the coercive control model maintains that abusive men may utilize coercive and controlling tactics to deprive a woman of full autonomy. It also emphasizes how various interlocking systems of domination (such as sexism, racism, and classism) increase women's vulnerability to men's violence, and facilitate men's ability to ultimately entrap women (Collins, 2000; Sokoloff & Dupont, 2005). Unlike the BWS model, the coercive control model emphasizes the abuser's role in constraining the woman's ability to leave rather than

pathologizing the woman. Stark (2007: 12) states that even though BWS is the dominant narrative used by expert testimony in cases where battered women kill, only a small percentage of abused women will present with PTSD or other psychological ailments that fall under the umbrella of BWS. In line with similar arguments against the stereotyping-nature of BWS, Stark contends that by representing battered women as helpless victims of their own psychological deficiencies, BWS is in fact reaffirming the same sexist stereotypes that help sustain men's abuse of women (2007: 135). Moreover, when women lack the appropriate symptoms, or do not conform to the stereotypes portrayed by BWS, their success at using a self-defence plea is made difficult.

BWS typically emphasizes extreme forms of violence, which may not be present in every battering relationship. Because the BWS model emphasizes trauma from this violence, it reinforces the legal/social interpretation of abuse as a series (or 'cycle') of discrete incidents of violence. By contrast, the coercive control model presents a more comprehensive view of intimate violence as a pattern of systematic behaviours meant to deprive women of their freedom, and, as such, is a better framework for understanding women who kill in self-defence, even those who have not experienced a 'cycle of violence', have not suffered violence at a level deemed 'significant' by the law, or are unable to corroborate these incidents. Additionally, the coercive control model better explains women who kill in non-confrontational settings, as it makes understandable women's fear of their partners and the reasonableness of their actions. The model also helps to explain why a woman who experiences minor physical violence (but ongoing abuse) may become entrapped in a relationship, and may therefore be justified in using force in self-defence (Stark, 2007: 106). As will become evident in subsequent chapters, the coercive control model is integral to the case under investigation in the current project, as the defendant

only testified to 'minor' physical violence committed against her and her son. As mentioned previously, the defence attempted to introduce coercive control testimony to support its theory of self-defence. Indeed, the case under investigation in this dissertation was the first time a defence lawyer in Canada utilized expert testimony specific to coercive control (Sheehy, 2014: 432).

Stark (2012) argues that recognizing that women who experience coercive control are harmed and in just as much potential danger as those who suffer physical violence requires that the criminal justice system police coercive behaviour in intimate relationships to the same degree that they do violent assaults or other similar crimes against personal liberty like kidnapping.[35] Recent legislation has been introduced in some localities to criminalize coercive behaviour in intimate relationships. For example, Section 76 of the Serious Crime Act 2015 of the United Kingdom criminalizes "controlling or coercive behaviour in an intimate or family relationship," [36] with penalties up to imprisonment for a term not exceeding five years, and/or a fine (Serious Crime Act, 2015, section 76(1-11)).[37] In Canada, the federal *Criminal Code* does not criminalize a separate category of controlling or coercive behaviours (like that of the UK). That is, while it does criminalize various forms of abuse such as assault (ss. 265-268), kidnapping (s. 279), and criminal harassment, stalking, or making threats (s. 264), currently, there are no offences specific to intimate partner violence in federal law. However, s. 718.2(ii) of the *Criminal Code* considers

[35] However, many women of colour, immigrant women, and other marginalized women do not seek more criminal justice involvement, largely due to racist policies, the risk of dual-arrests, or because of a precarious legal status (see Dichter, 2013; Mosher, 2015; Jacobs, 2017).

[36] Controlling behaviour is defined as "a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour" while coercive behaviour is defined as "a continuing act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim " (Home Office, 2015: 3).

[37] There is some suggestion that the new Canadian law of self-defence, enacted under Bill C-26 (S.C. 2012 c. 9), and finalized in the *Criminal Code* in 2013, would provide for the rationale for further expert testimony on coercive control and potentially clarify whether killing to prevent the deprivation of autonomy and liberty is equal to killing to save one's physical self (Sheehy, 2014: 309).

abuse against an offender's spouse or common-law partner a relevant aggravating factor in sentencing (See Department of Justice Canada, *Family Violence Laws*, 2017).[38]

In sum, coercive control provides an alternative framework to BWS-focused expert testimony in cases for abused women who have killed their intimate partners. While the psychological nature of BWS may pathologize battered women in explaining why they stay in abusive relationships, coercive control emphasizes the male partner's controlling tactics that essentially make leaving extremely difficult, if not dangerous. The coercive control framework also provides a more comprehensive (and arguably more accurate) view of intimate partner violence than is currently found in law. Abuse in relationships cannot be determined by the number of injurious episodes of physical or sexual violence alone. As Stark (2007) points out, coercive behaviours may be just as damaging to women's autonomy as physical violence. Thus, expert testimony on coercive control can help clarify why even women who experience low-level physical violence may fear for their lives. As mentioned above, the coercive control model was a significant part of the defence's arguments in the case under investigation in this dissertation, *R v Teresa Craig*, (2011 ONCA 142).

2.7 Overview of *R v Craig* (2011)

In this section, I provide an overview of the case, *R v Teresa Craig*, (2011 ONCA 142). Much of what is presented here will be further elaborated on in the analysis chapters of the dissertation.

[38] Though Stark calls for an increase in state intervention in coercive control in intimate partner relationships, Hanna questions whether this intervention may prove problematic for women who kill. She argues that with more state involvement comes the expectation that women should utilize these forms of intervention; if a woman does seek outside help, she is less likely to be seen as 'entrapped' in her relationship—"if she kills to liberate herself, the notion that violent resistance was necessary becomes a less persuasive defence in a world in which state intervention was at least theoretically available" (Hanna, 2009: 1460).

2.7.1 Background of the Case

Teresa Pohchoo was born and raised in Malaysia. During her police interview, she said that she had grown up in poverty. She testified in court that she had had only one prior serious relationship in her 20s (with a Malaysian man who raped her), and that this had changed her outlook on Malaysian men. In 1991, she responded to a newspaper advertisement in which Jack Craig, a Canadian, was advertising for an Asian wife: "Western Man Seeking Asian Woman."[39] Following her response, Teresa and Jack maintained a written correspondence, and she visited him in Ontario twice (in 1991 and 1992) before moving to Canada in 1994. They drove from Ontario to Nanaimo, British Columbia in the fall of 1994, and married before driving through the mountains in December of that year. Teresa was 38 years old, and Jack 43. Once married, Teresa gained permanent residency (landed immigrant) status.

Teresa supported Jack, who claimed disability and was not regularly employed, by working a minimum-wage job at Salvation Army. She gave birth to their son, Martyn, in 1996, after which Jack's temper and aggression towards Teresa increased. In 1997, she took her 10-month-old son to visit Malaysia. She returned after three weeks because Jack had decided to invest in a new business venture, a motel, in Sayward, B.C. He had also sold their furniture while she was gone. The business failed after three months, and Teresa lost the $5,000 she gave to Jack for the motel, and they moved back to Nanaimo.[40] Around this time, Jack filed a report with the Child Welfare Services, alleging Teresa had an inappropriate relationship with Martyn. Teresa

[39] Cross-examination, p. 2062.
[40] Factum of the Appellant, p. 3

was forced to speak with the authorities secretly because Jack would not allow her to meet them.[41]

Teresa took two-year-old Martyn and separated from Jack in May of 1998, and in August of that year, Jack moved to Protection Island, in Nanaimo Harbour, B.C. Teresa testified that she declined to disclose her location to Jack at this time because she was "afraid he might come after [her]me and grab [her]me and Martyn." She further testified that her fear stemmed from the fact that he was aggressive and used his body size to intimidate her— he showed his aggression "[b]y raising his voice, because he's big and tall and strong, I'm just a short person, so I afraid of his size..his..his body size".[42] Although Teresa testified that Jack did not hit her, she stated she felt threatened he might if she didn't walk away from him. After separating from Jack in May of 1998, Teresa enlisted the help of two close friends to gain custody of Martyn. She was awarded custody and Jack had weekend visits with his son.[43] At this time, she also filed for a restraining order against Jack to keep him away from her workplace.

In August of 1998, Teresa returned to Jack and moved to Protection Island, though she maintained her apartment in Nanaimo. She testified that she maintained her place in Nanaimo because she wanted a place to escape from Jack's abuse. Over the course of the next few years, Jack's abuse and aggression continued to escalate. According to her testimony (and testimony from other witnesses), he isolated her, kept her from visiting friends, controlled the use of the phone, and essentially stalked her when she went out without him. He also became more verbally abusive, calling her a *bitch* and *cunt*, and publically humiliating her. She stated in the police interview that he made her feel like a maid or servant, rather than a wife. In direct examination,

[41] Factum of the Appellant, p. 3. However, Jack's report did not result in any legal action taken by the Child Welfare authorities.
[42] Direct examination, p. 1955
[43] Factum of the Appellant, p. 4

she testified that Jack hit Martyn on the head and pushed her when they were on the boat crossing between the mainland and the island. He also went to her place of work, the Salvation Army, to harass and humiliate her in front of colleagues. In 2003, Teresa again separated from Jack, and this separation lasted one year.[44]

In 2004, Teresa quit her job at the Salvation Army and moved full-time to Protection Island. Jack removed Martyn from public school and began to home-school him. Jack abused Martyn on a daily basis (according to Teresa's testimony) at home, on the boat, and on the dock. Jack would hit Martyn hard in the head—"always hit Martyn with the ruler and hit Martyn head," as well as "whip him with a belt on the leg."[45] Teresa became increasingly worried about Jack's abuse of Martyn, which negatively impacted her psychological state. Because Martyn was home-schooled, Jack made it essentially impossible for Teresa to be with Martyn without Jack being present. Jack used Martyn to keep Teresa from leaving him permanently—she testified that he told her she could leave, but that Martyn could not. In April 2005, Teresa was hospitalized for increasing suicidal thoughts. The attending psychiatrists determined that she suffered from acute stress due to her relationship with Jack, and the relationship caused her a myriad of problems (such as suicidal ideations, insomnia, and sleep disorders). She was also prescribed anti-depressants, but she later testified that she could not afford to pay for these medications once she returned home.

After her hospitalization, Jack sold their home in order to lease a gas station/convenience store in Kemptville, Ontario. Teresa testified that although she did not want to leave BC, Jack again threatened he would keep Martyn from her if she did not go. By the time of Jack's death in March of 2006, the three were living in a motorhome outside their store. They had significant

[44] Teresa's separations and returns to Jack are explicitly dealt with in Chapter 4 and 5.
[45] Direct examination, p. 1986

financial problems, as the store was failing. Teresa testified that they went without running water due to a lack of money; at the time of Jack's death, she hadn't taken a shower in approximately two weeks and had been wearing the same pants for about a week.[46]

2.7.1.1 The Night in Question

After closing the store on March 30, 2006, Jack unsuccessfully attempted to collect roughly $140 of money owed from a customer, Barry. Jack returned home drunk[47] (something Teresa stated increased his aggression and abuse), and told Teresa "I'm gonna break his right leg, and I will"[48] if Barry didn't pay him in the next few days. Teresa testified that she was scared of Jack, and believed he would go through with the threat. She also testified that at a time prior to the night in question, a drunken friend of Jack's had assaulted her; this incident increased her fear of men and Jack specifically when he was under the influence. After going to bed, Jack woke in the middle of the night twice to use the washroom. He elbowed Teresa as she helped him up and she fell against a door. He also pushed her. He eventually fell asleep on the pull-out couch, where Martyn was sleeping, so Teresa moved Martyn to the couple's bed at the back of the motorhome. Teresa testified that she sat at the kitchen table worried about their situation and how Jack would behave in the morning. She then took a knife and stabbed Jack four times. She would later testify

[46] This would become a somewhat important detail in the case. Evidence collected from her person at the time of her arrest included a napkin with the phone number of Jack's sister (Shirley). Because Teresa stated at the time of her 9-1-1 call that she wanted family or friends to take care of Martyn, the Crown argued that this napkin also pointed to her 'plan' to kill Jack. However, the defence argued that the napkin was circumstantial and they highlighted the fact that Teresa had been wearing the same pants for a week, that Teresa had no memory of writing down Shirley's phone, but that she had contacted Shirley approximately two-to-three weeks prior to the night of the incident to use Shirley's shower (Direct examination, p. 2049).

[47] The pathology report concluded that Jack's blood alcohol level was two-and-a-half times the legal limit and that he had recently used marijuana (Factum of the Appellant, p. 11).

[48] Direct examination, p. 2025

that her mind was "blank" at the time and that she didn't know why she did it.[49] She ran out of the motorhome to a neighbour's house, where she stated that she had killed her husband and asked the neighbour to call 9-1-1. When asked what happened, Teresa responded, "I'm not happy with my life so I killed my husband."[50] When she was told by the emergency operator that Jack was still alive, Teresa stated, "Oh, I'm sad to hear that"[51] because, as she later testified, she thought that if Jack survived, he would kill her and Martyn. Jack was pronounced dead during the ambulance ride to the hospital. Teresa was taken into custody, interrogated, and charged with first-degree murder (s. 235 (1) of the *Criminal Code of Canada*). She was released on bail and remanded to an Ottawa women's shelter, Harmony House, to await trial.

2.7.2 The Trial

The trial began on April 15, 2008, in Elgin Courthouse in Ottawa, and lasted approximately two months. Teresa pled not guilty to the charge of first-degree murder. Forty-two witnesses testified at trial, including Teresa herself.[52] As a non-native speaker of English, Teresa was provided with a 'stand-by' Cantonese interpreter (cf. Angermeyer, 2008) during her testimony; however, she did take advantage of this service. The timeline for the trial is presented in table 2.1 below.

[49] Direct examination, p. 2039
[50] 9-1-1 Call, p. 4
[51] 9-1-1 Call, p. 49
[52] In Canadian law, defendants cannot be compelled to testify as witnesses in their own trial. See *Canadian Charter*, 1982, s. 11 (c).

Table 2.1 Timeline of Teresa Craig Trial

Date	Trial Phase
15 April 2008	Jury Selection Completed Crown Opening Address Witness Examination Begins
15 May	Defence Opening
21—22 May	Teresa's Examination
5 June	Ruling Re: Self-Defence
10 June	Defence Closing Address
11 June	Crown Closing Address Final Jury Charge
12 —16 June	Jury Deliberations
16 June	Verdict
22 —25 July	Sentencing Hearing
25 July	Final Sentencing
27 January 2011	Appeal Heard (Ontario Court of Appeal)

2.7.2.1 The Case for the Crown

In Anglo-American law, the burden of proof rests with the prosecution; therefore, it was the Crown's duty to convince members of the jury of Teresa's guilt (i.e., first -degree murder) beyond a reasonable doubt. In Canada, the Crown is the first to call evidence, and the defence typically only opens its case at the conclusion of the Crown's, pursuant to s. 651 (2) of the *Criminal Code of Canada* (the defence may open following the prosecution's opening if all parties consent, though this is rare) (Sheehy, 2014: 20). The Crown argued that Teresa's actions were intentional, deliberate, and planned, all consistent with a first-degree murder conviction. It further argued that Teresa killed Jack because she hated him and was unhappy with her life and mounting financial problems—problems that she blamed on Jack, according to the Crown. As evidenced by the questioning and closing arguments, both the 9-1-1 phone call and Teresa's

police interview (which will be examined in Chapters 6 and 7) were integral to the Crown's argument that her actions were consistent with first-degree murder.

In addition to calling as witnesses some of Jack's friends and family members (including his sister), the Crown also called an expert witness Dr. Hucker, a forensic psychiatrist, in order to provide an educated opinion on Teresa's state of mind when she killed Jack. Dr. Hucker interviewed Teresa for three-hours in March of 2008 (two years after the incident). He stated that it was his belief that Jack was abusive to Teresa, specifically verbally abusive, and that Teresa had a "naïve, fairy tale view of marrying a Caucasian man and having beautiful white babies, as a means of escaping her impoverished background."[53] He testified that he believed Teresa suffered from anxiety, mild to moderate depression, and some symptoms of post-traumatic stress disorder that he felt were linked to Teresa killing Jack, rather than to Jack's abuse. Based on his interview with Teresa, he opined that she had the capacity to form the intention to kill (a requirement for a murder conviction). Even though Dr. Hucker concluded that Jack abused Teresa, and the Crown Counsel noted during closing arguments that Jack was "certainly unkind"[54] to Teresa, the Crown argued that the abuse did not diminish her capacity to form the intent to kill. Moreover, the Crown argued that there was evidence supporting planning and deliberation and urged the jury to find her guilty of first-degree murder.

2.7.2.2 The Case for the Defence

Teresa pled not guilty to her charges, and the defence initially attempted to advance a plea of self-defence, under then s. 34(2) or s. 37 of the *Criminal Code*, at trial. Section 34(2) justified the

[53] Factum of the Appellant, p. 13
[54] Crown Closing, p. 3458

use of lethal force where the accused reasonably apprehended death or grievous bodily harm and where such force was necessary to preserve one's self from death or grievous bodily harm. Section 37 justified the "use of force to defend himself or anyone under his protection (such as a child) from assault, if he uses no more force than is necessary to prevent the assault or the repetition of it." In line with these sections of the *Criminal Code*, the defence argued that Teresa was subjected to psychological, verbal, and chronic but low-level physical violence, as well as other major elements of coercive control (such as isolation and humiliation) that left her in a constant state of fear for herself and her son. (Jack physically abused Martyn). This fear led her to kill Jack for the safety of both her and her son. The defence provided expert evidence from a psychiatrist that Teresa, due to Jack's abuse and control of both her and her son, developed depression and suffered from other significant psychological issues. Although these psychological issues would be consistent with symptoms of BWS, additional expert testimony on coercive control was needed in order to help the jury better understand the consequences of Jack's abuse, and more accurately present the defence's theory of self-defence (rather than BWS testimony alone). As mentioned previously, the BWS-model typically emphasizes repeated instances of severe violence and the cumulative effects of such (Stark, 2007: 153). Because Teresa testified to Jack's chronic but 'low-level' violence against herself and her son, a coercive control framework would presumably help the jury better understand Teresa's actions in killing her husband to save both herself and Martyn. As noted, the coercive control framework recognizes that physical violence may not be the most significant factor in intimate partner abuse, and the consequences of coercive control include not only high levels of fear and risks of injury but also hostage-like entrapment.[55] The testimony on Jack's coercive controlling

[55] Factum of the Appellant, p. 18.

behaviours (and its impact on the loss of Teresa's personal autonomy), was critical to explain why Teresa felt she had no other options than to kill Jack (Sheehy, 2018: 101).

The defence called six witnesses from British Columbia in support of Teresa to give evidence about Jack's behaviour. Some of this evidence came from neighbours who stated that they often heard Jack yelling at Teresa and Martyn in their home, or heard Jack publicly berate the two of them. One neighbour testified that he saw Jack smack Martyn in the back of the head, as Teresa had claimed. However, the trial judge also excluded evidence from neighbours with respect to specific incidents of Jack's violence, as it was seen to be too prejudicial and a character assassination of Jack. Excluded evidence included that from a neighbour who called the police after Jack threatened him with a handgun and a broken oar following a dispute. This neighbour chose not to press charges as Teresa and Jack were moving from Protection Island.[56] In addition to witnesses who testified to Jack's abuse, the defence also called two expert witnesses. They called Dr. Kunjukrishnan, a psychiatrist who treated Teresa after she was admitted to the Royal Ontario Hospital following Jack's death on March 31, 2006, and continued to see her for the next two years until the trial. He testified that Teresa suffered from major depression and PTSD as a result of Jack's abuse. In one report, dated February 15, 2007 (p. 1011), he stated that Teresa "felt trapped" due to Jack's "continuous intimidation and ongoing psychological abuse".[57] He determined that Teresa acted impulsively without planning, and that her mind was "not operating in a rational state at the time on account of long-standing post-traumatic stress disorder resulting from psychological abuse, financial control and intimidation from her husband."[58]

[56] Factum of the Appellant, p. 26
[57] Factum of the Appellant, p. 17
[58] Factum of the Appellant, p. 17

The defence also called Evan Stark, a widely-published expert on domestic violence, an advocate for battered women and a leading researcher on the theory of coercive control. Calling Dr. Stark was notable as Teresa's case was the first time in Canada a defence lawyer had entered into evidence the theory of coercive control in an attempt to advance a self-defence plea for a battered woman accused of murder (Sheehy, 2014: 432). The defence argued that Dr. Stark's testimony on coercive control would be necessary in order to fully understand Teresa's experiences and her resultant actions on March 31—Jack "deprived [Teresa] of her basic liberties, that narrowed her choices and left her [...] where there was no other alternative but to kill in self-defence."[59] That is, Stark's testimony was necessary to explain why Jack's tactics of coercive control, absent extreme forms of violence that are often common in cases of battered women who kill, were damaging to the point that Teresa killed Jack because she felt she could not otherwise preserve herself (or her son) from death or grievous bodily harm. The defence argued that Stark's testimony would shed light on Jack's actions as a course of conduct, "the death of a thousand cuts, not the single blow of an execution."[60]

Dr. Stark interviewed Teresa for approximately five hours and concluded that Jack abused Teresa and relied on intimidation and threats (to take Martyn) in order to control her. Stark opined that Jack treated Teresa like an "indentured servant"; he controlled her daily existence (such as monitoring her phone calls, and her bathroom habits), and resorted to yelling when she didn't respond in the manner he (Jack) deemed appropriate.[61] He observed that Teresa's strategies for minimizing Jack's coercive controlling behaviours—walking away from Jack when she feared he would become physical violent, talking with professionals, complying

[59] *Voir Dire*, p. 2312
[60] *Voir Dire*, p. 2316
[61] Factum of the Appellant, p. 20.

with his demands in regards to Martyn, the finances, and the home— were largely unsuccessful.[62] He noted a pattern of chronic low-level physical intimidation and violence (such as shoving, pushing, and slapping Martyn), and also concluded that Teresa was likely "underreporting the nature and extent of the abuse".[63] According to Stark, Teresa was faced with what he called the "battered mother's dilemma" —"a form of intimidation in which the perpetrator forces the victim to choose between her own safety and the safety of their children" (Stark, 2007: 253). In the *voir dire*, Stark stated he was prepared to testify that on the night of the killing:

> Mrs. Craig was overwhelmed by two, in some sense, conflicting and deeply felt fears, the most important of which was having to choose between a life of abuse in where she believed, reasonably in my opinion, that she was suffering a slow death physically and psychologically and losing her son. In other words, that on the night she stabbed Jack Craig, Mrs. Craig believed that she had no alternatives to either losing her own life, being annihilated by the suffocating sense of coercion and control that she had experienced over the previous decade, or losing the person that she loved most, her son, Martyn.
>
> (*Voir Dire of Evan Stark*, p. 2305)

Under cross-examination in *voir dire*, the Crown vehemently opposed Dr. Stark's testimony and challenged his credentials, the relevancy of his upcoming testimony, and the report he was prepared to put forward (Sheehy, 2018: 107). While Stark's testimony was meant to support a self-defence plea, the trial judge, using the *Mohan* application,[64] ruled that Dr. Stark's testimony on coercive control could be admitted only as it pertained to Teresa's ability to form the intent or plan to kill, but not in support of a self-defence claim (as it was originally

[62] Factum of the Appellant, p. 21
[63] Court of Appeal for Ontario judgment, at para. 29
[64] *R v Mohan*, [1994] 2 S.C.R. 9. The Supreme Court of Canada ruled in *Mohan* on the admissibility of expert testimony—"Admission of expert evidence depends on the application of the following criteria: (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; and (d) a properly qualified expert."

intended). Dr. Stark testified to Jack's coercive control and BWS, and he was again challenged by the Crown in cross-examination. In significantly limiting the scope of Dr. Stark's testimony to Teresa's intent, the trial judge further concluded that a self-defence plea lacked an 'air of reality', and, thus, disallowed the defence at trial. In addition to excluding some witness testimony (as noted above), the trial judged completely excluded the testimony of Jack's previous wife (pseudonym *H.F.*), as this evidence was also deemed too prejudicial.[65] Ultimately, the judge ruled that the case lacked any evidence that Teresa acted in self-defence, and declined to put self-defence, under s. 34(2) or s. 37, to the jury.

2.7.2.3 Ruling re: Self-Defence

Self-defence in Canada at the time of the proceeding was defined under the *Criminal Code* (R.S.C., 1985, c. C-46) at ss. 34-37.[66] In order to advance the defence of self-defence, the trial judge had to apply what is known as the 'air of reality' test in determining whether or not to put forward the defence to the jury. The test determines whether there is evidence upon which a properly instructed jury acting reasonably could acquit if it accepted the evidence as true:[67]

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[65] H.F. was prepared to testify that Jack was both physically and psychologically abusive towards her, that Jack was more aggressive when drunk (as he was on the night he died), that he used their son as leverage to keep her from leaving, and ultimately that the abuse was to such a level that "she thought she was going to die" (Submissions of Counsel, Vol. 26, pp. 2917-2943). However, Teresa testified that she was unaware of this abuse. Because of this, the trial judge ruled to disallow H.F.'s testimony, determining that anything she said would be akin to "character assassination" of Jack.

[66] As mentioned, the law of self-defence was reformed in 2012 and enacted in 2013. Since aspects of Teresa's trial and appeal were conducted between 2006-2011, I only refer to the law of self-defence relevant at that time. The new legislation was introduced in order to simplify the law of self-defence, which included the removal of the language of "justification" (Sheehy, Stubbs, & Tolmie 2012: 3-4). Sheehy, Stubbs, & Tolmie, 2012 state that abandoning "justification" could potentially benefit abused women who kill in pre-meditative contexts or with hired killers—two scenarios where self-defence as justification was previously unavailable (2012: 4). They continue that although aspects of this new simplified law could be viewed as positive advancements, the new law may also negatively affect women, as the new law "require[es] that the court consider 'imminence' and 'proportionality' in assessing whether the action taken in defence was 'reasonable,' words that were not previously in the statutory language of self-defence." (2012: 4).

[67] *R v Cinous*, [2002] 2 S.C.R. 3, at paras 81-82

> In applying the air of reality test, a trial judge considers the totality of the evidence, and assumes the evidence relied upon by the accused to be true. [...] The evidential foundation can be indicated by evidence emanating from the examination in chief or cross-examination of the accused, of defence witnesses, or of Crown witnesses. It can also rest upon the factual circumstances of the case or from any other evidential source on the record. There is no requirement that the evidence be adduced by the accused.
>
> (*R v Cinous*, [2002] 2 S.C.R. 3 at para. 53)

The Crown argued that there was no evidence that Jack assaulted Teresa or Martyn to a level that would reasonably require Teresa to act in self-defence. In contrast, the defence argued, in the absence of the jury, that the 'air of reality' test was met based on both Teresa's testimony and submissions provided by expert witnesses on Jack's coercive control, the battered mother's dilemma, and Teresa's resultant psychological difficulties due to Jack's abuse. One pertinent factor in allowing a plea of self-defence is whether there was assaultive behaviour on the night in question that would have left Teresa (and ultimately a jury) to believe that she was in imminent danger of death. The defence argued that there *was* assaultive behaviour on the night in question, (such as Jack elbowing and shoving Teresa), and that an understanding of "battered spouse syndrome[68] provides the framework in which the jury [can] analyze whether this shoving is enough to create the requisite fear and so on, both objectively and subjectively".[69] That is, the defence argued that Teresa's reaction to the elbowing and shoving (i.e., killing Jack) had to be viewed through the lens of Battered Woman Syndrome and coercive control as these were described in the expert witness testimony. However, the trial judge ultimately ruled against the defence. He stated that the case lacked the factual basis that either Teresa or Martyn had been

[68] As previously mentioned, many advocates have decried the use of a gender-neutral term like 'battered spouse syndrome', especially for defence counsel, as it nullifies the particular gendered experiences of violence in intimate relationships. This may lead jurors to minimize the abuse women experience in their abusive relationships, as well as overestimate women's ability to leave (Sheehy, 2014: 314).
[69] Exchange of counsel, in the absence of the jury, p. 2176.

assaulted that night, or that either was going to be assaulted to the extent necessary for Teresa to believe that she needed to kill Jack in order to preserve herself from death or grievous bodily harm:

> It is universal that she never once indicated that she believed she would be hurt or killed that night, or that she was even threatened that she was going to be hurt or killed that night by Jack Craig, or that she was even threatened that she would be hurt or killed by Jack Craig that at some time in the reasonably foreseeable future. Nor can the Court infer from any of this circumstantial evidence presented through this trial that Mrs. Craig was operating under that belief. [...] In effect, on two of the elements of self-defence, there is no evidence on the record upon which a properly instructed jury acting reasonably could acquit.
>
> (*Ruling on Air of Reality* Vo.1, 29, pp. 3129-3132)

2.7.2.4 Verdict and Sentencing

As the trial judge disallowed the initial self-defence plea, the defence instead argued that Teresa was guilty of manslaughter, but not first-degree murder. In Canadian law, a culpable homicide is classified as *murder* when the accused "means to cause death, or means to cause bodily harm" that the accused "knows is likely to cause death or is riskless whether death ensues" (s. 229) Additionally, "Murder is first-degree murder when it is planned and deliberate" (see *Criminal Code*, R.S.C. 1985, c.46, s. 231(2)). Both planning and deliberation are necessary aspects for a first-degree murder conviction. A second-degree murder is a homicide that was deliberate but not planned. By contrast, *manslaughter* (R.S.C. 1985, c.46, s. 236) is a culpable homicide (death is caused by an unlawful act) that is not murder (or infanticide). Generally, the perpetrator did not intend to cause death, but did intend the unlawful act that resulted in the death. Due to Jack's abuse and coercive control, the defence argued that Teresa, suffering from Battered Woman Syndrome and other psychological difficulties, was unable to form the intent to kill. She ultimately snapped and killed her husband out of impulse. In this way, Teresa lacked the

necessary *mens rea* for murder. The trial judge did put this 'partial defence' (i.e., lacking the intent to kill) to the jury (Sheehy, 2018: 101).

On June 16, 2008, after a four-day deliberation, the jury returned a verdict of not guilty of first-degree murder, but guilty of manslaughter, with a penalty range of suspended sentence to life imprisonment. The Crown argued that Teresa's actions were consistent with aggravated manslaughter and suggested a term of imprisonment between seven and nine years. The defence argued that Teresa's sentence should be mitigated because of her status as a battered woman suffering from BWS. It sought a term of imprisonment of less than two years and asked for a conditional sentence, similar to other cases where BWS was used to mitigate sentencing. In a letter of support for a conditional sentence (a period of imprisonment served in the community) (dated July 18, 2008), Dr. Kunjukrishnan remarked that "Ms. Craig's risk for further violence and criminal behaviour is minimal and whatever risk is present can be managed with adequate treatment of her depression" and that "any incarceration is likely to affect her physical and emotional health adversely" as well as interfere with her relationship with her son. Additionally, throughout both the trial and the sentencing hearing, numerous people offered letters of support for Teresa, something the trial judge stated was "frankly unprecedented" in his experience as a judge.[70] Although he concluded that Teresa was a well-liked person, her likeability was outweighed by the seriousness of her crime, which he characterized as a "near murder".[71]

The trial judge ultimately sentenced Teresa to a term of imprisonment of eight years, consistent with the Crown's suggestion. The judge stated that he accepted that Jack was a "domineering, bullying controlling man"[72] but concluded that Jack never "committed a serious

[70] Reasons for Sentence, p. 4029
[71] Reasons for Sentence, p. 4022
[72] Reasons for Sentence, p. 4027

physical assault against Mrs. Craig" or sexual assault.[73] He further stated that though some abuse in this case is "undeniable" and that "words can be crushing," he could not "equate what occurred in this relationship with the line of cases where battered woman syndrome was applied as a significant mitigating factor".[74] Teresa's son was taken into custody by Children's Aid Society. Immigration Canada also sought an order to remove Teresa to Malaysia following her sentence. Because of the "serious criminality" of the offence (Immigration and Refugee Protection Act, s. 36.1), Teresa would be deemed inadmissible to Canada, and unable to appeal the removal order.

2.7.2.5 The Appeal

Teresa (with new counsel) appealed both her conviction and sentence to the Ontario Court of Appeal. On conviction, defence counsel argued that the trial judge erred in not allowing self-defence to go before the jury, in excluding evidence from witnesses on Jack's predisposition for violence, and in curtailing the coercive control evidence from Dr. Stark on self-defence. The appeal argued that the trial judge "prevented fulsome development of [self]defence" by excluding this evidence and testimony.[75] On sentencing, it was argued that the trial judge had mischaracterized Jack's death as a "near murder", which was overly biased in favour of the Crown's position, and that the sentencing was harsh and excessive given Teresa's history of abuse. The Court of Appeal dismissed the appeal on conviction. The Court confirmed the trial judge's finding that "[t]here was nothing to indicate that Craig apprehended death or serious

[73] Reasons for Sentence, p. 4028
[74] Reasons for Sentence, p. 4028
[75] Factum of the Appellant, p. 1

bodily harm at the hands of her husband or that she believed she had to kill him to save herself".[76] They continued:

> It is fair to say, based on her evidence and statements, that what she feared was not death or grievous bodily harm, but having to live with the deceased at least until her son was on his own, in the isolated, destitute, loveless and seemingly hopeless environment the deceased had created for them.
>
> (*R v Craig,* [2011] ONCA 142 at para. 38)

However, the appeal on sentencing was allowed, and the court reduced Teresa's sentence to time served (roughly three years). The Court of Appeal concluded that the trial judge erred in focusing on the degree of abuse Teresa suffered, rather than on the impact this abuse had on her. It also agreed that Jack's death did not warrant the label, "near murder". The appeal was heard on January 27, 2011, and Teresa was released from prison.

2.8 Chapter Summary

This chapter has provided an overview of research on intimate partner violence, battered women and the legal system. It has also provided an overview of the case, including the trial itself. I began the chapter by reviewing the literature on intimate partner violence in Canada, Lenore Walker's theory of Battered Woman Syndrome, and its application to trials where women kill abusive partners. Though not without faults, BWS and its inclusion in expert testimony have fundamentally transformed the plea of self-defence for abused women who kill. However, as discussed above, many feminist legal scholars have criticized both the psychologizing and medicalizing nature of the syndrome itself, as well as its usefulness in securing positive

[76] Appellate Opinion, p .3

outcomes. These scholars suggest alternatives to both BWS and BWS testimony, such as removing the BWS language, focusing testimony on individual circumstances of battering, or using coercive control, an alternative framework for conceptualizing intimate partner violence. Coercive control was significant to Teresa's case as it was introduced by one expert witness, Evan Stark, himself a leading scholar on the theory. Importantly, Teresa's trial was the first time in Canadian history that expert evidence of coercive control was introduced to help advance a self-defence plea, although, as noted above, the trial judge restricted Stark's testimony to his opinion of Teresa's ability to form the necessary intent to kill.

In the next chapter, I present the theoretical and methodological approach I adopt in this dissertation. Chapter 3 begins by exploring the meaning of *discourse* in both social theory and linguistics, and by reviewing critical approaches to analyzing discourse. In addition to addressing the methodological tools adopted in the analysis chapters (4-7), Chapter 3 also reviews literature on the critical analysis of discourse in legal studies specifically, much of which provides the theoretical backbone for this study.

Chapter 3: Critical Approaches to Legal Discourse — Theory and Methods

3.1 Introduction

This interdisciplinary project is situated at the intersection of intimate partner violence, the legal system, and language. As such, it is not only necessary to review research on intimate partner violence and Battered Woman Syndrome within the Canadian legal system (as I have done in Chapter 2), but also a body of research within linguistics that critically examines language in the law.

This chapter begins by addressing the theoretical and methodological framework adopted in the dissertation. Section 3.2 discusses the notion of *discourse* from both a linguistic and social theory perspective. I then move to an overview of the theoretical framework for this study, that of critical discourse analysis, specifically, critical discourse analysis conducted through an intersectional *feminist* lens. Section 3.3 discusses previous work on critical linguistics in the legal system, an area of research scholarship that interrogates the impact of language on larger legal and social issues. Finally, Section 3.4 presents an account of the data selection and methods for analysis. Overall, this dissertation uses analytical tools developed in linguistics in order to investigate a legal case in which a battered woman is accused of murder. Following Conley and O'Barr (2005), I assert that this kind of critical investigation of language in the legal system is crucial to better identify "the concrete manifestation of the law's power" (Conley & O'Barr, 2005: 129).

3.2 On Discourse

Discourse is a difficult term to define as usage varies from one discipline to another. At the most basic level, *discourse* is generally understood to involve some aspect of language or communication. Beyond this very general meaning, however, there is little consensus among scholars from the varied fields of study that use the term; as a result, oftentimes the term is left undefined for the reader as if it were "simply common sense" (Mills, 2004: 1). Linguists typically use *discourse* in one of two ways, according to Schiffrin (1994: 20). Discourse has been defined as (1) a unit of language above the sentence or clause level (Stubbs, 1983: 1) or (2) as language in use (Cameron, 2001: 17). These two definitions generally reflect an emphasis on either language 'form' (definition 1) or language 'function' (definition 2). However, Bucholtz (2003: 44) has pointed out that, in spite of these different understandings of discourse, these two views "are often compatible" in practice. That is, most linguistically-oriented discourse analysts who are primarily interested in discourse 'function' (i.e., what we do with language in social interactions) study units of language that are larger than the sentence or clause. For the purpose of this dissertation, I adopt a functional view of *discourse*, following Cameron (2001): "language used to do something and mean something, language produced and interpreted in a real-world context" (2001: 13).[77] At the same time, in line with Bucholtz's comments, the units of language I investigate in this dissertation are generally larger than the sentence or clause (e.g., question-answer sequences, text trajectories, etc.).

In contrast to linguists, researchers in other fields (such as those in the social sciences, cultural studies, humanities, philosophy, and literary theory) who study discourse may focus less

[77] While discourse analysts may generally agree on functional-type definitions of discourse, there are many approaches to studying discourse, including conversation analysis (CA—Atkinson & Heritage, 1984; Sidnell, 2010a), discursive psychology (DP—Edwards & Potter, 1992; Potter & Wetherell, 1987), and critical discourse analysis (CDA—Fairclough, 1995; van Dijk, 1993), although these approaches can often be combined.

on minute details of language; that is, *discourse* for these scholars is related to "culturally and historically specific ways of organizing knowledge", an analysis of which does not necessitate a strict focus on linguistic form (Bucholtz, 2003: 45). These scholars are influenced by French philosopher Michel Foucault who defines discourse as "practices that systematically form the objects of which they speak" (Foucault, 1972: 49). That is, for Foucault, discourse does not simply reflect a reality, but brings about the existence of something; Foucault is interested in *discourses* as bodies of cultural and historical knowledge that regulate and produce social meaning and social subjects. He talks of discourses of sexuality, criminality, medicine, etc. and the type of subjects that are brought into being by these discourses. For example, in *History of Sexuality* (Vol. I, 1990), Foucault claims that the concept of 'homosexuality' came into being in the nineteenth century as a result of the psychological and medical discourses of the day that categorized homosexuality as an innate characteristic of one's 'soul'. That is, although same-sex sexual acts had always existed, Foucault declares that it wasn't until the advent of psychoanalysis in the nineteenth century that these practices were labeled as a form of *sexuality* that constituted one's identity. Society had previously regulated forbidden sexual acts (such as sodomy), but these new medical discourses constructed a 'homosexual' subject: "The homosexual was now a species" (1990: 43).

Furthermore, it is through the regulatory practices of discourses that Foucault insists power is exercised. Culturally and institutionally regimented discourses define "what counts as true" (Foucault, 1980: 131). They govern how we talk about, think about, and make meaning of an object. Thus, these societal "régimes of truth" (Foucault, 1980) are inextricably linked to issues of power, as power is connected to what counts as knowledge and truth in a particular culture at a particular historical moment. Foucault's notion of *power* differs from other

theoretical understandings of power, which often view it as a form of domination over subordinates, as is the case with Foucault's Marxist contemporaries who focus on economic class struggle. By contrast, Foucault conceptualizes power as something relational and mutable that is both productive as well as restrictive (Mills, 2004: 17). In other words, power is not an entirely negative force held by one group (the 'top') to ensure the subservience of those below, but is instead something that is created and circulates in social interactions (Foucault, 1990: 92). Power, for Foucault, is everywhere (Foucault, 1990: 93). He comments (1990: 101):

> [A] discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling point of resistance and a starting point for an opposing strategy. Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart it.

3.2.1 Critical Approaches to Analyzing Discourse: Power and Ideology

The previous section has described two definitions of *discourse*: (1) a definition of *discourse* (from linguistics) that focuses on actual language use, and (2) a more abstract, Foucault-inspired notion of *discourse* that refers to the constitutive power of 'bodies of knowledge'. However, rather than dichotomizing these two definitions, discourse analysts, especially those who adopt a 'critical' perspective on discourse, are interested in both simultaneously: They are interested in how 'discourses' in the Foucauldian sense are constituted through concrete, fine-grained aspects of language and how power is implicated in the construction/constitution of these discourses (Ehrlich & Romaniuk, 2013: 461). The area of critical discourse analysis (CDA) will be explicated more fully below.

CDA is a multi-method and interdisciplinary approach to discourse, which critically examines the ways in which power and inequality are manifested and maintained (and resisted)

in naturally-occurring language (both written and spoken). Underlying this approach is CDA's view of *discourse* as both "socially constitutive as well as socially shaped" (Fairclough & Wodak, 1997: 258, emphasis in original). That is, while discourse not only reflects social practices, it also constitutes social and cultural systems of knowledge, social actors and social institutions (Chouliaraki & Fairclough, 1999; Fairclough, 1992). This view of language as inherently constitutive of social realities is arguably influenced by Foucault's (1972) understanding of discourses as practices that "systematically form the objects of which they speak": Discourses are not purely reflective of meaning and social reality but more importantly engender them, so that "[w]ithout discourses, there would be no (social) reality" (Jäger & Maier, 2009: 36).

For CDA, the constitutive nature of discourse means that discourse is intrinsically linked to the social problems it produces. In other words, concrete linguistic interactions can have a profound impact on larger issues of power and inequality (such as gender, class, or racial inequalities). Many in CDA are concerned with analyzing how socially dominant groups and so-called elite institutions (e.g., the media, the government, the legal system) control and 'abuse' power through their linguistic practices (Fairclough, 1989, 1995; van Dijk, 2008). Power is "conceptualized both in terms of asymmetries between participants in discourse events and in terms of unequal capacity to control how texts are produced, distributed, and consumed" (Fairclough, 1995: 1). In sum, CDA largely understands that both modes of *discourse* (discourse as language use and discourse in the Foucauldian sense) are intertwined, and so CDA's goal is to make clear the connections between discursive practices at the micro level of social order, and power at the macro level (van Dijk, 2008: 87). CDA is an overtly political and 'critical'

theory/methodology as it strives to uncover imbalances in power and ultimately promote an emancipatory framework (Wodak & Meyer, 2009: 7).[78]

In addition to *power*, another crucial element of CDA scholarship is the investigation of *ideology* as it is articulated in and through discourse. Definitions of ideology, of course, vary not only among critical discourse scholars but also among social theorists.[79] Defining *ideology* can in many ways be a problematic endeavour. As Blommaert comments, "Few terms are as badly served by scholarship as the term ideology" as ideology studies is a "morass of contradictory definitions, widely varying approaches to ideology, and huge controversies over terms, phenomena, or modes of analysis" (2005: 158). One general definition of *ideology* is a shared set of beliefs that is both "coherent and relatively stable" (Wodak & Meyer, 2009: 8) and that defines and structures daily actions and social practice (van Dijk, 2011: 380). An important component of *ideology* is the ability for these shared sets of beliefs to become culturally accepted and 'taken-for-granted'; that is, they are *naturalized* in such a way so as to appear as *common-sense* rather than ideological (Fairclough, 1992, 1995). In many cases, this process largely occurs by way of the dominant groups in society—those with the most privileged access to and control over public discourses. Ideologies can be seen as the kinds of discourses (in the Foucauldian sense of bodies of cultural knowledge) that are ratified as *truth* in a particular social or historical context. These discourses govern our worldview, oftentimes at the expense of the less-than-powerful in society. It is the 'naturalizing' effect of ideologies or dominant discourses that is most relevant for the current dissertation, as this project investigates how 'common sense'

[78] However, Chilton (2005) questions whether critical discourse analysis has in fact accomplished its emancipatory objectives to a meaningful degree outside of academic scholarship.
[79] See Eagleton (1991) for a comprehensive overview of *ideology*. For an overview of *language ideology*, see Woolard (1998).

assumptions about battered women (and battering more generally) are drawn on by legal actors in their discursive constructions of a battered woman who killed her abusive husband.

