

DRAMATIC MONOLOGUES: THE GRAMMATICALIZATION OF SPEAKING ROLES IN COURTROOM OPENING STATEMENTS

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Abstract

This investigation examines different speaking roles that lawyers may shift into, and depart from, in the monologic genre of the opening statement in three American trials, incorporating Goffman's concept of Footing (1981) into an analysis of three high-profile trials. The findings reveal that lawyers take on three distinct discursive roles: The storyteller, the interlocutor, and the animator. In addition, indexical resources commonly associated with each role are explored which serve to contextualize such role shifts. In effect, the lawyers can subtly make the discourse argumentative and suggestive of inferences. Such discursive practices appear to stand in direct contradiction to the purpose of the opening statement.

Keywords: Courtroom discourse; Footing; Opening statement; Speaking roles.

1. Introduction

The opening statement of criminal trials in Anglo-American courtrooms is a persuasive monologue which provides the first opportunity for the trier of fact to hear a comprehensive statement of each party's factual claims. While not mandatory, the opening statement is seldom waived because it constitutes an invaluable opportunity for the lawyer of each side to provide an overview of the case and to explain the anticipated proof that will be presented in later parts of the trial. There has been some evidence that jurors draw at least tentative conclusions about the defendant's guilt or innocence based on what is said in the opening statement (Lind and Ke 1985; Pennington and Hastie 1991; Spiecker and Worthington 2003). In this initiate stage of a trial, the lawyers representing the two sides necessarily rely on their own command of linguistic and communicative resources to craft the discourse so as to convince the jurors that the defendant on trial committed the crime or else that he or she did not.

Previous linguistic studies find that a successful opening statement must be organized in such a way that presents a probable overarching story that fits with the juror's knowledge and experience of human behavior, hence a carefully structured narrative (Snedaker 1991). Along the same lines, Stygall (1994) argues that the plaintiff and the prosecution must tie the story to pieces of evidence and the legal requirements in jury instructions.

Other researchers show how lexical choices and semantic prosody may constitute and foreground the central theme of the opening statement, which may in turn carry into the questioning strategies during witness examination. For example, Cotterill

(2001, 2003) finds that in the O.J. Simpson trial, the prosecution repeatedly exploited the negative semantic properties of such terms as “encounter”, “control”, and “cycle of” in order to portray Simpson as someone who is negatively encountered, while the defense portrayed the interaction between the Simpsons as “incidents” and “discussions”. Cotterill (2003) notes that these divergent characterizations function as interpretative frames for the jury to organize their perceptions about acts and actors.

However, there seems to be more to the opening statement than successful structural organization and effective lexical choices. Hobbs (2008: 231, italics mine) critically argues that “lawyers do not just speak, they *perform*, constructing displays of style and competence that command the attention of their audience and imbue their arguments with persuasive force”, and that “evaluations of courtroom speech are dependent upon *speaker roles*” (232). Examining a pro se defendant (i.e. the defendant who represents him or herself), the researcher argues that while the speaker could successfully reproduce the form of a well-crafted opening statement, he failed to reproduce the legal voice. As a result, the presentation was not well received. This research demonstrates that language (i.e. what is included in the messages) alone has its limits. The speaker’s ability to deliver a convincing performance is argued to be another key factor in determining how a verbal presentation will fare.

Interestingly, studies on the closing argument—another monologic speech event in the courtroom—make similar observations that lawyers can create opposing representations of reality, not necessarily by making contradictory statements or contradicting each other, but by managing their identities and relationships with the jurors (or judge), the context, and the discourse. Cotterill’s (2003: 199) examination of the closing arguments in the O.J. Simpson trial, as well as collections of published closing arguments, leads her to conclude that closings have “an undeniably theatrical quality”, while Rosulek (2010a: 190) reveals how lawyers often add a “level of performance to the narrative” to make it “more lifelike” by re-creating different voices.

Despite their valuable insights into the workings of the opening statement, the studies above come with some limitations. First, they have tended to view this genre of courtroom discourse from a structural or rhetorical perspective and focus on a single trial. As a result, the management of interpersonal relationship has been downplayed and merely suggestive. Second, they appear to share the assumption that the lawyer takes on the traditional role of speaker, hence an uninvolved relayer of messages, without giving much attention to other discursive roles that he or she may assume and fulfill as the discourse unfolds. As a result, the complexity and dynamics of the relationship between speaker and utterance have been neglected. Third, previous studies that do focus on discursive performance and negotiation of interpersonal relationships (Fuller 1993; Hobbs 2003) have not examined the use of other linguistic cues that help contextualize different speaking roles: They only examine alignment shifts indexed by another language or a marked language variety, which is presumably not an option for all lawyers and all juries.

To remedy the limitations above, I critically examine how lawyers may shift their speaking positions in relation to the addressee and the material being presented, and deconstruct different performative roles they can assume. More specifically, incorporating Goffman’s concept of Footing (1981), I examine how different speaker roles may shape the way in which factual realities and legal codes are invoked, formulated, and rendered consequential. Drawing from the prosecution’s and defense’s opening statements of three high-profile American cases: Timothy McVeigh’s

Oklahoma City Bombing (1997), Michael Jackson's child molestation (2005) and the trial of 9/11 co-conspirator Zacarias Moussaoui (2006), I explicate the linguistic and discursive details through which three different speaking roles may be distinguished in the discourse of the opening statement: Storyteller, interlocutor, and animator.