Essentially, it is these dominant discourses/ideologies that are of interest to CDA scholars: CDA explores how unequal relations of power and domination are "established, maintained, enacted, and transformed" through the proliferation of ideologies (Fairclough, 2010: 26). Because ideologies are often transmitted through discourse (text and talk), an analysis of ideology inherently requires an analysis of discourse (Fairclough, 2010: 26). However, discourses are not always ideologically transparent (van Dijk, 2006). In fact, as Fairclough (1989: 85) comments, "Ideology is most effective when its workings are least visible". Therefore, CDA attends to the particular discursive practices that have the ability to naturalize ideologies so that they "appear as 'neutral' and, thus, remain "largely unchallenged" (Wodak & Meyer, 2009: 8).

According to critical discourse analysts such as van Dijk (2001, 2009), CDA is less a methodology and more an approach to the investigation of social problems. While CDA has historical roots in and has used the methodological tools of Halliday's (1985) Systemic Functional Linguistics (see Fowler et al., 1979; Kress & Hodge, 1979), it should not be characterized as a single theory or methodology (Weiss & Wodak, 2003; Wodak & Meyer, 2009). That is, there is no one way to 'do' CDA (Wooffitt, 2005: 137). CDA is instead a critical perspective on discourse and society; according to van Dijk (2001: 96), it is discourse analysis "with an attitude".

3.2.1.1 Feminist Critical Discourse Analysis

The key tenet of CDA is that language is a social phenomenon. A CDA approach focuses on the

ways in which discourse both reflects, and perpetuates, systems of power, and the way it might function to resist such systems. While concerned with addressing social domination in its various forms in order to enact social change, Lazar (2014) contends that CDA needs to be supplemented by a feminist analysis in order to deal with gender oppression specifically. Though CDA can be (and has been) applied to the study of gender, Lazar (2014: 182) discusses the difference between a CDA of gender, and a decidedly *feminist* CDA. A CDA of gender applies the same theories and methodological approaches of any CDA to the study of gender (that is, the way of doing CDA does not change) while a *feminist* CDA draws on critical feminist theory—it starts from a distinctly feminist position and adopts feminist concerns. In other words, *feminism* becomes political. Lazar calls for a feminist critical discourse analysis (hereafter FCDA) in order to elucidate "the complex, subtle, and sometimes not so subtle, ways in which frequently taken-for-granted gendered assumptions and hegemonic power relations are discursively produced, sustained, negotiated, and challenged in different contexts and communities" (2007: 142).

FCDA adopts the same theoretical position as CDA in that it assumes that discourse is both shaped by and constitutive of social realities. FCDA, however, draws particular attention to the way in which social practices are "deeply gendered" (Lazar, 2014: 184). Thus, one of the major goals of FCDA is to show how social practices are gendered, and how such gendered social practices are constituted in discourse. FCDA critiques discourses that create and sustain gendered hierarchies. It works to demystify the interconnection between gender, power, and ideology by uncovering "how power and dominance are discursively produced and/or resisted in a variety of ways through textual representations of gendered social practices, and through interactional strategies of talk" (Lazar, 2005: 10).

As with most contemporary feminist social theories, FCDA rejects an essentialist view of

'gender'. Instead, FCDA adopts an intersectional approach (Crenshaw, 1991) to gender such that gender is considered in relation to other aspects of social identity (e.g., race, age, sexuality, ethnicity, disability, etc.) and sexism is considered in relation to other systems of oppression (e.g., racism, homophobia, etc.). An intersectional analysis is crucially important in studying trials of battered women who kill, as this dissertation will demonstrate. While feminist legal activists maintain that the law is gender-biased (and the law of self-defence inadequate for battered women), how this inequality manifests itself can be different for different women. For instance, the English language ability of women who are non-native/second-language (L2) speakers is a major barrier to access to fair trials when these women are charged with killing abusive partners.[80] Women may not be provided with adequate interpreter-services, and legal actors (including defence counsel) are often ill-equipped to handle the cultural and linguistic differences that are likely to occur when non-native speakers answer questions or testify (see Eades, 1996). As with English language ability, race is also a significant factor in how the legal system interacts with abused women who kill. For example, insidious stereotypes about African-American women as more violent and less feminine than white women have contributed to disparities in rates of conviction and imprisonment for African-American women who fight back against or who kill their abusers (Ammons, 1995; Potter, 2008; Richie, 1996). Importantly, these stereotypes make it difficult for these women to utilize Battered Woman Syndrome as part of a self-defence plea because BWS is based on conceptions of *white* femininity (Allard, 1991; Morrison 2006). Indigenous women are also overrepresented in the prison system, and they may be subjected to similar racial stereotypes when they kill abusive intimate partners (Stubbs & Tolmie, 2008). In addition to women of colour, poor women, immigrant women, young women,

[80] See Lemon (2006) on second-language speakers and access to domestic violence services more generally.

and queer women are typically judged more harshly by the criminal justice system than white, middle-class, heterosexual women (Belknap, 2007: 154). Indeed, my analysis of *R v Teresa Craig*, (2011 ONCA 142), shows that Teresa's identity as a low income, immigrant, woman of colour was significant to the way that she was (discursively) represented in both the trial and in media reports of the trial.

The previous sections have introduced the theoretical assumptions underlying the approach I adopt in my dissertation (i.e., CDA, specifically, FCDA). In particular, I have argued that a distinctively *feminist* CDA is necessary to explore the gendered and intersectional dimensions of *R v Teresa Craig* (2011). The next section moves on to describe critical discourse analytic work that has analyzed legal discourse. As will become evident, this area of inquiry provides an important backdrop for my research.

3.3 Studies on Language and Law

It is fundamentally impossible to study any legal system without turning one's attention to language use. As Tiersma (1999: 1) says, "Our law is a law of words.... [The] several major sources of law in the Anglo-American tradition, all consist of words". In other words, it is through language that law comes into existence and, thus, language is essential to understanding the inner workings of the judicial system. Language and law is an interdisciplinary field of study in which scholars have turned their attention to the linguistic aspects of a variety of different legal 'texts', all of which can be subsumed under the broader category of 'law'. Work in language and law includes studies on language use in the legal sphere and the role of linguists as experts in the law (see Johnson & Coulthard, 2010). One large area of research in language and law is dedicated to the study of *legal language* in written legal documents and contracts, and its

use as a specific register (e.g., Gibbons, 2003; Kurzon, 1997;[81] Maley, 1994; Tiersma, 1999). Much of this research focuses on the differences between *legal language* and *everyday language*. Though all citizens interact with the 'law' in many ways, legal language can be inaccessible to anyone who does not have specific legal training. Legal language is archaic, full of technical jargon and complex grammar, and may be impenetrable for the average lay citizen. The complexities of legal language mean only a particular, privileged class of people (i.e., legal actors) is able to read and decipher legal documents (Goodrich, 1987: 81).

A second area of the law that has been of interest to linguists is the study of institutional interactions in legal settings. Such work investigates the details of linguistic practices in legal contexts, examining language as part and parcel of the legal process. Research has been conducted on language in various contexts within the legal system, from police interviews (e.g., Ainsworth, 2008, 2010; Haworth, 2006, 2010; Heydon, 2005; MacLeod, 2016), to all aspects of courtroom discourse (e.g., Cotterill, 2003; Drew, 1992; Eades, 2002, 2008; Heffer, 2005; Solan & Tiersma, 2005; Stygall, 1994), to socio-legal settings, for instance, protective order interviews (Trinch, 2003). There is also a significant body of work dedicated to issues pertaining to multilingual speakers, translation, and interpreting (e.g., Angermeyer, 2008, 2013; Berk-Seligson, 2002, 2009; Hale, 2004; Haviland, 2003). Much work on language use in trials has drawn from Atkinson and Drew's (1979) highly influential text, *Order in Court*. Working within a conversation analytic/ethnomethodological paradigm, the authors investigate talk in courtroom trials, specifically, how court 'business' is interactionally accomplished.

[81] Though Kurzon (1997: 121) distinguishes between language *of* the law (the language in which the law is written) and *legal language,* "a metalanguage used to talk about the law".

3.3.1 Critical Analysis of Language in Legal Settings

The work that is most important for this dissertation is that which approaches the law critically by combining linguistic analysis at the local level with analysis of the formation and contestation of larger socio-cultural structures. These studies examine not only the legal work accomplished through discursive practices (as Atkinson and Drew do), but also how discursive practices embody societal power and control. While much work in socio-legal studies (including feminist legal studies) scrutinizes imbalances of power within the legal system and works towards correcting injustices, legal anthropologists Conley and O'Barr (2005: 13) claim that this scholarship has been largely ineffective in producing empirical evidence for the kinds of imbalances that take place in everyday legal practices.[82] Because these practices are largely comprised of *language*, 'critical' work (including that of socio-legal studies) needs to examine the microlinguistic mechanisms that structure these practices in order to address legal shortcomings. As Conley and O'Barr comment, "Language is not merely the vehicle through which legal power operates: in many respects, language *is* legal power" (2005: 14, emphasis in original). Thus, one way of determining how legal power is "realized, exercised, sometimes abused, and occasionally subverted" so as to challenge systems of inequality is to study actual language (*ibid.*). According to the authors, this can be accomplished by merging sociolinguistic or discourse analytic methods with socio-legal research on broader social dynamics. One of the authors' major contributions to this type of work is their (1990) ethnographic research on the two styles of lay-litigant accounts (narratives) of legal issues in small-claims courts: 1) the *rule*-

[82] However, the authors also take issue with strict sociolinguistic perspectives that analyze legal interactions without connecting these interactions to much broader social issues (2005: 12-13). In fact, Atkinson and Drew, to whom much credit in legal linguistics is owed, clearly state that they are interested solely in developing an analytical model to explicate the characteristics of courtroom talk and not in searching for a resolution to social (or legal) problems (1979: 217).

oriented approach, where litigants appeal to violations of rules or principles to make their claims, and, 2) the *relational* approach, which emphasizes social relationships and status. Importantly, the authors find that the rule-oriented accounts fit best with the law, and participants who use these types of arguments generally fair better in legal situations than those who rely on relational ones (which are often viewed by judges as rambling and incoherent). By attending to the linguistic details of these particular legal interactions, Conley and O'Barr's analysis provides support for claims that certain lay participants (here, those unable to conform to the 'proper', or rule-oriented, narrative style) are systematically disadvantaged in court.

In the next section, I briefly describe the research of three scholars who, like Conley and O'Barr, have engaged in *critical* research on language and law, and whose work has informed many aspects of this dissertation: Susan Ehrlich, Diana Eades, and Shonna Trinch.

3.3.1.1 Susan Ehrlich

Susan Ehrlich's scholarship (e.g., 2001, 2007, 2012) on the language of sexual assault trials provides a crucial resource for the current study. Her work offers much in the way of both a methodological roadmap for this project, as well as key insights into important concepts in discourse analysis that have been relevant to this project. Ehrlich's (2001) book, *Representing Rape: Language and Sexual Consent*, is a detailed linguistic case study of sexual assault in two different legal settings—a university tribunal and a criminal trial. The same defendant, a university student, was charged in both settings with two sexually-related crimes (sexual harassment in the university tribunal and sexual assault in the criminal trial) perpetrated on two different women. Ehrlich uses a feminist linguistic framework (situated within a critical discourse analytic approach) to investigate how acts of sexual assault get transformed into

consensual sex in the talk of adjudicators, lawyers, and the defendant. The language of rape trials has been studied by a number of scholars (e.g., Drew, 1992; Matoesian, 1993, 2001; Taslitz, 1999) and it is generally claimed that linguistic practices in rape trials, especially in cross-examination, contribute to women feeling 'revictimized' on the stand. Ehrlich's work focuses less on the revictimizing of complainants and more on the ways in which aspects of the trial discourse—which often relied on outdated sexual/gendered stereotypes and ideologies—helped to construct the events as consensual sex, rather than sexual assault. Her analysis points to the constitutive nature of discourse (here, courtroom talk) in "defining and delimiting the meaning that came to be attached to the events and subjects under scrutiny" (2001: 1).

Ehrlich's book is highly relevant for this current project in a number of ways. As she states at the beginning of her book (2001: 1), her goal is to provide empirical evidence to support CDA's claims that discourse is both "socially constitutive as well as socially shaped" (Fairclough & Wodak, 1997: 258). She accomplishes this through a detailed linguistic analysis of the courtroom talk, which relies on various analytical tools such as grammatical analysis, framing (Tannen, 1993) from linguistic anthropology and interactional sociolinguistics, (re)formulations (Heritage & Watson, 1979) from conversation analysis, and speech act theory (Austin, 1962) from pragmatics. Her work is therefore an embodiment of van Dijk's (2001) assertion that any number of theoretical or methodological perspectives can be used in CDA scholarship. More importantly, her work highlights the way that courtroom talk can function to significantly shape the way events come to be understood in trials, and, by extension, the way that such understandings can potentially have an impact on legal outcomes. Her analysis of the adjudicators' questioning practices in the university tribunal, and the discriminatory ideologies of

gender, violence against women, and consent evident therein, is explored in Chapter 5.[83]

3.3.1.2 Diana Eades

Diana Eades's (2008) monograph, *Courtroom Talk and Neo-Colonial Control*, is another key example of how to conduct a critical analysis of legal language. Her book is an account of the *Pinkenba* case, a legal case which revolved around three Aboriginal Australian boys (aged 12-14) who were approached by armed police officers at a mall in Brisbane, were told to get into police vehicles, and were subsequently driven 14 kilometers away to an "industrial wasteland" where they were left (Eades, 2008: 3). The police officers were initially charged with 'unlawful deprivation of liberty'; however, a committal hearing to determine whether there was sufficient evidence to officially try the police officers was unsuccessful and all charges were dropped. Eades's book analyzes the discourse of this committal hearing. What is most notable about this hearing is that, while the police were the accused, the majority of the hearing was devoted to scrutinizing the boys, their actions, and their language.

In line with Conley and O'Barr's call for linguists to provide empirical support for the workings of power in the legal system, Eades' book investigates how issues of authority, power, and colonialism converge at the site of the highly adversarial cross-examination of the young boys. In exploring these themes, Eades stresses (in a similar manner to both Ehrlich and Conley and O'Barr) that micro-linguistic practices in the courtroom do not occur in a vacuum, but are intimately connected to power and, in her case, the neo-colonial control of Australian Aboriginals by the Australian state (2008: 40):

[83] Furthermore, her 2012 and 2013 research on the recontextualization of 'consent' is discussed in Chapter 6.

> [S]ociolinguist attention to the ways in which power is exercised through talk involves more than the immediate interaction—for example in the courtroom—as it must be seen as part of the wider societal exercise of power.

Much of Eades' book focuses on certain ideologies of language that were exploited by the defence counsel in the questioning of the boys. According to Eades, these kinds of linguistic ideologies —the "cultural ideas, presumptions and presuppositions with which different social groups name, frame and evaluate linguistic practices" (Gal, 2006: 13)—help sustain the power of the police (and the legal system) to dominate Aboriginals in various ways. The boys testified that on the night they were taken, the police told them to 'jump in the car' (or 'to get in the car'). At the center of the defence's argument, and the magistrate's decision not to pursue a formal trial of the police, was that the meaning of these utterances was misunderstood. That is, the defence argued that the utterances were meant as suggestions, rather than as commands as the boys had interpreted them (2008: 324). Of course, the defence's interpretation ignored the asymmetrical nature of the interaction between police officers and the three young boys[84] and the fact that these kinds of contextual features have an impact on how utterances are interpreted. Moreover, it delegitimized the boys' testimony that they were 'forced' into the cars (2008: 143). Eades contends that this language ideology, i.e., the ignoring of contextual factors in the interpretation of utterances, ultimately contributed to how the justice system failed the boys (by not officially charging the police). She poignantly comments that the boys were "victims of the police abuse, and then the victims of court abuse" and that the negative outcome in the case meant that the larger Aboriginal community (who were supportive of the boys and helped them seek legal

[84] Solan and Tiersma (2005), like Eades, acknowledge that courts tend to ignore the asymmetry between police and the public, specifically that due to power differentials, lay persons are likely to interpret police requests as orders.

redress) were also "punished [...] for getting the police into trouble" (2008: 317).[85]

3.3.1.3 Shonna Trinch

The final work to be covered in this section is Shonna Trinch's (2003) book, *Latinas' Narratives of Domestic Abuse: Discrepant Versions of Violence*, a linguistic analysis of protective order interviews between Latina women survivors of abuse and paralegal/lawyers in two unnamed U.S. cities (which Trinch calls 'Anytown' and 'Someville'). It provides a rich source of material for the current project as it is one of only a few book-length linguistic studies that addresses domestic violence and law (see also Andrus, 2015; Lazarus-Black, 2007). The book combines linguistic analysis with ethnographic methods to investigate the ways in which women's stories of abuse are transformed as they move from the protective order interviews to affidavits, and the consequences of such changes for both the women narrating the abuse and other women in situations of abuse.

Trinch points out that protective orders (court-mandated orders restricting or prohibiting abusers' access to the named parties) are one of the most common socio-legal responses to domestic violence; thus, the protective order application interview is one of the most common socio-legal speech events for women in these situations (2003: 61). The goal of the protective order interview is for women to recount their experiences of abuse to a legal actor who will then compose a written document (such as an affidavit) on their behalf, which will then be used to petition for the protective order. Because protective orders are not guaranteed for all women, success largely depends on these written documents. Trinch claims that the preferred narrative

[85] Eades's analysis of the linguistic mechanisms in the cross-examination is further explored in later chapters.

type for the legal actors and their affidavits is a Labovian[86] Normal Narrative Structure as described in sociolinguistic literature, which includes clauses linked to an orientation, complicating action, evaluation, resolution, and a final coda (2003: 23). The consequence of this narrative preference is that the women's stories often need to be altered to fit this expected pattern.[87] For example, Trinch found that the women she studied typically employed generic time narratives, which included the habitual tense and adverbials like 'always' and 'every time' to underscore the ongoing nature of their abuse (2003: 111). But, as Stark (2012) has commented, the legal system polices and adjudicates only discrete instances of violence. Consistent with Stark's comments, Trinch found that, for the purposes of the affidavits, the women's stories were altered to conform to a linear and temporally-sequenced narrative (with a definite past and present), which emphasized specific episodes of violence only. The *true* nature of the violence—that it was ongoing and consisted of multiple offences—was obscured. To put it a different way, the institutionalization of the women's stories erased the complexities of domestic violence, and this erasure only reaffirmed the law's (inaccurate) perception of it as isolated episodes rather than a course of conduct.[88] The protective order interviews studied by Trinch not only transformed women's identities, but they also defined and constructed what it means to be 'abused'. Though Trinch studied Latina women specifically, her findings suggest a need for more scrutiny of the protective order interview more generally. By focusing on the language of this kind of co-produced narrative, her work offers empirical support for feminist critiques of the legal system and how it handles domestic violence.

Having reviewed some key texts that investigate language in the legal system from a

[86] See Labov & Waletsky (1967) for more information.
[87] For further discussion of narrative credibility in protective orders and the civil justice system, see Epstein and Goodmark (2018).
[88] See also Neilson (2000) on the implications and limitations of an incident-based judicial understanding of abuse.

critical perspective, the next section describes the methods used to access and analyze my data.

3.4 Approaching the Data for Analysis

Fairclough (2001: 236) has identified five steps that can be used in carrying out a critical discourse analysis (though they need not be done in the following order):

- Step 1: Focus on a social problem[89] that has a semiotic aspect.
- Step 2: Identify obstacles to the social problem being tackled.
- Step 3: Consider whether the social order 'needs' the problem.
- Step 4: Identify possible ways past the obstacles.
- Step 5: Reflect critically on the analysis (steps 1-4).

As the following discussion will illustrate, I found these steps particularly helpful as I conducted my own feminist critical discourse analysis.

The larger social problem analyzed in this project involves battered women who kill their intimate partners and their unequal access to a self-defence claim for homicide charges. In the previous chapter, I elaborated on this social problem. Intimate partner violence against women is a systematic and widespread problem with roots in a number of interlocking systems of oppression and domination, including those surrounding race, gender, and class (Collins, 2000; Jiwani, 2006; Mosher, 2015; Nixon & Humphreys, 2010; Sokoloff & Dupont, 2005; Sokoloff, 2008). In response to the systems that have historically excused, or even condoned, abuse of wives and women, second wave feminist activists looked for ways to keep women safe and to

[89] In later work (Fairclough, 2009), Fairclough uses the term social 'wrongs'. He shifts terminology because 'problems' imply 'solutions' that are at least theoretically available from the very systems that create and sustain these problems in the first place (2009: 186). The idea that these systems can solve the social problems they have produced is part of their "self-justifying" discourse, and as Fairclough points out, "some wrongs are produced by systems and are not resolvable within them" (2009: 186).

seek legal redress.[90] Part of this work involved the development of a theory of battering and women's psychosocial responses to this battering, i.e., the Battered Woman Syndrome. When women (living under constant threats of violence and terror) took lethal action against their abusive partners, BWS became useful to address the myths and misconceptions of battering and battered woman, and to contextualize women's actions within this context of abuse. That is, BWS testimony was introduced to strengthen self-defence pleas for women, especially for those women who acted in situations counter to those typically covered by the law of self-defence. Feminist legal scholars assert that the law of self-defence (like much of the legal apparatus) is oriented towards a male perspective (e.g., it assumes *men* of equal size using equal force) and that this male perspective places women at a disadvantage in securing positive outcomes. This difficulty in securing self-defence pleas, then, would be, the "obstacle to the social problem being tackled" (Fairclough's Step 2).

As for the remainder of Fairclough's steps, arguably, the most important one involves the identification of "possible ways past the obstacle" (Fairclough's Step 4). I assert in this dissertation that the linguistic details of *R v Teresa Craig*, (2011 ONCA 142) are crucial to understanding why Teresa's attempts to claim self-defence were unsuccessful. That is, in the same way that Ehrlich (2001) demonstrates how problematic gendered ideologies can inform the 'talk' of sexual assault proceedings (and construct sexual assault as consensual sex), I demonstrate how myths and misconceptions about battering and battered women can make their way into trials and undermine the credibility of battered women who kill, and question the reasonableness of their actions in the context of ongoing, long-term abuse to themselves and their children. My focus on the linguistic practices of the *R v Craig* case, and the kinds of

[90] However, many second wave studies of IPV lacked intersectional focus (cf. Crenshaw, 1991), and largely discounted the experiences of marginalized women and women of colour (see Sokoloff & Dupont, 2005).

problematic assumptions embedded in these linguistic practices, suggests that it is these kinds of discursive/ideological practices that must become the target of scrutiny in order to get 'past' the problems that battered women in the legal system face (Fairclough's Step 4).

3.4.1 Description of the Data

The legal case that forms the basis of this dissertation is *R v Teresa Craig,* (2011 ONCA 142). (I provided a description of this case in the previous chapter.) The data I analyzed from the case comes from two main sources: (1) institutionally-transcribed legal documents, and (2) news media discourse. Although institutional settings have long been chosen as a site for linguistic analysis, researchers often face significant challenges in accessing courtroom data (Angermeyer, 2011: 211). Certain courtrooms and jurisdictions restrict or ban outside audio or video recording (such as in the UK), and this limits data access to the researcher's ethnographic observations in the courtroom (if allowed) and to institutionally-transcribed 'official' court documents. Within Canada, trials transcripts are subject to the rules of each province; these govern not only the amount of time it takes to request and obtain a transcript, but also the (very expensive) fee for a court reporter's transcription (Sheehy, 2014: 13).[91] These institutionally-produced documents may themselves be incomplete and missing key aspects of the trial (Heffer, 2005: 53). For example, because court reporters are not linguists, transcripts may lack linguistic and prosodic details found in more 'narrow' linguistic transcripts (such as overlaps, pauses, emphasis, tempo, pitch, volume and other prosodic features). Furthermore, institutionally-transcribed interactions are not neutral documents, as the process of transcription is itself an ideologically-laden activity

[91] Sheehy further comments that due to the privatization of court reporting, reporters in the provinces of the Yukon and British Columbia have been able to charge $15/page for transcription as well as impose costs for photocopies of previously transcribed court documents (2014: 14). The high fees to obtain oftentimes-lengthy trials transcripts are thus a significant barrier for researchers, especially graduate students, who wish to investigate language in the court.

(Bucholtz, 2000). That is, trial transcripts reflect both the institutional and personal preference of the transcriber (Walker, 1990), a preference that could manifest itself in the way the transcriber represents the language of the participants. Importantly, the representation of linguistic evidence can have very real effects on the judicial process (Bucholtz, 1995).[92]

Of course, that court transcripts are not neutral is true of all forms of transcription, not just institutionally-derived ones. Even sociolinguists and discourse analysts interested in representing naturally-occurring talk-in-interaction may allow (perhaps inadvertently) their own personal or institutional goals to seep into their transcripts. According to Bucholtz (2009: 504), they may engage in the practice of *professional hearing*, that is, they may 'hear' or make sense of language according to the norms of their professions. To exemplify, my view of language and how language 'works' is informed by my professional training as a linguist, and this view is necessarily embodied in any transcript I produce. One advantage, then, in relying on institutionally-produced transcriptions is that the distance between the researcher and the data remains intact, as the transcript is not subject to the researcher's influence (though, it is subjected to that of the official court reporter). A further advantage of 'official' court transcripts is that they function as the authoritative record of trials, records that adjudicators rely on at all levels of the judicial process (Ehrlich, 2001: 154 at note 11).

3.4.2 Accessing the Data and Choosing the Framework for Analysis

The process by which I accessed my data was as follows. In the initial stages of this project, I utilized *LexisNexis Academic* (an online law and research database) to search for appellate opinions and judgments in cases where women had killed abusive partners and claimed BWS in

[92] Issues of transcription and entextualization are further explored in Chapters 6 and 7.

defence. My search terms included *Battered Woman Syndrome*, *domestic violence*, *abuse*, *manslaughter*, *murder*, *self-defence*. My initial research plan was to compare cases from the United States and Canada. I narrowed my search down to eight cases—four from Canada and four from the United States. I then sent formal letters to the legal counsel for the appellants named in each opinion in order to gain access to the trial transcripts. I received three positive responses to these letters, though research on two of the cases never came to fruition.[93] The appellate counsel for Teresa Craig, Susan Chapman (now Justice Chapman),[94] responded to my request letter. She discussed my research project with Teresa, who agreed to allow me to access the official documents from the case. Chapman kindly provided me with the appellate case file, which included transcripts from the 9-1-1 call, the police interview, much of the trial, and the appellate factums. Once I received the data described above and began my initial analysis, I conducted an Internet search and this led me to media reports of the trial, a further source of data in this dissertation.[95]

In considering the analytical tools needed for this study, it became clear that a strict conversation analytic approach to analyzing the discourse—where 'context' is sometimes considered extraneous to an analysis unless speakers themselves make it relevant in their talk[96]—would not do my data justice. That women have historically been at a significant disadvantage in the legal system (one of many patriarchal social systems) cannot be ignored in analyzing linguistic practices that contribute to the workings of such an institution. Eades (2008: 50) comments that, in order to properly grasp what happened in the Pinkenba case, it was necessary

[93] For both of these cases, the lawyers no longer had access to the trial transcripts. In one instance, a large fire in the law office had actually destroyed the documents, though this lawyer did respond that he believed the research I wished to undertake was valuable.
[94] Justice Chapman was appointed to the Ontario Court of Justice, to preside in Toronto, effective October 11, 2017.
[95] The process of accessing the news media data is explained in-depth in Chapter 7.
[96] See Schegloff (1997) for more on 'context' in conversation analysis.

for her to analyze more than just the magistrate's hearing itself, as the power contestations in this case were deeply rooted in the larger context of neo-colonial control of Aboriginals in Australia. Likewise, it would be similarly impossible to understand the Teresa Craig trial if I were to limit my sociolinguistic analysis to the immediate courtroom interactions. For instance, significant portions of the questioning by the defence and the Crown in the trial were devoted to considering why Teresa 'stayed' in her abusive relationship. (See Chapters 4 and 5, respectively.) This kind of questioning might appear incidental to the theories of the case put forward by the defence and the Crown were they not framed within the historical, social, and legal context of woman abuse. That is, an understanding of these broader gendered issues was essential to uncovering the cultural 'narratives' drawn upon by both the defence and the Crown in their questioning. However, it would also be too simplistic, from a linguistic/discourse analytic point of view, to argue that legal actors rely on gendered ideologies in adjudicating intimate partner violence and women's responses to this violence, and that these ideologies contribute to a gender bias in self-defence law, without first determining *how* these ideologies are invoked in the fine-grained linguistic details of legal practices. Therefore, using Ehrlich (2001), Eades (2008), and Trinch (2003) (and others) as models, the present study applies a *micro*-level analysis of language to *macro*-level issues of power and gender inequality in the law. As noted above, I adopt a (feminist) CDA framework specifically because CDA views discourse as socially-embedded and socially constitutive. Because CDA does not adhere to a strict methodological protocol, my eclectic toolkit of analytic categories is drawn from various approaches to discourse analysis.

3.4.3 Ethical Considerations and Self-Reflection

Trial transcripts are a matter of public record. However, I received other documents in relation to

this trial that were not part of the public record but were part of the official case file, for example, evidence sheets, medical reports submitted as evidence, personal letters addressed to the judge and the appellate counsel's annotations on documents.[97] Though these documents were not analyzed for the purposes of the dissertation, consideration was given to how to approach any sensitive information contained within the data I had access to. I am keenly aware that this is a *real* trial, and though it provides me with a rich source of data for academic research, there is a very *real* woman at the center of it (Teresa Craig). I offer no judgement as to the 'right' or 'wrong' of Teresa's actions, but I acknowledge my own bias in both choosing this topic for research, and the potential for influence on my analysis. Self-reflexivity (Fairclough's Step 5) is paramount to any critical scholarship. In the interest of complete transparency, this is unequivocally a *feminist* research project, and I fundamentally believe (as an intersectional feminist) that societal institutions are comprised of intertwined sites of oppression that need to be addressed in order to be dismantled. In addition to acknowledging researcher bias or personal/professional positions at the outset, self-reflexivity also means "asking how we decide what to include and exclude in the scope of our fieldwork, analysis and writing" (Bucholtz, 2001: 166). To "make visible" every step of my research process (as called for by Bucholtz), I also acknowledge that I consciously selected the *Craig* case and the particular aspects of the case to analyze; however, the particular discursive features and analytic categories I examine developed only once I had engaged with the data.

[97] Although these notes did not constitute part of my analysis for this project, they are themselves a rich site for linguistic investigation (see, for instance, Scheffer, 2006).

3.5 Chapter Summary

This chapter has outlined the theoretical and methodological framework utilized in this study, (feminist) critical discourse analysis, and has also reviewed work that approaches language in the legal system from a critical perspective—work that Eades (2008) has characterized as *critical* sociolinguistics. The current study contributes to this body of literature, as it investigates larger themes of power and ideology as they are manifest in the linguistic details of legal interactions, specifically, in a trial for a battered woman who kills her husband and claims self-defence. The following chapter, Chapter 4, is the first of my empirically-based analytic chapters. I begin my analysis of the trial with a focus on the defence's questioning in Teresa's direct examination, and way in which such questioning helps to bolster Teresa's claim that she was a battered woman who acted in self-defence. The defence questioning is in stark contrast to the questioning practices employed by the Crown during Teresa's cross-examination, and I explore her cross-examination in Chapter 5.

Chapter 4: *So, Why Did You Go Back to Jack?* — Strategic Questioning in Direct Examination

4.1 Introduction

Although Canadian law does not require the accused to testify in her own trial, Teresa took the stand and testified. Following the presentation of witnesses for the Crown, Teresa's examination commenced on May 21, 2008. This chapter, along with the following chapter, analyzes the role of courtroom questioning in her examination. The present chapter investigates how the defence in direct examination attempts to highlight Teresa's status as a battered woman and the effects of Jack's coercive control (which include PTSD, chronic depression, and other symptoms consistent with BWS), thereby strengthening her initial plea of self-defence.[98] I aim to show two ways in which the defence lawyer accomplishes this: He employs a line of questioning that allows Teresa to narrate her 'version of events' (Maley, 1994) in a way that contextualizes her experiences within a larger framework of intimate partner violence and, specifically, coercive control. Additionally, he employs questions that can be seen to anticipate opposing counsel's (the Crown's) negative assessment of Teresa's actions, specifically, that she remained with her husband. I will argue in Chapter 5 that for the Crown, this fact (remaining in the relationship) was incompatible with her testimony that Jack abused and controlled both her and her son and that this abuse led her to resort to lethal violence.

I begin this chapter by outlining key features of courtroom talk, a specific genre of institutional discourse, and explicating the fundamental differences between it and 'ordinary'

[98] Although the judge ultimately declined to put forward self-defence to the jury, at the time of the examination (from which the excerpts in this chapter are taken) Teresa had pleaded self-defence.

talk. I then discuss the asymmetrical nature of courtroom talk and the structural properties of the examination phase of the trial. In general, my concern in this current chapter, as well as in the next (Chapter 5), is how courtroom questioning can shape witness testimony.

4.2 Defining Institutional Discourse

Talk in the examination phase of a trial, as in other kinds of courtroom interactions, is a recognizable form of institutional discourse. Institutional discourse is often defined in relation to 'ordinary' or everyday conversation (Drew & Heritage, 1992) because conversation analysts contend that everyday, mundane conversation is the "predominant medium of interaction in the social world" (Drew & Heritage, 1992: 19). According to Sacks, Schegloff, and Jefferson (1974), the organizational structure of everyday conversation is comprised of 'turns' at talk that are locally managed (at the time of interaction) by any number of speaker participants. In everyday conversation, turn order, turn length, and topic of conversation are variable, and speaker roles are not rigidly defined, as any speaker can take or hold the floor and select the next speaker (or self-select). Moreover, the interactional accomplishments of ordinary conversation are many and fulfill every type of social goal (Heritage, 2005: 109). As will be further clarified, these features of 'ordinary' talk are more restricted in institutional discourse.

While much institutional talk takes place in designated physical settings (such as a courtroom or a hospital), the setting of an interaction does not by itself determine whether or not talk is institutional (Drew & Heritage, 1992; Drew & Sorjonen, 1997). Institutional actors can engage in ordinary conversation while at work, and 'work' talk can be accomplished in other

locations (e.g., medical visits at home, or home-based learning).[99] For conversation analytic scholars, then, institutional talk is not defined in terms of the talk's setting, but rather by the fact that institutional interactions are *task-oriented*. More specifically, according to Drew and Heritage, institutional talk is characterized as "the principal means through which lay persons pursue various practical goals and the central medium through which the daily working activities of professionals and organizational representatives are conducted" (Drew & Heritage, 1992: 3). We see in this definition a major way in which institutional talk differs from ordinary conversation: Institutional talk is directed towards a task or goal connected to an institution's mandate whereas ordinary talk can fulfill any and every imaginable social goal. Drew and Heritage (1992: 22) expand on their definition above, by identifying three main features of institutional talk:

(1) "Institutional interaction involves an orientation by at least one of the participants to some core goal, task or identity (or set of them) conventionally associated with the institution in question. In short, institutional talk is normally informed by goal orientations of a relatively restricted conventional form.
(2) Institutional interaction may often involve special and particular constraints on what one or both of the participants will treat as allowable contributions to the business at hand.
(3) Institutional talk may be associated with *inferential frameworks* and procedures that are particular to specific institutional contexts." (emphasis in original)

[99] As exhibited by Drew and Sorjonen's (1997: 93) example of a phone call between work colleagues, participants may engage in both institutional and conversational 'social' practices within the same interaction.

4.2.1 Courtroom Talk as Institutional Talk

The three features of institutional interactions, as outlined above by Drew and Heritage, are evident in courtroom talk, and especially in witness examination (see Komter, 2012: 612-613). First, lawyers in courtrooms have goals associated with the institution's mandate: They wish to best represent the client (or state), to establish evidence (in the form of witness testimony), and, arguably, to 'win' a case by convincing the judge/jury that the narrative they put forward is the correct one.[100] Second, courtrooms place constraints on the type and content of talk that is allowed in court. For example, Anglo-American law generally prohibits the use of hearsay (or the reporting of another's words) in testimony. Lastly, the inferential framework of the courtroom affects how participants understand the talk. For example, participants may interpret what is being accomplished by questioning in the courtroom differently than in other settings. As courtroom questions "do more than merely question", (Matoesian, 2005: 621), witnesses may recognize, for instance, implicit accusations in certain questions (Atkinson & Drew, 1979).

In the remainder of this section, I focus specifically on the second feature of courtroom discourse that distinguishes it from ordinary talk—the constraints on participants' "allowable contributions" (Drew & Heritage, 1992: 22). While ordinary conversation is defined by its somewhat free qualities (in terms of topic choice and turn type), courtroom talk is characterized by legal conventions that determine *who* gets to talk, *when* they can talk, and *what kinds of turns* they can take. Moreover, these constraints on participant contributions align with the institutional roles of participants. For example, courtroom examination generally consists of a sequence of

[100] However, the Law Society of Ontario's Professional Rules of Conduct state that a prosecutor's primary duty is not to 'win' or "seek to convict", but "to see that justice is done through a fair trial on the merits" (s. 5.1-3)

questions and answers,[101] also known as adjacency pairs.[102] However, in ordinary conversations, participants are not restricted in terms of the kind of adjacency pair parts they can produce—they can ask questions or answer questions. By contrast, speakers in courtroom talk are allocated turn types based on their institutional role (counsel, witness, or judge), for instance, lawyers ask questions and witnesses' talk is generally restricted to answering these questions. This type of turn-taking system is labeled *turn-type preallocation* by Atkinson and Drew (1979).[103]

As the preceding discussion indicates, courtroom interactions are fundamentally asymmetrical in terms of participants' rights and contributions. One of the effects of this asymmetry is the ability of lawyers to control and shape witness testimony through their questioning. Lawyers exhibit "tight control" over both the turns and topic of the turns (Eades 2008: 142). As Conley and O'Barr note, "By utilizing specific types of questioning, lawyers constrain witness testimony, as well as offer their own interpretation on the information in question" (2005: 24). The conventions of storytelling and narration that speakers utilize in everyday conversation are in many ways restricted in the courtroom setting (Conley & O'Barr, 1990; Harris, 2001; Heffer, 2005). Essentially, unlike in everyday conversation, lay participants in court "are not in full control of their verbal contributions" (Heffer, 2005: 47).

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[101] Ehrlich and Freed (2010: 4) note that while the discourse function of 'questioning' is typically accomplished by using the interrogative form of a sentence, other syntactic forms also "do questioning." That is, questions are not limited to the interrogative form, and not all interrogatives function as questions. In his examination of inquiry testimony, Sidnell (2010b) found many lawyers' assertions that were couched in interrogative form but were *not* accomplishing the discursive function of 'questioning' (though they were treated as conforming to the rules of inquiry). His analysis shows that though lawyers may be bound by the rule of law to ask questions, they do not, in fact, question exclusively (2010b: 39).

[102] Adjacency pairs are utterances that occur one after another in spoken interaction where the first pair-part sets up the expectation for the type of utterance that can occupy the second pair-part (Schegloff & Sacks, 1973). Examples include Question-Answer, Invitation-Acceptance/Rejection, Greeting-Greeting, Request-Granting/Rejection. Adjacency pairs also contain an element of preference. Preference here refers to the structural notion of linguistic "markedness", where the dispreferred (or marked) utterance is structurally more complex and takes more conversational work than the preferred, or unmarked (Levinson, 1983: 307). Thus, an answer would be the preferred second part to a question first part.

[103] A further discussion of the asymmetrical qualities of courtroom examination, as it relates specifically to questioning, will be provided in Chapter 5.

Having reviewed the properties of courtroom talk, and institutional interactions more generally, I will now turn to a more in-depth discussion of the examination phase of a courtroom trial, and the various participant roles and functions therein.

4.3 Courtroom Examination

In the Anglo-American adversarial court, there are two different components to the examination of a witness or defendant, the examination-in-chief (or *direct examination* in US courts) and the cross-examination. The first (and only obligatory) part of examination is the examination-in-chief, which is carried out by the counsel who has called the witness. After its completion, a cross-examination is conducted by opposing counsel. As mentioned previously, both are structured around question-answer sequences. Examinations in court proceed as follows: The counsel poses the questions and the witness (or defendant in Teresa's case) is expected to answer to the best of her ability. Cross-examination follows. While opposing lawyers and judges may interrupt the questioning sequences (e.g. with objections or clarifications), the main interactions during examination occur between the counsel and witness. Although examination mainly consists of sequences of questions and answers between lawyers and witnesses, talk is also oriented to third-party recipients in the context of the courtroom, the jury and/or judge (what Heritage (1985) describes as the 'overhearing audience').[104] As Drew (1992: 475) comments, "speakership" may be limited to attorney, witness, and occasionally an intervening judge—"[h]owever, the talk between attorney and witness in examination is, of course, designed to be heard, understood, and assessed by a group of nonspeaking overhearers, the jury." In other

[104] 'Overhearing audience' derives from Goffman's notion of recipients within the *participation framework*. Interactions can contain two categories of *hearer,* who may be ratified (official) or unratified (unofficial) receivers of talk. Unratified participants include 'overhearers', those who are the inadvertent bystanders of talk (1981: 132).

words, courtroom talk may appear on the surface to be dyadic in nature, but it is actually a multi-party interaction (Drew, 1985, 1992; Cotterill, 2003). As Archer (2011: 3216) points out, a quality of a "particularly skillful lawyer" is the ability to communicate her message to the jury regardless of what the witness has answered.

In essence, examination is a form of story construction. The primary objective of witness examination is for the lawyers to produce evidence (in the form of witness answers) that lends support to the overarching arguments of their theory of the case. Lawyers strategically employ various question types (as will be explicated below and in Chapter 5) to mold evidence so it better conforms to the narrative they wish to put forward to the jury, who will then rely on this evidence in determining the fate of lay participants. Since examination-in-chief is conducted by the witness's own lawyer, the goal of the questioning is to construct the witness's account as believable. Generally, it is not adversarial and questioning involves what are sometimes referred to as 'open-ended questions' that allow the witness to tell extended narratives.[105] However, it is important to note the restrictions on the kinds of questioning permissible in examination-in-chief, such as the general prohibition against leading questions (those that suggest an answer the counsel desires).

After the examination-in-chief, the opposing counsel is given the opportunity to examine the witness in cross-examination with the aim of exposing any inconsistencies in the story told in examination-in-chief and attacking witness credibility. Cotterill (2003) describes the direct examination as a site of narrative *co*-construction (between the counsel and the witness/defendant) while characterizing the cross-examination as a process of narrative

[105] However, Eades (2000) shows how defence counsel and judge used questioning during the examination-in-chief of Aboriginal witnesses in Australian courts to control and effectively *silence* their testimonies.

*de*construction (done by the opposing counsel).[106] The cross-examination, then, is essentially hostile (Drew, 1992: 470). Opposing counsel's task is to expose discrepancies in the witness's testimony, which is often accomplished by questioning or discrediting the witness's credibility or reliability. As with examination-in-chief, cross-examining lawyers also utilize particular question types to control the trajectory of witness testimony and to curtail the evidence so that it fits the "carefully crafted" counter-narrative (Hobbs, 2003: 485). After cross-examination, the witness's own lawyer has the (limited) opportunity to re-direct (re-examine) her client (though the prohibition against leading questions remains). Since Teresa was the accused in this trial, her defence counsel carried out the examination-in-chief, while the Crown counsel carried out the cross-examination.