This research makes both theoretical and empirical contributions. Theoretically, it specifies resources by which speaking roles may be grammaticalized (i.e. the indexical categories in language that instantiate these roles), and how aspects of grammar can intersect with each other to index alignment shifts in a single strip of discourse. This in turn makes Goffman's notion of footing more linguistically grounded. To scholarship of legal study, it explicates interpersonal aspects of this monologic type of display talk—talk that is designed not to further an on-going interaction, but to present a particular perspective on what is said to an unresponsive, over-hearing audience. The study will show how lawyers constantly shift and inhabit different positions to negotiate the reception of their messages.

This article begins by first discussing some discursive features of the opening statement, and then proceeds to outline and discuss the concept and its relevance for the persuasive construction of reality in the opening statement. Finally, the findings are discussed and illustrated in detail.

2. The discourse of the opening statement

The opening statement starts with the party with the burden of proof (i.e. the plaintiff's attorney in a criminal trial or the prosecution in a civil trial), and is then followed by the defense's presentation. This phase of a trial allows attorneys from both side to introduce themselves and the parties involved in the lawsuit, outline the important facts of the case in the form of narratives, explain the applicable law, and make a request for a verdict.

The opening statement has been characterized by the Supreme Court as "ordinarily intended to do *no more than* to inform the jury in *a general way* of the nature of the action and defense so that they may better be prepared to understand the evidence (*Best v. District of Columbia* (1934); my own emphasis). That is, it is supposed to be a neutral summary of the case, and a road map by which lawyers from both sides explain to the jury how they will organize the evidence to be presented: They cannot assert personal opinions, comment about the evidence or the credibility of a witness, weigh the competing evidence, or discuss the application of the law to the facts. However, as this study will show shortly, lawyers can manage to overcome these legal requirements through shifts in footing: This includes filling in evidentiary gaps with subtle inferences, emphasizing favorable facts while silencing others, dramatizing key points by presenting them through other characters' speeches, and falsifying the validity of a witness's story.

The discourse of the opening statement differs from that of witness examination in a number of ways. First, instead of being a dyadic interactional situation, the opening statement is a persuasive monologue delivered with no interruptions by other participants (except when opposing counsel raises objections for possible misconduct). Second, while witness examination is a jointly constructed discourse between the lawyer and the witnesses, the opening statement can be argued to manifest the lawyers' complete control over the linguistic choices, thereby exhibiting lawyers' pragmatic

awareness of the audience and their needs. Third, the opening statement is directed specifically to the (silent) jurors, instead of just performing in their presence. Finally, the narrative presented in the opening statement is in large part woven into one unified speech, rather than fragmented stories (Harris 2001). As such, the opening statement is a linguistic site where both sides are highly motivated to manipulate and negotiate their relationships with the jurors for a favorable verdict.

3. Theoretical framework and data

In the analysis of speaker roles in the opening statement, Goffman's concept of footing becomes relevant and insightful on at least two counts. First, the concept offers a means to explore the linguistic negotiation of an individual's positions during the flow of talk and, hence, to capture the subtle complexities of interaction in this monologic genre. As we will see, the lawyers' speaking roles are neither static nor determined by the rhetorical structure of the discourse, but contextually situated and interactionally emergent. Second, the concept enables us to examine in fine-grained detail how, through interpenetration of multiple speaking roles, lawyers project their beliefs and commitments to those beliefs to persuasively and authoritatively contextualize an alternative frame for interpreting the legal argument at issue, for attributing/deflecting blame, and for accounting for/establishing inconsistencies during the course of a trial.

Goffman's concept of footing essentially refers to the metapragmatic processes through which speakers/hearers position themselves relative to one another and to their utterances in the framing of experience. A shift in footing transforms our interpretive frame for the embedded action. As Goffman (1981: 173) puts it, footing can be thought of as "the multiple senses in which the self of the speaker can appear, that is, the multiple self-implicated projections discoverable in what is said and done".

A shift in footing can be achieved by interlocutors' behavioral changes or the stance and alignment they show in discourse. Alternatively, interlocutors can also position themselves using other linguistic cues such as suprasegmental features, syntactic features and stance marker devices (see Hunston and Thompson 2000; Englebretson 2007). This is because a speaker has at her disposal different forms of talk, depending on her alignment in a given context. For example,

we can momentarily affect a podium speech register, or provide a theatrical version (burlesqued, melodramatic) of an aside. All of which, of course, provides extra warrant—indeed, perhaps, the main warrant—for differentiating various participation frameworks in the first place. (Goffman 1981: 154)

It is precisely this "theatrical" performance through language during the interaction that underlies Goffman's concept of footing.

Much more critically, Goffman finds that the traditional discursive roles such as speaker and hearer are not sufficient to describe the roles that interlocutors can assume during interaction. This led him to decompose the participant roles of speaker into more discriminating categories via what he refers to as the "production format": The animator, who voices the utterance; the author, who composes the words; and the principal, who is responsible for the words. To use one of Goffman's illustrations, the president's press secretary may be the animator, the speechwriter, and the president the principal. Alternatively, all the three participant roles may coalesce in a single speaker.

It should be noted, however, that these aforementioned roles do not exhaust the various speaker roles that may emerge during the course of talk.

Speakers may shift footing by attributing their remarks to someone else (Goffman 1981: 149-52). In the case of direct quotations, for instance, speakers may manipulate grammatical and linguistic forms such as pronominalization, deixis, and verb tense in the reported speech clause to distance themselves from the quoted information, and to impart an aura of authenticity to what was originally said, or, in Goffman's terms, to indicate that they are only the "animator" of the reported speech.