The preceding sections have described the key features of courtroom talk as a form of institutional discourse and have outlined the differences between courtroom talk and 'ordinary' conversation. Notably, participants in institutional interactions align themselves with specific institutional goals; that is, 'work' is an interactional accomplishment. Connected to the task-oriented nature of institutional discourse generally and of courtroom talk more specifically, the sections above have also described the asymmetrical features of courtroom discourse in terms of unequal distribution of turns and turn type. These systematic asymmetries, specifically, the ability of lawyers to shape witness contributions, can have a significant impact on witness testimony, and by extension, judicial outcomes. In the analysis portion of this chapter, I will show how the defence lawyer in *R v Craig* engages in a course of strategic questioning that contextualizes Teresa's experiences and actions within a larger framework of intimate partner

[106] Cotterill (2002) expands on the concept of co-constructed or 'dual-authored' narratives ('Author' here refers to the Goffman's (1981) definition—the person(s) who constructs and structures the utterance.) She states that although courtroom narratives are considered dual-authored, the emphasis is "on the voice of the lawyer as the primary and authoritative teller, rather than that of the witness" (1981: 149).

violence. I claim that this questioning helps to solidify Teresa's status as a battered woman (who suffered under Jack's coercive control), thereby strengthening her self-defence plea. The precise linguistic mechanisms that the defence employs in this questioning are elaborated upon in the following sections.

4.4 Analysis

4.4.1 Strategic Open-Ended Questions

As mentioned above, the general goal of lawyers during direct examination is to *co-construct* (Cotterill, 2003) a narrative that serves their clients' interests, typically through the use of open-ended questions. The first part of this analysis shows how the defence lawyer uses open-ended questions strategically in order to elicit from Teresa a narrative that is consistent with the experiences of battered women. I conclude that these accounts of abuse help the jury contextualize Teresa's experiences within a larger framework of domestic violence, and, by extension, help to bolster her claim that BWS and coercive control were contributing factors in Teresa's killing of Jack.

4.4.1.1 Verbal Aggression

The first example concerns Teresa's decision to leave Jack early in their relationship as a result of the verbal aggression that Jack inflicted on Teresa.

Excerpt 1 (Direct Ex.1952)

```
1 Q:  Why did you decide to leave Jack in May of '98?
2 A:  Because he yell at me a lot.
3 Q:  What do you mean, yell at you a lot?
4 A:  Yells, raises his voice whenever he start a conversation.
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5 Q:  How did you feel at that time?
6 A:  I feel scared.
7 Q:  Why?
8 A:  Fear, that Jack not respect me.
9 Q:  All right. Did Jack ever hit you, at that point?
10A:  Not that I recall, I don't remember.
```

The defence lawyer uses an open-ended 'Why-question' in line 1 to ask Teresa why she left Jack in 1998. When Teresa answers that Jack yells at her, the defence lawyer pushes for Teresa to explain 'yell at you a lot'. He does this by using a clarification request—'What do you mean…' (line 3). Cotterill (2003: 133) explains that clarification requests in direct examination "allow the direct examination lawyer temporarily to suspend the progression of testimony and return to an aspect which is perceived to be unclear, ambiguous or potentially confusing for the jury." The clarification request enables the lawyer to ask the witness to either elaborate on a previous response or provide greater specificity to a previous response. In Teresa's direct examination, the defence lawyer seems to use 'What do you mean…' questions (and others) in the way that Cotterill describes. In line 3 of Excerpt 1, for example, it is used as a request for elaboration. By asking Teresa to further explain Jack's yelling (line 3) and her feelings about it ('How did you feel', line 5), the defence lawyer provides the opportunity for Teresa to express her fear of her husband (lines 6 and 8). Ultimately, this line of questioning allows the defence lawyer to make a connection between Jack's verbal aggression and Teresa's fear of Jack's physical violence, a fear that she expresses many times throughout her testimony. As noted, verbal aggression and intimidation are one of the ways men may exert power in the coercive control model, and they are likely to increase a women's fear of her partner (Stark, 2007; see also Crossman, Hardesty, & Raffaelli, 2016). The literature on battered women also suggests that verbal aggression and other forms of emotional abuse may be precursors to physical violence (Karakurt & Silver, 2013;

Schumacher & Leonard, 2005).[107] Thus, by requesting further details about Jack's verbal aggression, the defence lawyer seems to be establishing a link between it and Teresa's fear of his physical violence—a link that is documented in the literature on battered women.

4.4.1.2 Children and Abuse

In Excerpt 2, the defence lawyer questions Teresa about her and Jack's son, Martyn. He specifically focuses on what the relationship with Jack was like before Martyn was born, and how the relationship changed after his birth. Again, the lawyer uses open-ended questions and clarification requests at strategic points in order to encourage Teresa to narrate her experiences of abuse.

Excerpt 2 (Direct Ex.1953)

1 Q: Okay. How old was Martyn when you left Jack in May of '98?
2 A: Two years old.
3 Q: All right. How did Jack treat you before Martyn was born, what
4 was the relationship like?
5 A: Normal.
6 Q: What do you mean, "normal"?
7 A: Like husband and wife, because that time we -- just only two of
8 us.
9 Q: Okay. Was there any particular change when Martyn was born?
10A: Yeah, later, slowly, slowly, step-by-step.
11Q: And what were the changes slowly step-by-step?
12A: I can feel that Jack jealous about Martyn because I focus on
13 Martyn a lot and never pay attention to him.
14Q: Why do you say he was jealous, what gave you that impression?
15A: Because I focus on Martyn a lot, because Martyn an infant and a
16 toddler, kid needs attention.
17Q: Well, you've told us that, but what I'm wondering, Teresa, is how
19 did you come to the conclusion, and what did you see in Jack's
20 behaviour that made you think he was jealous?
21A: Because he more aggressive, more yelling, more screaming.

[107] M. Johnson (2008: 66) contends that while relationships with physical abuse almost always include verbal abuse as well, verbal abuse does not always lead to physical violence. However, because verbal abuse can be seen as part of the cycle of violence that many abused women experience, and because there are indications that verbal abuse may precede more serious forms of physical abuse, Teresa's fear that her husband will use physical violence seems to be warranted.

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22Q:  How do you mean, more aggressive?
23A:  Aggressive in the way if -- the tone of his voice.
24Q:  What effect did that have on you?
25A:  I afraid of him.
26Q:  Again, why? Why were you afraid?
27A:  I afraid that he might hit me that time.
28Q:  Had he ever hit you?
29A:  I prevent it.
30Q:  How did you...
31A:  I always walk away.
32Q:  I take it, then, that he had not hit you at that point?
33A:  I don't recall that.
```

In line 5, Teresa responds to the previous question about her relationship with Jack (before Martyn's birth) by stating that the relationship was 'normal'. The defence lawyer uses a clarification request in line 6 ('What do you mean'), and asks Teresa to explain her idea of the term 'normal', as arguably *normal* is subjective.[108] He then asks her about 'any particular changes' (line 9) in Jack's behaviour after Martyn's birth. What is significant about this line of questioning is the importance that the defence lawyer seems to be attributing to children as factors in abusive relationships. Again, the lawyer seems to be trying to elicit a narrative from Teresa that resonates with the documented experiences of other battered women.

Research suggests that children may be catalysts for intimate partner violence. For instance, Taylor and Nabors (2009: 1289) found that women who had children with their partners were twice as likely to experience IPV than women who did not. They hypothesize that the increased likelihood of violence after a child is born may be related to the greater financial stress (especially for families with lower economic status) that the presence of children may cause. In addition, the presence of children may result in men feeling that they have lost control over their intimate partners because of the increased attention and time women devote to

[108] This request for more information could also be a reaction to Teresa's minimal response, which in itself may indicate that she is uncomfortable or unable to produce a more extended narrative (possibly on account of her language proficiency).

children. Teresa's responses in lines 12 and 15 to specific questions about Jack's 'changes' in behaviour echo Taylor's and Nabors' latter explanation: Jack is 'jealous' because Teresa spends more time with their baby than with him, and this leaves Jack 'aggressive' towards Teresa.

Teresa uses a *three-part list* (Jefferson, 1990) in line 21, 'more aggressive, more yelling, more screaming', to explain how she knows that Jack is 'jealous.' Listing is a rhetorical device often used in fact construction (see also Edwards & Potter, 1992) and listing is most rhetorically effective if it is comprised of three parts (Jefferson, 1990). Here, Teresa's use of a three-part list in itemizing Jack's inappropriate and abusive behaviour allows her to bolster her claim that Jack was jealous of Martyn, and that this jealousy contributed to Jack's abusive behaviour.

The defence lawyer uses another clarification request in line 30 ('How do you mean, more aggressive?'), continuing to encourage Teresa to expand upon Jack's escalating aggression and ultimately allowing her to assert that after the birth of her son, Jack's behaviour increased to a level where she feared physical violence. In a similar way to Excerpt 1, the defence lawyer seems to be contextualizing Teresa's narrative within the larger framework of battered women's experiences. Questions about the effect of Martyn's birth on Jack's behaviour resonate with research that demonstrates the increased risk of IPV among couples who have children. More specifically, Teresa's fear of Jack's abuse is consistent with studies that suggest men's violence either starts, increases, or changes after the birth of children, especially if men feel they have lost control. By highlighting the link between the birth of Martyn and Jack's increasing aggression, the defence lawyer can characterize Teresa's fear of Jack as rational, reasonable, and fully compatible with the responses of other battered women.

4.4.1.3 Weapons in the House

In Excerpt 3, the defence lawyer questions Teresa about weapons in the home, and Jack's use of weapons. The importance of this line of questioning lies in the fact that weapons can be considered another potential catalyst for violence, especially within the context of intimate partner violence.

Excerpt 3 (Direct Ex.1993)

1 Q: Now, were there any weapons in your house?
2 A: Yes.
3 Q: What types?
4 A: We got axe, we got chainsaw, we got two guns.
5 Q: So axe, chainsaw and two guns?
6 A: Yeah.
7 Q: What kind of guns?
8 A: One is a long one, what do you call that. Handgun—rifle.
9 Q: Okay.
10A: One is short like that. I'm not good with guns, so I don't know
11 what's the name.
12Q: Okay. So there's a short gun and a long gun?
13A: Yes.
14Q: Did you ever see either of those in use?
15A: Oh yeah, the short one always being used.
16Q: What about the long one?
17A: The long one is behind the door, so Jack is not using it because
18 it's old gun, not old gun -- like he didn't use for a while. So
19 he want a new toy, he get a shotgun, so he used that more often.
20Q: Okay. And how did you see it being used?
21A: Oh, he taught Martyn to shoot, and he shoot a deer, he shoot
22 raccoon, he shoot the dog that come to his yard, and he shoot the
23 cat.[109]
(intervening lines)
24Q: Okay. Now, you also—I asked you about weapons. You also
25 indicated an axe and a chainsaw?
26A: Oh yeah. Is that a weapon?
27Q: Well, that's what I was going to ask you.
28A: Because they can kill body.
29: You saw Jack, he used the axe to chop wood, I take it?
30A: Oh yeah. Yes.
31Q: And did you assist him in the wood chopping exercise?
32A: Say that again?
33Q: Would you be helping him chop wood sometimes?
34A: I help him to split wood and pile up wood.
35Q: And what was Jack's attitude when he was chopping wood with you?
36A: Oh, when he chop wood, he doesn't care about anybody around him.
37 When he pick up a piece of wood, he want to swing it, he swing

[109] Teresa later states (in the portion removed) that she doesn't remember if Jack shot at a cat.

```
38    it, he doesn't care you stand beside him or not, like Martyn and
39    me. We have to tell ourselves be cautious, not him, because Jack
40    is a type of person, he want to swing, he swing at anything. So I
41    and Martyn always got to be aware of him.
```

In this example, the defence lawyer begins with an open-ended question about weapons present in the household, to which Teresa replies 'axe', 'chainsaw', and 'two guns'. The lawyer asks Teresa to describe the guns, and she states that one is a 'long gun' and one a 'short gun'. He then asks her if she has seen the guns in use, to which Teresa replies that the short one is 'always being used' (line 15) and that it is used 'more often' (line 19). Teresa refers to the gun as Jack's 'new toy' (line 19) and goes on to explain that Jack uses the gun to shoot deer, raccoons, a dog, and a cat. However, Teresa also states in line 28 that the axe and chainsaw are 'weapons' and 'can kill body,' an indication that Teresa perceives both the axe and chainsaw as dangerous.[110] In line 35, the lawyer asks about Jack's attitude when chopping wood (something he does with the axe), and this question allows Teresa to elaborate with a longer narrative.[111] She states that Jack 'doesn't care about anybody around him' (line 36), and he will swing the axe carelessly, even when around their son (line 38). Thus, she and Martyn have to be 'cautious' of Jack because 'he want to swing, he swing at anything' (line 40). What is important about this line of questioning is that the lawyer is able to draw attention to the fact that Jack possesses weapons, uses them on a regular basis and can use them carelessly. Swinging an axe around (especially in the presence of

[110] In interviews with 417 women survivors of domestic violence, Sorenson and Wiebe (2004) found that the abusers used a variety of weapons in addition to firearms, including axes, wrenches, hammers, furniture, bottles, scissors and other household items. This finding concurs with Teresa's acknowledgement that Jack's axe and chainsaw are both potential weapons.

[111] Although Teresa's story (lines 36- 41) does not follow the Labovian narrative model (i.e., a temporally-ordered recall of a singular event in the past), her narrative appears similar to those produced by other women recounting abuse. Trinch (2003: 11) comments that because intimate partner abuse is typically habitual and on-going, narratives of abuse may also need to be expressed as such. In her study of protective order interviews, Trinch found that in addition to Labov linear narratives, women utilized both generic present and past time narrative types (cf. Polanyi, 1985) to indicate repeated action rather than a one-time event. Teresa's use of habitual present tense here marks this as a generic present time narrative— "always at this exact moment in discourse, Event X takes place" (Polanyi, 1985: 13, cited in Trinch, 2003: 109).

children) can be considered an intimidating behaviour. For instance, Dobash and Dobash (1998: 160) comment that "certain 'looks' and moods, pointing in an aggressive manner, swearing, calling names, and criticizing can be used by men to control women and display signs of potential danger." Therefore, it seems plausible that Teresa could have interpreted Jack's behaviour with the axe (swinging it around carelessly) as potentially dangerous and the defence's line of questioning in Excerpt 3 seems to be designed to elicit testimony that speaks to this danger.

Walker (1984: 52) found that some women perceive the mere presence of a gun in a household as a constant threat to their safety. (And, it is possible that Teresa had such a perception.) This perceived fear is reasonable when you consider the large body of research on guns and domestic violence. For instance, in their examination of intimate partner homicide in the US, Walton-Moss et al. (2005) found that the presence of a gun in the home increased the risk of injury for women by more than three times. This confirms Campbell et al.'s (2003) findings that there was an increased risk of intimate partner femicide when perpetrators had access to firearms. In fact, Campbell et al. (2003) noted that women were five times more likely to be killed if the abuser owned a gun.[112] And, the combination of weapons with controlling behaviours has been found to be particularly lethal (Stark, 2007; see also *Ontario Death Review Committee Report*, 2016). It appears, then, that by introducing the line of questioning about Jack

[112] A 2011 Statistics Canada report shows that between 2000 and 2009, 26% of all female homicides by spouses were committed with guns, making women more likely than men to be killed by firearms. Women were also more likely than men to be killed by their spouses through the use of strangulation, suffocation or drowning (22% of all spousal homicides committed against women) and beating (15%). The U.S. Department of Justice statistics show that between 1993 and 2004, female victims of nonfatal intimate partner violence were also more likely than male victims to encounter an offender with a firearm (Catalano, 2007). While US statistics note that the number of nonfatal intimate partner victims killed with guns has fallen, the number of women killed by other weapons has remained stable.

and his weapons, the defence lawyer is trying to show that Teresa had reason to be fearful of her husband.[113]

4.4.1.4 Isolation

In Excerpts 4, 5, 6, the defence lawyer employs questions that draw attention to how Jack's abuse included controlling and isolating Teresa. As mentioned in Chapter 2, section 2.6, the coercive control framework (Stark, 2007) recognizes that abuse is multidimensional, and includes patterns of domination, isolation, and control in addition to physical violence. Indeed, the coercive control exercised by Jack (even absent more serious physical violence), and its effects on Teresa, were an integral part of her initial self-defence plea. As discussed in Chapter 2, the defence introduced expert testimony on coercive control as part of a self-defence plea, although this testimony was later restricted. (Such expert testimony was the first of its kind in Canada.) In connection to Teresa's testimony, it seems that, by allowing Teresa to speak about her experiences of abuse (as exemplified in the following excerpts), the defence lawyer is contextualizing her actions (in killing Jack) within a larger framework of coercive control and intimate partner violence.

Excerpt 4 (Direct Ex.1979)

```
1 Q:  Okay. And then what happened with the apartment that you had in
2     Nanaimo?
3 A:  I give up the apartment and I move back to Protection Island.
4 Q:  And how did that change your life, what effect did that have on
5     you, Teresa?
6 A:  Yeah, I was regret that I give up my apartment, because I stay
```

[113] Additionally, a neighbour on Protection Island (a witness for the defence) stated that Jack threatened to shoot him if he did not leave a party at the Craig residence. He claimed that Jack threatened him with a handgun, and then later threatened him with a broken oar. The police were called to the scene, but the witness dropped the charges as Teresa and Jack had moved off the island (Submissions of Counsel, Vol. 16, p. 1636). While the trial judge excluded this evidence, it does suggest that Teresa's fear of Jack and his use of weapons is rational.

full-time with Jack, I don't have a comfortable and happy and a peaceful life with him.
Q: What do you mean, it wasn't comfortable or peaceful?
A: Because everywhere I go, he just watch me, and the things that I do, like phoning my friend, he just watch me, like I got no freedom.
Q: How did you know that he was watching you?
A: Like when I pick up the phone, he ask me, "Who you call?" and I told him my Salvation Army friend, and he say, "Oh yeah, they are a bunch of losers, they are women, they are bitch." He just criticize my friends.
Q: And what was your reaction when he did that, if any?
A: I feel uncomfortable because they are my friend, I allowed to talk to them. I need some support for them sometimes.
Q: What effect did this have on your relationships with your friends from the Salvation Army? Did you continue the friendships, for example?
A: Yes, but not too often by phone because that phone is not mine, it's Jack's. Even I phone to my family, I have to ask permission from him, no doubt I pay the bills for him.
Q: Was there any other phone in the house?
A: No -- yeah, we used to have cell phone, but got problem with it too.
Q: Okay. You indicated that Jack called your friends names?
A: Yes.
Q: When would that happen?
A: Whenever I mention my friend Salvation Army,[114] he just give me the kind of talk that not allowed me to talk to them, not allowed to mention them.
Q: Did any of them come to visit you on Protection Island?
A: No.
Q: Did you invite any of them?
A: I dare not.
Q: I'm sorry?
A: I dare not invite them to come.
Q: Why dare not?
A: Because Jack criticize them, so I don't want to put my friend down, I don't want Jack to put my friend down in front of me

Jack and Teresa lived on Protection Island (in the Nanaimo Harbour) from roughly 1998 to 2004, during which time Teresa separated from Jack twice and maintained an apartment in Nanaimo. She moved back with Jack full-time in 2004. In this excerpt, the defence lawyer begins by asking Teresa why she gave up the apartment, and what effect that had on her life. Teresa replies using a three-part list, that is, she doesn't have a 'comfortable and happy and a peaceful life' (line 7);

[114] Teresa is referring to her friends from the Salvation Army (where she worked).

this three-part list has the effect of emphasizing how poor her quality of life was when she moved off the mainland back to Jack on Protection Island. When the defence asks her to explain what she means by not having a 'comfortable' or 'peaceful' life,[115] Teresa responds that Jack keeps her isolated, and, in essence, stalks her ('everywhere I go, he just watch me', line 10).[116] He also limits her phone use (even though she pays for the phone),[117] and monitors and restricts her contact with friends. Teresa states that she feels she has 'no freedom' (line 11). Restricting contact with a woman's friends and family, whether in person or via the phone, firmly falls within the range of abusive tactics men may employ to control and isolate their partners and the defence lawyer's questions have the effect of eliciting testimony from Teresa about Jack's use of these very tactics.

As Johnson (1998) states, social and physical isolation is common in violent relationships: "One way for a batterer to assert dominance and control over all aspects of the woman's life is to keep her isolated and dependent on his demands" (1998: 43). According to Johnson, isolating behaviours include denying women access to their family or friends, preventing them from working outside the home or going to school, and in general preventing them from interacting with others outside of the immediate family (1998: 43).[118] By introducing a line of questioning that focused on the specifics of Jack's isolating and controlling behaviour (i.e., his tactics of coercive control), the defence lawyer succeeds in highlighting one of the

[115] The inconsistent tense marking in lines 6-8 ('I was regret', 'I stay full-time') is likely a result of Teresa's L2 (second-language) proficiency in English. These may obscure the sequencing of events in this narrative.
[116] Notably, stalking is the second most common behaviour in the coercive control framework (after assault) (Stark, 2007: 256). Stalking, monitoring, and other forms of obsessive behaviour is considered a risk factor for intimate femicide (Stark, 2007; see also DVDRC, 2016)
[117] Control of finances and deprivation of resources would be consistent with economic abuse (and are tactics of coercive control).
[118] Similarly, in their discussion of the role of male sexual jealousy in relationships, Wilson, Johnson, & Daly (1995) found a connection between partners' use of what they call "autonomy-limiting behaviours" and intimate partner violence. These behaviours include limiting contact with family or friends, monitoring whereabouts, and name-calling.

various manifestations of Jack's abuse, which potentially signals to the jury that Teresa's fear of physical abuse was reasonable.[119]

Throughout the next couple of turns in Excerpt 4, Teresa further elaborates upon Jack's isolating behaviours. Teresa uses direct speech in lines 15-16 to quote Jack and to emphasize how negative he is towards her friends ('Oh yeah, they are a bunch of losers, they are women, they are bitch'[120]). This, she says in line 19, makes her 'feel uncomfortable.' By restricting and controlling Teresa's contact with her friends, Jack is ending one of the most common and needed support systems for battered women.[121] In their study of family and social support for women in abusive relationships, Rose, Campbell, and Kub (2000) found that battered women most often identified female friends as a source of emotional support. The women felt that their girlfriends listened to them, and they liked "having someone to talk to" (2000: 31). Teresa's testimony is consistent with Rose, Campbell, and Kub's (2000) findings in that she says in line 20 that she needs 'support' from her friends, but Jack prohibits this. Teresa then states that Jack controlled her phone usage—'I have to ask permission' (line 25)—something that could further isolate her and lead her to become vulnerable to abuse. In line 27, the defence lawyer asks if there are any other phones besides the one that Jack monitors (which again highlights how Teresa's contact with and access to others were controlled by Jack), and Teresa answers 'no'.

In lines 34 of Excerpt 4, Teresa uses an example of metalanguage[122] in attempting to characterize Jack's verbal attempts to control her—'the kind of talk that not allowed me to talk to them'. Trinch and Berk-Seligson (2002: 406) note that metalanguage is one feature of narratives

[119] In fact, literature on battered women suggests that social isolation may precede physically-violent incidents, and may also increase after the first physically-violent incident (Nielson, Endo, & Ellington, 1992).
[120] This is also an example of a three-part list.
[121] Battered women often seek help or support from friends and relatives initially, either along with or in lieu of formal sources of support (Moe, 2007: 684). The 2014 GSS also indicates that women utilize a number of formal support services, including counselors, crisis lines, and family centers.
[122] "A language for talking about language" (Fairclough, 1989: 241).

used to "enhance the performative power of testimony" for women recounting stories of abuse to paralegals in protective order interviews. The authors claim that the use of metacommentary in the present tense is one resource that allows women to emphasize the ongoing nature of abuse, even though they are asked to recall specific incidents of violence. An example is reproduced below (P refers to the paralegal; C refers to the client):

Trinch and Berk-Seligson (2002: 405)

P: And during the argument, ah, you, you said he was, what was the threats that he was making?
C: **It's all verbal**, it's like um, "You better do what I say or else," you know, it's always, ah, "You need to listen to me," "You need to do what I say," it's stuff like that, you know. It's always, ah, it always has to be his way, you know, it, it, it's his way or no way at all.
P: Mmhm
C: And and and it's always, "Well you better listen to me, woman" or or, "or else," you know. **That's his favorite word**. And you know, and we, start like that and if I even say anything, then my kids get all scared, and you know.

Like the use of metalanguage in Trinch's and Berk-Seligson's example, the use of metalanguage in Excerpt 4 similarly helps Teresa describe how Jack (habitually) controlled her by denying her the ability to talk to or about her female friends—'he just give me the kind of talk that not allowed me to talk to them' (lines 33-34).

A further example of Jack keeping Teresa from her friends is found in Excerpt 5. In this excerpt, the lawyer asks about Teresa's relationship with her neighbour, Mary. Teresa states that she and Mary became close because they were both unemployed and struggling financially. When the defence lawyer inquires further about their friendship, Teresa responds that she had to keep her visits secret (lines 5-6) because Jack didn't like her or 'any women' who helped or gave Teresa advice.

Excerpt 5 (Direct Ex.2000)

```
1 Q:  How did that relationship develop?
2 A:  Make us closer and closer. But I know she have a problem too.
3     That time both of us are not working, we got financial problem.
4 Q:  And did you spend much time with her?
5 A:  Yeah, quite a few times, but I didn't let Jack know that I go
6     over to her place.
7 Q:  Why not?
8 A:  Because Jack didn't like her. Jack didn't like women who help me,
9     give me advice.
```

The defence also highlights Teresa's physical isolation on Protection Island, in Excerpt 6 below. Protection Island, in the Nanaimo Harbour, has approximately 300 residents, and lacks a bridge to the mainland; a boat was thus required for their transportation to the mainland.

Excerpt 6 (Direct Ex.1981)

```
1 Q:  Did you family own a boat, you and Jack and Martyn?
2 A:  Yes.
3 Q:  Where did you keep it?
4 A:  It's at the dock, one of the dock.
5 Q:  Did you drive the boat?
6 A:  Jack not allow me to operate the boat.
```

The line of questioning in Excerpt 6 (about Jack's boat) allows Teresa to explain that she was prohibited from operating it: 'Jack not allow me' (line 6). This meant that Teresa was physically isolated from the larger community and mostly reliant on Jack to leave the island. Her physical isolation would further complicate her ability to leave Jack, especially if (as she testified) he watched her everywhere she went. Again, by introducing questions about Jack's isolating behaviours, the defence can contextualize Teresa's experiences of abuse within a larger framework of intimate partner violence and coercive control, and, by extension, can help to underscore Teresa's fear of Jack. Indeed, isolating behaviours have been shown to correlate with intimate partner homicide (DVDRC, 2016). Thus, the defence's 'drawing out' of such behaviours may help explain why Teresa perceived death or grievous bodily harm from Jack.

In all of the excerpts discussed in this section (i.e., Excerpts 1-6), it appears that the goal of the defence lawyer's questioning is to highlight Jack's abusive behaviour and to allow Teresa to narrate her experiences in ways that are consistent with those of battered women more generally. In fact, all of Jack's behaviours and coercive controlling tactics that the defence lawyer asks about in Excerpts 1-6 would be considered risk factors for future severe instances of physical violence against women, as well as intimate femicide (e.g., access to weapons, jealousy, and domination) by abusive men (Goldfarb, 2008: 1540; see also DVDRC, 2016). In calling attention to these risk factors, the lawyer seems to be signaling to third-party recipients (i.e., the jury) that Teresa's fear of Jack's physical violence was warranted and that it was consistent with the fear that women in battering relationships experience more generally. In turn, this kind of evidence supports Teresa's claim that she was a battered woman and a victim of Jack's tactics of coercive control when she killed Jack.

4.4.2 Preempting Accusations in the Courtroom

The next section explores another questioning strategy that the defence lawyer employed in Teresa's direct examination to help legitimize her claim to self-defence—that of preempting potentially damaging accusations from the Crown attorney.

Though witness examination is conducted via a series of question/answers, Atkinson and Drew (1979: 70) comment that the questions employed by counsel may be designed to accomplish other kinds of activities, for example, in cross-examination, to challenge the validity of a statement or to accuse or implicate a witness. When witnesses recognize that these other activities are occurring, witnesses "may therefore design their answers as rebuttals, denials, justifications" or excuses (Atkinson & Drew, 1979: 70). Based on the prototypical adjacency pair

(accusation-justification/excuse), one might expect that a justification or excuse would naturally come as the second-pair part of a sequence, that is, as a response to a previous accusation.[123] However, Atkinson and Drew (1979: 136) found that witnesses in court often produced 'defence components' such as justifications or excuses preemptively, that is, in anticipation that the questions asked of them were leading towards or hinting at a "blame allocation". This is to say that even when questions are not direct accusations (i.e., "do not contain any blame-relevant assessment of the witnesses' actions"), witnesses may understand that they are leading to an accusation, and may display this understanding by producing preemptive defence components (Atkinson & Drew, 1979: 138).[124] To illustrate, an example from Atkinson's and Drew's data is repeated below:

Atkinson and Drew (1979: 137)

```
      1 C:  You saw this newspaper shop being bombed on
      2     the front of Divis Street?
      3 W:  Yes.
      4 C:  How many petrol bombs were thrown into it?
→     5 W:  Only a couple. I felt that the window was
      6     already broken and that there was part of it
      7     burning and this was a re-kindling of the flames.
      8 C:  What did you do at that point?
→     9 W:  I was not in a very good position to do
     10     anything. We were under gunfire at the time.
```

[123] In his *Philosophical Papers* (1961), Austin articulates the differences between 'justification' and 'excuse': a justification occurs when a speaker admits to an action but, "argue(s) that it was a good thing, or the right thing, or a permissible thing to do", whereas for excuses, a speaker admits that an action was unacceptable, but denies full or partial responsibility for that action (1961: 176). Atkinson and Drew group together justification and excuses into the class 'defence components' (1979: 60). For the purposes of their analysis, Atkinson and Drew do not distinguish between justifications and excuses because they believe that the distinction "does not seem to capture the claims which people may make about their action through excuse-type accounts" (1979: 140).

[124] To this point, in her examination of women reporting rape to police, MacLeod (2016) found that the women produce accounts, often unsolicited, that explain or justify why their behaviour was appropriate, in order to preempt potential blame for their actions. Furthermore, MacLeod found that the patterning in these accounts can be "directly mapped onto culturally constructed themes of victim-blaming," such as 'appropriate resistance' (cf. Ehrlich 2001) or 'prior relationship with the suspect' (2016: 107-108).

Atkinson and Drew conclude that the witness's (W's) answers in line 5 and 9 (highlighted with an arrow) show that he anticipates that the counsel's (C's) questions are leading to blame, even though they appear straightforward. The defence components in the answers show the witness trying to minimize the seriousness of the bombing as well as defend his reason for not taking action when bombs were being thrown (1979: 137). Neither question in lines 4 nor 8 include an accusation, yet the witness's answers signify that he perceives these questions as accusatory, or, at the least, leading to an accusation. For instance, the witness uses the modifier 'only' in line 5 to indicate that the petrol bombing was not serious enough for him to take action (it was 'only a couple' of petrol bombs instead of a more substantial amount) (1979: 140). And, even though the question in line 8, when taken at face value, appears as a request for further narrative information, the witness's answer in line 9 ('I was not in a very good position to do anything') indicates that he perceives this question as leading to a blame-allocation, in other words, blaming him for not taking appropriate action in response to the bombing. That is, the witness, in line 9, offers an excuse for his inaction as a way to mitigate the anticipated blame.

While Atkinson's and Drew's (1979) findings regarding preemptive defences were documented in the answers of witnesses during cross-examination, Ehrlich (2007) found a somewhat similar phenomenon in the *questions* of lawyers in the direct examination of a Canadian criminal trial involving sexual assault.[125] Ehrlich asserts that the Crown attorney utilized certain types of questions during the direct examination of the complainant (the woman who had accused the defendant of sexually assaulting her) in order to counter the kinds of accusations or negative assessments of the witness's actions that could come from opposing counsel. The excerpt below is illustrative (the pertinent line is highlighted with an arrow):

[125] In the case, the complainant alleges that the defendant sexually assaulted her during a job interview, which took place in his (the defendant's) trailer.

Ehrlich (2007: 461)

Q: Was he inside the van or trailer when you first got there?
A: I believe he was inside the van, but – he might have stepped out to meet me.
Q: What happened once you got there?
A: I asked him if we could go inside the mall, have a cup of coffee and talk about whatever.
→ Q: Why did you want to go inside the mall to talk?
A: *Because it was – it was a public place. I mean, we could go in and sit down somewhere and talk.*

Ehrlich notes that this example (and others) show how lawyers "will design their questions to elicit 'apparently premature' or preemptive explanations and justifications for [...]actions" (2007: 460).[126] In the example provided above, the Crown attorney uses the Wh-question (as arrowed) in order to highlight why the complainant suggested the mall as an appropriate place for a job interview rather than the defendant's personal van. The question allows the complainant to say that a mall is a public place where one would assume that one is not likely to encounter unwanted sexual advances. Thus, the answer shows that "the complainant is not passive, but rather is actively attempting to create circumstances that will discourage the accused's sexual advances" (2007: 462). In another set of examples, Ehrlich shows how the Crown attorney's questions allow the complainant to provide reasons for actions that might otherwise have been interpreted as "preambles" to consensual sex (rather than assault) (2007: 462). Ultimately, Ehrlich argues that the Crown attorney made use of certain types of questions in order to anticipate and therefore preempt, a 'blame allocation' from the defence—namely, that the complainant's actions were indicators of consent as opposed to strategies of resistance (2007: 464).

[126] Ehrlich found that the structure of the Crown attorney's questioning in these examples was broad Wh-question followed by a particular narrow Wh-question (a Why question) in order for the complainant to describe her reasons for performing an action that she had described previously (2007: 459).

Following Ehrlich's (2007) discussion of "preemptive explanations and justifications", I contend that during Teresa's direct examination, the defence utilizes questions that allow Teresa to explain her actions, in anticipation of the Crown counsel's negative assessment of those actions. These 'anticipatory' questions—and answers—help to shed light on various dimensions of intimate partner violence and coercive control, which in turn help to strengthen Teresa's initial plea of self-defence based on her status as a battered woman.

4.4.2.1 'Why did you go back?'

The following examples show how the defence's questions can be viewed as preempting negative assessments of Teresa, specifically, negative assessments of why she didn't leave Jack or why, when she did leave him, she went back to him.

The first example concerns events prior to Teresa and Jack's marriage. As noted in Chapter 2, Jack and Teresa first came into contact with each other, when in 1990, Jack placed a personal advertisement in a Malaysian newspaper: "Western man seeking Asian woman". Teresa responded to this ad and visited Jack in 1991 for a few weeks, returned to Malaysia, and then came back to Ottawa on a visitor's visa for a second visit in 1992. She lived with Jack for approximately four months before moving to Mississauga to work as a nanny. Teresa testified that this move was prompted by the fact that Jack spent all her money and did not treat her very well.[127] After a few months in Mississauga, Teresa returned to Jack.

Excerpt 7 (Direct Ex.1924)

```
1 Q:  All right. You had indicated that you weren't very happy with
2     him when you went to the job in Mississauga, is that correct?
3 A:  That's right.
```

[127] Direct examination, p. 1922

```
4 Q:  So, why did you go back to Jack?
5 A:  I cannot recall, it was too long ago.
6 Q:  All right. Do you remember how you felt when you went back to
7     him?
8 A:  Still not comfortable--
9 Q:  All right.
10A:  -- with him.
```

Here the defence counsel acknowledges the apparent disconnect between what is stated in line 1 ('You had indicated that you weren't very happy with him') and the fact that Teresa went back to Jack. Following the acknowledgement of this ostensible paradox, the lawyer asks in line 4, 'So why did you go back to Jack?' Indeed, the use of this Why-question is consistent with Ehrlich's claim that lawyers can use questions in order to elicit explanations for their client's actions, in an attempt to preempt a 'blame allocation' from an opposing lawyer. In this excerpt, the defence lawyer seems to be anticipating that the Crown attorney will make much of the fact that Teresa returned to Jack, and crucially, that the Crown will suggest that Teresa's 'return' is an indication that she was not a battered woman. When Teresa says in line 5 that she cannot recall why she went back to Jack when she hadn't been very happy with him before, the defence lawyer asks a different but related question in line 6 ('Do you remember how you felt'). This question encourages Teresa to explain the situation further: even though she went back to Jack, she was 'still not comfortable' (line 8) with him.

In Excerpt 8, the defence counsel asks about Teresa's pattern of leaving Jack and returning to him (lines 1-2, 'went back to Jack and then away again'; living with him 'part-time, sometimes full-time') between the years of 1998 and 2004 when they lived in Nanaimo and on Protection Island.

Excerpt 8 (Direct Ex.1959)

```
1 Q:  You indicated that you went back to Jack and then away again and
2     sometimes you were living with Jack part-time, sometimes full-
3     time?
4 A:  Yes.
5 Q:  Why is that? I'll break it up a little. When did you first go
6     back to him after May of'98?
7 A:  Because I was lonely and he's the only -- like call, got
8     relationship, relative. So, I go back to him.
```

Although Teresa's behaviour may appear unusual, this pattern of leaving and returning to partners is not uncommon for women in abusive situations.[128] Indeed, Teresa states that the reason she returned to Jack was because he was her only relative in Canada (line 8). This answer, then, points to the isolation Teresa seemed to experience as an immigrant woman from Malaysia without her own community or family ties. And, because Teresa was solely reliant on Jack for a family relationship, this complicated her ability to leave him permanently. In general, immigrant women may experience a loss of social and cultural support when they migrate, and often become both emotionally and/or financially dependent on their partners (Ahmad, et al. 2009; Bui, 2003; Kulwicki, et al. 2010; Vidales, 2010). One could argue that Teresa's status as an immigrant further contributed to her isolation, and ultimately to her inability to leave Jack. The crucial point is that the defence lawyer's questions in lines 5-6 of Excerpt 8 allow Teresa to identify her isolation as a factor in her returning to Jack (lines 7-8). She repeats that her isolation kept her from leaving Jack in the next example.

In Excerpt 9 (lines 1-2 and 12), the defence lawyer asks Teresa about her decision to return to Jack in 1998 after a short separation.

[128] As previously mentioned in Chapter 2, women in abusive relationships often exhibit a pattern or leaving and returning to their abusers. Griffing et al. (2002) state that statistics are unreliable, but that research suggests that half of all battered women will ultimately return to their abusive partners (2002: 306).

Excerpt 9 (Direct Ex.1961)

```
1 Q: All right.  You indicated you weren't happy with Jack. Why did
2    you go back to him?
3 A: Oh yeah, he -- I remember now.  He asked me to give him a second
4    chance, he would try and change himself, so...
(intervening lines )
5 Q:  And do you recall the conversation in any detail, what did he say
6     to you?
7 A:  He say he try his best to change, he try to quit smoking for me.
8 Q:  So, he told you he'd try to change his smoking habits?
9 A:  Yeah.
10Q:  Did he tell you -- say anything else?
11A:  No.
12Q:  So, again, why did you go back to him, Teresa?
13A:  Because I was lonely and isolated.
```

In response to the question in lines 1-2 regarding why Teresa went back to Jack, Teresa states that Jack asked for a second chance and said that he would 'try and change himself' (line 4).[129] This leads the defence to ask another time why she went back to him (line 12) and again, as in Excerpt 8, Teresa's response is that she was 'lonely and isolated' (line 13).

Again, it appears that Teresa's isolation, caused at least to some extent by her status as an immigrant woman, was a contributing factor in her remaining with her abusive husband. In their study of abused immigrant women in the United States, Erez, Adelman, and Gregory (2009: 45) found that women who lacked natal or extended family in their new countries (as was the case for Teresa) experienced higher rates of social isolation and also a sense of increased vulnerability to their abusive partners.[130]

[129] As mentioned in Chapter 2, men who abuse their intimate partners often express promises to change their behaviour as a way of keeping women in the relationships (see Davies et al., 1998). Promises to change are part of the reconciliation or loving contrition phase cycle of violence that some abused women may experience (Walker, 2003). Griffing et al. (2002: 311) found that women who had left an abusive relationship cited their partners' expressions of remorse as the most frequent reason they returned.

[130] In one report on low income women (including immigrant women) in Toronto, immigrant women repeatedly mentioned isolation as a major problem (Khosla, 2003). The report quotes one agency worker as saying, "Women can survive practical issues like poverty, but isolation can kill them" (Khosla ,2003: 52). Concurring with this finding, Bhuyan and Senturia argue that "[e]xtreme isolation continues to be a major issue for many immigrants and refugee women who are victims and/or survivors of DV[domestic violence]"(2005: 899).

The next excerpt is slightly different from the ones discussed above, as the defence counsel does not explicitly ask 'why did you stay/go back', but rather introduces a line of questioning that allows Teresa to explain her family and cultural background in a way that connects this background to her decision to remain with Jack. This line of questioning about Teresa's family, and her family members' opinions about her relationship with Jack, seems relevant to Teresa's inability to leave Jack as it is known that family relationships can have a major impact on women's decisions to stay in or leave abusive relationships. (For instance, Heggie (1985) found that women were more likely to return to abusive partners when family members supported that decision).[131] Moreover, as shown below, the defence counsel is explicit about his attempts to elicit information about Teresa's 'cultural underpinnings' as a way of understanding how they affected her decisions to stay with Jack.

Excerpt 10 concerns a trip to Malaysia that Teresa took with Martyn in 2001. In lines 1-2, Teresa is asked whether she discussed her relationship with Jack with any of her family members while on the trip to Malaysia. This initial question allows the defence to ask about Teresa's relationship with her family, and if they were involved in her decision to remain with Jack.

Excerpt 10 (Direct Ex.1969)

```
1 Q:  While you were in Malaysia on that visit, did you have any
2     discussions about your relationship with Jack?
3 A:  Discussion with who?
4 Q:  Did you talk to any family members, for example?
5 A:  Yes, I did talk to my brother.
6 Q:  Which brother?
7 A:  Second brother. He told me don't come back, stay there.
8 Q:  Why did you talk to that brother in particular?
9 A:  Because he's easy to compromise, he don't have temper.
10Q:  Did you talk to anyone else in the family?
11A:  I told my mom.
12Q:  And what was her...
13A:  My mom say husband...
```

[131] See also Trotter and Allen (2009).

```
Crown Counsel:
      14:   Your Honour - just before you go on, Mrs. Craig - Your Honour,
      15:   I'm objecting because this is obviously hearsay. I don't know
      16:   what use Mr. Morris intends to make of it.
```

Teresa states that her 'second brother' told her 'don't come back, stay there' (line 7). It is difficult to know whether this means that Teresa is being advised by her brother to return to Canada or to remain in Malaysia.[132] Teresa then begins to discuss her mother's advice before the Crown counsel objects to the defence lawyer's line of questioning as 'hearsay' in lines 14-16.[133] The excerpt is continued below where, in an explanation to the Court, the defence counsel states the following:

Excerpt 10 (continued)

```
Defence Counsel:
      17:   Ultimately, I'm going to ask her why she came back to Canada. To
      18:   me, the issue, Your Honour, is I expect the Crown is going to
      19:   argue that she had a number of opportunities to escape the
      20:   relationships and chose not to and therefore the advice she
      21:   received from family members, in my view, would be relevant.
            ( intervening lines )
      22:   Yes. I guess there's a couple of approaches I can take, Your
      23:   Honour. The first is, would be simply to say it's not going in
      24:   for the truth of its contents, it's a part of a narrative. What
      25:   I'm trying to get out of her is what her understanding was of the
      26:   situation back home, what her cultural underpinnings were and how
      27:   that affected her decisions whether or not to leave Mr. Craig.
      28:   Secondly, I could deal with it simply by asking her, "You went
      29:   home, you sought the advice of your relatives. What effect did
      30:   that have on your decision-making?" Either way, I'd suggest it's
      31:   a legitimate avenue.
The Court:
      32:   It's relevant to the issues.
Crown Counsel:
      33:   Sure, it's relevant. She can say -- you know, she can testify as
      34:   to the cultural underpinnings without getting into the hearsay.
```

[132] Teresa's English proficiency is likely a factor in this ambiguity. Without more contextual information, and without knowing whether Teresa is speaking from her perspective at the time of the testimony or from her brother's perspective at a prior time, the place referents for the spatial deictic expressions 'come back' and 'there' are unclear.

[133] Hearsay refers to a witness's report of another person's words, and is disallowed as evidence according to law - "Written or oral statements, or communicative conduct made by persons otherwise than in testimony at the proceeding in which it is offered, are inadmissible, if such statements or conduct are tendered either as proof of their truth or as proof of assertions implicit therein" (Canadian Rules of Evidence A.21).

35: And my friend is --I agree with my friend that she can say, you
36: know, after discussing it with the family, she made a decision to
37: go back, that's not offensive either. But I submit she can't get
38: into...

The Court:

39: Despite the advice of her family, she made a decision to come
40: back.

Crown Counsel:

41: Well, whatever it was, I don't know.

Defence Counsel:

42: I expect to get that she got conflicting advice, Your Honour.
43: And, again, my position would be that I am allowed to ask her
44: what advice she got in the context of the narrative, and then,
45: what effect that had on her (...)

This continuation of Excerpt 10 shows that the defence counsel is anticipating the Crown's negative assessment of Teresa's actions in remaining with Jack. He states in lines 18-20 that he expects that the Crown is 'going to argue that she [Teresa] had a number of opportunities to escape the relationship and chose not to'. Therefore, the defence needs to formulate questions that will allow Teresa to show how her family or cultural views ('cultural underpinnings'—line 26) on marriage impacted her decision to remain in the relationship. This line of questioning, then, seems to be designed to preempt the Crown's undermining of Teresa's claim to be a battered woman (which limits her ability to use either coercive control or BWS as part of her self-defence) on the basis of the 'number of opportunities' she had to escape her relationship with Jack.

The judge allows the defence to continue this line of questioning, and this begins in Excerpt 11.

Excerpt 11 (Direct Ex.1973)

1 Q: And you indicated that you also spoke to your mother?
2 A: Yes.
3 Q: And she gave you advice as well with respect to your marriage?
4 A: Yeah.
5 Q: Did that influence your decision about your marriage, about how
6 to treat your marriage?
7 A: What do you mean by "influence" my marriage?

```
8 Q:  Well, why did you seek the advice of family members?  Why did you
9     talk to them?
10A:  I want to see what they say.
11Q:  What they say about what?
12A:  My mom say husband and wife always argue, and just stick to the
13    marriage.
14Q:  What I'm interested in, Teresa, is why you want to talk to your
15    mother or brother?
16A:  Because I want to know that --I want them to know about my life
17    in Canada because they worry about me.
18Q:  And what was your life in Canada like at that point in 2001?
19A:  I told them my husband is abusive and --my mom always disagree
20    with divorce, so--divorce or separation, she want me to stick
21    together.
22Q:  So you received some advice from family members?
23A:  Yeah.
24Q:  And did that affect your decisions?  Did it have an influence or
25    [sic] you, or not?
26A:  Yes, yeah.
27Q:  Why?
28A:  Because I make my decision to come all the way to marry a man, so
29    it's my problem. I don't want my parents to get a -- have a
30    worry.
```

In interviews with battered Vietnamese immigrants in the United States, Bui (2003: 218) found that some women did not receive helpful advice from their relatives, who, although sympathetic, advised the women to accept their abuse and remain with their abusive partners. Teresa produces a similar sentiment in this excerpt: while she states that she told her family about her abusive husband (line 18), her mother's reaction is that all couples argue and that the two should 'stick together' regardless.[134] In other words, it seems clear from Excerpt 11 that Teresa's mother and her negative views on divorce impacted Teresa's decision to remain with Jack. We see, then, in Excerpts 10 and 11 that the defence lawyer's questioning allows Teresa's decision to stay with Jack to be understood within the context of her cultural background—a cultural context where family advice appears to be all-important. And, in highlighting the effect of family dynamics and cultural context on Teresa's decision-making, the lawyer seems to be anticipating and

[134] It is unclear from Excerpt 10 what the brother is saying, but based on the defence lawyer's mention of 'conflicting advice' (line 42) it seems plausible that the brother was advising Teresa to stay in Malaysia, while her mother advised her to return to her abusive husband.

preempting the suggestion from the Crown attorney that Teresa's decision to remain with Jack constituted evidence that she was not a battered woman.

4.5 Chapter Summary

This chapter has examined how the defence lawyer employed certain questioning techniques during Teresa's direct examination in order to advance the defence's theory of the case—that Teresa was a battered woman who was a victim of Jack's coercive control and abuse. This was a crucial dimension of the defence's theory as Teresa's self-defence plea relied on the fact that coercive control and, the resultant psychological symptoms Teresa experienced, contributed to her killing of her husband. The defence lawyer drew attention to the coercive control and abuse in at least two ways. First, he strategically utilized open-ended questions and clarification requests that allowed Teresa to contextualize her experiences of abuse within a larger framework of coercive control and intimate partner violence. That is, through his strategic questioning, he allowed Teresa to narrate experiences that could be seen as catalysts to violence (such as the birth of a child, or having weapons in the home) as well as abuse in-and-of-itself, like isolation (also a significant feature of coercive control). The testimony elicited by such questions detailed Teresa's abuse (specifically, Jack's coercive control) and, in doing so, drew attention to the reasons Teresa feared for her (and her son's) safety.

Second, the defence strategically utilized a series of questions that can be seen as preempting or anticipating negative assessments or accusations (from the Crown) of Teresa's actions, namely, her decision to stay with, or return to, Jack. In the analysis of Teresa's cross-examination (in Chapter 5), I will show how the Crown's argument that Teresa was *not* a battered woman relied on the fact that when she left Jack, she always returned. That is, the

Crown contends that Teresa's remaining with Jack was inconsistent with her claim that she suffered under Jack's coercive control or from a form of BWS. As noted, the analysis in the second half of this current chapter has demonstrated how the defence attempted to *preempt* these kinds of arguments from the Crown by showing how Teresa's decision to remain with Jack was not unusual when understood within the context of intimate partner violence.

Feminist scholars have asserted that there is an androcentric bias in self-defence law because it is constructed vis-à-vis *male* experiences. Thus, the importance of allowing battered women to narrate their experiences of abuse and to contextualize these experiences within feminist frameworks for understanding gendered violence cannot be overstressed. As Schneider comments, in her discussion of legal equality for women who kill violent intimate partners:

> As in all legal cases, the critical struggle is who gets to define the facts. Without first listening to women's experiences, and without understanding the social framework and experience of battering, it [is] simply not possible for lawyers to fairly represent battered women in these circumstances.
>
> (Schneider, 2000: 146-147)

In keeping with Schneider's comments, in this chapter I have attempted to show how the defence lawyer in *R v Craig* adopted questioning strategies that helped to represent Teresa's experiences as a battered woman and "the social framework and experience of battering" more generally.

The next chapter, Chapter 5, also examines questioning in witness-examination, specifically, the role of *controlling* questioning in Teresa's cross-examination. I argue that the Crown attempts to undercut Teresa's defence by challenging Teresa's identity as a battered woman and, by extension, her ability to use coercive control or BWS as part of her self-defence plea. This type of questioning strategy was integral to the Crown's argument because BWS and

coercive control were the linchpin of Teresa's defence (first as part of her self-defence plea, and then later as her defence argued for a conviction of manslaughter).

Chapter 5: *You Decided to Leave Him and You Did, Right?* — Controlling Questions in Cross-Examination

5.1 Introduction

This chapter presents an analysis of the Crown's use of questions in cross-examination. Specifically, I examine how the Crown's *controlling* questions function to represent Teresa as unconstrained in her ability to leave Jack, suggesting that she had other options than to use lethal force to exit the relationship. Unlike Teresa's direct examination, where the defence counsel elicits testimony that helps to represent the impediments Teresa faced in leaving Jack, the Crown's questioning seems to disregard the constraints that prevent women from leaving abusive partners. Ultimately, this kind of depiction calls into question Teresa's status as a battered woman and as a victim of Jack's tactics of coercive control, which, in turn, makes difficult Teresa's claim to self-defence. Indeed, rather than representing Teresa's killing of Jack as a response to the abuse she suffered at the hands of her husband (i.e., as self-defence), the Crown instead argues for a conviction of first-degree murder.

I begin the chapter by discussing a feminist critique of the legal system's treatment of women as 'autonomous subjects' within the context of gendered violence; that is, women are often represented in the law as having unlimited options and agency in the face of violence. I then return to the discussion of courtroom questioning and asymmetry from Chapter 4 and focus specifically on so-called *controlling* questions (Woodbury, 1984) in examination. The analysis section of this chapter focuses on how the Crown relies on various interactional resources (repetition, negative interrogatives, presuppositions, and reformulations) in *controlling* questions in shaping Teresa's testimony in cross-examination. I contend that a view of women as autonomous and with unlimited agency (Ehrlich, 2001) informs the Crown's questions and

interpretation of the evidence both during Teresa's cross-examination and in his closing address.

5.2 Gendered Violence and Legal Conceptions of the Autonomous Self

As Madame Justice Wilson's judgment in *Lavallee* affirmed, expert witness testimony is crucial for a jury and a court to be more informed of the realities that battered women face and to fully comprehend a battered woman's experiences. Advocates assert that battered women's actions, including the reasons that keep women from leaving abusive relationships, need to be understood within the context of these realities (many of which were highlighted by the defence in Teresa's direct examination). Nonetheless, the legal system does not always recognize these realities. A common feminist critique of the law centers on the subject who inhabits legal doctrine and practice. That is, legal subjects are often assumed to be like the subjects of classic liberal theory—individuals who are autonomous, freely-choosing, and rational. Liberal theories of autonomy presume that the self is individualistic, created prior to social interaction, and uninfluenced by social or cultural contexts (Abrams, 1999: 807). Likewise, some feminist scholars have proclaimed that the generic person assumed by the law is unconstrained in her ability to exercise choice, and is freely capable of acting and thinking rationally and reasonably (Bartlett, 1994: 154). Bartlett and Kennedy (1991: 7) elaborate:

> The Anglo-U.S. legal system presupposes what is essentially a mythical being: a legal subject who is coherent, rational, and freely choosing, and who can, in ordinary circumstances, be held fully accountable for "his" actions. Thus, legal doctrines generally assume that an individual acts with clear intentions that are transparently available to himself and to others, on the basis of suppositions about what a "rational person" would do in similar circumstances.

In assuming that individuals are freely-choosing and autonomous, feminist scholars maintain that the legal system ignores the larger societal realities and contexts in which people, especially

women, operate. These realities include societal inequalities (e.g., gender and racial inequalities), marginalization, gender dynamics, and power asymmetries (Lazar, 2008: 12).

The legal system's presumption that women are freely-choosing and unconstrained is especially problematic for women in contexts of intimate partner violence and for those who remain with abusive partners. That is, the liberal autonomous subject, as presumed in the law, is incompatible with the realities of women who experience gendered violence (Barnett, 1998; Merry, 1995; Naranch, 1997; Nedelsky, 1989; Schneider, 1996, 2000). If women in violent relationships are seen to be in complete control of their actions, that is, if their actions are seen as unimpeded by forces external to them, then they are understood as 'free' to leave violent relationships. Moreover, when they do not leave, they are understood as violating the "normative expectation that people ordinarily act in their own best interest, which rests on the assumption that they are free to do so" (Dunn, 2005: 04). By contrast, there is an extensive literature on intimate partner violence, some of which has been described in Chapters 2 and 4, that explicates the obstacles women face in leaving relationships, and the potential negative risks (such as economic livelihood, lack of social or cultural support, or threat of escalating and/or terminal violence) women must weigh before leaving. Barnett (1998: 270) stresses that the criminal justice system has "failed" women who kill their partners by discounting the larger contexts (the social and political background) in which they operate:

> By ignoring the context in which the violence took place, and the disparity in the power relations between partners, judges can continue to rely on gendered reasoning. Thus, questions which arise, and which are used against women defendants, are typified by questions such as 'why didn't she leave?, 'Why did she not seek a non-molestation or exclusion order?', 'Why did she not involve the police and invoke the criminal law to have her partner prosecuted?'[...] [T]he questions raised all presuppose that women in constantly violent situations, at constant risk of violent sexual or other physical and psychological violence, retain the same capacity for autonomy as do men, and the same rationality and power which would enable them to escape from the situation.

As Barnett points out, assuming that women "in constantly violent situations…retain the same capacity for autonomy as do men" runs counter to the research discussed in Chapters 2 and 4, which shows battered women to be *constrained* in their actions, specifically, that decisions to leave a relationship are much more complex than a matter of exercising one's free-will. Put somewhat differently, assuming that women in violent situations can freely choose to leave the situations downplays the legitimate constraints, both material and otherwise, that these women face.

That the legal system often discounts these kinds of constraints is documented by Hamilton (2010) in her research on appellate opinions of cases where men were convicted of various forms of domestic violence. She found that judges generally assumed that abused women "would, should or could" exert agency by ending an abusive relationship and refusing to return (2010: 573). Women who chose to remain (or return) to their relationships were seen as violating expectations and not 'genuine' victims of abuse (2010: 577).[135] These findings resonate with Merry's (1995: 300) assertion that the law promises women protected "legal liberalism" only if they leave their partners. Merry asserts that the fact that the autonomous and freely-choosing individual permeates both Western law and culture means that women who *fail* to conform to this conception of the individual (that is by *not* asserting their liberal rights and leaving relationships) are at risk of losing the legal support to which they are fundamentally entitled (Merry, 1995: 304). Women who do not leave, as Hamilton's findings would suggest, may also

[135] Hamilton (2009: 159) notes that judicial constructions of agency for abused women in these cases were often contradictory: judges acknowledge that women were "unable to exercise the type of agency that would allow them to avoid attack, yet they were expected to exercise the kind of agency that would permit them to avoid the resumption of the relationship."

be at risk of not being seen as *battered women* at all.

It is important to point out that, while many feminist scholars hold a relational view of the autonomy of the self by which identities are socially embedded and constituted through various kinds of social interactions and relations,[136] they reject the belief that battered women lack *any* autonomy. Such a view inherently leads to paternalistic state interventions (such as mandatory arrests, temporary restraining orders, or 'no-drop' prosecutorial policies) that may conflict with a woman's own wishes, and further contributes to delegitimizing her autonomy (Martin & Mosher, 1995; Goodmark, 2004, 2009). Instead, it is asserted that battered women do exhibit some agency in the various choices, however constrained, they make (Abrams 1999; Bell & Mosher, 1998; Chiu, 2001; Friedman, 2003, Schneider, 2000). As Schneider (1996: 323) comments, women are able to act "even when there are few and terrible options [...] Sometimes, like battered women who kill, [women] act if only in order to survive."

In discussing feminist critiques of the subject presupposed by the Anglo-American legal system, my goal is to shed light on the strategic questioning of the Crown counsel in his cross-examination of Teresa. More specifically, in the analysis section of this chapter, I show how Teresa's actions are assessed and measured in relation to an autonomous, freely-choosing individual, unimpeded by material or symbolic constraints. That is, the Crown's questioning represents Teresa as unaffected by the constraints women face in abusive relationships—constraints that in many cases prevent women from leaving their abusive partners. Before illustrating how the Crown's questions function to frame Teresa's actions in this way (i.e., in a way that is inconsistent with the lived experiences of battered women), I return to the discussion of the role of questions in examination that commenced in Chapter 4. In this chapter, I narrow

[136] See Abrams (1999); Mackenzie and Stoljar (2000); Nedelsky (1989, 2011).

the focus to the role of questions in cross-examination.

5.3 Questions in Cross-Examination

5.3.1 Asymmetrical Talk and Controlling Questions

As discussed in Chapter 4 (section 4.2.1), courtroom discourse, like other forms of institutional discourse, has been defined as asymmetrical in nature. Counsels' power to initiate turns and to ask questions that require of witnesses specific types of answers illustrates the power imbalance in courtroom talk (Atkinson & Drew, 1979; Conley & O'Barr, 2005; Drew, 1992; Matoesian, 1993, 2001). More specifically, only lawyers hold the power to question witnesses[137] and witnesses are compelled to answer the question posed by counsel with little option to refuse.[138] As noted previously, the ability of lawyers to ask questions of witnesses means that lawyers can shape witness testimony, something that Walker (1987: 57) claims lawyers "employ in conscious ways to influence the outcome of cases by controlling a witness's line of testimony" (Walker 1987: 57). [139]

One way that lawyers control witness testimony in cross-examination is through the use of what are called *coercive* or *controlling* questions. Such questions have received much attention in the literature on courtroom discourse (e.g., Berk-Seligson, 1999; Danet & Bogoch,

[137] Barring the rights of judges as mentioned in the previous chapter.
[138] In Canada, section 13 of the *Canadian Charter of Rights and Freedom* allows witnesses the right to not answer a question if the answer contains potentially self-incriminating evidence, "A witness who testifies in any proceedings has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for perjury or for the giving of contradictory evidence."
[139] However, Eades argues that this view of courtroom discourse (as "one-sided situational domination" of witnesses by lawyers) is an oversimplified look at power and control. The underlying assumption that it is only the questions that accomplish interactional control "ignores the wider linguistic and non-linguistic context" (2008: 37). And, as Matoesian (2005: 621) points out, assuming that lawyer questions are more powerful than witness answers "risks the problem of reifying structure" (cited in Eades, 2008: 37). Additionally, see also Ehrlich and Sidnell (2006) for how a witness can resist a lawyer's attempts to control testimony by producing non-type conforming responses (cf. Raymond, 2003).

1980; Maley & Fahey, 1991; Newbury & Johnson, 2006; Walker, 1987).[140] I follow Woodbury (1984: 199) who defines *control* as "the degree to which the questioner can impose his[sic] own interpretations on the evidence". So, while other researchers have conceptualized controlling questions in terms of their ability to constrain answers (Danet & Bogoch, 1980; Harris, 1984; Walker, 1987), Woodbury's definition emphasizes the power bestowed upon lawyers in using such questions: "the power to control the topic of agenda, to phrase evidence, and to 'load' questions in order to convey impressions about the particular question's truth content" (Matoesian, 1993: 150-151). It is through the use of controlling questions that lawyers can orient jurors and judges towards inconsistencies and "damaging implications" of witnesses' evidence (Drew, 1992: 472).

Many scholars have proposed taxonomies of these so-called controlling or coercive questions (e.g., Harris, 1984; Matoesian, 1993; Walker, 1987; Woodbury, 1984). The following taxonomy is adapted from Woodbury's (1984: 205) *Continuum of Control*. Questions with the least ability to control are those with interrogative pronouns (e.g., *Who, What, When, Where, Why, How*), Wh- questions. Woodbury (1984) further breaks Wh-questions down into broad, ("And then what happened", "What did you do next?") and narrow ("How old were you at the time?"). Broad-Wh questions are considered by Woodbury to be the least controlling in the sense that they do not allow for much of the questioner's interpretation to be imposed on the evidence. For example, there is little propositional content in a question like "And then what happened" except that "something happened" (Ehrlich, 2002: 196). During examination-in-chief, lawyers tend to use more Wh-questions than in cross-examination, especially broad-Wh questions, because these types of questions allow the witness to produce extended narratives and also

[140] Although typically more common in cross-examination, there are studies to suggest that controlling questions are also used in various ways by counsel in direct examination as well. See Eades (2000).

introduce new information. They are undesirable in cross-examination since the goal of cross-examination is to discredit and expose inconsistencies in witness testimony, or *de*construct the narrative in Cotterill's (2003) terms (as mentioned in Chapter 4). Therefore, lawyers in cross-examination do not typically employ Wh-questions (Danet & Bogoch, 1980).

While Wh-questions are at one end of the spectrum of control (i.e., they impose little of a lawyer's version of events on the evidence), Yes-No questions of varying types are at the other end. Yes-No questions are more controlling than Wh-questions in that the propositional content contained within the question is made available to the third-party recipients (the judge and jury); thus, whether or not a witness agrees or disagrees with the propositional content of a Yes-No question, it is still something that could influence a jury or a judge (Woodbury 1984: 200). Woodbury breaks down Yes-No questions into the following categories (based on Woodbury 1984: 202):

- Grammatical Yes-No questions ("Did you see the gun?")
- Negative grammatical Yes-No questions ("Didn't you see the gun?")
- Prosodic questions – declarative questions with prosodic clues such as a clause-final rise in intonation ("You saw the gun?")
- Negative prosodic questions ("You didn't see the gun?")
- Tag questions ("You saw the gun, didn't you?")[141]

Prosodic and tag questions are considered the most controlling of these Yes-No questions as they not only make available certain propositional content to third-party recipients, they also "express the speaker's expectations that his belief [i.e., the propositional content], whatever it is, will be confirmed" (Woodbury, 1984: 203). As such, these types of questions and are highly desirable in cross-examination. An example of such a prosodic question comes from Teresa's cross-examination: "So you went back to him when you decided to, and you left him again when you

[141] Tag questions can be both positive ("did you?") and negative ("didn't you?").

decided to". Note that regardless of how Teresa ended up answering a question like this one, the proposition that Teresa was able to come and go when she decided, as well as the questioner's belief that this proposition will be confirmed, is made available to the judge/jury.

5.3.2 The Power of Controlling Questions

As indicated above, controlling questions are powerful in the courtroom because they 'load' (Matoesian's term) questions with content, thereby conveying to the judge and jury a particular view of the evidence. This 'loading' of content into controlling questions is examined by Ehrlich (2001) in her investigation of sexual assault adjudications in Canada, in both a university tribunal and a criminal trial. Based on both of these settings, Ehrlich makes the argument that even though the 'utmost resistance standard' (the necessitation that women must resist men's advances to the utmost to prove rape has occurred) is not a requirement in Canadian law (and is no longer a statutory requirement in the US), it was still "the primary ideological frame through which the events in question and, in particular, the complainants' actions [were] understood and evaluated" (2001: 67). In the following example, for instance, Ehrlich shows how the 'utmost resistance standard' informs the tribunal member's questioning.

Ehrlich (2001: 76-77, emphasis in original)

Q: I heard the men left the room twice on two different occasions.
[...]
Uhm what might have been your option? I see an option. It may not have occurred to you but I simply want to explore that option with you. Uhm did it occur to you that you could lock the door so that they may not uh return to your room?

Ehrlich notes that a question like the Wh-question, 'what might have been your option?', is controlling in that, contained within it, is the presupposition that 'Marg had options'.

Presuppositions are "propositions whose truth is taken for granted in the utterance of a linguistic expression" (Green, 1996: 72, as cited in Ehrlich, 2001: 71), and, as such, cannot be easily denied. Thus, questions with presuppositions are especially powerful in cross-examination, according to Ehrlich, because their presupposed content has a 'taken-for-granted' quality. In the example above, the question, 'Uhm what might have been your option?', presupposes (or takes for granted) the idea that Marg had options and this, along with other italicized parts of the excerpt above, conveys the idea that Marg didn't make use of options that the adjudicator felt were available to her. As we know, controlling questions, such as those that contain presuppositions, make available to the third-party overhearers (that of the judges or juries in trials) a particular view of the evidence. In Ehrlich's work, many of the controlling questions were loaded with presuppositions about the lack of 'action' the complainants took in resisting their perpetrator and, ultimately, Ehrlich concludes that this helped to reframe the complainants' assault as consensual sex.

In the previous chapter, I argued that the defence lawyer's line of (co-constructing) questioning contextualized Teresa's experiences within a framework of intimate partner violence and lent support to her claim that she was a battered woman who acted in self-defence. In this chapter, I claim that the Crown makes use of an alternative sense-making framework (Ehrlich, 2007) through the use of controlling or coercive questions in cross-examination. That is, what informs much of the Crown's questioning is the idea that battered women are freely-choosing individuals with unrestricted autonomy. More specifically, many of the Crown's controlling questions impose a particular viewpoint on the evidence: Teresa had unrestricted autonomy and, crucially, had options other than killing her husband.

5.4 Analysis

5.4.1 Cross-Examination

The following excerpts come from Teresa's cross-examination. Again, since Teresa is the defendant in this case, the Crown counsel conducted her cross-examination.

As mentioned in Chapter 2, Teresa initially made contact with Jack through an advertisement he placed in a Malaysian newspaper. After maintaining a pen pal relationship with Jack, she came with a friend to Canada to visit him in 1991. She came back to visit a year later and stayed with him for four-and-a-half months. Teresa testified that she left Jack after the four months because he yelled at her often and was generally unpleasant towards her. After an approximately year-long separation, she returned to Jack and the two were married during a cross-country move from Ontario to British Columbia in 1994.

In May of 1998, Teresa separated from Jack and moved to an apartment. She testified that her two close friends assisted her in accessing legal aid and going to court, and she filed for a restraining order against Jack to keep him from her place of work (she testified that he would visit her work and harass her) or from any close proximity to her. The family court awarded Teresa custody of their two-year-old son, Martyn, and Jack was allowed weekend visitations. She then returned to Jack later that year. From 1998 until 2004, Teresa returned and left Jack a number of times, and also maintained her own apartment or other place of residence without Jack.

As mentioned in Chapters 2 and 4, Teresa's pattern of leaving and returning to an abusive partner is not atypical behaviour for battered women. Anderson and Saunders (2003: 185) believe that multiple separations and returns are all part of the *process* of leaving, where each time women learn new and better skills for how to cope with their abuse. That is, the leave/return

cycle should not be viewed as a failure on the woman's part. However, as will be seen below, the Crown, through the controlling questions, indicates that Teresa's multiple separations and subsequent returns (all part of the process of leaving, according to Anderson and Saunders) were *choices* Teresa made; in other words, the Crown highlights Teresa's agency and the unlimited options she ostensibly had to escape Jack's violence. Below I illustrate how this kind of view of Teresa emerged in the controlling questions of the Crown.

5.4.1.1 'You decided to leave him': Repetition

One feature of Teresa's cross-examination connected to the depiction of Teresa as unconstrained in her actions is the repetitive use of Yes-No questions (i.e., controlling questions) containing Teresa as the subject/agent of the verb, *decide*. Matoesian (2001: 54) shows how "poetic repetition" can be an effective rhetorical strategy utilized by lawyers during examination. According to Matoesian, repetition draws jurors' attention to a portion of witness testimony, allowing a lawyer to covertly comment on that testimony, thereby circumventing the legal rules prohibiting lawyers from more overt evaluative commentary (2001: 54). As Hobbs (2003: 491) has claimed, repetition acts as a kind of contextualization cue (Gumperz, 1992), signaling to the jury the "key points" lawyers wish to communicate. In Excerpt 1, the Crown asks Teresa about the early period of their relationship before they were married.

Excerpt 1 (Cross Exam.2071)

```
1 Q:  Okay. So, can we back up for a second and can you tell us how it
2     is – first of all, when you came back to Canada the second time,
3     and you spent four and half months with Jack, right?
4 A:  Yes.
5 Q:  And then you decided that it wasn't working for you, so you
6     decided to leave Jack, right?
7 A:  I'm not happy, that's why I decided to leave.
```

```
8 Q:  So you decided to leave, and so you left, right?
9 A:  Yeah.
10Q:  And then living in Mississauga didn't work out for you either,
11    right?
12A:  Yes.
13Q:  So you decided that you wanted to go back with Jack, right?
14A:  Yes.
15Q:  And so you did?
16A:  Yes.
17Q:  Okay.
```

In Excerpt 1, the formula, 'You decided X' (with Teresa as the referent of 'you'), is repeated in the tag questions in lines 5-6, line 8, and line 13. This "poetic repetition" seems to signal to the jury that Teresa was free to leave Jack in that the verb, *decide,* implies a degree of choice in relation to Teresa's ability to leave (or return) to Jack. This rhetorical strategy becomes even more significant later in the cross-examination when the Crown repeats a similar pattern of both prosodic and tag Yes-No questions with Teresa as the subject/agent of *decide,* in representing Teresa's actions after she and Jack were married. As in Excerpt 1, in Excerpt 2 the Crown similarly seems to employ these questions types (lines 1-2, 4, 8, and 13) to highlight Teresa's choice in leaving and subsequently returning to Jack. Excerpt 2 includes questions about Teresa's actions following the first post-marriage separation in May of 1998.

Excerpt 2 (Cross Exam.2081-2082)

```
1 Q:  Okay. And when you left him in May of 1998, that was your
2     decision, right?
3 A:  Mine, yes.
4 Q:  You decided to leave him and you did, right?
5 A:  Yes.
6 Q:  And the times when you went back to him part time, right,--
7 A:  Yes
8 Q:  --that was your decision too?
9 A:  It's part of Jack's decision, he asked me to give him a second
10    chance
11Q:  Yes, and did you?
12A:  Yes.
13Q:  Yes. So it was your decision too.
14A:  Because he ask me.
```

The propositional content of the prosodic and tag questions in Excerpt 2, such as 'You decided to leave him and you did, right' in line 4, all contain forms of the verb, *decide* (line 4), or the nominalization, *decision* (lines 2, 8, 13), with Teresa as the subject/agent. As mentioned previously, prosodic and tag questions are highly controlling in Woodbury's view because they communicate to the judge/jury certain propositional content (contained within the declarative), as well as express the questioner's belief that this content will be confirmed (Woodbury, 1984: 203). By using these questions, then, the Crown imposes a particular perspective on the evidence—that Teresa was able to exercise her agency and make a decision to leave Jack. While Teresa attempts to clarify her reasons for returning to Jack in lines 9-10 ('It's part of Jack's decision, he asked me to give him a second chance')[142] by implicating Jack in the decision-making process, the Crown asks a further controlling question in line 13 ('So it was your decision too') that reiterates Teresa's involvement in the decision. In general, the Crown's "poetic repetition" of controlling questions with Teresa as the subject/agent of *decide* (and its variants) downplays for the jury Jack's control over Teresa. Rather, what is conveyed is that Teresa could decide to 'leave [Jack]' or 'go back to him', as she did when they were first dating (Excerpt 1). This depiction of Teresa fails to acknowledge the constraints (such as the cycle of violence) that keep women in abusive relationships and subtly calls into question Teresa's status as a battered woman.

5.4.1.2 'Why didn't you…': Negative Interrogatives

Another discursive mechanism the Crown utilizes to cast doubt on Teresa's inability to leave

[142] Jack's promise to change is reminiscent of the reconciliation phase of the cycle of violence described by Walker (1979, 2000, 2009).

Jack is that of negative interrogatives. Heritage points out that negative interrogatives are often used to "frame negative or critical propositions while still inviting the recipient's assent" (2002: 1432-1433). That is, a negative interrogative signals a speaker's conflictual attitude towards the proposition under question.

In 2001, Teresa again chose to separate from Jack, but she returned after a year. She testified that her decision to leave was partly based on Jack's increasingly aggressive behaviour, which continued over the next few years—he publicly humiliated her and kept her isolated by restricting her ability to contact her friends and family (all tactics of coercive control). In April 2005, Teresa was hospitalized for a severe depressive episode (including suicidal thoughts) while living on Protection Island, British Columbia (BC). Shortly after her two-week stay in the hospital, Jack decided to sell their house and intended to move both Teresa and Martyn across the country to Ontario. She initially did not want to move away from BC, but in Excerpt 3 below, she testifies that she ultimately moved with Jack for the sake of her son Martyn (who she said Jack was abusing).

Excerpt 3 (Cross Exam.2099-2102)

```
1 Q:  And you ended up going with Jack and Martyn too, right?
2 A:  Yes
3 Q:  What was the reason for that?
4 A:  I want to protect Martyn.
5 Q:  To protect Martyn. Okay. That's not true, is it?
6 A:  Yes. I have seen Jack abuse Martyn a lot, and I don't want Jack
7     to abuse him
8 Q:  Um-hmm
9 A:  So I want to protect Martyn, go with him, stay at his side so
10    that when Martyn got problems, at least he can cry, come at me.
11Q:  Um-hmm. Okay. So if this was about Martyn, about protecting
12    Martyn, why didn't you take him back to court for custody then?
13A:  Jack not allow me to.
14Q:  Not allow you to?
15A:  Yeah.
```

The negative interrogative in line 12 —'*why didn't you* take him back to court for custody

then?'—questions Teresa about her prior statement that she wanted to protect Martyn. This question is controlling (in the Woodbury sense) in that it enables the Crown to signal to the jury his critical evaluation[143] of Teresa's *inaction* (i.e., not taking Jack back to court) and to subtly imply that she is not measuring up to the reasonable standards of a good mother—someone who would have gone to court for custody if she wanted to protect her son. This question also implies that legal intervention was easily accessible and the most appropriate course of action for Teresa.[144] While Teresa was able to seek custody of Martyn (with the help of friends) after the first separation in 1998, recall that by 2005 (the time period interrogated in Excerpt 3), Jack's abuse and coercive control had escalated. Teresa herself alludes to this—'Jack not allow me to'— in line 13.

A similar negative Wh-question is used in Excerpt 4 when the Crown asks Teresa why she did not leave Canada with Martyn and return permanently to Malaysia (following her hospitalization) as a means to protect her son.

Excerpt 4 (Cross Exam.2102-2104)

```
1 Q:  So, why didn't you just go back to Malaysia and bring Martyn with
2     you?
3 A:  Because that time I got no money.
4 Q:  Okay.
5 A:  Jack control the money.
```

In using a negative interrogative, 'So, *why didn't you* just go back to Malaysia and bring Martyn

[143] Relatedly, Labov (1972: 380-381) argues that negative accounts in narratives serve an evaluative purpose to invite comparison between what happened and what might have happened. Negative accounts in testimony (such as the one in line 12) are especially problematic if we consider that courtroom narratives, though the product of co-construction, are treated as solely those of the witness. Thus, the negative evaluation (that something did *not* happen) is assigned to the witness.

[144] Assuming that legal intervention is the best course of action for all battered women is problematic—custody is not a foregone conclusion for battered mothers, immigrant women may face particular challenges due to their status, and the violence may not cease (Goodmark, 2004).

with you?' (lines 1-2), to accomplish the questioning, the Crown once again signals (to the jury) his critical evaluation of Teresa's *inaction*: Teresa should have flown to Malaysia with Martyn to escape from Jack. Moreover, the adverb *just* suggests that this option, fleeing to the other side of the world, is easy and unproblematic (Ehrlich, 2001: 85). In both Excerpts 3 and 4, the Crown's use of negative interrogatives allows him to cast a negative light on Teresa's actions (or lack of action), implicitly suggesting that Teresa was unimpeded in her attempts to leave Jack.

5.4.1.3 'You knew that you had rights': Presuppositions

As noted above, the power of controlling questions to control evidence is particularly effective when such questions contain presuppositions—propositions that are assumed to be true in the uttering of a sentence and whose truth survives negation or denial of that sentence. For example, the sentence (adapted from Levinson, 1983: 192), 'The chief of police arrested three men', contains the presupposition, 'There is a chief of police' (because of the definite article *the*), and even if the sentence is negated (i.e., 'The chief of police didn't arrest three men'), this presupposition survives. Indeed, as Ehrlich and Sidnell (2006: 658) have said, the credibility of witnesses in cross-examination may be particularly compromised by questions with presuppositions "given that presupposed propositions are not the primary ones under question" and "witnesses may be legally prohibited *from* challenging or denying them."

Excerpts 5 and 6 below include controlling prosodic and tag questions containing presuppositions. The questions with presupposition in Excerpt 5 (lines 1-2, 9-11, 13, 20, 31-33), and Excerpt 6 (line 2) all contain the factive verb *know* as in 'you *knew* from years ago…' (line 6). *Know* is a presupposition trigger (Levinson, 1983: 179) in the sense that it is a verb whose complement is presupposed (verbs such as *realize, regret*, *forget* etc. are also presupposition

triggers) (Kiparsky & Kiparsky, 1971).[145] For example, in producing the sentence, 'Teresa knows that it is raining', the speaker presupposes the truth of the proposition, 'it is raining'. In Excerpt 3 above, Teresa says that she moved from BC to Ontario to protect Martyn because Jack prevented her from going to court to gain custody over Martyn. However, Excerpts 5 and 6 show the Crown challenging this claim by foregrounding Teresa's legal rights as Martyn's mother. While, in theory, legal channels are available to all citizens, the reality for battered women may be quite different. Though Teresa did not technically need Jack's permission to go to court, Jack's control and abuse would have made accessing the court difficult. Recall that Teresa testified that Jack controlled their finances, kept her isolated from friends (who were integral in getting her legal help the first time), and later physically isolated her on the island, all common tactics of coercive control (Stark, 2007). Additionally, Teresa, as an immigrant and non-native speaker of English, could face significant cultural and linguistic difficulties in navigating an English-speaking legal system (Kwong, 2002). Presumably, these constraints would make it difficult for her to seek legal assistance.

Excerpt 5 (Cross Exam.2100-2101)

```
1 Q:  But, Mrs. Craig, you knew from years ago that you didn't need
2     Jack's permission to go to court.
3 A:  This time, Jack say not allow me to have Martyn.
4 Q:  Yes. And that wasn't the first time he said that to you.
5 A:  Yes, this is the first time he say it. When I take Martyn with
6     (sic) him, he didn't know.
7 Q:  So he'd never said that to you before?
8 A:  No.
9 Q:  Okay. Now, you knew from years and years before that, that if
10    you and Jack couldn't agree on who had custody of Martyn, the
11    court would decide, right? You knew that?
12A:  Yes.
13Q:  Okay. So you knew it wasn't Jack's decision, right?
14A:  I knew Jack will find a way that I don't get the custody.
15Q:  But that wasn't your experience?
```

[145] Presuppositions have been well studied in courtroom questioning (e.g., Ehrlich 2001; Ehrlich and Sidnell 2006; Gibbons 2003; Hickey 1993).

16A: No. With his threat, I believe him, the way he talk.
17Q: What he said was, "You don't have to go, but Martyn is coming
18 with me" right?
19A: Yes.
20Q: You knew that you had rights,--
21A: Yes.
22Q: –right? In the past, you went to Legal Aid and you got yourself a
23 lawyer, right?
24A: Yes.
25Q: And you went to court.
26A: Yes.
27Q: And the judge gave you custody--
28A: Yes.
29Q: —and gave Jack visitation, right?
30A: Yes.
31Q: So you know what your rights were, and you knew from that
32 experience that it wasn't Jack's decision in the end who got
33 custody, right?
34A: Yes.

In lines 1-2 of Excerpt 5, the Crown produces the prosodic question: 'But, Mrs. Craig, you knew from years ago that you didn't need Jack's permission to go to court.' This question signals to the jury that Teresa knew that she didn't need Jack's permission to go to court. Moreover, what is presupposed by this question is a proposition about Teresa's legal rights—that she does not in fact need Jack's permission to go to court. As noted above, presuppositions are difficult for witnesses to deny because they are not the primary ones under question and, in Excerpt 6, we see that Teresa's response to the Crown's question in lines 1-2 does not deny the presupposition. As a result, the proposition that Teresa did not need Jack's permission to go to court remains unchallenged. In turn, Teresa's testimony that Jack kept her from gaining custody is called into question as is her claim that Jack did not control her, given that seemingly she did not need his permission to do things like go to court.

The Crown continues to question Teresa's claim that Jack kept her from seeking custody of Martyn throughout the remainder of the excerpt. Another presupposition connected to Teresa's legal rights is evident in lines 9-11: 'Okay. Now, you knew from years and years before

that, that if you and Jack couldn't agree on who had custody of Martyn, the court would decide, right? You knew that?' Here, the discourse maker *now*, which prefaces disagreement (Hale, 1999: 75), plus the controlling tag question reiterates the idea that Teresa is incorrect in her belief that Jack can control decisions about Martyn's custody. Indeed, what is presupposed by the Crown's question in lines 9-11 is that the court decides custody, not Jack.

The Crown spends his next few turns trying to get Teresa to acknowledge that she was fully aware of her legal rights as Martyn's mother, which included the ability to fight for custody of her son. He again relies on controlling questions with presuppositions—'you *knew* that you had rights' (line 20), 'you *knew* what your rights were' (line 31), 'you *knew*...it wasn't Jack's decision in the end who got custody' (line 33). Teresa responds to one of these questions (line 20) by saying that even though she knew about her custodial rights, she also believed that Jack would keep Martyn from her ('I knew Jack will find a way that I don't get the custody'—line 14) and that she interpreted Jack's comments about Martyn as a very real 'threat' (line 16). While it is true that the court decides custody, as the Crown's questions presuppose, the line of questioning pursued by the Crown functions to cast doubt on Teresa's claim that Jack's control could likely extend to the legal system. Rather, it is Teresa's legal rights that are emphasized in the Crown's questions in Excerpt 5 and not the *threats* that Teresa no doubt believed could jeopardize those rights.

In a very general way, it seems that Jack's control over Teresa is lost in the Crown's questions of Excerpt 5. Arguably, children play a vital role for many women in their decisions to remain in abusive relationships. Children and/or child custody are often used as 'bargaining chips'. Abusers may threaten child custody, or to call child protective services, or even threaten to kidnap or abuse children as a way of controlling their partners (Chesler, 2011; Dutton, 1993;

Hardesty & Ganong, 2006; Meyer, 2011; Rhodes et al., 2010; Stark, 2007). Coercive control includes patterns of domination such as controlling parental relationships to keep women from leaving. Importantly, Teresa's defence expert witness (Dr. Stark) argued that Teresa likely suffered from the 'battered mother's dilemma', forcing her to choose between her own safety and that of her child. Yet, the ways in which abusive partners may use children to control abused women are obscured in Excerpt 5 with the Crown's continued emphasis on the control that *Teresa* has in the legal system, and not the control that Jack exerted over her.

In Excerpt 6, the Crown uses a similar line of questioning to challenge Teresa's claim that Jack would not let her take Martyn.

Excerpt 6 (Cross-Exam.2103-2104)

```
1 Q:  Now, you've said that a few times now, "Jack wouldn't allow me to
2     take Martyn," but you know that you had rights too?
3 A:  I know I have rights. Every time I go to town, he watch me. He…
4 Q:  What's that go to do with your rights?
5 A:  Pardon me?
6 Q:  What does that have to do with your rights?
7 A:  With my race?
8 Q:  Your rights.
9 A:  Because I—my rights—at that time, I didn't think of my rights. I
10    just—just do my own thing, yeah
```

In the Crown's question in lines 1-2, the factive verb *know* triggers the presupposition 'you had rights'. Once again, the taken-for-granted quality of presuppositions means that what is communicated to the jury here (and in many of these questions) is that Teresa's rights as Martyn's mother outweigh any claim from Teresa that Jack controlled her. As mentioned, it is difficult for witnesses to challenge or deny damaging presuppositions due to constraints on witness responses. Presuppositions are "resilien[t] to negation, denial, and disagreement" if witnesses produce a type-conforming response (Raymond, 2003), here a 'yes' or a 'no' (Ehrlich & Sidnell, 2006: 659). That is, even if Teresa answered in the negative to the question 'you know

that you had rights too', the presupposition, 'you had rights', remains. There are ways of resisting presuppositions, however. In their study of inquiry testimony, Ehrlich and Sidnell (2006) found that one of the ways that Mike Harris, the then-premier of Ontario, resisted the lawyer's presuppositions was to directly address and challenge them (2006: 665). In a similar way, it is possible that Teresa's expansion in line 3, 'Every time I go to town, he watch me. He…', is an attempt to challenge the presupposition contained in the previous question. She states that even though she knows she has legal rights, Jack's controlling behaviour kept her from being able to see a lawyer. It seems that she is trying to say that Jack's *watching* her is a kind of controlling behaviour that interferes with her ability to seek advice from a lawyer. Though this behaviour is reminiscent of coercive control tactics like micro-managing daily activities and stalking, the Crown does not seem to want to acknowledge this connection and does not accept Teresa's answer as valid: he interrupts the rest of her turn with: 'What does that have to do with your rights?' (line 4). This questioning again suggests that Teresa has rights and that her claims about Jack's control over her are overstated, if not false.

5.4.1.4 'So you went back to him when you decided to': (Re)Formulations

Another of the discursive strategies that contributes to the Crown's depiction of Teresa's agency and autonomy is that of (re)formulations (Garfinkel & Sacks, 1970; Heritage & Watson, 1979). Formulating is a communicative resource by which participants summarize, gloss, or develop the gist of previous stretches of talk (Heritage, 1985: 100) in order to co-construct meaning. By "saying-in-so-many-words-what-we-are-doing", formulating is a 'practical action' for conversational co-participants to check understanding (Garfinkel & Sacks, 1970: 351). Heritage and Watson (1979) divide formulations into two categories: *gists*, which summarize previous

turns (typically for meaning-check), and *upshots*, which "presuppose some unexplicated version of gist" (1979: 135) and draw out what is most relevant from the previous turn. As both paraphrases and recasts of previous utterances, formulations have three central properties: *preservation*, *deletion*, and *transformation* of the previous material (Heritage & Watson, 1979: 129). Structurally, they occur in "formulation-decision" adjacency pairs where *confirmation* is overwhelming preferred (Heritage & Watson, 1979: 143). Since formulations are meant as a resource for collaborative understanding, *disconfirmations* "may jeopardize the sense of 'the talk so far'" (Hak & de Boer, 1996: 85). Rather than bald *disconfirmations*, formulations are typically followed by either *plain* or *qualified confirmations* (Hak & de Boer, 1996: 85).

While occurring in everyday conversation, formulations are also prevalent in various institutional settings where participants engage in question-answer sequences, for example psychotherapy/medical interviews (Antaki, Barnes, & Leudar, 2005; Hak & de Boer, 1996), child counselling sessions (Hutchby, 2005), news interviews (Heritage, 1985), and university settings (Vásquez, 2010). Typically, formulations are most often utilized by the interviewer, occupying the 'third turn' slot after the interviewee's answer (Heritage, 1985). Though formulations enable an interviewer to "check understanding", they are often used in institutional settings to gloss relevant details for the overhearing audience (Heritage, 1985). In the process of "preserving relevant features" (Heritage & Watson, 1979), interviewers may selectively represent certain portions of the preceding talk that hold greater institutional significance. These selective representations alter or transform meaning. In this sense, they are better understood as *re*formulations. Far from being a neutral resource, reformulations are utilized for strategic purposes. Through reformulations, interviewers are able to 'fix' a particular reading of the interviewee's answers, one that aligns with their (the interviewer's) goals (Heritage, 1985). This

also occurs in courtroom examination. Reformulations are a powerful strategy that allow lawyers to put forward a particular interpretation of the evidence (by selectively summarizing answers), on to which the overhearing audience will produce a judgement (Gnisci & Pontecorvo, 2004: 978). They allow lawyers to highlight, challenge, or "define […]the upshots" (Hutchby & Wooffitt, 1998: 166) of witness testimony without directly challenging the witness herself (Hobbs, 2003: 501). And, because reformulations are ostensibly representations of the witness's own words, they may be hard to reject or refute (MacLeod, 2010: 172). The following excerpts examine how the Crown uses the reformulations of controlling questions to "reshape" (Ehrlich, 2001: 75) Teresa's testimony in order to portray her as a woman who is unconstrained by the kinds of factors that have been shown to prevent battered women from leaving their abusive partners.

In Excerpt 7 (a partial repeat of Excerpt 2), the Crown asks questions about Teresa's actions following her separation from Jack in 1998. The excerpt contains two reformulations (line 8, lines 13-14).

Excerpt 7 (Cross Exam.2081-2082)