In studies on legal discourse, Goffman's concept of footing has been widely used. In the case of closing statements, Fuller (1993) discusses how lawyers may take advantage of footing shifts to imply things that they are not allowed to say directly by switching to different speech styles. In this study, the lawyer was observed to change from formal courtroom speech styles to African American Vernacular English (AAVE), and Standard English. Using double negation (a well-known characteristic of AAVE) when delivering her closing statement, the lawyer could subtly paint the defendant as a gang member, thereby reminding the jury of this aspect of the defendant's identity. Because each speech style carries a symbolic meaning, a particular style can index the characterized individual (be it the speaker or another person) to a role relationship within the speech event and in the society at large. In a similar vein, Hobbs (2003) in a detailed analysis of just three minutes of the closing statement made by an African American lawyer shows how the lawyer used an AAVE oratorical style to construct a shared identity with the jurors, thereby urging them to affiliate with her point of view. She concludes that the switch to AAVE is part of "impression management" that enabled the lawyer to play a "character" that was professional but that the jurors could still relate to. More recently, Rosulek (2010b) argues that lawyers create two separate identities for themselves in the closing arguments. Through the use of first and second person pronouns, and speech acts such as imperatives and questions, the lawyers could construct the jurors and the lawyers as having had the same experiences during the trial and believing the same propositions. On the other hand, they also used unevaluated statements to create an authoritative persona.

In the case of witness examination, Matoesian (1999, 2001) carefully examines how the defendant in a rape trial, who was a medical student in the final year and who was not tendered as an expert in the eyes of the public, shifted into and departed from an expert medical identity, as he was impeaching the expert witness's technical account of how the victim could have sustained injuries during the alleged rape. Also focusing on the issue of expert witnesses, Chaemsaithong (2012a) argues that while expert witnesses in the courtroom are equipped with social status and educational or professional qualifications, these privileges do not come uncontested in the courtroom. In particular, experts are faced with how they can best explain the analysis and express the derived opinions to an audience of legal and lay professionals. This study explicates the ways in which an expert witness calls upon a range of interactional devices to appropriate the desired footing and labeling category of "expert". Instead of asserting their dominance and expertise over the interlocutors, experts were found to construct and negotiate their identity by aligning with other participants and establishing a relationship with them. Comparing direct and cross-examination, Chaemsaithong (2012b) finds that shifting into and departing from a particular identity helped the participants to contextualize and frame the local context of a rape trial to substantiate their legal arguments and to offset

oppositional arguments. Different footings allowed the participants to assume and speak from particular perspectives with respect to the same event at issue.

In the domain of courtroom interpretation, Berk-Seligson (2009: chapters 3 and 4) shows how the interpreter, who may easily be perceived by the defendant as being there to help him or her, steps out of the interpreter role and begins to act as an interrogator. The change of footing reveals how police officers who take on the official role of interpreters often see themselves essentially as police detectives rather than as interpreters. This research provides evidence that the interpreter's behavior is sometimes completely out-of-bounds for court interpreters.

The current study aligns with the above-mentioned studies in that it recognizes the important roles of footing in framing interaction and signaling to co-conversationalists the nature of what is being talked about and how it should be interpreted. Changes in footing enable speakers to traverse between different layers of interaction, beyond the immediate interactional setting. As we will see, in the case of the opening statement, while the immediate setting is the monologue delivered to the jurors, the lawyer can break away from just narrating the details of a crime, to directly interact with the jurors, as well as to assume and perform the roles of other speakers.

Despite Goffman's invaluable insights, scholars have noted that it remains somewhat unclear how to apply these insights systematically to the study of actual discourse. Because Goffman's role distinctions of author, animator, and principal were proposed for narratives of personal experience, these roles may not be applicable to every discursive genre. It is also unclear whether Goffman intended such roles to be the only speaking perspectives a storyteller may assume. As Levinson (1988) and Wortham (1994, 1996) point out, Goffman was vague about the precise role language plays in speakers' performance of particular footings. In particular, Levinson (1988) suggests that Goffman's notion of footing and his proposed set of participant role categories should be integrated into a rigorous linguistic discussion of "who stands in which when" (221).

In response to the criticisms above, this study makes use of insights from a wealth of linguistic studies on self-positioning and alignment to systematize the analysis of footing in the opening statement. Broadly speaking, speakers can manage their footing in two main ways: Stance-taking and interactional strategies. With respect to the former, the speaker can add personal or social attitudes towards the referential information being presented in the discourse. Speakers may thus focus on lexical items with certain semantic properties, such as hedges, boosters and attitudes markers (Hyland 2005, 2008). With respect to interactional strategies, successful speakers are able to relate to their interlocutors and acknowledge their presence by guiding them to the intended message, anticipating and addressing their questions, and constructing a harmonious (or an antagonistic) relationship with them. For example, first-person plural pronouns have been found to be able to build a relationship between the speaker and the hearer because the pronoun can align them into one group or community that may or may not exist in the real world (Zupnik 1994). Other linguistic resources that can function interactionally include questions, personal asides and discourse markers (Hyland 2005, 2008; Tannen 2007). Similarly, Levinson (1988: 184-92) suggests some "clear" areas of grammar where speaker roles can be decomposed, including evidentials, moods (such as interrogatives, directives or hortatives), and deictic terms. What these studies show is how stance-taking and interactional engagement function as non-referential indexical devices to enact the footing of a speaker in interaction, and

thus these linguistic resources can be used to help detect the speaker's footing and shifts of footing. By integrating such concepts into my analysis, this study can further systematize Goffman's concept of footing for the exploration of speaking roles in the opening statement.

To examine the different speaking roles found in the opening statement, I draw from three American trials. These cases have been selected because of their very high visibility, not because of any special characteristics of the cases, the lawyers, or the linguistic patterns. The official transcripts of these state trials are available to public, readily available on the *LexisNexis* database. These transcripts are then qualitatively examined for different speaking roles, taking into consideration lexical and grammatical choices that the speakers choose to signal shifts in footing. A short description for each trial is provided below.

Case 1: United States v Timothy James McVeigh (1998)

Deemed the most destructive act of terrorism on American soil until the September 11, 2001 attacks, the so-called Oklahoma Bombing incident was committed by Timothy McVeigh, who, motivated by his hatred of the federal government and angered by how the government was perceived to mishandle the Waco Siege in 1993, detonated an explosive-filled truck parked in front of a federal building in downtown Oklahoma.

Case 2: The People of the State of California v. Michael Joseph Jackson (2005)

This case started to be investigated after a British documentary had been broadcast in March 2003, presenting an interview of Michael Jackson and a (then) 13-year-old boy named Gavin Arvizo. In one scene of the show, Jackson was seen holding hands with Arvizo and, at one point, Arvizo rested his head on Jackson's shoulder. Moreover, the film also showed the guests' discussing sleeping arrangements. Jackson was charged with four counts of molesting a minor, four counts of intoxicating a minor in order to molest him, one count of attempted child molestation, and one count of conspiring to hold the boy and his family captive at his Neverland Ranch.

Case 3: United States v. Zacarias Moussaoui, an alleged 9/11 co-conspirator (2006)

Moussaoui, a French citizen, was tried in a United States court on charges of involvement in the Sept. 11 attacks. Moussaoui's path to arrest started when the flight instructor assigned to him had suspicions as to why Moussaoui would seek simulator lessons when, in fact, he lacked basic plane knowledge. After some convincing, his supervisors contacted the FBI, who eventually arrested him. He admitted having planned to hijack a fifth plane to crash into the White House. Several pieces of evidence were found that showed his connections with Al-Qaeda.

4. Findings

The analysis finds that the lawyers shifted into, and departed from, three speaking roles: The storyteller, the interlocutor, and the animator. Below I explicate the discursive process of footing construction, and the way in which linguistic resources were mobilized to activate a footing shift.

4.1. *The storyteller role*

As the primary purpose of the opening statement is to present the factual background of the case, it is the lawyer's responsibility to introduce the involved parties and their relationships so as to set the scene, and identify what is in dispute. Thus, the lawyers necessarily present narratives pertaining to the case (which may include the narrative of the crime itself, or other stories that can be related to the case at issue to legitimate the actions they want the jurors to take).

However, in this speaking role, lawyers hardly present their narratives in a neutral, value-free way. Instead, they choose to present the information as true, false, surprising, social norm breaking, non-factual, or worthy of notice. On one hand, they can signal affective attitudes toward the propositions through attitude markers. In so doing, the lawyers can express their position and pull the jurors into a conspiracy of agreement to pre-empt potential disputes. On the other hand, as they tell their stories, they may also indicate the commitment they want to invest in their "facts" through epistemic stance. This is a tool for them to balance objective information and subjective evaluation to gain acceptance for their stories. Both of these linguistic resources are speaker-oriented markers that the speakers use to stamp their personal take onto the propositions.

In my corpus, the following attitude markers and epistemic markers are found.

4.1.1. *Attitude markers*

Attitude markers can be realized in different forms (such as nominals, adjectives/adverbs, and modals). Because attitude markers are "value-laden" words, an attitude can be conveyed and inferred through these markers (Gray and Biber 2012: 22). The attitude markers employed in the corpus may be classified into three main groups, according to their semantic fields: Those markers that express the destructive, inhumane and offensive nature of the crime; those that express the significance of the information presented; and those that express (dis)agreement with a specific proposition.

Through attitude markers, the lawyers guided the audience's interpretation by using expressions that, when put in context, depicted the event or the character in the narrative as inhumane (1a), destructive to the public (1b), and sexually offensive (1c). These attitude markers indicate the writer's affective, rather than epistemic, attitude toward propositions (Hyland 2005). Lexical items in this group include: Terms about killing and ensuing damage, such as *burn*, *death*, *die*, *terror*, *violent/violence*, *tragedy*, *catastrophic*, *horrible/horrific*, *murder*, *killer*, and *killing*; and terms about the norm-breaking, offensive nature of the crime, such as *innocent*, *young boy*, and *sexual(ly)*.

- (1) a. *Killers* were among us that day and for more than just that day. Those *killers* had lived among us for months, planned for years to *cut our throats*, hijack our planes, and crash them into buildings to *burn us alive*. On that day, September 11, 2001, a group of *cold-blooded killers* from distant lands capped their plan, their conspiracy, to *kill* as many innocent Americans as possible. Those *killers*[...]carried it out, *hijacking* four commercial planes on September 11 and crashing them on purpose to *kill* as many Americans as they could. (Zacarias Pros)

- b. At 9:02 that morning, two minutes after the water rights proceeding began, a *catastrophic* explosion *ripped* the air in downtown Oklahoma City. It instantaneously *demolished* the entire front of the Murrah Building, brought down tons and tons of concrete and metal, *dismembered* people inside, and it *destroyed*, forever, scores and scores and scores of lives, lives of *innocent* Americans. (McVeigh Pros)
- c. his hand into the private areas of the *young boy*[...]sleeping with *young boys*[...]sharing his bedroom and his bed with *young boys*[...]when *the boys* look at him[...]*sexually* explicit materials to whet *the boys'* blossoming *sexual* awareness. (Jackson Pros)

Second, through attitude markers, the lawyers indicated their agreement or, as examples (2a) to (2c) show, disagreement or disfavor with a specific point. Frequent attitude markers in this category include *lie/truth/false/wrong*, *actually*, *in fact*, and *unfortunately*. Expressions of agreement/disagreement can be viewed as an assertion of superior competence on the part of the lawyers, as they showcase privileged access to critical information that the jurors do not have. In this way, the lawyers presented themselves as authoritative.