```
1 Q:  And the times when you went back to him part time, right,--
2 A:  Yes
3 Q:  --that was your decision too?
4 A:  It's part of Jack's decision, he asked me to give him a second
5    chance
6 Q:  Yes, and did you?
7 A:  Yes.
8 Q:  Yes. So it was your decision too.
9 A:  Because he ask me.
10Q:  Right. Well, if Jack didn't want you to go back, you wouldn't
11    have, right?
12A:  Because he's Martyn's dad, so I give—yeah, I agree.
13Q:  You agree, right, okay. So you went back to him when you
14    decided to, and you left him again when you decided to,--
15A:  Yes.
```

In response to the Crown's question regarding why she went back to Jack 'part-time' following their separation, Teresa comments that she returned to the relationship because Jack promised to change (lines 4-5). After confirming that Teresa did give Jack a second chance (i.e., she returned) (line 6), the Crown reformulates her answer with a controlling prosodic question in line 8: 'So it was your decision too'. Discourse marker *so* is commonly used to preface a formulation (Hutchby, 2005), especially formulations with upshots (Raymond, 2004). Here, *so* allows the Crown to "summarize, evaluate and label the previous answers in order to focus the questioning on a particularly important evidential detail" (Johnson, 2002: 105). The reformulation in line 8 *preserves* Teresa's 'decision' in returning to Jack while *deleting* any mention of his role; thus, the decision is represented, as noted above, as solely hers. Teresa produces a qualified confirmation in line 9, which again refers to Jack's desire for a second chance. Teresa further explains that Jack's role as the father of her son contributed to her returning (line 12). This is consistent with Mahoney's (1991: 21) idea that "[s]ince mothers bear much of the responsibility for the emotional ties between the fathers and children in our society," women may be hesitant to sever relationships between fathers and children, even if maintaining the relationship may put these women *at* risk. In other words, Teresa's decision to keep her family intact is no doubt a response to the societal pressures of maintaining a nuclear family, a reason many women cite for staying in abusive relationships (Dobash & Dobash, 1979; Meyer, 2012; Rhodes et al., 2010). This pressure may be heightened for women of colour and immigrant women who face particular cultural and family resistance to leaving relationships (Erez, Adelman, & Gregory, 2009; Richie, 1996; Yoshioka et al., 2003).[146] However, counsel reformulates Teresa's explanations for her

[146] Women of colour particularly also face societal stigma and negative stereotypes associated with 'broken' families in these communities, both of which contribute to these women staying with abusive partners (Potter, 2008; Richie, 1996).

leaving and returning to Jack with the upshot (again, a prosodic question prefaced by discourse marker *so*): 'So you went back to him when you decided to, and you left him again when you decided to' (lines 13-14). The Crown's reformulation here represents Teresa as able to leave Jack and return to him as she wishes. Again, the focus is on *Teresa's* ability to make decisions; such a focus downplays the structural factors that may explain her returning to Jack (Jack's professing to change, pressure to maintain the family)—factors that echo ones discussed in the literature on intimate partner violence (reviewed in Chapters 2 and 4). Teresa's explanations are seemingly *deleted* in this summation, and instead the Crown focuses on Teresa as an autonomous individual who has free will to leave and return as she sees fit.

As with Excerpt 5, in Excerpt 8 the Crown interrogates Teresa's claim that Jack would keep her from getting custody of Martyn if she chose to seek legal intervention.

Excerpt 8 (Cross Exam.2100-2101)

```
1 Q:  Okay. So you knew it wasn't Jack's decision, right?
2 A:  I knew Jack will find a way that I don't get the custody.
3 Q:  But that wasn't your experience?
4 A:  No. With his threat, I believe him, the way he talk.
5 Q:  What he said was, "You don't have to go, but Martyn is coming
6     with me" right?
7 A:  Yes.
```

The Crown uses a prosodic question in line 3 to contrast Teresa's claim with her prior experience (getting custody of Martyn). Teresa maintains that she interpreted Jack's words as a very real 'threat' (line 4). Jack's 'threat' is taken up by the Crown, and is reformulated and transformed into something Jack said, not threatened-—'What he *said* was, "You don't have to go, but Martyn is coming with me", right?' (lines 5-6). Presumably, by quoting Jack's words here, the lawyer is signaling to the jury the disconnection between Teresa's impression (a threat) and its

literal meaning, which may not convey the threat-like nature of the utterance. The lawyer's reformulation suggests that Teresa's claim about Jack's threat is without basis. It *preserves* Jack's words, but not the illocutionary force behind them. As a result, Teresa's claim that Jack's threat kept her from going to court seems unwarranted.

Excerpt 9 is a continuation of Excerpt 5 above.

Excerpt 9 (Cross Exam.2101-2102)

```
1 Q:  So this idea that you went to protect Martyn doesn't make any
2     sense, does it?
3 A:  Because Martyn want to see me and his dad together, so I just
4     make Martyn happy.
5 Q:  Oh, it was to make Martyn happy?
6 A:  Yeah.
7 Q:  Not to protect him.
8 A:  Always Martyn say, "Mom, I like you and dad together," so I try
9     my best to stay in relationship with his father.
10Q:  Okay. So it was Martyn's happiness that made you decide to go—
11A:  Yeah.
```

In lines 1-2, the Crown explicitly questions Teresa's rationale for moving to Ontario to protect Martyn with the use of the controlling tag question—'So this idea that you went to protect Martyn doesn't make any sense, does it?'. This question puts forward what the Crown presumably wants to communicate to the jury: Teresa was able to seek custody at a prior time, and was in fact awarded custody of Martyn; therefore, she had no reason to believe that Jack could possibly keep her away from their son. In response to the question, Teresa states that she moved because her son wanted the family together, and she wanted to make Martyn happy (lines 3-4). The Crown then questions this phrase 'make Martyn happy' (line 5) and contrasts it with her earlier testimony, 'not to protect Martyn', (line 7) suggesting a contradiction between the two. Teresa chooses to elaborate on Martyn's desire to keep the family together. The lawyer reformulates Teresa's elaboration in line 10 — 'So it was Martyn's happiness that made you

decide to go.' Notably, this selective reformulation (Ehrlich, 2001), *deletes* Teresa's desire to *protect* her son, and instead highlights her desire to 'make Martyn happy'. The Crown seems to represent this explanation ('make Martyn happy') as incompatible with Teresa's prior one (that she wanted to protect Martyn), and perhaps as less compelling, but I would suggest that it was possible for Teresa to not only want to protect her son, but also try and maintain a strong family unit. While the reformulation in line 10 allows the Crown to frame Teresa's decision to move with the family as a *choice* Teresa made (given that Martyn's safety is represented as not being at stake), it could alternatively be seen as a strategy to keep her family and child's livelihood intact.

Excerpt 10 is a continuation of Excerpt 4 above. The Crown asks Teresa why she didn't escape to Malaysia following her hospitalization.

Excerpt 10 (Cross Exam.2102-2104)

```
1 Q:  You weren't asked that question yesterday, about going back to
2     Malaysia with Martyn?
3 A:  Yeah, it's—I did went back with Martyn.
4 Q:  You were there twice, right?
5 A:  Yes.
6 Q:  And the last time you were there with Martyn was in 2001,--
7 A:  Yes.
8 Q:  —right? And Mr. Morris asked you, "Did you think about just
9     staying there, not coming back, staying there with Martyn" right?
10A:  Yes.
11Q:  And what was your answer, what's your answer to that question?
12A:  Martyn cannot handle the temperature.
13Q:  Okay. So the reason that you didn't take Martyn and fly to
14    Malaysia in 2005 was not because you didn't have the money.
15A:  That time, Martyn want to go to school. He got school. And Jack
16    not allow me to take Martyn.
```

In Excerpt 4, Teresa comments that she didn't fly to Malaysia in 2005 following her hospitalization because Jack controlled the money (a form of economic abuse). In line 1 in Excerpt 10, the Crown enquires about Teresa's direct examination in which Teresa was also

asked about why she cut short her visit to Malaysia in 2001. In lines 8-11, the Crown asks explicitly about her answer to a question in the direct examination ('And what was you answer…to that question?'), presumably to expose a contradiction in her responses. Teresa answers in line 12 that she previously said 'Martyn cannot handle the temperature'. The Crown reformulates the response in line in 13 with a controlling prosodic question — 'Okay. So the reason that you didn't take Martyn and fly to Malaysia in 2005 was not because you didn't have the money.' This reformulation erases a number of important details, including that Teresa's answer in line 12 relates to her leaving Malaysia in 2001, not 2005 (the time period for this line of questioning). Teresa's reason for leaving Malaysia in 2001 is thus conflated with her decision to *not* flee to Malaysia in 2005. This enables the Crown to undermine Teresa's claim that Jack controlled their money, and by extension, her. As noted above, reformulations in prosodic questions are difficult for witnesses to deny because they not only convey certain propositional content to the jury, they do this by supposedly representing the words of the witness. However, Teresa does challenge the Crown's reformulation from lines 13-14 by providing a more detailed explanation of her reasons for not returning to Malaysia in 2005, and again repeating that Jack 'not allow [her] to take Martyn'.

Excerpt 10, like the others in this section, is meant to show how the Crown's reformulations of Teresa's answers, while *preserving* some aspects of their content, also *delete* and *transform* those answers. And, I am suggesting that these deletions and transformations are designed to depict Teresa in a particular way—as an autonomous agent whose actions were not impeded by the constraints that her abusive relationship with Jack imposed upon her.

In sum, the previous sections in 5.4.1 have explored the Crown's use of controlling questions in cross-examination. The excerpts show a number of rhetorical and interactional

devices within the controlling questions, such as repetition, negative interrogatives, presupposition, and reformulations, that contribute to the Crown's argument about Teresa. Specifically, these devices allow the Crown to convey to third-party overhearers—the judge and the jury—the idea that Teresa was unconstrained in her abilities to leave Jack. In the next section, I explore how this idea also is apparent in the Crown's closing arguments (or closing address as it is also referred to in this case). Recall that at the time of the closing address, Teresa's self-defence plea had been disallowed and her defence team then argued that Teresa should be found guilty of manslaughter (though the Crown argued for first-degree murder).

5.4.2 The Crown's Closing Address

In his closing address, the Crown continues to portray Teresa as uncontrolled by her husband and unconstrained in her actions. And, in depicting Teresa as a 'freely-acting individual', the Crown rejects the idea that Teresa should be able to use BWS (as a result of Jack's coercive control) in order to reduce her conviction from murder to manslaughter, or as a mitigating factor in sentencing, since, as a freely-acting individual, she had the ability to leave her husband rather than to kill him.

Excerpt 11 (Crown Closing.3458)

Jack Craig was ***certainly unkind*** to Teresa Craig, he certainly was. They did not get along. ***She had a difficult life***.
But does that matter to your legal decision? Not one bit.
(lines omitted)
Even if you take it as given that Jack Craig was a ***bad husband***, that didn't mean that she had no ***options***. That doesn't mean this wasn't murder, and it doesn't entitle her to a conviction of anything less than what she's legally responsible for, and that's murder.

The Crown's comments in Excerpt 11 can be viewed as an attempt to downplay the abuse and coercive control Teresa experienced at the hands of her husband. Although Teresa testified to the abuse and tactics of coercive control, the Crown characterizes Jack as 'unkind' (line 1) and Teresa's experiences are reduced to 'a difficult life' (in line 2). In line 4, Jack is described as a 'bad husband' and the conditional clause in line 4 that precedes this descriptor ('Even if you take it as a given…') suggests that Jack's status as a 'bad husband' is even debatable. Thus, here we see Teresa's experiences of abuse and control being reformulated as a 'difficult life' in part because of her 'unkind' and perhaps 'bad husband'. The Crown then states that Jack's status as a 'bad husband' does not negate the 'options' (line 5) Teresa had. That is, killing someone who is merely unkind to you, or a 'bad person', is never justified, especially when other options are available. Ehrlich (2001: 77) notes that intrinsic to the definition of *option* is the notion of choice. Thus, describing Teresa as having *options* again illustrates the Crown's contention that Teresa is unconstrained in her actions: she is free in her ability to choose among a set of alternatives and, given that she had alternatives or options, she is 'legally responsible' for her actions, i.e., killing Jack.

Excerpt 12 explicitly uses the language of 'choice' when the Crown says in line 1 that Teresa 'chose' to murder her husband, when she could or should have left him. Since she had left him twice before (line 2), the presumption is that she could have left him again. In emphasizing Teresa's choices, specifically that she could have chosen to 'get rid of' Jack by leaving him, the Crown manages to obscure the many factors that seemed to prevent Teresa from leaving Jack.

Excerpt 12 (Crown Closing.3458-3459)

1 She ***chose*** to get rid of him by murder, ***not by leaving him***, as she
2 had done twice before, but by killing him.

The final excerpt also comes from the Crown's closing.

Excerpt 13 (Crown Closing.3478)

Her evidence at trial that Jack abused Martyn and that she was anguished by this and wanted to protect him doesn't make sense when you consider the following evidence, that ***she had previously left Jack twice and won a custody battle, yet agreed-wasn't forced-but agreed*** to return Martyn to Jack, even though she had won custody.

As previously mentioned, Teresa testified that she moved with Jack to Ontario in 2005 because she wanted to protect her son Martyn (see Excerpt 3). The Crown finds this explanation incompatible with the 'evidence'—Teresa was previously able to leave Jack and gain custody of Martyn, yet she willingly returned to him ('she…agreed to return Martyn to Jack'—line 5). It is interesting here the contrast the Crown sets up between the words 'agreed' vs. 'wasn't forced' in characterizing the basis of Teresa's actions. In a certain way, this contrast encapsulates one of the main differences in the prosecution's and the defence's positions more generally. Whereas the defence focused on the constraints that severely restricted Teresa's 'options' (and 'forced' her to kill Jack) in a situation where she was a victim of Jack's coercive control, the Crown highlighted the choices that Teresa had in dealing with her domestic situation. And, I am suggesting that just as the Crown's depiction of Teresa in her cross-examination as unconstrained in her options and choices may have impacted her ability to use a self-defence plea, so this same kind of depiction in the Crown's closing address may have influenced her ability to use BWS/coercive control as a mitigating factor in sentencing.

5.5 Chapter Summary

Both Chapters 4 and 5 of this dissertation have explored the ways in which courtroom questioning can shape witness testimony. The essential argument in this chapter is that the Crown employed a series of *controlling* questions, which allowed him to impose a particular interpretation on the evidence. While the defence engaged in questioning that allowed Teresa's actions to be contextualized within a framework of intimate partner violence, the Crown's questioning was 'filtered' (Ehrlich, 2001) through a frame where battered women are seen as freely choosing individuals and unimpeded in their actions. This frame is reminiscent of the 'liberal legal subject' that many feminist legal scholars stress is both omnipresent in the law but inadequate for contexts of gendered violence. That is, many feminist scholars have argued that the classic liberal subject (with unburdened autonomy) presumed in the law is at odds with battered women who are constrained not only by the violence within their relationships, but by other kinds of external forces and the intersection of various social and cultural structures of oppression (sexism, poverty, racism, homophobia, immigration status, language ability, etc.). Battered women who leave and return to abusive relationships (for any reason) are viewed with distrust in the legal system, as this pattern of leaving and returning is often viewed as evidence of an unimpeded autonomy.

In a similar way, I have argued that the Crown's line of questioning in cross-examination undermined Teresa's claim to be a battered woman and potentially her attempt to utilize the theory of coercive control or BWS in support of her self-defence plea and/or as a mitigating factor in sentencing. Even though Teresa faced significant challenges in exiting the relationship that many women (especially, immigrant and L2 speakers of English) face, the Crown's questions suggested that Teresa had *options* to leave the abusive relationship permanently; in

other words, the implication was that she had options other than to kill Jack. In a more general way, the Crown's line of questioning (questioning which disregarded the realities of women in situations of intimate partner violence and constructs them as wholly autonomous) is revealing of the androcentric bias that feminist legal scholars have argued inform cases involving gendered violence.

Chapter 6: *Enough is Enough* — Tracking Entextualization Practices in *R v Craig*

6.1 Introduction

On March 31, 2006, in the early morning hours after Jack's death, Teresa was detained and placed under arrest for murder by the Ottawa police and submitted to an official police interrogation with two members of the force. The interrogation was both tape-recorded and officially transcribed. Throughout the course of Teresa's three-plus hour interview, Teresa was repeatedly asked to tell the police officers why she stabbed Jack. In one exchange (that will be further analyzed below) she replied:

> "Enough is enough. Get rid of him."

This chapter examines how these statements made by Teresa during her police interview 'move' throughout the course of the case in what Blommaert (2001, 2005) calls a *text trajectory*. Specifically, I show how these particular statements ('enough is enough' and 'get rid of him') are removed from their original context (in a process known as *entextualization*) and are then re-circulated by various legal actors (the Crown, the trial judge, and the Court of Appeal) into other contexts. By analyzing the *trajectory* of these statements, I explore how they become "transient discourses", that is, how they "move through and around institutional processes and are shaped, altered, and appropriated during their journeys" (Rock, Heffer, & Conley, 2013: 4). A focus on the trajectory of 'texts' such as these allows us to explore the transformations in meaning that can occur as they move across settings, and, importantly, how such transformations can have legal or social consequences. In particular, certain 'readings' of texts will have more weight within the legal system when they are put forward by legal actors who have the power to influence legal outcomes. In the case under investigation here, the entextualization and

recontextualization of Teresa's police statements shaped how Teresa and her actions (killing her husband) came to be viewed; that is, as her words moved out of their original occasion of production, they were used by the Crown to add weight to the theory that she was guilty of first-degree murder. This 'reading' of Teresa's utterances ignored contextualizing information evident elsewhere in the trial (most notably, that Teresa was a victim of abuse), and thus made difficult her ability to use a self-defence plea informed by both Battered Woman Syndrome and the theory of coercive control, and then her ability to later rely on BWS as a mitigating factor in sentencing once the self-defence plea was disallowed. The two phrases highlighted above occupied very little discursive space in the actual police interview yet were assigned a great deal of significance in the trial. Tracking their travels, then, demonstrates the importance of entextualization practices to this case specifically and to the legal system and its outcomes more generally.

The concepts of *intertextuality* and *entextualization* are the starting point for this chapter. I first explore these concepts and their place in institutions generally, and in the legal system more specifically. I then turn to an analysis of the phrases from the police interview and track their movement within the trial and in the appellate decision in order to show how these recontextualizations played an important role in how Teresa's trial (and appeal) unfolded.

6.2 Theoretical Concepts

6.2.1 Intertextuality

Intertextuality refers to how, in the production of words (either written or spoken), we often refer to prior words, that is, words produced by other people and in other discourse settings. We "recycle meanings" (Blommaert, 2005: 46), such that our words are inherently connected to

those of others. Discourse is not a bounded phenomenon, but rather "depend[s] on a society and history" (Slembrouck, 2011: 159), and on discourse produced in other contexts. The term, *intertextuality*, stems from philosopher and literary analyst Bakhtin's (1981, 1986) discussions of *dialogism* and *heteroglossia.* For Bakhtin, language is socio-historically constructed and "tastes of the context and contexts in which it has lived its socially charged life" (1981: 293). In other words, all discourse is a dialogical phenomenon: Our words are always in 'dialogue' with, or in response to, previous words and voices (uttered by ourselves or others), or other contexts/histories. Meaning in language, then, is the combination of (at least) "two minds and consciousnesses, creating results that cannot be reduced to either one of them" (Blommaert, 2005: 44). While dialogism is clearly represented in reported speech,[147] even language traditionally thought of as monologic can be considered dialogic: "Any true understanding is dialogic in nature" (Voloshinov, 1973: 102). In drawing attention to the dialogic nature of language, Bakhtin allows us to see that "a single strip of talk [...] can juxtapose language drawn from, and invoking, alternative cultural, social, and linguistic home environments, the interpenetration of multiple voices and forms of utterance" (Goodwin & Duranti, 1992: 19).

The multiplicity of voices that is evident in any piece of discourse is known as *heteroglossia.* Bakhtin notes that in every utterance "a significant number of words can be identified that are implicitly or explicitly admitted as someone else's" and that within these utterances, a "struggle" occurs between one's voice and the voices of others; these voices work to "interanimate" one another (Bakhtin, 1981: 354). That is, a heteroglossic view of utterances is more complex than one that views utterances as simply the product of one speaker or one voice. For Bakhtin, the dialogic nature of language means that utterances become a link in a chain of

[147] Voloshinov defines reported speech as "speech within speech, utterance within utterance, and at the same time also *speech about speech*, *utterance about utterance*" (1973: 115; emphasis in original).

communication that includes not only all prior instantiations, but also those that follow the initial discourse event, or the "subsequent links" (Bakhtin, 1986: 94).[148] Of interest is how utterances are imbued with a 'history'. Every utterance is made up of connections to previous discursive events and previous interpretations, and every subsequent reproduction ultimately contains what came before. And, this history of "(ab)use, interpretation, and evaluation [...] sticks to the utterance" (Blommaert, 2005: 46).

Kristeva is credited with formally introducing the West to Bakhtin's theories of dialogism in the 1960s[149]—a "textualizing of Bakhtin's dialogism" (Bauman, 2005: 145). She is also considered to be responsible for the term *intertextuality*: "each word (text) is an intersection of other words (texts) where at least one other word (text) can be read" (Kristeva, 1980: 66). Although Bakhtin and Kristeva (as literary theorists) were working with written forms of speech, the concept of intertextuality has been applied to studies of spoken language by discourse analysts and linguistic anthropologists who view language as embedded in socio-cultural practices. Elaborating further on the concept of intertextuality, Fairclough distinguishes between *intertextuality* and *interdiscursivity*. For Fairclough, *intertextuality* is the broader category, or the "property" that texts have, because they are "full of snatches of other texts, which may be explicitly demarcated or merged in, and which the text may assimilate, contradict, ironically echo, and so forth" (Fairclough, 1992: 84). *Interdiscursivity*, or "constitutive intertextuality," is

[148] To highlight the subsequent links of the communication chain, Bakhtin argues that an utterance is constructed while accounting for the recipients of the talk, and in anticipation of possible responses (1986: 94).
[149] Hodges (2015b: 43).

the mixing of different genres, linguistic styles, and discourses within a singular text that is "constituted through a combination of elements of orders of discourse" (1992: 118).[150]

6.2.2 Entextualization

Intertextual analysis does not solely focus on how one text relates to another, but rather how *intertextuality* "is accomplished in communicative practices, including both production and reception, and to what ends" (Bauman, 2004: 5). This focus on the kinds of communicative practices that create intertextual connections leads to the concept of *entextualization* and *recontextualization* (Bauman & Briggs, 1990; Silverstein & Urban, 1996). Entextualization refers to the means by which a piece of naturally occurring discourse is segmented, bounded and detached from its contextual background, and turned into a 'text' (Bauman & Briggs, 1990: 73). That is, the entextualization process involves extracting a portion of a discourse from "ongoing social action", removing it from its "infinitely rich, exquisitely detailed context", and creating a delimited, temporal fragment that can be analyzed as independent from the background context (Silverstein & Urban, 1996: 1). A *text-artifact* (Silverstein & Urban, 1996) is created through the process of entextualization and this new 'text' can then be transplanted into various contexts where it can acquire new meanings (cf. Blommaert, 2005; Ehrlich, 2012). When removed from its original setting it becomes *de*contextualized, and when placed into a new context, the discourse is *re*contextualized.[151] Bauman and Briggs remark that the processes of

[150] Bauman states that the term *interdiscursivity* is more appropriate to study the dialogic phenomenon of language in all discourse (including spoken) because it focuses on the historical and social aspect of an utterance (outside of its immediate temporal location) and emphasizes that "all utterances are ideologically formed"; *intertextuality* is a term better used for the analysis of a written 'text' specifically (Bauman, 2005: 146). For a more in-depth discussion of *intertextuality* and *interdiscursivity,* see Hodges (2011, 2015b).

[151] Alternatively, Bauman and Briggs (1990) use the terms *centering, decentering*, and *recentering*.

entextualization, *de*contextualization and *re*contextualization, happen simultaneously—they are "two aspects of the same process" (1990: 75).

The various practices of (de-) and (re-)contextualization (the process of entextualization) are part of what Silverstein and Urban call the "natural history" of discourse (1996).[152] [153] As with Bakhtin's intertextual chain, a text "carries elements of its history of use within it" as it is subjected to various recontextualizations (Bauman & Briggs, 1990: 73). Meaning attached to a text can change during recontextualization—texts are transformed as they are (de)contextualized from their original occasions of production, the "socially, culturally and historically situated unique event" (Blommaert, 2005: 47), and moved into other contexts. These new contexts impart meaning as the text is subjected to "response, uptake, commentary and explanation" (Slembrouck, 2011: 173). Reported speech, as noted, involves the process of entextualization (Hodges, 2015b: 50). When speakers report the speech of others, they choose to 'lift' words out of their original context (thereby creating a moveable text), and recontextualize them by embedding that text into their own words.

The ability to decontextualize a text and assign new meanings as it is recontextualized in a new context is inherently linked to issues of power and authority. As Bauman and Briggs say, *entextualization* is "an act of control" and it is in the differing access that social actors have to entextualization (and thus *control*) that "the issue of social power arises" (Bauman & Briggs, 1990: 76). That is to say that access to a text and its contextualizing spaces, and the ability to 'move' a text, add metapragmatic or metadiscursive commentary to it (and thus impart a

[152] The natural histories view of discourse is a research framework that critiques previous anthropological understandings of culture as something that can be 'read-off' from text. This 'culture-as-text' view is problematic in that it disregards the fact that the resultant texts (created from entextualization practices) are only one portion or snapshot (or one "thing-y phase" to use the authors' term) of the larger cultural process (1996: 1).
[153] Although, as Bucholtz (2003: 61) remarks, the term *natural* is a "misnomer" in that there is nothing inherently natural about how discourse becomes entextualized.

potential new meaning onto the text), is constrained by participants' social and/or institutional status. Moreover, the value attached to new meanings is also variable; as Silverstein and Urban comment, "not all texts are created equal" (1996: 12). Entextualizations can create discourse that functions to serve "social and political agendas" as well as institutional agendas (Briggs, 1993: 390). How power is created and sustained through the recontextualization of discourse is evident in institutional entextualization practices. Discourse 'shifts' across contexts, where it is "written, summarized, reworded and reframed" by those not part of the original production, but whose interpretations nonetheless can become the most important, or the official institutional story (Ehrlich, 2007: 453). Recontextualization by powerful institutional actors allows for original instances of discourse to be "infused" with an elevated institutional viewpoint, one that's meaning is taken-for-granted and constructed as "inevitable and natural" (Park & Bucholtz, 2009: 486). Additionally, because of the differing access to contextualizing spaces available to participants in institutional settings, "transformations in meaning" that texts can undergo may be "deeply implicated in larger patterns of social inequality" (Ehrlich, 2012: 48).

6.2.3 Intertextuality in the Legal System

According to Mertz (1994: 441), we find in legal language a "crucial 'crossroads' where social power and language interact". As an institutional setting, the legal system is an apt place to investigate how discursive practices serve to maintain power and authority; entextualization practices in these settings are "essential for the reproduction of institutional authority" (Park & Bucholtz, 2009: 487). As Matoesian states, "Trial discourse rests on a theory of intertextuality, decontextualizing speech from one speech event and recontextualizing it in a new one, to constitute its evidentiary and epistemological field" (2000: 879). And, judicial opinions in the

common-law legal system (Anglo-American) are primarily composed intertextually. Precedential case law, for example, which forms the fundamental backbone of the common-law system, is composed of "[p]revious discourses, or selected parts of previous discourses, [which] become crucial to the interpretation of present discourses" (Maley, 1994: 48). Additionally, appellate courts review decisions and findings from lower courts, and their opinions are built upon these lower courts' written records and trial transcripts (rather than re-hearing evidence or new testimony) from which they (the appellate courts) create intertextual links.

The intertextual links of a case are evident from the very beginning, when the police work to build a case by "collecting, interpreting, reinterpreting, revisiting, and relaying information" in the form of emergency phone calls, witness statements, and police records (Rock, Heffer, & Conley, 2013: 15). Spoken discourse is transformed into written discourse by means of transcription, and this transcription is thus one way in which discourse becomes entextualized. The process of transcribing is in itself an entextualization: Language is 'extracted' from its original production (the spoken interaction) and reproduced/recontextualized in written form— "reified as text, a highly portable linguistic object" (Bucholtz, 2009: 505). The act of transcribing permanently records a "temporally prior language produced in interaction" in an attempt to produce a 'fixed' text, or "to capture transient and ephemeral discourse by representing it on paper [...] that guarantees a certain degree of [...] permanence" (Park & Bucholtz, 2009: 486). These new texts (the entextualized transcripts of police interviews, for example) are now pieces of evidence in a case, forming the first link in the intertextual chain that is trial discourse. Indeed, transcriptions of 9-1-1 calls, police interviews, and/or witness examination and testimony underpin legal discourse in the sense that lawyers may refer to these documents during trial, judges will review them before decisions and sentencing, and they may

form the basis of appellate opinions. Importantly, Bucholtz points out that transcription relies on the "professional beliefs, expectations, norms, and interests of both the auditor/interpreter/transcriber and the institution she or he represents" (2009: 505).[154] In other words, transcription in the legal sphere is not a neutral practice, but one aligned with institutional goals and authoritative perspectives. Similarly, Walker (1986, 1990) makes the point that there is no such "verbatim" record (transcript) of in-court testimony. For instance, court reporters, operating under an institutional ideology, select what contextual information is relevant (leaving out prosodic and non-verbal cues), but also choose how to represent participants' language use. Discrepancies that occur between the transcript and the original spoken testimony are not merely attributable to the difference between oral and written language, but they are also due to reporters' personal and professional beliefs about language (Walker, 1990: 203).

The power conferred upon legal actors (i.e., lawyers and judges) to entextualize discourse not only affects the meanings attached to resultant texts, but as Ehrlich (2007) has argued, these re-entextualizations may affect participant identities as well. Eades (2008) highlights this point in her investigation of the Pinkenba case (which was introduced in Chapter 3). Recall that the case revolved around three Aboriginal Australian boys who accused six police officers of effectively kidnapping them and then later leaving them in a deserted area. A committal hearing was held to determine whether or not the police should be formally charged. In her analysis of this hearing, Eades shows how the defence counsel for the police adopted particular strategies of entextualization during the cross-examination of the boys. Statements made by the boys to the police were recontextualized within the hearing, enabling the defence lawyers to establish 'inconsistencies' between their police statements and their hearing testimony. Indeed, Eades

[154] See also Bucholtz (2000); Ochs (1979)

argues that the boys were represented as *liars* due to the inconsistencies 'manufactured' by the defence (2008: 156).[155] The defence lawyers also spent a great deal of the cross-examination questioning the boys about previous incidents in which they had used swear words. Eades remarks that curse words are often used by teenagers and have a fairly benign meaning in Aboriginal culture; however, in recontextualizating these words within the trial and providing metadiscursive commentary, the counsel reframed their meaning so that the boys seemed more like criminals than benign teenage boys (2008: 159). These strategic kinds of entextualization practices ultimately allowed the defence to discredit the boys' version of events. In Eades' work, then, we see the power of the lawyers' entextualization practices in shaping the boys' identities as juvenile delinquents or menaces rather than as victims of a crime.

Of particular interest to this dissertation is Andrus's (2012, 2015) work on the legal recontextualization of words spoken by women who experience domestic violence, and how this entextualization process has consequences for the women. Specially, Andrus examines the operation of an exception to the hearsay rule—a rule that prohibits the admissibility of a witness's statement in-court of another person's statement made out of court. The excited utterance exception to hearsay deems an 'excited utterance'—one uttered spontaneously and "in response to shocking events"—as admissible in court, even though it is hearsay, because such an utterance is viewed as an inherently trustworthy and 'truthful' account of events (Andrus, 2015: 10).[156]

According to Andrus, the excited utterance exception has recently been invoked in domestic violence cases as domestic violence has moved out of the home and become a more

[155] Mateosian (2000, 2001) makes a similar point in his study of a rape trial—cross-examining lawyers use reported speech (itself a recontextualization) to highlight perceived inconsistencies in order to discredit a witness.
[156] Andrus (2015: 9) states that she focuses on the hearsay rule in particular because it's a site where the law explicitly references both language and domestic violence.

public crime (2015: 37). In the past, the excited utterance exception was used in accident or male-on-male assault cases, but as domestic violence has become criminalized, prosecutors are able to introduce speech of the victim irrespective of the victim's participation in the trial (2015: 38). Andrus comments that because victims of domestic violence may not always testify in trials (for instance, some may recant due to fear of retaliation from their partners, or they may be deemed not credible for the stand by the prosecution), the excited utterance exception allows for the use of victims' statements without speakers' presence, or even consent (2015: 38). Thus, through the excited utterance exception to hearsay, trials and appellate opinions often appropriate domestic violence victims' words, making both the words and the speaker 'legally relevant'—speakers are "translated" into a "legally recognizable category that brings [them] within the disciplining gaze of the law" (Andrus, 2015: 81). An excited utterance becomes an artifact, representing the events in question as "referentially true in and of itself" and the utterance is now "delinked from the actual speaker and interactional context and linked instead to a simplified, legally intelligible speaker role." (2015: 120). It is in this way that the excited utterance exception ultimately undermines speaker/victim's agency. The words that become entextualized are seen as factual and inherently trustworthy, even if the person who spoke them is not seen to be (Andrus, 2012: 609).[157]

6.2.3.1 Textual Trajectories in the Legal Sphere

In this chapter, I examine how two utterances produced by Teresa during her police interrogation were 'reified as text' through the process of entextualization and became part of a *text trajectory*

[157] Furthermore, Andrus states that although reported speech of victims of domestic violence is variably admitted in cases, "[w]hat remains consistent is that the reliability of some aspect of the speech of victims of domestic violence is always questioned" (2015: 81).

(Blommaert, 2001, 2005), moving into various phases of the trial and the final appellate decision. Much research has been conducted on the trajectory or 'travel' (cf. Heffer, Rock, & Conley, 2013) of texts in legal settings. For instance, Trinch (2003) (whose work was also addressed in Chapter 3) examines Latina women's oral narratives of abuse as told to paralegals/lawyers during protective order application interviews, and shows how the resultant stories of abuse were transformed when reproduced in written affidavits. Incidents of violence were entextualized according to the "local demands of truth, importance and relevance as governed by the speech event," that is, the institutional setting of the protective order interview (2003: 123). When entextualized in written affidavits, women's accounts of habitual and ongoing abuse were oftentimes transformed into individual events, so that these accounts better align with a legal system that prioritizes (injurious) episodes of violence.

In a similar way, Ehrlich (2012, 2013) shows in her analysis of a post-penetration rape case how narratives about rape can become transformed. In the particular case analyzed by Ehrlich, a young woman's tactic for survival during a rape (allowing the assailant to penetrate her quickly if he promised to stop when she said so) was transformed into an expression of consent. And, as her strategy of resistance (i.e., her submission to a 'lesser' form of sexual violence) was entextualized in the appellate decisions, the narrative of the case was also transformed: The appellate court reframed the case as a post-penetration rape[158] case. That is to say, the young woman's resistance strategy was 'read' as consent in the appellate decisions, and

[158] Post-penetration rape refers to the act of consenting to sex and then withdrawing that consent once penetration has occurred (Ehrlich, 2012: 50).

this preferred version (adopted by the most powerful legal agent, the appellate court) was then able to circulate outside of the legal setting and into the media.[159]

Like Ehrlich (2007), I argue that, because of the powerful positions of the recontextualizing agents (i.e., the Crown prosecution and the trial judge) in Teresa's trial, their recontextualizations of Teresa's utterances, "Enough is enough. Get rid of him", not only shaped the utterances' meaning but that of Teresa herself: Her words were used to make her appear as a callous murderer, rather than a battered woman who, arguably, killed Jack in self-defence. Crucially, these recontextualizations had a significant impact on the trial and its outcome: The Crown was able to use the recontextualizations to affirm the prosecution's theory that Teresa's actions were tantamount to first-degree murder. And, although Teresa was ultimately convicted of manslaughter, the Crown's characterization of Teresa appeared to significantly impact the trial judge's sentencing (as will be seen below).

6.3 Analysis

6.3.1 On Police Interviews

This section presents an overview of the language of police interrogations in order to ground the first part of my analysis, that of the utterances in their original occasion of production (i.e., the police interview). As with examination in a trial, the language of police

[159] For more on entextualization in the legal sphere, see also Rock (2001) for what is omitted in the 'genesis' of a witness statement from oral police/witness interviews to the written report. Additionally, Heffer, Rock and Conley (2013) have edited a volume on 'textual travel' in the legal system.

interviewing/interrogations[160] is inherently asymmetrical; the suspect in question occupies, at least institutionally, a less-powerful position than that of the police-interviewer (Haworth, 2006; Heydon, 2005).[161] The police control the setting, time, and ultimately whether or not to lay formal charges. They have privileged access to legal knowledge that a lay-subject may not possess. In relation to the particular case investigated in this dissertation, it is important to note that the power dynamics of a police interrogation can be doubly difficult for a woman charged with murdering her partner. Sheehy (2014) argues that "a woman confronted in an interrogation room by the sheer size and masculine authority of police officer can be easily intimidated—more so if she has experienced male violence" and that police may take advantage of this situation and "run roughshod over the constitutional rights [of these women]" (2014: 200).[162]

Suspects' talk (not only what they say, but how they say it)[163] is highly constrained by the questions asked by police officers. Yet, the fact that suspects' answers are always created in response to and are shaped by (highly constrained) police questions is often rendered invisible by ideologies that obscure the interactional nature of interviews. As Eades points out (2012: 478),

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[160] The terms *interview* and *interrogation* can ostensibly refer to the same idea here, although *interrogation* has a negative, more aggressive undertone. Due to ethical concerns over suspects' rights, the UK guidelines for police/suspect interview shifted from an adversarial interrogation to a more objective truth-seeking interview (Benneworth-Gray, 2014: 252). The preferred term for the UK is police *interview*, while *interrogation* is more common in the US (Johnson & Coulthard, 2010: 4). Teresa's interaction with the police is referred to as an *interview* in the trial. Additionally, Snook et al. (2010) suggest that Canadian police should adopt practices that align more with the UK's PEACE model of interviewing, rather than the REID technique of interrogation that is currently used in both the US and Canada.

[161] However, see Haworth (2006) and Newbury and Johnson (2006) for analyses of suspect resistance in police interviews. Importantly, Haworth (2006) points out that although the police have considerable control over suspects, the suspects are not completely without power: "[I]nterviewees still have control over what they say (...) the outcome of the interview is very much in the hands (or rather words) of the suspect interviewee (2006: 740).

[162] Teresa herself testified that one of the police officers, sergeant 'KP', intimidated her during her interview. Consider the following excerpt from her re-examination (carried out by her defence lawyer):

Q. Did you find any differences between the two officers?
A Yes. Mike Hudson is more friendly. Patrick is like--remind me of my husband, because he bang on the table and suddenly scream at me and force me to answer the question that he--answer he wants. (Re-examination, p. 2163)

[163] See Ainsworth (2008, 2010)

"[I]t is problematic to view the stories that emerge from interviews as the sole product of the interviewee, although this is exactly the way in which such stories are typically received and assessed within the adversarial legal process." For suspects in police interviews, this is especially problematic once suspects' answers/stories move beyond the police interview and are interpreted in other contexts within the legal system.

As I have indicated above, information from police interviews can be recontextualized and entered into evidence in a subsequent trial (Haworth, 2010: 174). As such, police are acutely aware of the interview's *trajectory*, and how legal actors can make use of the data produced in the interview. As is the case with testimony given in a trial, police interviews are often designed with a third-party, over-hearing audience in mind, such as the prosecution, judge or jury (cf. Drew, 1992). The police occupy multiple roles within the interview: They are the primary intended recipients of the interaction, and, at the same time, they function as part of the larger criminal investigation. That is, from an institutional point of view, police act as the "conduit" to the prosecution, judge, or jury (Haworth, 2010: 176), and, as such, must structure the police-suspect interactions with an eye to these non-present distal recipients and those recipients' institutional goals (Stokoe, 2009).

These simultaneous institutional and interactional positions (i.e., both primary addressee and 'conduit' to the jury) are at odds with the fact-finding, objective stance that police are said to adopt. While police routinely comment that interviews are done under the guise of seeking 'the truth',[164] it has been claimed that the purpose of suspect interviews is to help the prosecution build a case, for example, by obtaining a confession (Auburn, Drake, & Willig, 1995: 355). Auburn, Drake, and Willig (1995) conclude that the police interview privileges a version of

[164] For an analysis of 'truth' in UK police interviews, see Benneworth-Gray (2014).

events preferred by the prosecution, one that "constructs the assumption of the suspect's guilt" (1995: 356). In other words, even though police interviews are purported to be an objective exercise to collect evidence, they tend to be biased in favour of the prosecution; [165] that is, they are a "guilt-presumptive process" (Kassin & Gudjonsson, 2004: 41). This means that police are *not* neutral entities, but actors operating with institutional goals, i.e., to secure a conviction for the prosecution.

6.3.2 Teresa's Police Interview

It is important to note that at the time of Teresa's police interview, there was no official record of Jack's abuse. And, more importantly, the police believed they had a confession from Teresa in the form of an audiotape of Teresa's 9-1-1 call. After Teresa stabbed Jack, she ran to a nearby neighbour's home, told the neighbour she killed her husband, and she asked the neighbour to call 9-1-1 (emergency services). Excerpt 1 is taken from the transcript of that call (the 9-1-1 dispatcher is transcribed as 'DS', while Teresa is transcribed as 'TC'.)

Excerpt 1 (9-1-1 Call.4)

1 DS: Hi Teresa. It's 9-1-1.
2 TC: Yeah.
3 DS: What happened?
4 TC: Oh, I'm not happy with my life so I kill my husband.
5 DS: What did you do?
6 TC: I used a knife and snapped...
7 DS: And you...
8 TC: Stab three times.

As will become clear in my analysis below, the police (and later the prosecution) take Teresa's statement in line 4 ('I'm not happy with my life so I kill my husband') as her motive for the

[165] See also Heydon (2005). However, in her analysis of a police interview with a man suspected of rape, Haworth (2015) shows how police interviews are not solely prosecution-biased, but rather "interviewer agendas are strongly determinative of interview outcomes in terms of the evidential account produced" (2015: 195).

crime, and use this statement to add context to the phrases 'enough is enough' and 'get rid of him'.

Excerpt 2 below comes from Teresa's police interview and is the original speech event in which 'enough is enough' and 'get rid of him' are produced (marked with boldface). The exchange took place roughly two-to-three hours into the interview, approximately twelve hours after the incident. Here, Teresa is being questioned by one of the police officers, Sergeant Keith Patrick ('KP'; Teresa is marked as 'TC'.)[166]

Excerpt 2 (Police Int.203-205)

1 TC: I don't know why my lawyer tell me not to talk to you guys and
2 you all keep pushing me to tell you.
3 KP: But you...but you know your rights. Like you're...you're an
4 adult, right. You know your rights and you've talked to your
5 lawyer, okay. You've talked to your lawyer.
6 TC: Now, you got more information that I tell you than I tell my
7 lawyer. I didn't say much to my lawyer.
8 KP: Okay. Well, I'll tell you what. I...we...that is more information
9 and you know what, to be fair, you have lots of rights here. But
10 I guess what I'm getting at is I...I don't know...
11TC: Oh, you all want to know I hate him if I kill him.
12KP: Is that why you did it? Because you know what? You know what? I
13 think it's that simple.
14TC: **Yeah...(pause)...Like Michael say, enough is enough.**
15KP: Why'd you kill him? Is that why?
16TC: **Enough is enough. Get rid of him.**
17KP: Is that what you thought? Are we just talking about pure hate
18 here, is that what it is?
19TC: I don't know. Sometime I...I love him. Like just now I sit down
20 in the cellar, I say, "Oh, I'm sorry. I...I love you. I didn't

[166] On the advice of her lawyer, Teresa was told to remain silent during her interview. It is evident throughout the interview that Teresa does not entirely understand the conflict between her lawyer's advice (to remain silent) and the police officers' request that she answer their questions. As the complexities of police cautions are well documented (see Ainsworth, 2008), it is possible that Teresa was not fully aware of her rights as a result of this complexity, though Teresa's lawyers never argue this. Police cautions are outside the scope of analysis for this dissertation, although I think it is important to highlight previous research which notes that second-language speakers are disadvantaged when it comes to the complex linguistic nature of police cautions, for instance in the US (Berk-Seligson, 2000; Pavlenko, 2008; Solan & Tiersma, 2005) and Australia (Eades, 2003; Gibbons, 1996). Although it is difficult to ascertain whether or not Teresa's second-language status affected her ability to understand her rights, based on previous literature on police cautions and second-language speakers (as well as on linguistic analysis of the police transcript), it seems plausible that Teresa's English language ability may have affected her comprehension. Teresa did not rely on a translator during the interview.

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21    mean kill you." And sometimes I...when this happen the time...and
22    sometimes just say, "I hate you."
23KP: Okay. 'Cause you know, I told you about police officers what we
24    do is we watch people and they react. When you said sometimes I
25    love you, I didn't see it in your eyes very much. I didn't see it
26    in your eyes. That's what I do. I look at people. I'm watching
27    all the time. Do you know what I'm saying. It's...I...you know...
28TC: Sometime I don't know what is love maybe so I just say...
29KP: Yeah, okay. But I'm not here to disrespect you, Mrs. Craig.
30TC: I understand.
31KP: And you know what, I'm not here...I'm not here to...I'm here to
32    find the truth. I'm not here...I'm not an advocate for your...for
33    your husband or anybody else. What Mike's job, Detective Hudson's
34    job is and the rest of the team is just to find the truth. That's
35    all we do. That's what they...that's what our job is, is to find
36    the truth. It's a very...sometimes a very difficult job and this
37    is one of those time where it's very difficult because we're
38    dealing with a very nice family, right, and we have to find the
39    truth.
```

In this excerpt, we see that Teresa is repeatedly asked to tell the police officers why she stabbed Jack the night before. Preceding the bolded utterances, 'Enough is enough' and 'Get rid of him', are two turns that seem crucial in understanding the police officers' interpretation of these utterances and their role in the trial more generally. In line 11 ('Oh, you all want to know I hate him if I kill him'), Teresa appears to interpret KP to be asking her about whether she hates Jack. This is signaled, in part, by her use of turn-initial discourse marker *oh*, which Bolden (2006: 663) states can mark that something has "just now" been realized or noticed.[167] And, significantly, in response to Teresa's turn in 11, KP reformulates (Garfinkel & Sacks, 1970; Heritage & Watson, 1979) or repackages Teresa's words—'Is *that* why you did it...' ('that' being Teresa hating Jack)— into the motive for the crime: Teresa killed Jack because she hated him. Indeed, that KP takes Teresa's comment about *hate* to be her motive for Jack's killing is evident in the remainder of his turn in lines 12 and 13—'Because you know what?...I think it's that simple'. While formulating is typically seen as a communicative resource that allows conversational co-

[167] See also Heritage (1998). See Schiffrin (1987) for a larger discussion of *oh*.

participants to "settle on one of many possible interpretations of what they have been saying" (Heritage & Watson, 1979: 123), its use in police interviews (like with courtroom examination) serves a particular institutional purpose beyond merely summarizing or agreeing on meaning. Johnson (2008: 328) shows how police reformulate suspects' words, creating an "institutional voice" that that is "evidentially valuable". As mentioned above, police interrogations provide the basis from which a prosecution can build a case. Therefore, establishing pieces of the crime story (such as the motive of the suspect) is important. While a motive is not necessary for a conviction, it is nevertheless a critical piece of evidence that helps the prosecution.