- (2) a. The agents suspected that he was a foreign terrorist here up to no good, and they confronted him with that. And he *lied*. He said no, it is a dream of mine to fly a Boeing 747 simulator. I'm just a tourist here in the United States. I'm not a terrorist. *Those are lies*. They asked him about of his money that he used to pay for the expensive simulator training. He said: Oh, that money came from a business in England called NOP. Again *false*. That money came from al Qaeda. (Zacarias Pro)
- b. That, *in fact*, Michael Jackson, after a short time period, had had very little contact with Gavin during his fight with cancer. In the beginning he[Jackson] was and did support Gavin. But in the later months, he wasn't around. He'll [Gavin] tell you that's *a lie*. *What is true*, though, is that[...] (Jackson Pro)
- c. Mr. Hartzler has also discussed with you and the Government will introduce into evidence The Turner Diaries. The Turner Diaries, we will show, has sold about 200,000 copies in this country. *In fact*, you can buy it down at the Tattered Cover book store right here in Denver; and it is *no more* a blueprint, *much less* a reason, to blow up a federal building. (McVeigh Defense)

Third, attitude markers, such as *particular(ly)*, *specifically*, and *important*, and *focus* were used to present certain pieces of evidence as worthy of consideration. In (3) below, the lawyers can be seen to draw the jurors' attention to a specific point they deemed important.

- (3) a. He *particularly* took a liking to Gavin[...]Now there is one *particular* conversation that probably will be of interest[...] (Jackson Pros)
- b. He *specifically* stated the following: He told his brother[...] (McVeigh Defense)

- c. *Equally important* is the fact that the government's case for death is unrealistically premised[...] (Zacarias Def)

4.1.2. Epistemic markers

In addition to attitude markers, the lawyers use epistemic markers. This device offers a venue for the lawyers to express their attitude as to the truth-value of propositional content, degree of certainty, precision, and limitation. In some cases functioning as hedges, these expressions may lessen the force of the discourse on the part of the speaker (Kärkkäinen 2006). In other cases, they strengthen the force of the discourse because they enable the lawyers to seek agreement for the strongest claims their evidence will support, while at the same time acknowledging the possibility of opposition. Regardless, these markers help to guide the listener's interpretation and acceptance of the message. Epistemic markers appear frequently with first-person singular pronouns, such as *I think*, and *I believe*. Nominals such as *evidence* and *proof* were also frequently resorted to. Other lexical expressions include modals, adjectives/adverbs, such as *would*, *really*, *sure(ly)*, *probably*, *clear(ly)*, *certain(ly)*, *possible/possibly*, *apparent(ly)*, *no question/no dispute/in no way*. Through "would" and "I think", the lawyer signaled to the jurors that the defendant's serving alcohol to the witnesses was a rather inconceivable act (4a) and that his argument was strong and speaking for itself (4b-c).

- (4) a. One of the things that *I think* that you are going to want to ask yourself [...] is why *would* any adult give alcohol to a minor. But more importantly, why *would* any adult give alcohol to a cancer survivor with one kidney. And *I think* the answer is rather *apparent* [...] (Jackson Pros)
- b. But *the evidence* in this case will be *entirely clear* to you that Moussaoui was totally uninvolved with the 9/11 plot. *There will be no evidence* that he knew the names, the phone numbers, the locations of any of the real hijackers, and *no evidence* that he knew the date or the targets or the timing of the impending attacks. In fact, *the evidence will be* that the real hijackers did not even begin to select the date for the attack until August. (Zacarias Def)
- c. And just like the Bridges card, just like the eyewitness identification and other matters that we will present in *evidence*, instead of it being a scientific inquiry, the *evidence, our proof* will show[...]The individuals primarily responsible for the supervision and collection will not give *evidence* of an expert nature in this case, but they handled it, performed examination and tests, and *our evidence* is, contaminated it[...] (McVeigh Def)

4.2. The Interlocutor role

The next speaking role observed is the interlocutor role. In this role, a lawyer endeavors to interact and build a relationship with the jurors by bringing them into the discourse to anticipate their possible objections and respond in appropriate ways. More specifically,

the lawyer may choose to address the jurors directly (through pronouns, for example), to represent himself as their conversation partner, or to rhetorically position them and guide their interpretations with questions, and directives or references to shared knowledge. Notable linguistic signals for this interlocutor role include the use of pronouns and questions.

4.2.1. The use of pronouns

- *Second-person pronouns.* First, second-person pronouns are used to construct the jurors as experiencers during the trial. The pronouns tend to occur with mental verbs. However, in reality, the lawyers do not actually possess such knowledge of the jurors' mental states. Used to anticipate and respond to a doubt that the jurors may have (as in 5a-c), these forms therefore serve to construct the jurors as agents who willingly accept the lawyers' arguments or rebuttals as true.

- (5) a. *you're* going to want to ask *yourself* in connection with the allegations in the Indictment alleging that the alcohol was used in the commission of these offenses. (Jackson Pros)
- b. Now, if he had rented a truck for some legitimate purpose, *you* would think it would be in his name. (McVeigh Pros)
- c. But that belief, ladies and gentlemen...is contrary to *your* common sense. (Zacarias Def)

Second, through second-person pronouns, the lawyers reminded the jurors that all the events at the trial took place for the benefits of the public, and thus the jurors should decide on the outcome of the case accordingly. Mostly occurring in the request for verdict phase, this strategy foregrounds the responsibility the jurors have because of their position and their role in the courtroom, as the following examples show.

- (6) a. What the government wants *you* to believe is only a dream...*you* cannot find that beyond a reasonable doubt and, thus, find that Moussaoi's lies caused a death. Ladies and gentlemen, *you* must not accept such obvious speculation as fact in a court of law. (Zacarias Def)
- b. as it's turned out, the bombing in Oklahoma City was the first event in a series of events that would lead *each of you* to be in this courtroom today as jurors; but *you'll* learn as jurors that the bombing was a premeditated act. (McVeigh Pros)
- c. What Michael said on that documentary he expected to be a public thing, and that needs to be understood as *you* watch it and hear his words. (Michael Def)

Third, second-person pronouns serve to highlight the jurors' role as the direct recipients of the discourse. This use allows the lawyers to remind the jurors that they are the addressees of the message, the evidence or other legal information. This foregrounds their participant role, as in the following examples:

- (7) a. I'm here to tell *you* that these charges are fictitious, they're bogus, and

- they never happened[...]I have an organized opening statement for *you*. I'm going to take *you* through various topics. (Jackson, Def)
- b. Now most of you don't know what the wall is, and it is complicated, but I will tell *you* it generally was—it is gone now---an artificial barrier[...] (Zacarias Def)
 - c. *You* remember Mr. Tipton, and the proof will be, was the sales manager for a company nailed VP Racing Fuels[...] (McVeigh Def)

Fourth, somewhat related to the third strategy above is the lawyers' use of second-person pronouns to specifically tell the jurors to do something. In (8a), the lawyers directed attention to an aspect of the case, and in (8b-c), the jurors were asked to view the case in a particular way. In all these instances, the explicit instructions serve to persuade the jurors to accept the lawyers' theory of the case. Deontic modals frequently appear in this use.

- (8)
 - a. Now, one of the other things *you* should know about the incidents[...]is that[...] (Jackson Pros)
 - b. So *judge* Moussaoui only for what he has done, on the facts and the law. *You* cannot judge him to get revenge for the victims or for what happened on September 11th or some substitute for Usama Bin Laden. And *you* must not judge him as a scapegoat for government officials who made errors before September 11th. (Zacarias Def)
 - c. At the conclusion of the case, the Judge will instruct *you* must consider Michael Fortier's testimony with care and caution; and we encourage *you* to do that ... (McVeigh Pros)

Fifth, second-person pronouns help relate the jurors' experience inside the courtroom with their experiences outside of it. In the examples below, references to outside contexts serve to highlight the similarities between what is happening in the trial to another experience that the jurors may be familiar with and be able to connect to. In (9a), the lawyer refers to an in-patient experience so as to support his argument that the lid of the urine specimen was unlikely to fall off on its own. In (9b), the lawyer seeks to appeal to the jurors' emotions by aligning them with the point of view of a witness who lost her child in the bombing incident. In (9c), the lawyer alludes to both a question that the judge asked earlier in the jury instruction phase and to the commonly shared experience of "the war on terror" just to ask the jurors to be consider the defendant solely based on the evidence that would be presented.

- (9)
 - a. If *you've* ever been in a hospital bed, *you'll* know they're the ones they put on the side with the caps. This is not something that comes off. (Jackson Pros)
 - b. He was a toddler; as some of *you* know that have experience with toddlers, he had a keen eye for mischief[...]That morning, she picked him up and wrestled with him[...]She remembered this morning because that was the last morning of her life. (McVeigh Pros)
 - c. Now, the judge asked *you* early in this process if you could fairly judge an admitted member of al Qaeda. And this was a very difficult

question[...]but this trial cannot be viewed by *you* as jurors as part of the war on terror. (Zacarias Def)

Finally, second-person pronouns may be used generically. Previous linguistic work has recognized that *you* is not always addressee-referring, as it can differentiate between generic and referential uses (Meyers 1990; Kitagawa and Lehrer 1990; Wales 1996). While it is not always clear-cut to distinguish the two uses, Siewierska (2004) suggests that the generic *you* (or to use her term, “impersonal”) is employed when the addressee is directly invited to imagine himself in the situation or event expressed by the speaker and thus share in the world-view being presented or entertained” (212). What is important here seems to be the element of generalization involved (alongside the personal appeal), even if it is of a low order. As can be seen in (10a-b), the lawyers used second-person pronouns to express generalities to demonstrate why a line of reasoning was not possible, thereby stating a reasonable rule that everyone, including the jurors, should follow. In (10c), the lawyer switched from a third-person based account to a second-person one at the end. In these instances, the generic usage allowed the lawyers to strengthen their theory of the case by bringing in generalities beyond the context of the courtroom to make their claims appear neutral.