In response to this reformulation of KP's (that is, the one that appears to establish motive), Teresa responds in line 14 with a *yeah* followed by a pause, i.e., a "within-turn silence" (Sacks, 2004: 40).[168] One could infer from this substantial pause that Teresa was hesitating about how to answer KP's question, as pauses often precede hesitations or disagreements (Pomerantz, 1984). If so, Teresa's use of 'yeah' might not have been a confirmation of KP's suggestion that Teresa's motive for killing Jack was hate. Nonetheless, after the pause, and seemingly in response to KP's assertion that there is a 'simple' explanation for Jack's killing, Teresa states 'Like Michael say, enough is enough.' And, after another reformulation from KP in line 15 ('Why'd you kill him, is that why?') that again appears to establish a motive (i.e., hate) for the crime, Teresa repeats the phrase, 'Enough is enough', (in line 16), with the addition of the phrase 'get rid of him'. 'Enough is enough' in line 14 is ascribed to Michael, probably Teresa's neighbour (whose name was mentioned earlier by an officer in the interview). It is unclear whether 'Get rid of him' is also being ascribed to Michael.

[168] Since I do not have access to the recording of the police interview, it is impossible to know how long the pause was (because the transcription makes no note of these fine details), but presumably, it was longer than the usual pauses or gaps that are transcribed here with three dots.

In the remainder of the interaction, KP continues to affirm Teresa's motive for killing Jack, imputing the utterances in question (lines 14 and 16) with meanings that seem to support this theory. That is, in lines 17-18, KP reformulates the upshot of these statements as 'pure hate'. In response to KP's question whether 'pure hate' was her motive for killing Jack, Teresa begins her turn in line 19 with the hedge 'I don't know'. Weatherall (2011) claims that first position *I don't know* functions as a prepositioned epistemic hedge, a stance marker which displays that "the speaker is less than fully committed to what follows in their turn of talk" (2011: 317).[169] Teresa's apprehension or uncertainty is also made apparent by her use of pauses in her response to KP and by the expression of her conflicted feelings for Jack. In lines 19-22, Teresa moves between reporting her words of hatred for Jack and those of love.[170] KP spends the next few turns discrediting Teresa's comments about loving Jack. The significance of contesting Teresa's claim that she loved her husband is that it allows KP to continue to put forward the motive of 'hate' (a motive that could help secure a guilty verdict for the prosecution). KP then shifts the topic to his role as a truth-seeker. KP repeats the word *truth* four times in his turn seen in lines 31-39. He states that he is not an advocate for Jack or anyone else, but is merely tasked with objectively finding the 'truth' in the case. This, of course, is at odds with the research mentioned previously that suggests that the police help to sustain a particular version of events that aligns with the prosecution. By invoking notions of 'truth', KP is able to frame the interaction as a neutral interview, rather than the adversarial interrogation that it, arguably, is.

In the next excerpt, Teresa repeats the phrase 'enough is enough'. In order to get Teresa

[169] Although Teresa uses 'I don't know' in response to KP's question, its function in line 19 appears closer to Weatherall's description than to a claim of insufficient knowledge (cf. Beach & Metzger, 1997).
[170] Teresa's conflicting emotions about her abusive husband are normal when contextualized within a framework of IPV. Lempert (1996) claims that IPV occurs in a context of both love and violence and that it is "set within contradictory interactional contexts, that is, abused women hold oppositional beliefs in their partners as their sole sources of love and affection and, simultaneously, as the most dangerous persons in their lives" (1996: 270).

to tell him why she has killed Jack, KP here engages in a type of role-play.[171]

Excerpt 3 (Police Int.239-240)

1 KP: What should I tell Martin? That's Martin[172] there. This room is
2 empty. You tell me...you tell Martin what you want to say to him.
3 TC: I just tell him I kill your dad.
4 KP: He would say well...
5 TC: Trust me. I (unintelligible) a lot.
6 KP: He would say, "Why...why would you do that, Mommy? You know I
7 love Daddy. Why would you do that?"
8 TC: I know you love your dad. Some time I love your dad too, but some
9 time I hate him.
10KP: "But why did you kill him? Why didn't you just walk away like you
11 told me to walk away, dad...mommy?"
12TC: **Enough is enough. That's the word.**
13KP: Okay.
14TC: **I don't use that too often. Just I heard Michael say.**

KP shifts into the role of Martyn in line 2, through a self-repair ('you tell me...you tell Martin'). It appears that by engaging in this role-playing, KP is appealing to Teresa's role as a mother in the hope that she will be more forthcoming. Moreover, by acting as Martyn (e.g., using lexical items such as 'mommy' and 'daddy'), KP takes on a less adversarial role than that of police interrogator. In lines 8-9, Teresa repeats a similar statement to one she made earlier ('Some time I love your dad too, but some time I hate him'). When KP continues to ask her why she didn't walk away (a strategy that Teresa previously said she utilized in dealing with Jack's abuse), she responds with the statement 'Enough is enough. That's the word.' In line 14, she states that she doesn't use 'that' (the phrase 'enough is enough') too often, and again references 'Michael' as the source of the phrase ('Just I heard Michael say').

As previously mentioned, police interrogations with suspects are not neutral, fact-finding interviews, but tend to be skewed towards the prosecution (cf. Auburn, Drake, & Willig, 1995; Heydon, 2005). Interrogations accomplish particular institutional goals, such as establishing a

[171] Role-playing can be considered a type of interrogation techniques (Leo, 2008: 26).
[172] Martyn's name is misspelled in the police interview transcripts.

motive or *mens rea* (intent), and these will not only determine the nature of the suspect's charge but also help secure a conviction (Edwards, 2008). It appears from the two preceding excerpts from the police interview that the 'preferred version' of events put forward by the police is one in which Teresa *hated* Jack and this 'pure hate' was her motive for killing him. This is perhaps not surprising given that a motive such as 'hate' is much more in line with a murder charge—for which Teresa was placed under arrest—than with a plea of self-defence. And, what is crucial for the purposes of my argument here, is that this motive (supplied to the prosecution) appears to be have been informed by Teresa's use of the phrases 'enough is enough' and 'get rid of him' in response to KP's questions about 'why' she killed Jack.

Although the 9-1-1 call (Excerpt 1) formed the initial basis for Teresa's motive for killing Jack (i.e., hatred for Jack), I have argued above that the police interview continues to solidify this motive based, in part, on Teresa's use of the phrases 'enough is enough' and 'get rid of him' in the police interview. While hatred is one way of understanding Teresa's killing of Jack, it is important to note that Teresa's actions in calling the police can be seen as consistent with the actions of other battered women who kill their husbands— "they summon police themselves, quickly confess their crime, and usually provide the weapon" (Sheehy, 2014: 200). And, there are many other ways in which Teresa's actions were consistent with battered women who kill their abusers. For example, Teresa's use of the word 'snapped' in Excerpt 1, line 6—'I used a knife and snapped'— would seem to be consistent with someone suffering from BWS or other psychological difficulties as a result of years of abuse. Indeed, as I have discussed in previous chapters, the defence in this case argued that Teresa's actions were a result of her suffering from difficulties consistent with BWS stemming from Jack's abuse and coercive control. With the defence's argument in mind, in the next section I offer an alternative interpretation of the

phrases, 'enough is enough' and 'get rid of him'—an interpretation that situates their meaning in relation to Teresa's history of abuse.

6.3.3 Defence Interpretation of 'Enough is Enough'

The Oxford Dictionary defines *enough is enough* as a North American English phrase meaning "No more will be tolerated." In a similar way, the Merriam-Webster Dictionary defines it as meaning "used to say that one wants something to stop because one can no longer accept or deal with it."[173] In order to gain even more insight into the meaning of this phrase, I entered it into the Corpus of Contemporary American English (COCA).[174] The phrase was found 600 times in the corpus.

Table 6.1 Frequency of 'Enough is Enough'

Frequency	Genre
303	Spoken
138	News
70	Fiction
68	Magazine
21	Academic

As Table 6.1 shows, the phrase 'enough is enough' is fairly common in North American English, especially in spoken discourse. Examples from COCA show that the phrase is most often used to indicate that an individual or individuals can no longer tolerate something and, as a result, decide to take action in order to eliminate it. For instance, the following sentence comes from a news

[173] Both dictionaries are available online at https://en.oxforddictionaries.com/ and https://www.merriam-webster.com, respectively.
[174] COCA is a corpus created by Mark Davies from Brigham Young University. It is available online and is the largest free corpus of English and American English (Davies 2008). The corpus includes more than 560 million words of text from various genres, and it classifies these texts into five categories: spoken (including interviews), academic articles, newspaper, popular magazines, and fiction.

report on female circumcision and describes the fact that 'a handful of women' decided to speak about their experiences in hopes of ending the genital mutilation:

> "But now, a handful of those women are breaking their silence and telling the world that ***enough is enough***."[175]

Although, based on Teresa's police interview, it is not completely clear *what* exactly Teresa had had 'enough' of, it does seem possible, as the defence argued, that it was Jack's abuse that Teresa could no longer tolerate and propelled her to take action and to kill Jack.

Recall that when Teresa produces the phrase 'enough is enough' in the police interview, she actually imputes the phrase to Michael, 'Like Michael say, enough is enough' (Excerpt 2, line 14). While it is difficult to know definitively why this is, there are a couple of possibilities based on the literature on reported speech. One reason is connected to the observation that reported speech, ("the practice of reporting, directly and indirectly, the words of other people" (Stokoe & Edwards, 2007: 338)), can be used is as a means to distance speakers from what is being reported (Buttny, 1997). That is, speakers may position themselves as the *animator* (i.e., the speaker who physically utters the words, the "sounding box") of an utterance rather than as its *author* (i.e., the person who originally created the utterance) (Goffman, 1974, 1981) in order to reduce their responsibility for the utterance. Thus, it is possible that, in Excerpt 2, Teresa is trying to distance herself from the phrase 'enough is enough' by imputing it to Michael (in Excerpt 2, line 14), especially when you consider Excerpt 3, line 14—'I don't use that too often. Just I heard Michael say'.[176] Teresa may know that phrases like 'enough is enough' and 'get rid of him' could be interpreted negatively and therefore she attempts to mitigate her responsibility for them. Another possibility is that, in quoting her neighbour Michael, she is giving more

[175] 'Scarred for Life', *ABC DAY ONE* (September 9, 1993).
[176] It is unclear from the transcript, but 'get rid of him' could also be reported speech, i.e., Michael's words.

credence to her decision to kill Jack. That is, if Jack's abuse was severe enough that even a third-party actor (her neighbour Michael) suggested she take action ('get rid of him'), then her killing Jack can be understood as justifiable. And, indeed, there were other neighbours and friends who testified (or were prepared to testify) that they saw Jack being controlling and abusive towards Teresa and Martyn, supporting the interpretation of 'enough is enough' as connected to Jack's abuse.

A further indication that Teresa's use of the phrase 'enough is enough' was connected to Jack's abuse comes from the trial itself. As noted above, the defence's theory of the case was that Teresa was subjected to her husband's tactics of coercive control and suffered from some form of BWS, and, therefore, her actions had to be understood within such a context. Consider the following excerpt, from the *voir dire* of the defence's expert witness, Dr. Evan Stark:

Excerpt 4 (Evan Stark VD.2304-2305)

ES: Mrs. Craig is a victim of partner abuse, and that the partner abuse—the type of partner abuse that she experienced was coercive control, and that she was exposed to experience coercive control as a result of the action of a former husband, Jack Craig,
(...)
Mrs. Craig experienced...chronic but low level physical violence, humiliation, intimidation, isolation, and control.
(...)
a major facet of coercive control in this case was Mr. Craig's use of their son, Martyn, to intimidate and control Mrs. Craig, the pattern known as child abuse as tangential spouse abuse.
(...)
Teresa suffered numerous psychological consequences, including but not limited to, and most markedly, a chronic level of fear and anxiety about her own safety and the safety of their son, Martyn...that she experienced and has suffered post-traumatic stress disorder, and also a pattern of learned helplessness which is consistent with a diagnosis of battered woman syndrome.

The expert witness clearly lays out the abuse that Teresa suffered at the hands of her husband, Jack—'chronic but low level physical violence, humiliation, intimidation, isolation, and control'

(line 6). He also explains how Jack abused Martyn in order to control Teresa, what he calls 'child abuse as tangential spouse abuse' (lines 9-10). And, importantly, he notes that Teresa's symptoms as a result of Jack's abuse are consistent with BWS. In keeping with the defence's theory of the case, then, I am proposing an interpretation of Teresa's police statements, 'enough is enough' and 'get rid of him' that runs counter to the one that emerged from the police interview—one that identifies the thing that "will be tolerated…no more" (Oxford Dictionary) as the chronic abuse that Teresa suffered at the hands of her husband, Jack. As outlined above, the police interviewer, by contrast, seemed to produce an interpretation of the phrases that would bolster the prosecution's theory that Teresa committed pre-meditated murder.

The remainder of this chapter explores the *trajectory* of 'enough is enough' and 'get rid of him'— how they were extracted from their original occasion of production (the police interview), were "reified as text" (Bucholtz, 2009), and then were recontextualized in various other contexts within the legal setting (the Crown Closing, the Final Jury Charge, and the Appellate Opinion). As Blommaert (2005) points out, these kinds of recontextualized utterances are not merely replicated when they are written down or summarized by participants *not* involved in the original interaction; rather, such recontextualizations often involve "far-reaching transformations" of the original utterances and their meanings (2005: 63). Indeed, in what follows, I argue that the prosecution's recontextualizations of Teresa's words from the police interrogation transformed their meanings. That is, rather than interpreting her words as connected to her lived experience as a battered woman, the prosecution used them to support a different theory of the case (relative to the defence): one in which Teresa was said to have committed first-degree, pre-meditated murder. Such an understanding of the case, of course, was incompatible with the defence's theory that Teresa's killed Jack in self-defence, or that at the

very least, the consequences for her actions should be mitigated because of her status as someone suffering from psychological difficulties consistent with BWS.

In the next section, I track the phrases' movement into the Crown's closing address (also called closing arguments or statements). At the time of the closing address, the Crown would have been made aware of Jack's abuse. However, I argue that the Crown was able to build off the motive supplied by the police (Teresa's general 'hatred' of Jack), and recontextualized the phrases in order to signal intentionality/*mens rea*, a requirement for a first-degree murder conviction.

6.3.4 The Crown's Closing Address

Unlike other areas of courtroom discourse, closing arguments (like opening ones) are considered to be a monologic genre in that only lawyers can speak and the lawyers' addressees, the jury, cannot respond directly to lawyers. The purpose of closing arguments is for counsel to summarize and ultimately convince the jury of their version of events.[177] Following from Labov's (1972) framework on narrative analysis, Cotterill (2003: 24) categorizes the closing arguments of a trial as the *evaluation* part of a narrative, or the "point of the story". While lawyers, arguably, can engage in evaluation throughout the entire trial (in cross-examination of witnesses, for instance), closings are the last time lawyers are able to overtly comment on and evaluate key pieces of testimony, all while speaking directly to parties they intend to convince (i.e., the jury). However, closings are not considered evidence, but rather are a persuasive means by which lawyers evaluate or interpret the evidence—they have the chance to "emphasize the evidence which is favorable, and to attack that which is harmful to the case" (Geller &

[177] Heffer (2005: 69-70) found that during closings, lawyers tend to focus more on the trial story (the unfolding events of the trial) by recounting witness testimony, rather than the crime story (the story of the crime in question).

Hemenway, 1996: 179). Lawyers are constrained in what they can present in closing (only evidence that has been presented during the trial) but they are less constrained in their presentation style, often resorting to hyperbole or other forms of theatrics.[178] For instance, in her examination of the O.J. Simpson trial, Cotterill (2003) found that both the prosecution and defence used metaphor in their closings as a "powerful means of guiding ... the jury" (2003: 200). The prosecution relied on the metaphor of Simpson as a ticking time bomb and the story as a jigsaw puzzle, while the defence used metaphors of war.

Lawyers selectively choose what pieces of information to include or exclude in their closings, purposefully highlighting or downplaying material in a way to "manipulate" the evidence in order to benefit their argument (Felton Rosulek, 2008: 532). The following excerpts from the Crown's closing address show how the Crown extracts the phrases 'enough is enough' and 'get rid of him' from the police interview in a way that does not refer to Jack's abuse of Teresa. In other words, for the Crown, Teresa kills Jack not because he has abused her but because she hates him. The Crown also maps intent onto the phrase 'get rid of him': For the Crown, Teresa's use of the phrase indicates a confession to premeditating Jack's murder, though again this is presented as unrelated to his abuse. Rather, these phrases are used in order to underscore the Crown's position and to convince the jury of Teresa's guilt in committing this particular offence.

Excerpt 5 (Crown Closing.3458-3459)

You can dislike Jack Craig, but it really doesn't matter except to the extent that that was the reason, hate, in fact- more than dislike but hate- that was the reason that she chose to **get rid of him** was hate. (...) She chose to **get rid of him** by murder, not by leaving him, as she had done twice before, but by killing him.

[178] See Geller and Hemenway (1996).

As mentioned above, the Crown's position is that Teresa committed first-degree murder, which legally requires that the murder was planned and deliberate. Although a motive is not required for a verdict of first-degree murder, it does give more weight to the intentional aspect of the charge, and, 'Teresa's hatred of Jack' is the motive the Crown provides, in part (as will be clear in the subsequent excerpt), based on the police interview. That this is the motive the Crown puts forth is clear from this excerpt. Consider lines 2-4: 'that was the reason, *hate*, in fact-more than dislike but *hate*- that was the reason that she chose to get rid of him was *hate*'. These lines indicate that 'hate' was the reason Teresa 'chose' to 'get rid of Jack'; the verb, *chose*, appearing in both lines 3 and 4, seems to reinforce the intentional aspect of the crime.

The Crown repeats the phrase 'get rid of him' twice in this passage. The repetition of this phrase here, and in fact throughout his closing, is rhetorically significant as repetition "is an effective way to stress critical propositional content" (Danet, 1980: 531). Moreover, a phrase like *get rid of* indexes a particularly negative view of the act of killing, a view that a verb like *kill* may not index in quite the same way. For instance, one may *kill* in self-defence or by accident, but only murderers *get rid of* people. In repeating this phrase in Excerpt 5, then, the Crown is drawing attention to these kinds of negative associations, as well as to the legal requirement of intent that the use of the phrase supports.

The next example (Excerpt 6) begins with the Crown reading a part of the police interview transcript, lines 11-16 from Excerpt 2.

Excerpt 6 (Crown Closing.3466-3467)

She cuts off Sergeant Patrick and says:
Oh, you all want to know I hate him if I kill him.
[He asks]: Is this why you did it? Because you know what? You know what? I think it's that simple.
[And she says]: Yeah...like Michael say, **enough is enough.**

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6     Why'd you kill him? Is that why?
7     [And she says]: Enough is enough. Get rid of him.
8     You know, these are powerful compelling words that she's tried to
9     come out from under during this trial, but it just can't work,
10    you just can't get away from words like that: "Enough is enough.
11    Get rid of him."
```

That the Crown selects this particular passage from the police interview to read to the jury highlights the fact that he thinks it is important or evidentially valuable (Philips, 1986). Haworth (2010) discusses how lawyers *perform* police interview data in the context of a trial, suggesting that lawyers often use perceived differences between what is said in a police interview and what is said at trial to undermine the credibility of an accused and to suggest their guilt. In this excerpt, the Crown draws attention to the differences between Teresa's statements ('enough is enough' and 'get rid of him') in the police interview and her later testimony at trial, using what Sneijder (2014) has called the post-quotation space of reported speech. Sneijder (2014), based on an investigation of closing arguments in Dutch trials, shows how lawyers embed reported speech in a three-step approach, including a pre-quotation, the reported speech itself ('like Michael say, enough is enough...enough is enough, get rid of him'—lines 5 and 7), and post-quotation. The pre-quotation allows prosecutors to "display disaffiliation with the suspect's words or attitude" (2014: 485). The lawyers use the post-quotation space to offer an evaluation on the reported speech, based on personal view or "objectively grounded fact" (2014: 486). In Excerpt 6, the Crown uses the post-quotation in lines 8-11 in line with Sneijder's claim that post-quotations can be used "to undermine the words of the suspect" (2014: 486). That is, for the Crown, during the trial, Teresa tried to 'come out from under' (line 9) or distance herself from the 'powerful compelling' words (line 8) produced in her police interview (i.e., 'enough is enough' and 'get rid of him'). By characterizing the phrases as both 'powerful' and 'compelling', the Crown is

emphasizing their importance to the prosecution's overall argument—that these words not only indicate that Teresa murdered Jack, but also that they show planning and deliberation.

As in Excerpt 5, in Excerpt 6 Teresa's words are recontextualized in the Crown's closing argument in a way that supports the prosecution's theory of premeditated murder. For the Crown, 'Enough is enough' is connected to Teresa's 'hatred' for Jack: She could not tolerate him any longer and killed him. And, the phrase, 'get rid of him', gives weight to the claim that Teresa acted with forethought (planning) and deliberation (requirements for first-degree murder). What is significant about these recontextualizations is the fact that the context of Teresa's original utterances in the police interview, specifically, that they were not the "the sole product of the interviewee" (Eades, 2012: 478) and that the exchange occurred after many hours of probing, have all "fallen away" (Ehrlich, 2012: 59). That is, they are represented in the Crown's closing argument as a bald confession rather than responses to repeated questions from police officers. Furthermore, although line 14 in Excerpt 2 and line 14 in Excerpt 3 show that Teresa does not represent the statement ('enough is enough') as her own, it is nonetheless ascribed to her throughout this recontextualization (and in later recontextualizations). That is to say, any mention of 'Michael' is completely removed, and the utterance is solely ascribed to Teresa. Most importantly, the fact that Jack abused Teresa, and her phrase 'enough is enough' could be a characterization of this abuse, is disregarded in Excerpt 6.

The Crown uses the phrases in question in the next excerpt as well:

Excerpt 7 (Crown Closing.3504)

She says, when asked why, "**Enough is enough, get rid of him.**" So, she knows what she's saying during that video. And the labels don't matter, whether it's shock or whatever you want to call it, it doesn't matter. The point is she knew what she was saying. She had the intent to kill.

The Crown repeats Teresa's response to KP's (the police interviewer's) question about why she killed her husband, 'enough is enough, get rid of him', and indicates that it is consistent with her 'intent to kill' (line 5). Like Excerpt 6, in Excerpt 7 the Crown implies that Teresa's statements during the police interview are more truthful than the ones during her in-court examination. During both her direct and cross-examination, Teresa stated that she was not in a clear state of mind when she killed Jack, nor so during her police examination (which was conducted roughly 12 hours after the incident). Teresa testified that during the incident her mind was 'blank'[179] and during the subsequent police interview she was confused and not thinking clearly ('mind is all messed up').[180] The Crown, by contrast, says in Excerpt 7 that Teresa's 'shock' (line 3) 'doesn't matter', suggesting that it is not a valid reason for her not to take responsibility for her words in the police examination. The phrase, 'shock, or *whatever* you want to call it', is a further indication of the way in which the Crown dismisses Teresa's 'shock' as inconsequential. Sheehy (2014) believes that battered women who kill may problematically yield to pressure to confess, and such confessions are used to discredit them. Due to the trauma women have experienced, it is "unreasonable and unfair to expect such a person to give an airtight account of the homicide and decades of battering in the hours, days, or even weeks after" (Sheehy, 2014: 310). That is, Teresa's state of shock not only seems plausible but expected. Yet, the Crown indicates 'it doesn't matter' and instead attaches significance to Teresa's police interview and the phrases, 'enough is enough' and 'get rid of him', treating the phrases as evidence of her intent to kill.

In this section I have demonstrated how the phrases, 'enough is enough' and 'get rid of him', are extracted from Teresa's original police interview (in a process of entextualization) and

[179] Direct Examination, p. 2039
[180] Cross-Examination, p. 2109

recontextualized in a new setting, that of the Crown's closing address. Moreover, I have shown how the meanings attached to these phrases change as they are subjected to this kind of recontextualization. On the basis of Excerpts 2 and 3, I claimed that the police interpreted the phrases as related to Teresa's hatred of Jack. In keeping with this interpretation, the prosecution, in its closing statement, can be seen to use this hatred (established by the police interviewer, in keeping with the prosecution-biased nature of the interview) and the phrases more generally to support its theory of the case—that Teresa planned to murder Jack and that this act constituted the crime of first-degree murder.[181] In fact, based on Excerpts 5-7, it can be seen that the Crown maps a legal understanding of 'intent' onto these phrases—a meaning that was, arguably, not present in the original speech event (the police interview). Again, the Crown's interpretation of Teresa's words discount the possibility that what Teresa had 'enough' of was abuse and that it was this abuse that led her to kill Jack and led the defence to argue for a defence based on BWS (and then later to argue for leniency in sentencing once the self-defence plea was disallowed). The importance of these phrases to the final outcome of the case is further indicated by their inclusion in other parts of the trial. For example, the trajectory of these phrases continues in the trial judge's jury charge.

6.3.5 Final Jury Charge

In Canada, in the Final Jury Charge (also known as jury instructions), the trial judge is responsible for summarizing evidence for the jury in relation to the charges and issues under consideration, also referred to as the 'summing-up' (Marcus, 2013: 6). Although these

[181] Hate would not be incongruous for women who have been abused by their partners. However, displaying this emotion during the trial may negatively affect jury perception. During witness examination, for instance, women may be advised by their lawyer, "Don't be angry, because anger is ineffective...you can't hate him" (S. Chapman, personal communication, December 19, 2012).

summaries have no legally required form, considerable attempts have been made to offer 'model instructions' for judges.[182] For example, a report issued by the Department of Justice addressed concerns over jury instructions and clearly laid out the standards for trial judges' jury instructions based on the Supreme Court finding in *R v Daley*, 2007 CSC 53. The findings in *Daley* state that jury instructions should include "(1) instruction on the relevant legal issues, including the charges faced by the accused; (2) an explanation of the theories of each side; and (3) a review of the salient facts which support the theories and case of each side" (as quoted in Steering Committee in Justice Efficiencies and Access to the Justice System, 2009: 30). Although a summation of the counsels' positions is not a requirement in the jury charge, its inclusion in the jury charge is further explained in the following judgment:

> In their final instructions most trial judges include a discrete statement of the positions of the parties, often a repetition of a brief summary prepared by counsel at the judge's request. [...] In the end, however the message is delivered, jurors must be left with a clear understanding of each counsel's position.
>
> (*R v P.J.B.,* 2012 ONCA 730, para 43)

In recent years, judicial summing-up discourse has been of interest to linguists (e.g., Heffer, 2002, 2005; Henning, 1999; Johnson, 2013, 2014). Because the summing-up addresses both legal participants (such as appeal courts who may review the summation) and lay participants in the form of the jury, it has been categorized as a 'legal-lay genre' (Heffer, 2005: 162). One focus of the work on judicial summing-up has been the linguistic patterns in the way judges quote and refer to the prior accounts from defendants (Johnson, 2014), as well as any bias that may be evident in these patterns. Though a judge's personal feeling towards a trial, (the

[182] See *National Judicial Institute's Model Jury Instructions*: Section 8.7 'Judge's Review of Evidence'. Available at: https://www.nji-inm.ca/index.cfm/publications/model-jury-instructions/#794B11A5-D8B5-4A30-9A22E1526BC814BD

'judicial perspective' cf. Heffer, 2005), is most obvious when a judge adds overt (even subtle[183]) commentary on the evidence being reported,[184] Johnson (2014) reasons that even without additional commentary, a judge's presentation of the evidence can influence how a jury interprets this evidence. For example, the organizational structure of the charge, and the particular linguistic patterns used in the reporting of the defendant's speech, may influence the jury. However, in theory, a jury charge is to be unbiased: As is stated in one appellate opinion, "A jury charge must also be even-handed, the instructions fair and balanced. No sides should be taken and no editorial comment should intrude" (*R v Largie*, 2010 ONCA 548, para. 127).

In Excerpt 8, the prosecution's position is summarized by the trial judge in the Final Jury Charge Section III—'Positions of Counsel'. The judge summarizes both the prosecution's and the defence's theory of the crime in this jury charge. In summarizing the theory of the prosecution, the judge uses the phrases, 'enough is enough' and 'get rid of him'. Indeed, that these phrases ('enough is enough' and 'get rid of him') are included in the Theory of the Crown jury charge demonstrates how significant they were to the prosecution and its attempts to secure a first-degree murder conviction.

Excerpt 8 (Final Jury Charge, Theory of the Crown.93-94)

It is the theory of the Crown that Teresa Craig was unhappy with her life, blamed Jack Craig for her unhappiness and hated him for it. So she decided to kill him. This is not a complicated theory to come up with or a far-fetched theory given this is precisely what she said in the hours after she killed her husband. She was sick of all the financial problems she and her husband had experienced and she was tired of being yelled at. She blamed her husband for their financial problems and resented him for continuously raising his voice towards her. On March 31, 2006, Teresa Craig came to the conclusion that **enough was enough.** Their business was failing, their financial situation was bleaker

[183] Heffer (2005: 189) provides a framework of linguistic features that he organizes on the scale of *proximal* (most likely to show judicial influence), such as "to state baldly", to *distal* (most impartial), "to disclaim".
[184] This is what Hall (2007) calls 'judicial comment'.

than it had ever been before and showed no signs of improvement, their marriage had their share of problems. So, "**enough is enough**" she thought, "**get rid of him**". Those are her words, not the Crown's words. While the vast majority of people would not see these problems as reason to take their spouse's life, these reasons were good enough for Teresa Craig to kill her husband.

(...)

Not only did she intend to kill Jack Craig, she also planned the murder and deliberated on it

(...)

At the end of the day, Teresa Craig's actions and Teresa Craig's words speak loudly and clearly that what she did to her husband was first degree murder.

The Crown's theory (as the judge represents it in Excerpt 8) is that Teresa killed Jack because she was 'unhappy with her life' and hated Jack. In lines 3-6, the judge states 'this is not a…far-fetched theory' and that the theory is based on 'precisely' what Teresa said after she killed Jack—the judge here is presumably referring to the 9-1-1 call (Excerpt 1). It is difficult to ascertain whether the evaluation of the theory here is that of the prosecution's or is the judge's own 'judicial comment.' As Heffer has remarked, "In the context of the summing-up, there is a fine line between simply reminding the jury of the prosecution and defence cases and *actually evaluating their claims*" (2005: 219, emphasis added). It is possible, then, that what we see illustrated in Excerpt 8 is this 'fine line' between simply summarizing the Crown's theory and actually evaluating it as credible.

What is perhaps more significant about this excerpt, however, is that the judge's use of the phrases 'enough is enough' and 'get rid of him' are recontextualized here to suggest meanings that are somewhat different from those put forward by the Crown. That is, though this jury charge is supposed to be a summation of the prosecution's theory, the way the trial judge uses these phrases differs from their use by the Crown in his closing address. Specifically, the phrases ('enough is enough' and 'get rid of him') are reformulated by the judge as Teresa's thoughts *prior* to killing Jack (e.g., Teresa '*came to the conclusion* that enough was enough' (line

10); 'their marriage had their share of problems. So, enough is enough, she *thought*, get rid of him' (lines 13-14)) rather than as responses to questioning *after* the incident.[185] Of course, it would be impossible to know what Teresa thought before killing Jack. What is evident from the original police transcript, however, is that Teresa never stated that 'enough is enough' or 'get rid of him' were thoughts she had before killing Jack. (See Excerpt 2.) And, likewise, as Excerpts 5-7 above show, the Crown never represents these phrases in this way in the closing address.

So, what might be the significance of the judge's recontextualization of these phrases? Referring to Teresa's thought process before killing Jack would presumably help establish intention and premeditation, something necessary for the first-degree murder conviction that the prosecution sought. In other words, the judge's recontextualization of these phrases adds credibility to the Crown's position, but does so without any overt commentary. Similar to the findings from both Heffer (2005) and Johnson (2014), then, the trial judge's 'judicial perspective' is evident in the mere presentation of this evidence, specifically, the reformulations of the phrases as *thoughts* Teresa had *prior* to killing Jack rather than *words* she produced *after* the killing. The Supreme Court of Canada has generally established that judges are allowed to express opinions on factual matters, though they are *not* allowed to direct the jury to a particular finding (Hall, 2007: 250). However, the recontextualization of the phrases in the summation could be seen as a (subtle) way for the judge to direct the jury towards the Crown's argument, without transgressing the rules against judicial bias.

In contrast, we see no overt (or even subtle) commentary in the Theory of the Defence as

[185] The judge also emphasizes that the phrases in question are Teresa's: 'Those are her words, not the Crown's' (lines 14-15), an indication that the words have significant evidential weight (at least for the judge). However, in the original police interview, as I have noted, Teresa imputes 'enough is enough' to 'Michael', which I have suggested is to either distance herself from the meaning of the phrase, or to add weight to the claim that Jack abused her. Both of these possible interpretations are lost in this recontextualization.

represented in the jury charge. The charge also makes no reference to the phrases 'enough is enough' or 'get rid of him'.[186]

Excerpt 9 (Final Jury Charge, Theory of the Defence.90-91)

```
1     Teresa Craig killed Jack Craig, but she did not murder him.
2     Teresa Craig is a battered spouse. She has suffered years of
3     psychological abuse at the hands of Jack Craig, as well as low
4     level physical abuse.
5     Teresa also witnessed the ongoing physical and psychological
6     abuse of their 10-year old son, Martyn Craig[...]
7     Upon being seen by a psychiatrist after Jack Craig's death,
8     Teresa Craig [...] [was] diagnosed with Major Depression,
9     Adjustment  Disorder, and Post Traumatic Stress Disorder stemming
10    from spousal abuse. These issues predated March 31, 2006 and were
11    present on that date and did not occur until after she came to
12    Canada and married Jack Craig[...]
13    Teresa Craig's actions that caused the death of Jack Craig were
14    as a result of her "snapping"—her actions were an impulsive
15    reaction to the years of abuse she had suffered
```

The trial judge here lays out the defence position without any evidence of bias. Teresa is a battered spouse (line 2) who suffered from psychological and low-level physical abuse (lines 2-3). Her psychiatric conditions (PTSD, Major Depressive Disorder) were a direct result of her marriage to Jack (lines 8-12). According to the defence (as presented here by the trial judge), this abuse caused her to 'snap' (line 11) and kill Jack. Presumably, the verb 'snap' is used because Teresa used it in her 9-1-1 call (Excerpt 1, line 6).

In brief, the general purpose of the final jury charge is to recap 'what happened' in order to guide jurors towards their legal responsibilities. Because jurors may have sat through weeks or months of testimonies, summations play an integral role in helping to remind jurors of the evidence at trial. While judges are largely to remain uninvolved in the jury's decision-making

[186] It should be noted that at the time of the Final Jury Charge, the judge had disallowed the initial self-defence plea and Teresa's defence argued for manslaughter based on the fact that she was suffering from BWS and was therefore incapable to form the intent to cause death.

process (that is, the ultimate responsibility for the verdict lies with the jury), the summation of the Crown's theory (Excerpt 8) highlights the ways in which a judge's perspective or bias may bleed into the 'objective' presentation of the theories. Though it is impossible to determine how much influence judicial perspectives may have on findings, the ability to both summarize and *interpret* evidence for a jury remains a powerful resource in the courtroom.

6.3.6 The Appellate Opinion

The final appearance of the phrase 'enough is enough' comes from the Ontario Court of Appeal's Opinion, which was delivered in February 2011. At trial, Teresa was convicted of manslaughter and sentenced to eight years in prison. Teresa's appellate counsel appealed both her conviction and her sentence. The appeal argued that the trial judge erred in deciding not to put self-defence to the jury. It also argued that the trial judge erred in characterizing Jack's death as a "near murder", and not considering his abuse of Teresa significant enough to mitigate her sentence. On appeal, the Court found that the trial judge did not err in deciding not to put self-defence to the jury. The Court upheld Teresa's manslaughter conviction but allowed the appeal to her sentence, and Teresa's sentence was reduced to time-served (roughly three years). The following excerpt comes from Part II, 'The Facts' of the Appellate Opinion.

Excerpt 10 (Appellate Opinion.5)

After her arrest, the appellant gave lengthy videotaped statements to the police in which she acknowledged stabbing her husband to death. When asked by the officer to explain why she had done so, the appellant said, **"enough is enough"**. The appellant's explanation that **"enough is enough"** can only be understood in the context of her relationship with the deceased.

The excerpt begins by describing the 'lengthy' videotaped police statement, and, in particular, the fact that the phrase, 'enough is enough', was provided in response to the police officer's question as to why Teresa killed Jack. In lines 5-6, the Opinion states that this phrase ('enough is enough') 'can only be understood in the context of her relationship', a relationship in which Jack routinely abused and controlled Teresa and Martyn. Unlike the prosecution and the trial judge's use of the phrase 'enough is enough', then, the Court of Appeal here connects the phrase to the circumstances of Teresa's abuse. Why the Court of Appeal interpreted this phrase in this particular way is clearer when other parts of the Opinion are considered. For example:

Excerpt 11 (Appellate Opinion.5)

```
1     There was, however, a great deal of evidence from the appellant
2     and others, particularly persons who knew the deceased and
3     appellant in British Columbia, that almost from the outset of the
4     marriage, and even more so after the birth of their son Martyn in
5     1996, the deceased regularly psychologically and verbally abused
6     the appellant. The deceased was much larger than the appellant
7     and used his size and temper to intimidate her. He often
8     humiliated the appellant in front of her friends and co-workers.
9     He treated her more like an object than a person.
10    The appellant became increasingly isolated during the marriage.
11    [...] His conduct tended to alienate the appellant from her
12    friends and coworkers. Over time, the appellant became socially,
13    geographically and economically isolated from everyone except the
14    deceased and Martyn.
[...]
15    In addition to psychological, verbal and emotional abuse, the
16    appellant quickly came to bear the financial burden within the
17    family.
[...]
18    Although the appellant was the primary earner within the family,
19    the deceased controlled the finances and used that control to
20    further dominate and isolate the appellant
```

In this excerpt, we see the Court of Appeal stating that a 'great deal' of evidence from both Teresa and others supports her allegation that Jack abused Teresa and Martyn. Jack's abuse is categorized (using a three-part list for emphasis) as 'psychological, verbal, and emotional' abuse (line 5). The Opinion details how Jack repeatedly intimidated and abused Teresa, dominated her,

isolated her, and treated her 'more like an object than a person' (line 9).

Ultimately, the Court of Appeal argued that the trial judge erred in accepting the Crown's characterization of Jack's death as a "near murder", and in not considering Teresa's status as a battered woman as a mitigating factor in sentencing. Consider Excerpt 12:

Excerpt 12 (Appellate Opinion.14)