- (10) a. Mr. Hartzler has also discussed with you and the Government will introduce into evidence The Turner Diaries. The Turner Diaries, we will show, has sold about 200,000 copies in this country. In fact, *you* can buy it down at the Tottered Cover book store right here in Denver; and it is no more a blueprint, much less a reason, to blow up a federal building than [...] Lady Chatterley’s Lover can teach *you* how to make love. (McVeigh Def)
- b. From those eight numbers the FBI continue on and get the name and location and address of five hijackers[...] *you* can readily get to six more highjackers. (Zacarias Pros)
- c. You will learn that the person [Jackson] who’s not on stage is really a very shy person[...]he has written of the importance of dreams, not only as a creative process, but as the basis for living *your* life. (Jackson Def)

Overall, second-person pronouns in the context of the opening speech constitute a strategy that constructs the jurors as having seen, heard, thought or done processes that would in turn cause them to accept the lawyer’s argument, although they may or may not have such an experience.

- *First-person singular pronouns.* First-person singular pronouns make a discourse “sender-oriented” (Berman 2004). Such a discourse tends to be affective or prescriptive in attitude, reflecting the personal involvement of speakers in the events and ideas they have experienced or thought about.

In the corpus under study, first-person singular pronouns serve the following functions. First, they were used when the lawyers referred to their earlier statement in the opening statement. This device increased social cohesion and interaction by bringing in another participant’s contributions to the discourse (Mauranen 2003: 22). As a result, the lawyers could establish a connection to the previous statement by pointing out that a similar claim had already been made. To illustrate, the intertextual references (e.g. the

embedding expressions of “have already explained” and “as I said” in examples below) primarily serve to make a new claim that the lawyer’s previous account stand uncontested. This may have an impact on the construction of a coherent representation in the jurors’ memory.

- (11) a. Michael Jackson didn’t really see these people in the year 2001. They surfaced again in 2002, but *I have already explained to you* all the efforts to latch on to other celebrities that they tried, and it didn’t completely work. (Jackson Def)
- b. they actually acquired large quantities of explosives, *as I said*, just getting the mixture, the fertilizer with the chemicals of nitromethane. (McVeigh Pros)
- c. The response from the US government, *as I said*, would be both offense [...] and defense[...] (Zacarias Pros)

Second, first-person singular pronouns were used to foreground the role of the speaker in the creation of the discourse and help organize the propositional information in the opening statement. The lawyer showed recognition of the jurors’ presence through his assessment of their processing difficulties and their need for interpretative guidance. In (12a) the lawyer stated his contribution to the information to be presented, in (12b) indicated the discursive goal, and in (12c) sequenced the material to be presented:

- (12) a. And McVeigh had typed on the blank form. He had made it look like it was a driver’s license from North or South Dakota[...]And the phony name he had selected—*I’m going to give you another alias name*—was Robert Kling. (McVeigh Pros)
- b. And *I want to stress* to you, ladies and gentlemen, and, please[...] (Zacarias Def)
- c. What results is a video that occurs—and *I’m going to speak more about later in my presentation*—but occurs and doesn’t end until two o’clock[...]Now, *what I want to do is*—at this point, *is I want to share with you* just a few of the comments from the Bashir transcript. I want to share with you some of the things that cause the reactions[...]And *before I do that*, though, *I want to stop and tell* you, in caution and in candor and in fairness[....] (Jackson Def)

Third, the lawyers used first-person singular pronouns as a way to bring aspects of their identity outside of the courtroom into the present context. In my corpus, this strategy only appears to be used by McVeigh’s defense team. In (13a), the lawyer compared the case to Pearl Harbor, a historical event of a similar catastrophic magnitude that the jurors should be able to relate to. In (13b), he drew on a common household aspect to identify the defendant as being guilty of the crime. This strategy allows the lawyer to incorporate his non-professional self into the present institutional discourse, thereby appealing to the jurors on a more personal level.

- (13) a. For those of us from Oklahoma, the bombing of the Alfred P. Murrah

Building is the event by which we measure time. It is to *my* generation in Oklahoma what Pearl Harbor was to *my* mother and father's generation. (McVeigh Def)

- b. and even though they didn't get a phone bill, as you or *I* would get for our home phone, they didn't get the phone bill of course because they were paying for these calls in advance. (McVeigh Pros).

In sum, first-person pronouns can contribute to the authoritativeness of the lawyers, as they serve to emphasize previous claims, their roles in the creation of the discourse, and their identity outside of the courtroom.

- *First-person plural pronouns.* Previous studies of the discourse functions of the pronoun *we* have highlighted issues such as group membership, participant alignment, and positive/negative face needs (e.g. Goffman 1981; Mao 1996; Duszak 2002). In particular, Duszak (2002: 6) observes that this pronoun can be used creatively to manage discourse "in order to construct, redistribute, or change the social values of ingroupness and outgroupness", opening up a number of referential and pragmatic options. Using this pronoun, the speaker can align herself into one group or community that may or may not exist in the real world (Zupnik 1994; Hyland 2001), thereby constructing a shared identity. As a result, listeners will not question the speaker's argument and will accept that the speaker is genuinely speaking on their behalf. Kitagawa and Lehrer (1990) find that first-person plural pronouns can also add persuasive force to a directive, as it forces the listener to have a more personal stake in what is being said, foregrounding the idea that they are part of the group the command applies to.

As to the opening statement, first-person plural pronouns are used in the following ways. First, they were used when the lawyers inclusively referenced themselves and other legal professionals as a group who were specialized in legal matters, or who possessed the knowledge and evidence pertaining to the case while the other side did not. This is shown in (14a-c).