```
1     On the evidence, the appellant fit the description of a battered
2     wife. She was trapped in a relationship that belittled and
3     dehumanized her to the point where she suffered a serious and
4     ongoing mental disorder rendering her unable to perceive the
5     obvious consequences of her actions.
6     We are satisfied that the effect that the long-term abuse had on
7     this appellant should have been treated as a substantial
8     mitigating factor on sentence.
```

In Excerpt 10, the Court of Appeal links the phrase 'enough is enough' to Teresa and Jack's relationship (line 6). In Excerpt 12, this relationship is said to have 'belittled and dehumanized' Teresa (lines 2-3) and was unquestionably abusive. This ongoing abuse, it is said, also rendered Teresa unable to grasp the consequences of killing Jack. In sum, the Appellate Opinion puts forward a theory of the case that resonates with Teresa's defence: Teresa had 'enough' of Jack's abuse—abuse which caused her severe mental problems and resulted in her killing of Jack. In other words, the Appellate Opinion contextualizes the phrase 'enough is enough' within Teresa's history of abuse, and this (re)contextualization formed the basis (at least in part) for the Court's granting of Teresa's appeal with regard to sentencing.

6.4 Chapter Summary

This chapter has presented a *text trajectory* (Blommaert, 2001, 2005) of two phrases ('enough is enough, and 'get rid of him') in the case, *R v Craig,* (2011). I have shown in my analysis how

these phrases were subjected to various kinds of entextualization practices and how the meanings of these 'texts' changed as they *moved* through the various phases of the case. The police, the Crown, and the trial judge (in his summation of the Crown's viewpoints) all seemed to attach considerable importance to these phrases in their understanding of the case, as did the Court of Appeal (at least with the phrase 'enough is enough'). For example, the police used these phrases to put forward a motive of *hate* (that is, Teresa's hatred of Jack) for Jack's killing, supporting previous research that has shown police interviews to be biased towards the prosecution. In turn, the Crown recontextualized the phrases in his closing address in order to signal intent and premeditation on the part of Teresa, both of which are needed for a first-degree murder conviction. As 'enough is enough' and 'get rid of him' were recontextualized in the trial judge's Final Jury Charge, they became *thoughts* that Teresa had *before* killing Jack, rather than words that were uttered in the police interview after the killing. I argued that, even though jury charges are not meant to take sides, the trial judge's depiction of Teresa's *thoughts* showed deliberate planning and legal intent (*mens rea*) on her part, further bolstering the Crown's theory of first-degree murder. It wasn't until the final stage of the text trajectory, the Appellate Opinion, that the phrase 'enough is enough' was contextualized within the framework of intimate partner violence. Here, the meaning of this phrase was again transformed in a way that resonated with the defence's theory of the case, that is, to signal that what Teresa had 'enough' of was Jack's abuse.

As argued, entextualization practices have the power not only to shape textual meaning but to shape participant identities as well (Ehrlich, 2007), which, in turn, can significantly impact legal outcomes. In Teresa's trial, the recontextualizations of the phrases 'enough is enough' and 'get rid of him' were used to transform Teresa's identity—from a battered woman who,

arguably, killed in self-defence to a murderer. As noted, these recontextualizations seemed to discount Teresa's history of abuse and, much like the Crown's questioning (examined in Chapter 5), they similarly expose a gender bias in legal practices. (That is, the Crown never locates the phrase, 'enough is enough', within a context of intimate partner violence, even after Jack's abuse is made apparent.) The impact of such recontextualizations can be seen in the final outcome of the trial. Even though Teresa was convicted of manslaughter and not the first-degree murder conviction that the Crown sought, the trial judge characterized Teresa's actions as "near murder". The "near murder" was then used to justify Teresa's sentence of eight years (rather than the conditional sentence that the defence sought). As with the Final Jury Charge, this characterization was another way in which the trial judge's bias in favour of the Crown's position was apparent in the case. In contrast to the meanings the Crown and trial judge ascribed to the two phrases, however, the final recontextualization of 'enough is enough' (in the Appellate Opinion) was used by the Appellate Court to represent Teresa as a victim of Jack's abuse who deserved leniency.

While this chapter has explored the trajectory of phrases in the legal case, the final empirical chapter, Chapter 7, focuses on how texts moved from the legal setting into the news media. Importantly, I maintain that these mediatized recontextualizations may have impacted not only how the general public understood this particular trial, but also how the public comes to interpret the larger social issues of violence against women more generally.

Chapter 7: *Woman Changes Story on the Stand* — Mediatized Recontextualizations

7.1 Introduction

There was notable media coverage of *R v Craig* from the beginning when charges were officially laid against Teresa. The magnitude of the press coverage was likely due to the media's (and society's) inherent fascination with women who kill. These stories are often both prime news and tabloid fodder, as women who kill are seen to have violated their gender roles as submissive wives or nurturing mothers. Much research has been conducted on the ways in which the media linguistically construct women who kill, and how these depictions reinforce gendered ideologies. Notably, these damaging ideologies mean that battered women who kill abusive husbands are rarely portrayed as reasonable actors who are justified in their use of lethal violence.

In this chapter, I explore how Teresa is discursively constructed in news reports of the case. I specifically focus on the recontextualization of two portions of the police interview: 1) the phrases 'enough is enough' and 'get rid of him' that were discussed in the previous chapter; and, 2) extracts from the police interview that focused on whether or not Teresa's killing of Jack was premeditated. I situate my analysis within a body of larger research on media coverage of battered women who kill. I claim that the media largely appropriated the Crown's interpretation of these pieces of evidence from the police interview. That is, the media did not simply report on the trial in a balanced way such that the prosecution's and defence's version of events received comparable coverage. Rather, the media reports privileged the prosecution's theory of the case and, thus, called into question Teresa's status as a battered or abused woman. Ultimately, I postulate that the mediatized recontextualizations served to sensationalize the story and to

construct Teresa not as a battered woman who, arguably, killed in self-defence, but as a *bad* woman, that is, a "cold blooded killer" (Noh, Lee, & Feltey, 2010: 120).

Representations in the media do not exist in a vacuum independent of their social and cultural context. As Attenborough (2014) remarks, it is through media recontextualizations of events that the public comes to understand and unpack social issues. In keeping with Attenborough's claims, I suggest that the media recontextualizations of Teresa's police interview had effects not only on the public perception of this case, but also on the larger social issues of domestic violence. The role of the media in shaping public perception is especially important considering that jury members in courtroom trials are selected from this very group of media-consuming public.

7.2 Situating the Analysis: The Media

7.2.1 Trials and the Media

The purpose of media accounts of trials is to inform the general public about matters occurring within the courtroom. While court proceedings are typically open and public, very few people actually access courtroom proceedings or the (expensive) transcribed legal documents that provide records of trials. Since legal matters affect the population at-large, it is then the role of the media to act as a proxy, reporting on issues of public interest. For example, although judges 'speak' through opinions and decisions, it is the media who disseminate the relevant information to the public (Canadian Judicial Council, 2007: 39).[187] Additionally, media accounts of trials are integral to the democratic ideal of "open justice", whereby the inner workings of law

[187] In recent years, more judicial opinions (especially in high-profile cases) have been circulated online, and are thus accessible for a wider audience.

enforcement and the legal system are made transparent through media reports (Hanna, 2006: 193). Media accounts make visible the legal process and how the state defines *crime*.

Because multiple trials take place every day, the media need to be selective about which cases to report on. Courtroom trials can often exhibit the same characteristics (such as 'crime', 'drama', or 'celebrity') found in television shows or other fictionalized forms of entertainment—providing readers with the "seductive thrill of reading about some criminals' lifestyles" and comforting them with "reports of justice" (Hanna, 2006: 194). Although one might assume that an article on this trial (and trials, more generally) would merely report facts, Bell (1991) contends that "[j]ournalists do not write articles. They write stories" (1991: 147). In other words, news reports must appeal to readers and provide information that is "entertaining and captivating" while still being seen as factual (Teo, 2000: 36). However, it is not entertainment alone that drives the reporting. The 'newsworthiness' of a trial is determined by a number of factors, called *news values*, which journalists or editors use to gauge public interest (Jewkes, 2004: 37). Based on her analysis of the British media, Jewkes identified the following factors as contributing to a crime story's newsworthiness: threshold, predictability, simplification, individualism, risk, sex, celebrity, proximity, violence, spectacle or graphic imagery, children, and conservative ideology and political diversion (Jewkes, 2004: 40). These factors shape legal reporting to the extent that they determine what trials end up being covered by the media.

As they typically meet the criteria of 'newsworthiness', high-profile legal cases (such as those with celebrity defendants) and their subsequent trials are often broadcast live and/or recontextualized in newspapers, online media, and television,[188] and U.S. cases are often

[188] Notable high-profile cases that have garnered linguistic analysis of media recontextualization include the O.J. Simpson case (Cotterill, 2003), and, more recently, that of Trayvon Martin (Hodges, 2015a; Rickford & King, 2016).

broadcast live.[189] In the United States, with the advent of channels like Court TV, the public is able to watch the unfolding events of a high-profile trial from their home, physically distant from the courtroom but nonetheless as *secondary addressees* of the talk-in-interaction (Cotterill, 2003: 107). Although the viewing public in mediatized trials is merely an *observer* of the legal process rather than an active participant, these "silent participants" still have influence on the talk that takes place in the courtroom (Cotterill, 2003: 107). For instance, the staggering number of television viewers in the OJ Simpson trial led critics to decry that legal participants in the trial were *acting* or "playing to the camera" and subsequently "indulging their new role as media celebrities at the expense of their legal responsibilities" (Cotterill, 2003: 110).

Even in non-high profile cases, members of the public can become active participants in the courtroom when they are positioned in legally defined roles, such as when they serve on a jury. Jurors are asked to weigh evidence and determine verdicts *not* based on legal or procedural knowledge (of which they will most likely have little or none), but as "ordinary citizens" using their "common-sense and knowledge of the world" to help in deliberations and in applying the law (Heffer, 2005: 107). The legal framework of jury trials is designed so that jurors are selected precisely for this reason. That is, juries are comprised of a representational portion of the public (at least in theory), instead of legal actors; as such, they approach the trial with the experiences of the average person, rather than with the expertise of a legal professional (Heffer, 2005: 41).

It is at this intersection of jurors and 'common-sense' experiences that Statham (2016) claims media influence on legal and criminal decisions is most apparent. He suggests that jurors are the "conduit" through which media constructions of crime enter the legal system. That is, the 'common-sense' life experiences that jurors are expected to bring to trial are often based on

[189] However, the broadcasting of trials is typically banned in many jurisdictions in Canada (such as Ontario), and in other countries (such as the U.K.).

ideological constructions that emanate from media discourses. He argues that jurors are not "blank slates" but "possess pre-trial notions of crime garnered from interaction with social discourses in the media" (Statham, 2016: 40). Statham concludes that discursive and linguistic "isolators" in the courtroom make jurors even more reliant on the culturally scripted frames generated by the media, what he terms "Enhanced Trial by Media" (2016: 46). By isolators, Statham is referring to courtroom features such as complex legal language, which make rules of law largely inaccessible to juries, who are instead pushed towards using media constructions of crime to help process information. So, the jurors themselves act as "filters through which media maintained ideologies enter the courtroom trial" (2016: 90). These ideologies are further reinforced in the courtroom by prosecutors and defence lawyers (and even trial judges), who often deploy them in strategic ways. As Van Dijk (1988: 11) has stressed, "The media are not a neutral, common-sensed, or rational mediator of social events, but essentially help reproduce preformulated ideologies" that originate in 'credible' sources such as government, or the legal system. Members of the community, in turn, read the mediatized reports of the trial that have propagated certain ideologies, and this ultimately creates an unavoidable circularity. That is, ideologies originate in the legal system, are then circulated by the media, and then reappear in the courtroom when juries rely on these ideologies in making assessments and rendering verdicts.

7.2.2 Women and Violence in the Media

Similar to Jewkes's (2004) discussion of factors contributing to newsworthiness, Meyers (1997) notes that journalists adhere to a "hierarchy of crime" in reporting, where *murder* takes top priority; however, as she explains, it is only certain murders that are deemed newsworthy. She

concludes that because intimate partner violence is (unfortunately) a common reality, women who are murdered by their abusive male partners are not guaranteed coverage (1997: 90; see also Carter, 1998 on the coverage of sexual violence versus other forms of gendered violence in the media).[190] Moreover, when accounts of intimate partner violence are covered, the media tend to conceptualize male violence as a problem of individual pathology (Meyers, 1997: 10).[191] That is, when the media cover intimate partner femicide, these accounts are often not contextualized within a culture of domestic violence; rather, these deaths are viewed as "just another homicide" (Kirkland Gillespie et al., 2013).

However, that Teresa's trial garnered significant media attention can be attributed to the fact that there appears to be a public fascination with *women* who kill, and, thus, their stories are deemed to be especially newsworthy. In media reports of female violence, women's use of lethal violence in the context of intimate or familial relationships is especially prevalent (Naylor, 2001a: 188; see also Barnett, 2006; Easteal et al., 2015). According to Nicolson (1995: 202), public interest in the 'women who kill' narratives comes from society's interpretation of such women as "doubly deviant". Violent women are seen to have violated not only the laws set forth by the state (in the case of murder, for instance), but also the social roles that are assigned to women by means of dominant gender ideologies.[192] For instance, women are seen by society at large to be passive, nurturing, gentle, and weak, in opposition to their stronger, practical, and

[190] Additionally, the lack of interest in women who are murdered by intimate partners may reflect the little value society places on women's lives compared to men's; that is, in the context of a patriarchal society, women are seen as naturally subordinate to men, and by extension, they are valued less than men (making their deaths less important).

[191] The language of the news media predominantly represents gendered violence as a result of individual criminality or pathology, often focusing on isolated acts of violence committed by strangers (Clark 1998), rather than the patriarchal society that sustains, and often excuses these forms of violence (Berns, 2001; see also Venäläinen, 2016 on representation of violence in supposedly 'gender-neutral' Finland).

[192] Therefore, women's violence is perceived as more *transgressive* than men's use of violence: "Women's use of violence is seen as more in need of an explanation [than men's violence]" (Naylor, 2001a: 188, emphasis in original).

active male counterparts (Eckert & McConnell-Ginet, 2005: 35). And, women who kill are judged against this ideal of "appropriate femininity"[193] (Nicolson, 1995). Thus, the fact that women who kill are seen to transgress not only legal but also social mores means that their stories become sensationalized and are given a significant amount of attention in the media. Additionally, because women's use of lethal violence is rare, especially when compared with men's use of lethal violence against women,[194] these stories become even more newsworthy (Berrington & Honkatukia, 2002: 50). Noh, Lee, and Feltey (2010: 111) claim that although the rates of intimate partner homicide by males far outweigh the converse, there is more media attention and "extant sensationalism" afforded to the cases where women kill men.[195]

Noh, Lee, & Feltey (2010) not only consider the newsworthiness of women who kill as compared to men who kill, but also the way that battered women who kill are represented in the media. The authors analyzed 250 US and Canadian newspaper articles of women who killed abusive partners in order to understand how the news portrayed these women. Their results suggest that the news media overwhelmingly portrays the women as deviant: They are either *mad* women (i.e., insane women), suffering from major mental illness as a result of the violence they experienced, or *bad* women, "rational manipulative cold-blooded killers" (2010: 120). Rarely, however, does the news represent the women's actions as reasonable. Noh, Lee, & Feltey conclude that these typifications of battered women who kill as either mad or bad "not only make for sensational news, they reinforce belittling ideal types and social attitudes towards women and

[193] Nicolson (1995: 188) also points out that the parameters of "appropriate femininity" tend to be based on white, middle-class, Western women.
[194] In Canada in 2014, the rate of female victims of intimate partner homicide was four times higher than that of males (Miladinovic & Mulligan, 2015).
[195] Additionally, Morrissey (2003) postulates that media narratives of women who kill signify that these acts are deemed more traumatic for heteropatriarchal societies: "For the fear of women, of their power to generate life and to take it away, runs deep in male dominated societies" (2003: 2).

victims of domestic violence" (2010: 127). That is, the news media perpetuates myths about women who kill abusive partners, reinforcing larger legal and social ideologies.[196]

The sensationalism that characterizes media stories about women who kill their abusive partners is, of course, inextricably connected to how journalists present the 'facts' of such stories. While some media accounts strive to represent the objective facts of a trial, others "shade, explain, or minimize the evidence, supporting or condemning the accused woman" (Sheehy, 2014: 239). Sheehy (2014: 238) illustrates this point with an analysis of media reporting on the Lilian Getkate[197] case. Although she pleaded self-defence, Getkate was convicted of manslaughter in the shooting death of her abusive husband, and she was sentenced to a conditional sentence of two years to be served in the community. After the verdict, media publications in major newspapers criticized the conditional sentence as too lenient. These media accounts were underscored by other media reports of the Crown attorney's statements regarding the presumed 'lack of evidence' to substantiate Getkate's claims of abuse and/or fear for her life. As Sheehy points out, by only reporting the Crown's theory, the media representations excluded mention of *actual* evidence from the trial (such as witness testimony and physical evidence in the form of the deceased's weapons collection); thus, these newspaper accounts both "vilified" Getkate and "contributed to the entrapment of other battered women by overemphasizing the need for corroboration and ignoring the proof on record" (2014: 239).

Sheehy's example, along with others, shows how newspapers' representations of women who kill abusive partners have larger implications outside of the immediate milieu of the media: "The media provides an important source from which members of the community, such as jurors,

[196] Crucially, the dichotomy of the mad/bad woman who kills is circulated within the criminal justice system as well (Morrissey, 2003; Nicolson, 1995).
[197] *R v Getkate*, (1998) O.J. No. 6329.

form their views about legal issues and through which legal and law enforcement professionals seek to advance their preferred frames" (Easteal et al., 2015: 32). Such a statement is consistent with Statham's (2016) argument that jurors are the conduit through which social ideologies enter the courtroom. This work, then, highlights the role that media reports may have in shaping social ideologies, and, in turn, how jurors (and judges) may be influenced by these ideologies.

7.2.3 Media Recontextualizations

News reports are themselves *recontextualizations* of events (Caldas-Coulthard, 2003: 273) and these media recontextualizations have an important impact on how the public comes to understand the 'facts' of cases and, more generally, how it *decodes* social issues, including violence against women (Attenborough, 2014). As discussed in the previous chapter, Ehrlich's (2012) analysis of the text trajectory (Blommaert, 2005) of a Maryland rape trial demonstrated that the "official story" of the case (where a young woman's resistance strategy was 'read' as consent) was the one put forward in the final appellate decision. Importantly, it was the appellate decisions that ultimately framed the 'facts' of the case as a post-penetration rape, and it is these 'facts' that were re-circulated in the media, at the expense of the original narrative put forward by the complainant in the trial.

The issue of rape is also taken up by Attenborough (2014). He analyzes how witness testimony about an alleged rape, committed by WikiLeaks founder and celebrity Julian Assange, is recontextualized in media reports. He asserts that, as with all recontextualizations, media reporting on particular events may differ, in "rhetorically consequential ways", from the original version (Attenborough, 2014: 184). When events are reported in the media, they are often displayed as faithful representations of the original, whereby the media appear to close the

"intertextual gap" (cf. Briggs & Bauman, 1992) between the original interaction and the recontextualizations. As a result, the public, and other media, do not always interpret these reports as *recontextualizations*. But, Attenborough's analysis shows that the media recontextualizations of the Assange case not only downgraded the violence that Assange was alleged to have committed, but also that commentators used these recontextualizations in order to evaluate and interpret the evidence for the allegations brought against Assange—that is, to delimit what is and is not *rape* (2014: 184).

Following the work of Ehrlich and Attenborough, in the remainder of this chapter, I consider how aspects of Teresa's trial were recontextualized in media reports in "rhetorically consequential ways." In particular, I show how the majority of the news reports were devoted to the Crown's theory of the case, and such a theory, I suggest, allowed the media to advance a narrative of Teresa as a mad/bad woman in ways that are consistent with previous work on media representations of women who kill. Following Attenborough (2014), I assert that this particular depiction no doubt had an influence on how the public interpreted Teresa's motivation for killing Jack—she was not understood as a reasonable actor justified in her use of lethal force—but, also, on its perception of battered women who kill more generally.

7.2.4 Recontextualizations of the Police Interview

7.2.4.1 'Enough is Enough', 'Get Rid of Him'

In the previous chapter, I explored the textual trajectory of two phrases—'enough is enough' and 'get rid of him'—made by Teresa during her police interview in response to repeated questioning as to why she killed Jack. While these phrases seemed to be interpreted by the defence as connected to Teresa's abuse (i.e., Teresa had 'enough' of Jack's abuse and therefore took action),

the police appeared to use these phrases in order to supply a motive to the Crown (i.e., Teresa's hatred of Jack) such that the Crown could argue intent and premeditation on the part of Teresa. This (latter) interpretation of the phrases was also evident in the trial judge's Final Jury Charge, and ultimately in his sentencing, where Teresa's abuse was not considered significant enough to warrant a more lenient sentence. That is, as the phrases were situated in new contexts, new meanings (i.e., intent or premeditation) were attached to them in ways that, I suggest, supplanted their original associations (i.e., Jack's abuse). And, arguably, these new meanings had a significant impact on the outcome of the trial in that Teresa was denied a self-defence plea, as advocated by the defence, found guilty of manslaughter, and sentenced to eight years in prison instead of receiving a conditional sentence as proposed by the defence.

In this chapter, I examine how these phrases moved out of the legal sphere and were recontextualized in the news media during Teresa's trial. I argue that the meanings assigned to these utterances by the prosecution were to a large extent appropriated by the news media. That is, in line with the Crown's theory, the phrases were portrayed as signaling intent and/or premeditation on the part of Teresa. Notably absent from the media reporting was any mention of 'enough is enough' as connected to Jack's abuse, even after the appellate decision made specific reference to this interpretation (see Chapter 6, 6.3.6).

7.2.4.2 Sound Bites

The statements 'enough is enough' and 'get rid of him' appear to function as sound bites or "catchy phrases" (Hodges, 2011: 16) in the newspaper articles about this trial. Talbot, Atkinson, and Atkinson (2003: 22) define a sound bite as "a short extract taken from a recorded interview or speech" that is "written for impact". Such sound bites are then reproduced within various

media, and as Hodges (2011) remarks, these various recontextualizations can "index the prior contexts from which they came and carry with them previously established social meanings" (2011: 85). Hodges examines how certain phrases from George W. Bush's post-9/11 speeches are represented in the news media, and how these phrases reinforce or "solidify the larger narrative with which they are associated" (2011: 16). That is, key phrases of presidential discourse (e.g., 'weapons of terror', 'terrorists and tyrants') are turned into sound bites that underscore the larger "War on Terror" narrative (a narrative Bush used to justify the invasion of Iraq in 2003). Hodges also argues that if reiterations of sound bites are repeated enough, then what they represent (the "War on Terror" narrative) "may come to be accepted as fact" (2011: 87). In the examples that I present here, the 'enough is enough' and 'get rid of him' sound bites seem to underscore the larger narrative of the mad/bad woman who committed murder, a narrative made possible by the media's almost exclusive presentation of the Crown's theory of the case. That is to say, these phrases are selected and reproduced in the news media in order to sensationalize the story and help it sell for a general public who would not have access to the trial or trial transcripts. 'Enough is enough' appears to be particularly appealing as a sound bite because of its rhetorical property of repetition (or diacope —the repetition of words, but with additional words in between), in a similar way to George W. Bush's 'terrorists and tyrants', which Hodges proposes is appealing (and memorable) because of its alliteration (Hodges 2011: 87).

7.2.4.3 'She waited for her husband to fall asleep'

A second element of the trial (beyond the phrases 'enough is enough' and 'get rid of him') that underwent significant transformation as it was recontextualized in media representations also

originated from Teresa's police interview. The undisputed facts of the case are that Teresa stabbed Jack while sleeping. However, while the Crown argued this attack occurred with forethought and planning (consistent with the narrative of pre-meditated murder that they advanced at the trial), the defence argued (after the self-defence plea was thrown out) that Teresa (suffering from BWS/psychological difficulties and the effects of coercive control as a result of Jack's abuse) "snapped" on the night in question. That is, she did not plan to kill Jack. Teresa herself testified at trial that she didn't remember what happened that night, as her "mind went blank".[198]

It seems that the prosecution's determination of Teresa's premeditation (i.e., whether or not Teresa planned on killing Jack in his sleep) was largely dependent on the police interview, a section of which I have reproduced in Excerpts 1-2 below. The first excerpt begins with Sergeant KP attempting to deduce Teresa's reason for killing Jack.

Excerpt 1 (Police Int.211-214)

1 KP Okay. But he didn't...correct me if I'm wrong, Mrs. Craig, but
2 from what I understand there was no ever...never any abuse, as
3 far as hitting?
4 TC Abuse. No, he was...I don't know.
5 KP Okay. Okay.
6 TC Oh, because I take that action, that the only time I take it when
7 he was asleep other than that...
8 KP He what?
9 TC He was working all the time. He was awake.
10KP Yeah.
11TC When he's awake he really awake and he really strong.
12KP What do you mean by strong? What's that matter...what's that
13 matter about him being awake? What're you trying to say that? I
14 don't understand that.
15TC When he awake I can take...I cannot kill him.
16KP Okay. Okay. And so you're waiting for him to be asleep 'cause
17 he's stronger when he's awake.
18TC Yeah.
19KP Well, he sleeps every night. Why wasn't this done every night?
20TC No. No. No. He insomnia. He didn't sleep every night.
21KP He has insomnia?

[198] Direct Examination, p. 2039

22TC Yeah, he got insomnia he can't sleep.
23KP Did he have...did he have some sort of medication for that, Mrs.
24 Craig?
25TC No. No.
26KP Okay. So...so so is that why you're saying he was strong because
27 if he's awake he's strong and you can't do what you wanted to do?
28TC That's right.
29KP Okay. Was there a time before this when he was asleep you thought
30 you could maybe do it? Wasn't...wasn't there another time he was
31 asleep?
32TC Oh, that time I never think of doing it because my mind is not
33 focus on it.
34KP M'hm. But when you do get focus on what did you think?
35TC I don't know why I did it. Yesterday sometime...
36KP M'hm.
37TC But just down in the cell I was regret. I shouldn't kill him.
38KP But it's done.
39TC We...we...we should talk.
40KP Okay. But we have to get past that, Mrs. Craig, right. 'Cause
41 that didn't happen right.
42TC Yeah, that's right.
43KP It didn't happen so let's not talk about what didn't happen,
44 let's talk about what happened. How's that. Is that at some time,
45 Mrs. Craig-Mrs. Craig, at some time a knife was...was brought
46 into the RV and it was used on your husband, right. Okay. And now
47 you...you've told me that you're...you're angry at him sometimes,
48 that he didn't sleep and when he's awake, he's strong so you had
49 to wait til he's asleep to kill him, right?
50TC Yeah.
51KP That doesn't explain why. Just tell me why. I don't understand
52 that. Tell me why. Why would that happen? Tell me, tell the
53 cameras, tell...I...

KP asks whether there was never any physical *abuse* in the relationship (i.e., 'hitting') and Teresa answers 'no', but then hedges her response ('I don't know'—line 4). Presumably, KP asks about physical abuse in order to exclude 'abuse' as a motivation for Teresa's killing of Jack. Teresa continues that the only time she 'take that action' (i.e., stabbing Jack) was when he was asleep. She continues that when Jack is awake he is 'really strong' (line 11). It appears that Teresa is trying to indicate that the only time she could have the same kind of strength as her husband is when he is asleep, which makes sense given the physical size difference between Jack and Teresa. In lines 12-14, KP requests clarification of Teresa's previous turn about Jack being 'strong' when he's awake. Presumably, the multiple requests for clarification ('What do you

mean,' 'What's that matter,' 'What're you trying to say') indicate that the previous turn is problematic and/or significant for KP.[199] Teresa responds by stating that 'When he awake I can take...I cannot kill him' (lines 15). KP then reformulates this statement in lines 16-17: 'And so you're waiting for him to be asleep 'cause he's stronger when he's awake.' According to Johnson (2002: 97), police in interviews use *so* and *and*-prefaced questions to indicate that a stretch of prior talk is significant and important for a particular narrative they are advancing. What KP's reformulation does is to gloss Teresa's comment as *criminally* relevant (Edwards, 2008). As mentioned in the previous chapter, the interactional accomplishment of 'police work' involves repackaging suspect's descriptions of actions in order to establish testimony "with regard to putatively criminal actions and their consequences" (Edwards, 2008: 195). Here, KP's reformulation helps to establish pre-meditation and intent, or *mens rea*. That is, this reformulation characterizes Teresa as 'waiting' for Jack to fall asleep so she could kill him. Teresa responds with 'Yeah' (line 18).

The construction of this narrative (i.e., that Teresa waited until Jack fell asleep so she could kill him) continues throughout this excerpt. KP continues to probe Teresa for details in lines 29-31 in order to establish intent and premeditation— 'Was there a time before this...you thought you could maybe do it?' Teresa responds that she 'never think of doing it because my mind is not focus on it' (lines 32-33), which suggests that Jack's death was not premeditated. She then offers regret for killing Jack (line 37). In lines 43-49, KP puts forward a different version of events with the utterance in 44, 'let's talk about what happened'. What follows is KP seeming to establish the necessary elements for a murder charge, including premeditation and *mens rea* ('a knife was brought into the RV'; 'you had to wait til he's asleep to kill him'), as well as a possible

[199] The request for clarification could also indicate that Teresa's L2 English proficiency played a role in KP's inability to understand her response.

motive ('you're angry at him sometimes'). Teresa responds with 'Yeah' (line 50).

KP again tries to establish premeditation later in the interview but here it is not so much by questioning Teresa about it but rather by presupposing it.

Excerpt 2 (Police Int.240)

```
1 KP  When did you decide to...to kill your husband?
2 TC  Why?
3 KP  When?
4 TC  He's already dead okay.
5 KP  When did you decide to kill him?
6 TC  When he's sleeping, when I decide.
7 KP  Okay. Did you think there may be another way of doing it besides
8     stabbing him?
9 TC  Oh, no.
```

Specifically, KP asks Teresa both in line 1 and line 5 when Teresa decided to kill Jack. Notice that both of these questions presuppose that Teresa 'decided' to kill Jack, thereby representing Teresa's intent and premeditation as assumed and taken for granted. In sum, what Excerpts 1-2 show is the police producing a particular narrative about Teresa's intent and premeditation, and in doing so, establishing the necessary components for a murder charge. While Teresa seems to signal agreement with this narrative at points in Excerpt 1, it is also possible that, because Teresa is a non-native speaker of English, her answers are instances of the intercultural phenomenon of what is known as gratuitous concurrence. Gratuitous concurrence is a phenomenon whereby speakers respond *Yes* to Yes/No questions "regardless of belief of the truth or falsity of the proposition questioned" (Eades, 2008: 31) to appease the questioner, in spite of possibly not understanding the question at all. In intercultural interactions, this kind of response may come about because of speaker preference for surface harmony, but also because of "intimidation and coercion" in interactions that are "marked by sharp power asymmetry" (Angermeyer, 2013: 117). It has been widely observed in legal contexts (inherently asymmetrical interactions) with

Australian Aboriginals (Cooke, 1996; Eades, 2002, 2008; Gibbons, 1996), as well as in interviews with US Hispanics and speakers from Latin-American backgrounds (Berk-Seligson, 2009). Additionally, Gibbons (1996: 294) comments that gratuitous concurrence is common among people from the Asian-Pacific region where Malaysia, Teresa's country of origin, is located. Eades (2008: 97) has observed that gratuitous concurrence is more likely to occur in response to repeated questioning over a period of time, when the speaker lacks the ability to control the talk, or when the questioner "pressures" the speaker, with forceful questioning or shouting. These are all recognizable features of police interrogations. In fact, as mentioned in the previous chapter, Teresa testified in her courtroom examination that during the police interview she felt pushed to answer the police questions, and that KP reminded her of her husband because "he bang on the table and suddenly scream at me and force me to answer the question that he--answer he wants".[200] However, Eades (2008: 97) rightfully points out that because we don't have access to speakers' minds, we cannot know definitively whether any given response is, in fact, gratuitous concurrence. While it is possible that Teresa is agreeing with the propositions posed by KP in Excerpt 1, it is also feasible that her responses are something akin to gratuitous concurrence. This interpretation would be reasonable given the power dynamics in the police interview, Teresa's status as a non-native speaker of English, and because Teresa expressly stated that she never thought about killing Jack before that night (Excerpt 1, line 32). In sum, it is plausible that Teresa's 'that's right' (Excerpt 1, line 28) and 'yeah' (Excerpt 1, line 50) answers *do not* signal confirmation that she 'waited until [Jack]'s asleep to kill him,' or acted with premeditation.

Regardless, nowhere in these excerpts does Teresa herself say that she planned to kill

[200] Re-examination of Teresa, p. 2163

Jack and thus waited until he was asleep to act. Rather, this interpretation of the events under investigation is provided by KP (and Teresa may or may not have agreed to it). However, when this evidence is recontextualized by the Crown, and then later by the media, it is framed somewhat differently.

7.3 Analysis

7.3.1 The News Media Data

The primary data for this chapter comes from a corpus of newspaper articles and online news reports. These articles were obtained through three different electronic sources: the academic research database *LexisNexis,* the research database *Factiva*, and the search engine *Google*. Through *LexisNexis* and *Factiva*, I was able to search Canadian newspapers for reports of the trial. I conducted keyword searches using the terms *Teresa Craig* and *Teresa Pohchoo Craig*. I also used *Google* to search for newspapers that were not available under *LexisNexis* or *Factiva*, as well as for reports of the trial written for online-specific sources. Since the analysis in this chapter is only concerned with media recontextualizations of the trial, I excluded any articles written before the trial, and articles that mentioned the trial but did not report on it. I also excluded duplicate postings (verbatim news copy reported in more than one paper). My final corpus consists of 40 news articles that directly reported on the trial, 36 before the appeal and four after.[201] I present representative examples from my corpus of newspaper articles in the analysis below.

The first example comes from The Ottawa Citizen on the first day of trial testimony.

[201] In addition, my Google search led me to websites, blog postings, and web forums that discuss Teresa Craig and the trial, but these sources remain outside the scope of analysis.

Excerpt 3 (The Ottawa Citizen, April 15, 2008)

Accused waited until husband slept, then stabbed him: Crown

1 The jury in the murder trial of Teresa Craig has heard that she sat in the dark, waiting for her husband to fall asleep, and when Jack Craig began to snore, she got the sharpest knife in the kitchen and stabbed him four times.

2 Crown attorney Jason Neubauer told the jury that when police told Ms. Craig her husband had died, she replied: "Good for him. I always suffer verbal abuse, not physical abuse."
He said she also told police, "I hate him. Yeah, enough is enough. I kill him."
[...]

3 In his opening address in Ms. Craig's first-degree murder trial at the Elgin Street courthouse Tuesday, Mr. Neubauer told jurors they will hear evidence that Mr. Craig was never violent with the accused.

The headline of the story, 'Accused waited until husband slept, then stabbed him: Crown' represents the Crown's theory that Teresa is a murderous woman who preyed on her husband when he was vulnerable (asleep). Because headline space is limited, writers must employ "the minimum number of words to package maximum information" (Teo, 2000: 14). The headline functions to both present what the article is about, as well as to provide a 'hook' that will pique the reader's interest (Teo, 2000: 36). Both the lead paragraph of news stories—the abstract or "micro-story" of the article (Bell, 1991: 176)—and the headline—the abstract of the abstract (Bell, 1991: 150)—cue the reader as to how to interpret the remainder of the article. From the headline in Excerpt 3, readers are 'hooked' on a story of a woman killer. Moreover, although the headline is framed as coming from the Crown, the lead paragraph in Excerpt 3 makes no mention that the 'micro-story', that is, that Teresa viciously murdered her husband in his sleep, comes from the Crown's opening address. This is significant because opening and closing statements, unlike witness testimony, are not considered to have the status of evidence in trials. [202]

[202] Although, they are expected to closely track the evidence presented in the case.

We see in this first paragraph that Teresa's actions are displayed as premeditated; for instance, 'she sat in the dark, waiting for her husband to fall asleep' suggests that Teresa planned to murder Jack. Recall that in the discussion of Excerpt 1, I propose that it is possible that Teresa's responses (in lines 18 and 50) were *not* signaling confirmation of KP's reformulations (i.e., that Teresa planned Jack's murder). Yet, paragraph 1 of Excerpt 3 is quite definitive in its representation of Teresa's premeditation and intent in the killing of her husband. It should also be noted that the representations of Teresa's actions in this paragraph are fairly sensationalized. '[Sitting] in the dark' helps to conjure up the image of an evil woman hiding in the dark, waiting to commit a crime. Moreover, we are told that Teresa secured 'the sharpest knife in the kitchen' in order to execute the stabbing. Consistent with previous research, we see that Teresa is framed as a *bad* or evil woman here.

In the next paragraph, the authors explicitly reference the Crown's opening address. The newspaper here is engaging in a multi-layered recontextualization of Teresa's statements: The newspaper is reporting what the Crown said during his opening address, which is itself a recontextualization of what Teresa said in the police interview. Thus, Teresa's statements from the police interview are twice removed from the original producer (Teresa). But, interestingly, the phrases are still represented as direct speech and attributed to Teresa. Moreover, what Teresa said over the sequence of many turns in the police interview is condensed into one sentence, and represented as Teresa's exact words. Bell (1991: 60) has called these kinds of quotes pseudo-direct speech or pseudo-quotes—quotes which are written by a press officer but attributed to

another source.[203] However, while Bell found, in his work, that pseudo-quotes were at least sometimes approved by the original source in question, presumably neither the Crown nor certainly Teresa has had any say in how the statements in Excerpt 3 are reproduced in the newspaper.

The pseudo-quotes in Excerpt 3 not only eliminate material from the police interview (for example, the fact that Teresa's statements in the police interview were answers to a police officer's persistent questioning is left out of the news article[204]), they also misrepresent Teresa's original statements. For example, in the original police interview, Teresa's phrases 'I hate him' and 'enough is enough' do not appear adjacent to each other, but in this article they do. And, interestingly, when 'I hate him' and the 'enough is enough' sound bite are juxtaposed, it appears that what Teresa can no longer tolerate is her 'hateful' husband.[205] In addition, we see that Teresa is represented as saying something that was *not* produced in the police interview,'I kill him', an utterance that could be construed as a blatant confession to murder, especially when it follows 'I hate him' and 'Yeah, enough is enough.'[206] Furthermore, since these words are represented as a verbatim rendering of what Teresa said, the 'direct speech' (the pseudo-quote) lends "veracity and authenticity" to the reported account (Stokoe & Edwards, 2007: 339). Taken together, then, the recontextualizations of Teresa's words in paragraph 2 (of Excerpt 3) function to frame Teresa

[203] Waugh (1995: 160) uses the term pseudo-direct speech to refer to a type of indirect speech in newsprint, where utterances are represented with markers typical of direct speech (such as certain pronouns and tenses) but not quotation marks that would index them as direct speech. Similarly, Jacobs (1999: 148) refers to 'constructed quotes'—invented quotes represented as direct speech.

[204] Similarly, Clayman (1990: 79) found that newspapers often only quote public figure's remarks, and leave out the reporter's questions that elicited these remarks.

[205] The prefaced *yeah* is included in the representation of Teresa's statement but the pause that is apparent in the transcription—and that I argued (in Chapter 6) could be a sign that Teresa was hesitating or disagreeing with KP's assessment that she killed Jack because she hated him—is omitted.

[206] I noted in Chapter 6 that both phrases ('enough is enough' and 'get rid of him') were phrases that Teresa attributed to Michael, but this attribution is not included here. I suggested previously that, in attributing these utterances to Michael, Teresa may have been trying to distance herself from them, or alternatively may have been signaling that if even a third-party actor, i.e., Michael, thinks Jack's abuse is 'enough,' then her decision to take action is more reasonable.

as a “cold-blooded killer”. And, significantly, while this article is representing the Crown’s theory of the case and not the one put forward by the defence, this particular vantage point might be something that is missed by the average reader.

Excerpt 4 also reports on the Crown’s opening address, which itself (as mentioned above) includes recontextualizations of Teresa’s statements to the police.

Excerpt 4 (Times Colonist, April 19, 2008)

Woman admitted stabbing husband to death, court told

1 A former Protection Island resident on trial for her husband's murder admitted to a neighbour she was the killer, an Ottawa court heard this week
[...]
2 In his opening address to the jury, Crown attorney Jason Neubauer said she agreed to the marriage even though she never liked Jack Craig.
[...]
3 The jury heard that Teresa Craig had waited in the dark for her husband to fall asleep on the pull-out coach. Their son was asleep in a bedroom at the rear of the 32-foot RV.
4 When Jack Craig began to snore, Neubauer said she got the sharpest knife in the kitchen and stabbed him four times.
Neubauer said that when police told Craig her husband had died, she replied: "Good for him. I always suffer verbal abuse, not physical abuse."
5 He said she also told police, "I hate him. Yeah, enough is enough. I kill him."
[...]

Teresa Craig: "I hate him. Yeah, enough is enough. I kill him."

Figure 7.1 Photograph of Teresa Craig, Times Colonist, April 19, 2008

Like Excerpt 3, this report represents Teresa as 'wait[ing] in the dark for her husband to fall asleep' after which 'she got the sharpest knife in the kitchen and stabbed him four times.' As with Excerpt 3, the media report represents the Crown's theory here—that Teresa intentionally killed Jack. A further similarity between Excerpt 3 and 4 is the inclusion of pseudo-quotes, which misrepresent Teresa's answers to questions in the police interview**: '**I hate him. Yeah, enough is enough. I kill him.' (See discussion above.) However, not only does this pseudo-quote appear in the body of the article, it also appears as the caption to a photograph of Teresa (Figure 7.1). Captions help to contextualize images, which are themselves "recontextualized by the news process" (Huxford, 2001: 47). According to Teo (2000: 16), they "can have a very powerful ideological effect on readers' perception and interpretation of people and events". We can see in this particular caption that Teresa's statements to the police are wholly decontextualized and reproduced under the undated, and not particularly flattering, photograph. The complete caption,

'I hate him. Yeah, enough is enough. I kill him', here offers to readers a particular interpretation of the image, and therefore of Teresa herself: It emphasizes Teresa's criminality as she appears to be confessing to an intentional, premeditated killing.

While the first two newspaper excerpts above focus on the Crown's opening address, the focus of Excerpt 5 is the replaying of Teresa's police interview in court.

Excerpt 5 (The Ottawa Citizen, May 02, 2008)

'Maybe there is some evil in me':
Accused unable to explain reason for stabbing husband

1 In a rambling three-hour statement to police, accused murderer Teresa Pohchoo Craig came across as a hard-working, loving mother who saw herself as submissive to a husband she had grown to hate.
2 But Mrs. Craig was unable to supply a straightforward answer when asked again and again by police why she had repeatedly stabbed Jack Craig as he was asleep in the couple's RV motorhome on Donnelly Drive near Kemptville.
3 "Maybe there is some evil in me," she told Ottawa police Sgt. Michael Hudson, the lead investigator in the case.
"Something keep pushing me. ... Do it. Do it," she said.
4 The video of the statement was played yesterday in the courtroom where Mrs. Craig is on trial, charged with first-degree murder in her husband's death.
5 "I hate him, that's why I kill him. Enough is enough. Get rid of him," she said on the recording.
6 But earlier in the statement she said, "I didn't mean to kill him."
7 Asked if she had any message for her nine-year-old son, Mrs. Craig said, "Just tell him I'm sorry I kill his dad. He's going to miss him for a long time. I wish I didn't do it."
8 She said that she worried her son will hate her "because I kill his dad."
9 Mrs. Craig said she waited until her husband fell asleep before stabbing him in the early hours of March 31, 2006.
10 "When he's awake, I cannot kill him. He's strong."
[...]

The headline, 'Maybe there is some evil in me', immediately characterizes Teresa negatively and this characterization frames the reader's understanding of the article as a whole. This phrase is taken from the police interview when Officer MH asks Teresa why a "good mother, a hardworking person ends up in this situation" to which she responds: "Maybe there is

something...some evil in me. I don't know why I did it. Now I regret" (Police Interview, p. 12). By choosing this particular quote as the headline, the reporter seems to sensationalize the story—there is something 'evil' lurking inside of Teresa and it is this evil impulse which has motivated a killing that is otherwise inexplicable. This quote is repeated in the body of the report (paragraph 3).

We see that the *bad* (i.e., 'evil') woman narrative is further reinforced with the recontextualization of 'enough is enough' and 'get rid of him' in paragraph 5. Teresa's utterances are once again misrepresented here (see discussion above) and additional statements are added and attributed directly to Teresa—'I hate him that's why I kill him. Enough is enough. Get rid of him'. The use of the quotation marks indicates that this is direct speech; a further indication that this is supposed to be a verbatim rendering of Teresa's words is the mention of the videotape and the reporting phrase 'she said on the recording'. What is interesting about this particular pseudo-quote is that there is a direct and explicit link established between Teresa's hatred of Jack and her killing of Jack, 'I hate him that's why I kill him', and this same link seems to get projected onto the subsequent sound-bites, 'Enough is enough. Get rid of him.' Thus, while the point of this article, as shown in the sub-headline ('Accused unable to explain reason for stabbing husband'), seems to be that Teresa was unable to explain her reasons for killing Jack, through the recontextualization of Teresa's words in paragraph 5, the article at the same time conveys the idea that Teresa's hatred for Jack motivated the killing. This, of course, was the Crown's theory. However, there is no mention in the article that this is the Crown's theory; rather the recontextualizations of Teresa's words are represented as coming directly from the videotape of Teresa's police interview as this videotape was played in court.

In paragraph 9 of Excerpt 5, KP's and Teresa's interaction (as shown in Excerpt 1 and 2) is recontextualized in a way that discounts the dialogic nature of the police interview. Research (cf. Jonsson & Linell, 1991; Rock, 2001; van Charldorp, 2014) has been conducted on the ways in which the interactional nature of police interviews is obscured when represented in written documents. As mentioned previously, narratives created in police interviews are co-constructed as police officers play a significant part in creating the suspect's 'story'; however, when these interviews are transformed into written documents, information may be "introduced through a question or a suggestion from the police officer" but "such differences between sources are systematically *blurred*" (Jonsson & Linell, 1991: 434, emphasis added). In her investigation of the Pinkenba case, Eades (2008) found that one way source distinctions were *blurred* was the switching of authorship attribution. This was a common tactic not only in the courtroom but also in media reports of the case. For example, propositions that were uttered by the defence counsel during the boys' cross-examination were later attributed to the boys themselves when this information was recontextualized in the media.

In a similar way, we see that the source distinction of a key utterance from Excerpt 1 (lines 48-49) —'you had to wait til he's asleep to kill him, right?'— is *blurred* when this portion of the police interview is recontextualized in the media. That is, even though Teresa only confirmed KP's utterance about her premeditation and intent (although I have argued that this is not clear), Teresa is nevertheless represented as having authored a similar statement to that of KP's in Excerpt 1. Specifically, what KP originally said in Excerpt 1 (lines 48-49) is transformed, and the sentiment is imputed to Teresa in paragraph 9 of Excerpt 5, as evidenced by the reporting verb *said* —'Mrs. Craig *said* she waited until her husband fell asleep before stabbing him'. This representation of the evidence suggests that Teresa premeditated her

husband's killing and, moreover, is portrayed as something Teresa said in the video recording as opposed to something that is a part of the Crown's theory of the case.

We also find blurring of sources in the next news report, a report that focuses on Teresa's cross-examination.

Excerpt 6 (Ottawa Sun, May 22, 2008)

Woman changes story on the stand; denies plotting to kill husband during sleep

1 A 51-year-old woman, charged with the first-degree murder of her husband, denied under cross-examination Thursday she plotted to kill him as he slept on March 31, 2006.
2 But Teresa Craig's only explanation for her damning statements to police later that day was that her mind was ``messed up.''
3 ``My mind was blank at the time ... not thinking anything,'' she insisted of the moment she picked up a kitchen knife and repeatedly stabbed Jack Craig, 54, in the trailer parked outside their gas bar about 60 kilometres south of Ottawa.
4 She also denied thinking what she later told police, that she wouldn't be able to kill her husband if he were awake.

The headline summarizes the article's narrative: Teresa originally confessed her 'story' in the police interview, but later denied or recanted her confession under cross-examination; that is, she 'chang[ed] her story on the stand'. Teresa's original story, as represented in this report, is that she admitted to 'plotting to kill' her husband Jack. Recall, however, that Teresa did not actually say anything like this in her police interview; rather, as indicated in my discussion of Excerpt 5 above, KP asks Teresa 'when he's awake, he's strong so you had to wait til he's asleep to kill him, right' (Excerpt 1, 48-49), and Teresa seems to confirm that proposition. So, while KP originally produced the 'story' that Teresa planned to kill her husband (Excerpt 1), the story is now ascribed to Teresa in Excerpt 6 (paragraph 1), and is represented as Teresa 'plott[ing] to kill' her husband. Teresa is then said to have 'chang[ed] her story' under cross-examination. Arguably, this report presents Teresa in a negative light by suggesting, first, that she confessed to

murdering her husband (i.e., 'plotted to kill' her husband) and, second, that she then denied it under cross-examination.

In the last excerpt in this section, we again see how the interaction from Excerpts 1 and 2 is reframed. This excerpt reports on the cross-examination of a defence expert witness, Dr. Kunjukrishnan.

Excerpt 7 (The Ottawa Citizen, May 31, 2008)

'Right knife for the job,' trial hears; Lawyer says fact wife used a sharp weapon proves deliberation

1 The fact that Teresa Pohchoo Craig chose a sharp knife to stab her husband shows she was capable of deliberately planning to kill him, Crown attorney Jason Neubauer told a court yesterday.
[...]
3 In her statement to police, Mrs. Craig said she choose [sic] the knife "because it's sharp." Mr. Neubauer said, "These are the words of someone who has thought this out."
4 He also pointed out that Mrs. Craig told police she waited for her husband to fall asleep before she stabbed him several times. "When he awake, I cannot kill him," she said

In Excerpt 7, both the headline— 'fact wife used a sharp weapon proves deliberation'—and paragraph 1—'she was deliberately planning to kill him'—demonstrate that it is the Crown's theory of the case that is being portrayed: That Teresa chose a sharp knife to kill Jack indicates that his death was premediated and intentional. We see that this theory is further developed in paragraph 4, where it is reported that the Crown 'pointed out that Mrs. Craig told police she waited for her husband to fall asleep before she stabbed him several times.' As with Excerpt 5 and 6, the collaborative nature of Teresa's police interview is obscured in this excerpt, and the utterances KP produced in Excerpt 1, lines 44-49, are reformulated as having come from Teresa ('Mrs. Craig *told* police…'). However, unlike Excerpts 5 and 6, this interpretation is presented as the Crown's evidence ('He pointed out…'), rather than having come directly from Teresa.

In sum, Excerpts 3-7 are representative examples of how the media overwhelmingly adopted the Crown's theory of the *R v Craig* case in their recontextualizations of aspects of the trial before the appeal. In analyzing these excerpts, I have focused on the recontextualization of two different portions of the police interview. First, I have shown how the phrases, 'enough is enough' and 'get rid of him', in these articles are linked exclusively to Teresa's 'hatred' for Jack and not to her abuse. This supports the Crown's theory that 'hatred' was Teresa's motive for killing Jack, and, by extension, that she was guilty of first-degree murder. As demonstrated in Chapter 6, this theory was at odds with the defence's understanding of what motivated Teresa to kill Jack, specifically, that what Teresa had 'enough' of was Jack's abuse. Second, I have shown how the media engages in a "blurring of source distinctions" when they represent a key element of the case, i.e., whether or not Jack's death was premeditated. Excerpts 5 and 7 both portray Teresa as having 'waited' for Jack to fall asleep before she stabbed him. As shown in Excerpts 1 and 2, this version of events is one that was put forward by KP in the police interview, with Teresa seeming to confirm them. (As noted, there is some question as to whether this confirmation was meaningful or in fact gratuitous concurrence). However, what we see in Excerpts 5 and 7 is that the gist of KP's utterance—'you had to wait til he's asleep to kill him' (Excerpt 1, lines 48-49)— is attributed to Teresa (i.e., in paragraph 9, Excerpt 5 and paragraph 4, Excerpt 7). Similarly, KP's 'story' (that she 'plotted to kill Jack') from Excerpt 1 is also ascribed to Teresa in Excerpt 6. Importantly, the representations of Teresa as having waited (or plotted) to kill Jack suggests that her actions were premeditated and intentional, again supporting the Crown's theory. What we see in Excerpts 3-7, then, is that the recontextualizations of these two portions of the police interview help to construct Teresa not as a battered woman, but as a *bad* woman.

7.3.2 Positive Portrayals

Previous research suggests that the prosecution's version of events (as opposed to the defence's version of events) is more often represented in media reports on trials in which battered women kill their partners (for example, Morrissey, 2003; Naylor, 1994; Sheehy, 2014). My findings also show that the majority of the news articles on the trial focused on the Crown's theory, and did not generally report on Jack's abuse. For example, of the 36 articles I looked at written before the appeal, only 14 articles devoted significant space to the defence's theory of the case and specifically mentioned Jack's abuse. Of course, that the media chose to focus on the Crown's theory of the trial is probably unsurprising given that its version of events is arguably more sensational than the defence's version: Teresa was a vengeful woman who sat ominously in the dark, plotting to kill her husband. She planned the murder because she 'hate[d] him'.

Though the Crown's version of events was more prevalent (than that of the defence) in the media reports of the trial I looked at, I did find some examples that focused on the defence's point of view and portrayed Teresa as a victim of abuse. These included ones that reported on the examination of the defence's expert witness, Dr. Evan Stark—*Wife 'felt like a hostage,' expert testifies; Tells murder trial of systematic abuse* (Ottawa Citizen, May 30, 2008)—as well as on Teresa's cross-examination—*Murder trial hears of mother's love; Woman stayed in abusive marriage to save son* (Ottawa Citizen, May 23, 2008).[207] Excerpt 8 below is an article that reports on Teresa's cross-examination:

[207] Additionally, two article 'backgrounder' pieces (Hanna, 2006: 201) were published that included interviews with members of the community on Protection Island (one before the trial had commenced, and two before the conviction). I eliminated these pieces from my analysis because they did not report on the trial itself, though I mention them because I think it is important to highlight that, unlike in many cases, there was some media attention given to contextualizing Teresa's experiences within the context of Jack's abuse.

Excerpt 8 (The Ottawa Citizen, May 23, 2008)

Murder trial hears of mother's love; Woman stayed in abusive marriage to save son

1 The power of a mother's love for her child kept Teresa Pohchoo Craig at her abusive husband's side, a court heard yesterday.

2 Mrs. Craig testified that she agreed to return to Kemptville from British Columbia with Jack Craig in October 2005 solely to protect their eight-year-old boy from the physical abuse meted out by her husband. She is on trial for first-degree murder in the stabbing death of Mr. Craig on March 31, 2006.

3 In her second day of testimony, under cross-examination by Crown attorney Jason Neubauer, Mrs. Craig was insistent that she stayed with Mr. Craig to keep her son safe.
"Yes, from my true heart," she said.
"I love my son. I'm his mother, I look out for him," she said through tears.

4 The court heard evidence previously that Mr. Craig, 54 when he died, often slapped his son on the top of the head and
on the arms, making him cry. He also yelled at the boy and called him fool.
[...]

Here, Teresa's status as a loving mother who sacrificed herself for her son is foregrounded in the headline —'Woman stayed in abusive marriage to save son'; presumably this is done to counter society's image of a murderer and to present Teresa in a positive way, as a *selfless mother* (Naylor, 2001b) who stayed in an abusive relationship for her son. This kind of representation is further evident in paragraph 2— Teresa stayed with Jack 'solely to protect' Martyn. The inclusion of the quotations in paragraph 2 also furthers this narrative— 'I love my son. I'm his mother, I look out for him'. The direct quotes add a sense of credibility (Philips, 1986) and authenticity to the claim that Teresa is a *selfless mother*, and this is further reinforced by the depiction of her testifying through 'tears'. Moreover, significant space is given to Jack's abuse— he was an 'abusive husband' (paragraph 1), and he 'meted out' physical abuse towards their son (paragraph 2). The public is reminded of the evidence from Teresa's testimony in direct-examination: the paper provides specific examples of Jack's abuse (he 'often slapped his son on

the top of the head' and 'yelled at the boy'.) In general, then, this article is framed in such a way as to garner sympathy for Teresa. Teresa is positioned as a *mother* right from the headline, and her selfless behaviour, i.e., remaining in an abusive relationship to 'keep her son safe' (paragraph 3), is the focal point.

In contrast to the articles written before the appeal, those written after all portrayed Jack as abusive and situated Teresa's killing of Jack within the context of this abuse. This is, of course, unsurprising considering the appellate decision (analyzed in the previous chapter). The Court of Appeal determined that Teresa was a battered woman and suffered from mental illnesses as a result of Jack's abuse, and it was this that led her to kill Jack. Teresa's status as a battered woman was considered to be a mitigating factor in determining a sentence and the appeal to her sentence was therefore granted. (The court found the original sentence excessive in light of its findings.) The following two articles report on the ruling of the Court of Appeals:

Excerpt 9 (The Kingston-Whig Standard, February 25, 2011)

Judge erred in sentencing woman who killed abusive hubby: Appeal

1 A court ruling overturned an eight-year sentence for a woman who stabbed her abusive husband to death with a butcher knife because a trial judge made two errors, according to the decision released Thursday.
[...]
2 However, Teresa Craig suffered years of psychological and emotional abuse from her husband and was subsequently diagnosed with depression and post-traumatic stress disorder

Excerpt 10 (The Ottawa Citizen, January 29, 2011)

Appeal court frees convicted killer

1 Teresa Pohchoo Craig's eight-year sentence for death of husband reduced to time served
[...]
2 Craig was subjected to constant verbal abuse from her husband, which ruined her health and brought her to the brink of suicide.

In both excerpts, Jack's abuse of Teresa abuse is presented as factual, rather than alleged. For example, in Excerpt 9, Jack is positioned as the 'abusive hubby' (headline) and 'abusive husband' (paragraph 1). Both Excerpt 9 (paragraph 2) and Excerpt 10 (paragraph 2) clearly depict the details of his abuse ('psychological and emotional abuse'; 'constant verbal abuse') as they were represented in the appellate decision (discussed previously in Chapter 6). What these two excerpts show is that as the 'official story' (cf. Ehrlich, 2012) of Teresa's case changed post-appeal, so too did the media representation. Teresa is represented post-appeal as an abused woman, not a *bad* murderer.

7.3.3 Feminist Backlash Discourse

The power of the news to shape both institutional and social ideologies is evident in the rather large body of editorial articles, website forums, and examples of 'citizen journalism' (cf. Bou-Franc, 2013) that reported on the trial, most of which also portrayed Teresa as *mad* or *bad.* These pieces can be classified as what Ehrlich (2012, citing Faludi, 1991) refers to as "feminist backlash discourse".[208] The authors of these pieces espouse anti-feminist rhetoric, most notably by disbelieving Teresa's claims of abuse. Although there are many examples of this type of discourse, I have chosen the next piece because it engages in a multi-layered recontextualization of 'enough is enough' and 'get rid of him'. That is, the entextualized *text* has gone from the police interview (the original site of production) to the Crown's opening and closing address, to the newspaper reports, and finally, to this editorial.

Excerpt 11 (The National Post, August 13, 2008)

[208] See also Berns (2004) on the "Anti-Feminist frame" in magazine depictions of battering.

Hear the Other Side

[...]

1 Ms. Craig's recent trial in Ottawa heard evidence that one night, while Jack slept under the influence of alcohol and marijuana, she put a pillow over his face and stabbed him repeatedly with a butcher knife. In a videotaped statement made to police later, she admitted they had not even been arguing that night. Rather, she said: "I hate him, that's why I kill him. Enough is enough. Get rid of him."

2 She was an abused wife, she told police, but the abuse was never physical, just verbal. As I perused the newspaper reports of her allegations, I couldn't help imagining how Jack's side of the story might have sounded, had he lived to tell it.

3 Teresa "I even had to ask permission to telephone my family."
Jack "That was after she phoned her family in Malaysia ten times within a week and ran up a phone bill of $300."
Teresa "He even timed my visits to the bathroom."
Jack "I yelled at her once, 'You've been in the shower for 25 minutes with the bathroom door locked, and I have to use the toilet.'"
Teresa "He called me 'bitch' and 'whore.'"
Jack "She called me worse than that."

4 The jury, however, got to hear only Teresa's version of the story. They responded by finding her guilty only of manslaughter, rather than the premeditated, first-degree murder that her act seems to me to have been. As a result, she avoided life imprisonment and may be out of jail after serving as little as two years of her official eight-year sentence.

[...]

5 Readers, get used to this. We can expect to see many more female criminals getting off with a slap on the hand in future.

[...]

6 Back in Ottawa, no fewer than 46 female sympathizers attended Ms. Craig's sentencing, including representatives of LEAF, the radical feminist legal organization. Some supporters reportedly broke down sobbing after her sentence was delivered. Many felt she should serve no jail term at all. My mind boggles at the kind of world these women want to live in -- a world where women murder men instead of leaving them, with complete impunity. My suspicion is that the jury was intimidated by this coterie of vixens, but we'll never know. They're legally forbidden to say.

This article, like Excerpts 3, 4, and 5, uses a pseudo-quote of ‘enough is enough’ and ‘get rid of him’ in paragraph 1. That is, these phrases are represented in a quote attributed to Teresa in a way that misrepresents their actual occurrence in the police interview. Similar to Excerpts 3, 4, and 5, it appears that this article has accepted the Crown’s interpretation of these phrases given its juxtaposing of them with ‘I hate him. That’s why I kill him’.

A further indication that the author's interpretation of these phrases is similar to the Crown's is evidenced by the sentence that precedes the (mis)quoting of Teresa's words: 'she admitted they had not even been arguing' on the night of the killing. By focusing on the supposed absence of an argument between Teresa and Jack, the author is drawing attention to a lack of justification for the killing; and, this lack of justification is contrasted with (via the use of 'rather') with an alternative motive provided in Teresa's *own* words: 'Rather, she said: "I hate him, that's why I kill him. Enough is enough. Get rid of him"' (paragraph 1). This focus on an argument (or lack thereof) as justifying a killing invokes a traditional understanding of self-defence, one based on an imminent threat of death or serious harm. It is important to note, however, that such understandings of self-defence have been said to reflect the androcentric reasonable *man* standard (Ogle & Jacobs, 2002; Schneider, 2000) —which was discussed in Chapter 2. According to such a standard, Teresa's description of her actions that night would be deemed unreasonable (and certainly not self-defence) because there was no violent encounter, or *even* an argument. It should be pointed out that the Crown also used the 'lack' of an argument to bolster their claim that Teresa did not act in self-defence.

The representation of Teresa as a *bad* woman continues throughout the opinion piece. While the author acknowledges that Teresa told the police of her abuse, the abuse is described as 'just' verbal (the adverb *just* downgrades the abuse). And, Teresa's claims of abuse are juxtaposed with purely fictionalized quotes from Jack, which further call into question the reality of the abuse. The author's skepticism regarding Teresa's abuse ultimately leads her to conclude that Teresa should have been convicted of first-degree murder and that the finding of manslaughter was the result of the jury hearing 'only Teresa's version of the story.' Teresa is portrayed as a murderous woman who exaggerated her abuse and those who sympathized with

her are characterized as a 'coterie of vixens' (paragraph 6). We see that it is not only Teresa who is represented as 'bad', but also her supporters.

Collins (2014) remarks that the media's harsh depictions of women who kill their male partners are indicative of a larger criminal problem: "It is perhaps not surprising, in this context, that these portrayals are so often accompanied by text bemoaning the moral decay of western society and proclaiming that crime is everywhere" (2014: 306). That Teresa's case is symptomatic of the "moral decay" of (at least Canadian) society for the author is evident in the final two paragraphs. The author maligns what she sees as the inevitable decline of the criminal justice system in its dealings with women who kill abusive partners and states that the public can expect 'more female criminals getting off with a slap on the hand in the future' (paragraph 5).

7.4 Chapter Summary

Because the workings of trials are generally not easily accessible to the public, the media become the main source of information regarding legal cases. Media reports of trials, then, wield significant power in influencing how the public comes to understand and decode critical social issues that arise in these cases, including that of intimate partner violence. The analysis presented in this chapter has shown how portions of Teresa's trial were recontextualized in "rhetorically consequential ways" (Attenborough, 2014). Through the recontextualizations of the phrases 'enough is enough' and 'get rid of him' from Teresa' police interview, the media was able to put forward a particular narrative, one that supported to a great extent the Crown's theory of the case. Crucially, in these recontextualizations, Teresa was *not* generally represented as an abused woman who acted as a result of this abuse. Rather, the media reports were written in such a way as to deliver a very particular kind of story, one that sensationalized Teresa as *bad*, in line with previous research conducted on this topic.

Beyond recontextualizations, the blurring of sources was another intertextual device that the media articles employed in ways that helped to represent the Crown's theory of the case—that Teresa was guilty of first-degree murder. A particularly salient utterance in the excerpts above is one produced by the police interviewer: 'when he's awake, he's strong so you had to wait til he's asleep to kill him, right?' (Excerpt 1, lines 48-49). While it is not completely clear whether Teresa's confirmation of this proposition in the police interview was meaningful (I have speculated that Teresa's seeming confirmation may have been an instance of gratuitous concurrence), in a number of the media excerpts above she was represented as the source of this utterance. I have proposed that the imputing of this utterance to Teresa functioned to represent her as acting with premeditation and intent when she killed Jack. These attribution switches, then, were integral to the media's representation of the Crown's theory of the case (at the expense of the defence's theory) and helped further the Teresa as *bad* narrative.

As Berns (2004: 37, emphasis in original) comments, "The media shape the way people *think* about social problems; for many people, in fact, the media are how they *experience* social problems." I have contended, following Attenborough (2014), that one of the ways in which public perceptions of social problems are formed is through mediatized recontextualizations. I have suggested that the recontextualizations of Teresa's trial might have influenced not only public perception of Teresa, but also to a larger extent public perception of battering and battered women who kill. Importantly, as misconceptions about battered women are sustained and reproduced in the media, so too they may find their way into the legal system through the public participation of jurors. In this way, mediatized recontextualizations may have far-reaching effects.

Chapter 8: Conclusions

8.1 Introduction

For centuries, so-called 'wife abuse' has been ignored and excused by the very social structures, such as the judicial system, put into place to protect citizens. While various feminist reforms have worked towards protecting women and criminalizing woman battering, intimate partner violence (IPV) against women remains a widespread, lethal problem. To this day, women are significantly more likely to die at the hands of their male partner than the reverse. Yet, when women act to protect themselves or their children, they have often not been afforded the same rights as men in claiming self-defence. In fact, much research and advocacy for these battered women has revolved around confronting the androcentric biases present in the legal system and, specifically, in the laws of self-defence. Scholars have asserted that battered women who kill and claim self-defence are systematically disadvantaged in court for a number of reasons. For example, women's unique experiences with IPV have often been discounted by legal actors. Instead, women have been measured against an ostensibly male subject. They have been presumed to be freely choosing individuals unconstrained in their actions. Additionally, the standards by which self-defence law has been determined are likewise problematically gendered. That is, conceptions of 'reasonableness' and 'rationality', as defined by self-defence law, have been constructed from a male perspective and are inadequate for *women* in contexts of IPV (Crocker, 1985; Ogle & Jacobs, 2002; Schneider, 1996, 2000).

It has been suggested that in order to locate and ultimately combat legal inequalities, scholars should address the *language* in "the details of everyday legal practice" (Conley & O'Barr, 2005: 3). In accordance with this recommendation, this dissertation has utilized a

feminist critical discourse analysis to examine the detailed linguistic practices of a legal case in which a battered woman who killed her abusive husband claimed self-defence, *R v Teresa Craig*, (2011 ONCA 142). The defendant, Teresa Craig, claimed that she suffered from symptoms consistent with Battered Woman Syndrome, and her defence also introduced testimony on coercive control as part of her self-defence plea. As her plea of self-defence at trial was unsuccessful, and she was (at least initially) unsuccessful in utilizing BWS or evidence of her husband's coercive control to mitigate sentencing, particular attention has been given to the linguistic details of the court process that contributed to and enabled this outcome. The overall purpose of this project has been to highlight the ways in which the various participants within the criminal trial, the appeal, and the news media use language to construct Teresa's identity in ways that made difficult her ability to use either BWS or coercive control as factors in her self-defence plea or leniency in sentencing. Furthermore, not only has my analysis shown how discursive constructions potentially impacted the legal outcome in *R v Craig*, it has also questioned the implications of such constructions for larger societal interpretations of battered women who kill.

Critical discourse analysis necessarily entails a focus on both discursive practice at the local level and the larger institutional/social processes, realities, cultural knowledge, and ideologies enmeshed within them. In conducting my 'critical' analysis, my investigation of the linguistic details of the case has been informed by research on battered women, intimate partner violence, and the legal system. A key component of critical discourse analysis is the belief in the constitutive power of discourse; that is, discourse not only reflects but also constructs elements of the social world (Fairclough & Wodak, 1997). The fundamental aims of CDA are to locate issues of the 'social world', such as power asymmetries, ideological hegemony, oppression, and social inequality, as they are "expressed, constituted, legitimized, and so on, by language use (or

in discourse)" (Wodak & Meyer, 2009: 10). A *feminist* critical discourse analysis adheres to the major principles of CDA and is itself a program for social justice, as it ultimately works towards ameliorating gender inequalities present in society (such as those evident in the judicial process). FCDA adopts a distinctly political *feminist* position, and it focuses on addressing the discriminatory gender ideologies that are "enacted and renewed in society's institutions and social practices," chief among them, discursive practices (Lazar, 2014: 186). FCDA's focus on an overtly feminist emancipatory agenda makes the framework most suitable for praxis-oriented research because it "mobilizes theory in order to create critical awareness and develop feminist strategies for resistance and change" (Lazar, 2014: 184). As feminist legal scholars have critiqued the gendered nature of the law in relation to the masculine bias of self-defence laws, an FCDA approach seemed an appropriate one for interrogating how these presumed biases become embedded in the linguistic practices of a legal case where an abused woman killed her husband but was denied a self-defence plea. To address the larger objective of FCDA research, that of developing strategies for "resistance and change", my hope is that the critique of the linguistic details of this case may illuminate potential ways to secure fairer outcomes for battered women who kill abusive partners.

Having presented a general overview of the dissertation's aim and theoretical underpinnings, the next section summarizes my empirical findings and their significance. I then highlight what I believe are the strengths of this project. The final section discusses suggestions for future research.

8.2 Summary of Empirical Findings

The first of my empirical chapters, Chapter 4, focused on questioning in Teresa's direct examination. I claimed that the defence utilized a series of strategic questioning practices in an attempt to solidify Teresa's status as a battered woman who suffered from her husband's abuse and tactics of coercive control, thus strengthening her initial plea of self-defence. My analysis showed that this was accomplished in two ways. First, the lawyer employed a line of questioning that allowed Teresa to narrate her experiences of abuse in a way that contextualized them within a larger framework of intimate partner violence and, specifically, coercive control. The defence lawyer's strategic use of open-ended questions allowed significant aspects of Teresa and Jack's relationship to emerge, such as Jack's verbal abuse, his escalating aggression post the birth of their child, his access to and use of weapons (guns, an axe, and chainsaw), and his patterns of isolation and domination (which are consistent with the theory of coercive control). Importantly, because these are all factors that have been reported to either increase the likelihood of or be concurrent with lethal violence, the defence's focus on these elements helped to show that Teresa had reason to believe that her safety (or the safety of her son) was in jeopardy. This therefore strengthened her claim to have killed in self-defence.

The second strategic questioning technique the defence employed involved the use of questions that anticipated potentially damaging accusations from the Crown. The questions functioned to elicit testimony that 'preempt[ed] accusations' (Atkinson & Drew, 1979) regarding some of Teresa's behaviour, specifically, that she remained with her abusive husband. In other words, the defence's questioning presupposed that the Crown would portray Teresa as having "a number of opportunities to escape the relationship" (see Chapter 3, excerpt 10, lines 18-19) and, importantly, as having opportunities other than to use lethal force (which would nullify self-

defence). By contextualizing Teresa's experiences within a framework of intimate partner violence and attempting to preempt the Crown's negative portrayal of Teresa, the defence's questioning was able to legitimate its own claims, i.e., that Teresa's actions were consistent with other women who killed in self-defence.

It is important to also consider the extent to which Teresa's non-native speaker status may be connected to the questioning strategies her defence lawyer employed. In particular, some of the lawyers' questions were designed as requests for Teresa to elaborate on answers in previous turns (See Excerpts 4.1, 4.2) possibly because Teresa's non-native abilities in English prevented her from providing detailed and expansive answers.[209] Nonetheless, I would suggest, in keeping with my argument about the strategic nature of the defence's questioning techniques, that the defence lawyer was *selective* about which of Teresa's answers should be expanded upon. That is, the defence did not request elaboration of all of Teresa's brief responses, but only those which would help to contextualize her experiences within a larger framework of IPV/coercive control.

Overall, the analysis of the defence's questioning illuminated the kinds of linguistic practices defence lawyers could employ in order to allow women to contextualize their version of events within a framework of abuse. Feminist legal scholars have commented that in order for lawyers to better represent battered women and secure better outcomes for them, the social phenomenon of battering needs to be understood (Schneider, 2000; Sheehy, 2014). It seems to me that the questioning strategies of the defence in *R v Craig* were exemplary in this respect.

[209] However, it also plausible that the brevity of her responses was connected to the particularly distressing episodes she was asked to recount. In fact, research indicates that speakers narrate traumatic events differently from every-day experiences (Harvey et al. 2000; Ladegaard 2015; Patterson 2013).

The analysis of the cross-examination in Chapter 5 confirmed the necessity for the defence to deflect potentially negative assessments of Teresa in relation to her decision to remain with Jack. I claimed in Chapter 5 that the Crown employed a series of *controlling* questions that functioned to portray Teresa as someone who was unconstrained in her ability to leave her abusive husband. These questions implied that Teresa had options other than utilizing lethal force, and, therefore, her actions in killing Jack were tantamount to murder. While Chapter 4 showed how the defence represented the impediments to leaving for Teresa, the Crown's questioning seemed to (strategically) disregard them. I suggested that the Crown's line of questioning seemed to assume a subject (i.e., Teresa), reminiscent of the classical liberal subject, who was wholly autonomous and unimpeded by external forces. As I noted, feminist scholars have concluded that such a view of personhood is inappropriate for women in contexts of gendered-violence.

I analyzed *controlling* questions (Woodbury, 1984) asked by the Crown attorney in cross-examination in this chapter because these types of questions are particularly powerful in "loading" questions with content (Matoesian, 1993: 150-151) and conveying this content to third-party overhearers, judges and juries. My analysis identified features of controlling questions, i.e., repetition, negative interrogatives, presuppositions, and reformulations, that the Crown used to represent Teresa as unimpeded by the constraints that make it difficult for battered women to leave their abusive partners. I suggested that these kinds of representations may have made difficult Teresa's ability to claim self-defence using BWS and the theory of coercive control. The results of my analysis suggest that prosecutors may be unknowledgeable about, or may strategically choose to ignore the realities of IPV, in these kinds of legal cases. Either scenario would underscore the value of the particular kind of questioning practices that I

identified in Teresa's direct examination. Furthermore, advocates have argued that one way to ensure legal parity is to curtail biased questioning practices employed by prosecutors in examining witnesses (Sheehy, 2014: 302-303).[210] The findings of Chapter 5 point to just the type of questioning strategy that deserves legal scrutiny.

Chapter 6's analysis began with Teresa's police interview and sought to investigate the text trajectory (Blommaert, 2001, 2005) of statements Teresa made in this interview, 'enough is enough' and 'get rid of him'. Specifically, I showed how these statements were subjected to the process of entextualization, whereby they were extracted from their original context, turned into a 'text', and then transplanted by the Crown, trial judge, and the Court of Appeal into other contexts. Consistent with much previous work on entextualization practices and text trajectories, I showed how differing meanings came to be attached to these phrases throughout their legal journey, and I argued that such meaning transformations played a significant role in the overall outcome of the case.

The phrases were produced in response to police questioning about *why* Teresa killed her husband. Based on collocational and definitional features, and information from the trial regarding Teresa's history of abuse (including the defence's theory of the case), I argued that 'enough is enough' most likely indicated that *what* Teresa had enough of was Jack's abuse. However, the police appeared to view these phrases as reflecting Teresa's *hatred* of Jack in order to supply a motive to the Crown, who then recontextualized the phrases in his closing address in order to signal intent/*mens rea*. I suggested that it was, in part, through the recontextualization of

[210] For example, Becker proposes to make certain questions inadmissible, such as questions about whether a woman previously minimized or denied her abuse, questions about her "inadequacies as a mother", and questions that use the word *feminist* pejoratively to undermine witness credibility (Becker 2001: 69).

these phrases that the Crown was able to construct Teresa as a murderer, rather than as a battered woman who acted in self-defence.

The phrases were then subjected to another layer of recontextualization in the Final Jury Charge when the trial judge summarized the Crown's position. There, the trial judge recontextualized the phrases in such a way that a further layer of meaning was added, i.e., Teresa's *premeditation* in killing Jack. Specifically, in the Final Jury Charge, the phrases were represented as part of Teresa's thought processes *before* she killed Jack, rather than as statements she made in response to police questioning. In conclusion, my analysis of the jury charge suggested that even though judges are expected to remain unbiased in their presentation of the defence's and prosecution's positions, the trial judge's recontextualizations subtly added support to the Crown's theory.

The Crown's and trial judge's recontextualization of the phrases 'enough is 'enough' and 'get rid of him' were in stark contrast to that of the Appellate Court. That is, the appellate opinion argued that 'enough is enough' had to be interpreted in the context of Teresa's dehumanizing and abusive relationship with Jack. So, while the Crown's closing and Final Jury Charge recontextualized the phrases so as to support the Crown's theory of Teresa's motive, the opinion utilized the phrases to construct Teresa as a battered woman who deserved leniency. The Court of Appeal upheld Teresa's conviction, but reduced her sentence to time-served. Overall, the analysis of the phrases, and how they influenced the outcome in Teresa's case, confirmed the importance of analyzing text trajectories within legal discourse.

The final empirical chapter, Chapter 7, built upon the analysis from Chapter 6 to explore multi-layered news media recontextualizations of 'enough is enough', 'get rid of him', as well as other portions of Teresa's police interview. The results of the analysis of 40 newspaper reports of

the case (36 before the appeal and 4 afterwards) demonstrated how the media generally presented a sensationalized version of the case that often aligned with the Crown's theory. My analysis centered on two intertextual devices adopted by the media in their reports of *R v Craig*. First, through the recontextualizations of 'enough is enough' and 'get rid of him', the media was able to construct Teresa as a 'mad/bad' murderer rather than a battered woman. That is, in these media reports, Teresa was generally not viewed as an abused woman who acted reasonably in response to this abuse. Second, the media reports also showed evidence of concealing the collaborative nature of stories generated in police interviews and blurring the source of an utterance originally produced by the police. And, this blurring of sources had the effect of representing Teresa as acting with premeditation and intent when she killed Jack (two important elements for a murder conviction). While my analysis also included evidence of 'positive portrayals' of Teresa in the media, the findings demonstrated how the majority of news accounts before the appeal overwhelming reported on the Crown's perspective. However, my analysis of the newspaper reports post-appeal showed a change in how the media presented Teresa—when the Appellate Opinion established that she was an abused woman who killed in response to the abuse meted out by her husband, the news accounts similarly adopted this perspective.

In tracking the movement of texts from the legal sphere through to the media, my analysis provided an indication of how the media and law are interconnected. I adopted Attenborough's (2014) position that it is through mediatized recontextualizations that the public comes to understand larger social problems, such as those of battering and intimate partner violence. I proposed that the media reports may have influenced public perception of not only Teresa and this case, but also that of battered women more generally. Importantly, any damaging misconceptions of battering or battered women that originate in the media may reappear in the

legal system when members of the public serve on juries (Statham, 2016). Thus, my analysis in Chapter 7 illuminated the interconnected process by which discriminatory views of battered women may circulate widely across dominant discourses in the law *and* media.

8.3 Research Strengths

My dissertation has shown how an in-depth look at the language of legal cases can help sociolinguists and socio-legal scholars alike to understand one of the ways in which 'power' works in the legal system generally and in cases involving battered women specifically. To the best of my knowledge, the present study is the first fine-grained linguistic analysis of a case in which a battered woman killed her abusive partner and claimed self-defence. In this way, my dissertation has made an important contribution to the field of sociolinguistics and especially the language and the law literature which, as I noted in the introduction, is devoid of research on battered women who kill. This study is noteworthy because as a critical work, it gives weight—in the form of linguistic evidence—to claims that abused women face difficulties in securing acquittals or mitigated sentences due to androcentric biases within the law.

This project is also notable in terms of the range of data sources analyzed. As mentioned in Chapter 3, trial transcripts are extremely expensive and difficult to obtain, and the process of ordering a transcript in Ontario (where this trial took place) is itself not straightforward. Official trial transcripts are thus likely to be out of reach for many researchers (Craig, 2018: 18). It is perhaps not surprising, then, that previous studies on the language of cases in which battered women kill abusive partners have focused on appellate cases or sentencing judgments (e.g., Wells, 2008, 2012), which are both more readily available. Thanks to the range of my documents I was able to secure from *R v Craig*, generously given to me by Teresa's appellate counsel

(Susan Chapman), I was able to offer a comprehensive overview of the case, beginning with the transcripts of the 9-1-1 call on the night of the killing and of Teresa's police interview. Both of these data sources are typically not available when purchasing trial transcripts, and yet, as my dissertation has shown, they were an essential part of the case. That the 9-1-1 call and police interview were integral to the outcome of the trial highlights the value of studying these interactional contexts in future research on language and law. Without these documents, I believe that my analysis of Teresa's examination, and to a much larger extent that of the case itself, would have been incomplete.

In addition to the transcripts of the 9-1-1 call and of the police interview, this project also analyzed documents from other aspects of the case including Teresa's examination, expert witness *voir dire*, the Crown's closing address, the Final Jury Charge, the trial judge's reasons for sentence, and the Ontario Court of Appeal findings. The inclusion of these data sources allowed me to pursue a more thorough investigation of the case that would not have been feasible had I limited the scope of my analysis to any one of these documents individually. In particular, my investigation of the text trajectory of 'enough is enough' and 'get rid of him' would have been impossible had I not had access to the linked series of texts that comprise this case.

This project has also highlighted the advantage of adopting an eclectic methodological approach to the study of language in the law. My methodology combined a variety of analytical tools from discourse analysis, conversation analysis, and intertextual analysis ('text trajectories'). These tools allowed me to situate the microanalysis of institutional discourse within larger macro-structures (cf. Eades, 2008: 24), such as androcentrism within the law and violence against women, in order to accomplish a 'critical' investigation of language and law as called for

by Conley and O'Barr (2005). This dissertation also confirmed that a feminist critical discourse approach (discourse analysis accomplished through an intersectional feminist lens) is highly suitable for linguistic/discursive investigations of legal power. FCDA allowed me to unpack and critique the discriminatory discursive practices in cases where battered women kill their abusive partners, demonstrating how dominant discourses of battering and battered women are constituted and recirculated in linguistic interactions (in both the law and in the media). In this way, the dissertation, in line with other 'critical' discourse analytic work, has been suggestive of the *power* that discursive practices can have in determining real legal outcomes.

8.4 Suggestions for Future Research and Final Remarks

I believe that further linguistic analyses of trials for battered women who kill are vital to securing just outcomes in these kinds of cases. Having identified particular linguistic patterns in *R v Craig* that may have influenced the outcome of the case (for example, strategic questioning practices by both the defense and prosecution, the 'trajectory' of crucial phrases from the defendant's police interrogations, and implicit bias in jury charges), future research could investigate similar kinds of linguistic patterns across a wide variety of cases. Though I believe that analyzing one case was sufficient for this current project, compiling research on multiple cases, with defendants from a wide range of backgrounds, may allow for more conclusive results. As it has been argued that certain women (including women of colour, Indigenous women, low income women, immigrant women, and non-native speakers) may face particular racist and classist challenges in securing fair outcomes, it is necessary to consider these intersectional categories when examining the discursive constructions of defendants.

To this point, a question remains with respect to Teresa's language proficiency and the ways in which her L2 status may have influenced her police interview or testimony. Although it is difficult to determine Teresa's English proficiency from the transcripts alone, there is a significant body of work that highlights the considerable problems that L2 speakers or second-dialect speakers may have in English-speaking courtrooms (Angermeyer, 2013; Cook, 1996; Eades, 2003; Gumperz, 1982; Rickford & King, 2016). L2 speakers, like Teresa, may be at a significant disadvantage when attempting to answer questions in these contexts (without interpreters), and, as a result, their testimony may be misinterpreted or devalued.[211] For example, previous research on courtroom discourse (e.g., Ehrlich & Sidnell, 2006) has demonstrated how certain witnesses may be able to challenge the damaging presuppositions of cross-examining lawyers' questions. Presumably, this kind of discursive resistance requires a certain level of proficiency in the language of the courtroom and thus L2 speakers, like Teresa, may not have the linguistic resources to counter the negative assessments of the type put forward by the Crown attorney in this particular trial (specifically, the representation of Teresa as unimpeded by the constraints that make it difficult for battered women to leave their abusive partners). Communicative problems are further compounded by important cultural differences between speakers and the court. While my analysis did attend to the ways in which Teresa's L2 status may have impacted her police interview (for example, the possibility of gratuitous concurrence was discussed in Chapter 7), issues central to second-language speakers' participation in the legal system, specifically, in relation to women tried for killing abusive partners, clearly warrants further research.

[211] For example, Gumperz (1982) examined how grammatical interference from a Filipino doctor's home languages created ambiguities between his sworn testimony in English and an earlier FBI report. These perceived discrepancies significantly undermined the doctor's testimony, which then led to the doctor's indictment for perjury.

Future research could also undertake comparative analyses of cases where battered women were successful in their self-defence claims and those where they were not. This type of research would have both theoretical and practical implications. For instance, an analysis of 'successful' vs. 'unsuccessful' defendants may indicate what sorts of questioning patterns by defense counsel lead to more successful results. Conversely, the discriminatory questioning practices of prosecuting counsel could be examined in an attempt to 'preempt' and counteract damaging ideologies concerning battered women. Such research would have important implications not only for studies of institutional discourse but also for legal reform in cases where battered women kill their abusive partners.

Feminist legal advocates have worked tirelessly on challenging and reforming gendered disparities in the law, including those which concern battered women who kill. At the same time, feminist linguists have undertaken research to address systemic inequalities related to language and gender and ultimately to enact change.[212] Yet, the study of language as it intersects with legal cases involving battered women who kill is relatively unexplored in linguistics.[213] Schneider comments that "feminist legal work must *both* describe *and* allow for change [...] Our work must simultaneously capture the reality of battered women's lives, translate this reality more fully and effectively to courts, and push toward transforming this reality" (1996: 323, emphasis in original). Part of the work of 'translating' women's lived-realities and transplanting these 'translations' into courtrooms invariably involves critical examination of the *language* used in cases where battered women are charged with killing their abusive partners. With this in mind,

[212] See Bucholtz (2014) for an overview of the history and current trends for 'feminist linguistics'.
[213] This isn't to suggest that there is no research on the intricacies of trials for battered women who kill. In fact, Sheehy (2014) has published a very comprehensive and illuminating book on Canadian trials, which was a key resource for material related to Canadian law. She utilized insights from the trial transcripts to ground her arguments about the limitations of current self-defence law. I believe that my specific *linguistic* analysis (which Sheehy, as a legal scholar, does not undertake) is compatible with not only Sheehy's purpose but also her findings.

I maintain that a linguistic analysis like the one I have conducted in this dissertation is complementary to legal advocacy and essential to secure a feminist vision of justice for battered women.

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Appendices

Appendix A: Cases and Legislation Cited

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