- (14) a. *We* 'll present a lot of evidence against McVeigh. *We* 'll try to make your decision ultimately easy[...]There are a number of *us*, but *we* won't stumble over each other. You'll see that *each of us* has a different role[...]Everyone in this great nation has a right to think and believe, speak whatever they want. *We* are not prosecuting McVeigh because *we* don't like his thoughts or his beliefs or even his speech; *we*'re prosecuting him because his hatred boiled into violence[...]and the reason *we*'ll introduce evidence of his thoughts[...] (McVeigh Pro)
- b. Her fiancé, now her husband, has testified that they didn't want money, but *we* have a witness who will tell you that he approached them at their home, and Jay Jackson wanted \$15,000...(Jackson Def)
- c. Agent Samit interviewed Moussaoui for about three and a half hours over two days[...]He did not, however, get the information that *we* got in April 2005 during Moussaoui's guilty plea. He got instead a series of lies. (Zacarias Pros)

Second, the lawyers used first-person plural pronouns to construct a single homogeneous unit, presenting the narrative as if they and the jurors shared the same knowledge (15a), mental experience (15b) and physical experience (15c). It is worth pointing out that such a unit was not necessarily recognized before the use of these pronouns.

- (15) a. *We all* know where we were when *we* learned about the attacks. *We* remember the shock and horror of that day. *We* remember the immense and senseless loss of life that occurred as *we* watched, and *all of us* remember the incredible bravery of the police and the firemen. And *we* all cried that day. And *we* will again before this case ends[...]And *we* also know that the pain and losses suffered by all of the victims will never be remedied[...]by anything *we* do in this case. (Zacarias Def)
- b. This country has been a witness to how the alleged suspect, Timothy McVeigh, has already been crucified by all the lies put forth by the media. *We have all seen* how the alleged suspect, Timothy McVeigh, has been portrayed in the media. (McVeigh Def).
- c. One of the people in that plan, one of the conspirators is among *us* still, right here in the courtroom today. (Zacarias Pros)

Third, the lawyers used first-person plural pronouns to draw upon communally-held social values, thereby including social members outside of the courtroom. The lawyers sought to align themselves and the jurors with this group. For example, the reference to the right to due process of the law in (16a) was likely to be a common value that enjoyed widespread support from all kinds of audience, as it entails the right to be treated fairly and have a fighting chance when facing legal action. Using this strategy, the lawyer foregrounded such a value system and silenced the fact that the defendant was a member of al-Qaeda, a fact which may have influenced the decision of some of the jurors. On the other hand, the lawyer in (16b) alluded to the nation's founding principles to establish a stark contrast between what the founding fathers did and what the defendant did, so as to invalidate the motive of the crime that had been claimed to be for the purpose of liberation. In (16c), the lawyer used the remote deictic marker "that" (in "an environment like that") to suggest the socio-economic background of the witnesses and their family. He then contrasted it with the deictic center "this beauty that we have here in Santa Barbara", where the courtroom and jurors are located. Such contrast explained to the jurors how the witnesses and their family's motivation should be understood.

- (16) a. And I say to you today that we must give this man a fair trial. No matter who he is, what he thinks of *us*, or what he represents, this is because of who *we* are and what *we* stand for as a people and as a nation, ladies and gentlemen. And it is for this reason and many others that this trial is much more about *us* and who *we* are than it even is about him anymore. (Zacarias Def)
- b. to resolve it not by violence and terror but to resolve it in the same way *we* are resolving matters here, by constitutional due process[...]Well, ladies and gentlemen, the statements of *our* forefathers can never be televised to justified warfare against innocent children. *Our* forefathers

didn't fight British women and children. They fought other soldiers [...]They didn't plant bombs and run away wearing earplugs. (McVeigh Pros)

- c. Gavin, ten, and Star, nine, were picked up in a limousine with their mother and their father and their brother, and traveled to Neverland Valley Ranch. It was here—and you can imagine just about the excitement that must have been with the family coming from an environment like that to the ranch and this beauty that *we* have here in Santa Barbara County. (Jackson Pros)

Fourth, first-person plural pronouns may be used generically to refer to no group in particular (replaceable by the generic pronoun “one”). This strategy foregrounds how a particular situation applies to everyone and belongs to everyone, a common sense, or universal statement, thereby establishing generalities and creating a persuasive proposition. In (17a), the lawyer represented one of the important witness's dishonest acts as a human trait. Such acts were used by the other side to weaken the prosecution's argument. This strategy makes the motive of those acts identifiable and understandable to the jurors. In (17b-c), the use of “we” and “us” suggests an obvious fact on the issue being discussed.

- (17) a. The evidence in this case will show you, like virtually *everyone of us* in *our* life, that she's made mistakes, that she's done things that were wrong. But *none of us* can put *ourselves* in her place. But we're going to help you by having an expert come in and testify to you to what it's like to be a person—to be in a relationship that's abusive for 16 years, and how that affects their judgment system. (Jackson Pros)
- b. it's true that the Government will introduce evidence of—in various ways to describe the Darrell Bridges debt car, Spotlight debt card, the telephone card, but *we're all* referring to the same thing. (McVeigh Def)
- c. The Statement of Facts is a startling document. It tells *us* what Moussaoui knew. It tells *us* what Moussaoui did. (Zacarias Pro)

In conclusion, first-person plural pronouns, when including at least the lawyer, are used to reference shared values or experiences, and contribute to the silencing of any differences of opinion or understanding among the members of that group.

4.2.2. Questions

Another interactive device in the interlocutor role is the use of question-answer sequences. While not occurring as frequently as other devices, the use of questions can still be regarded as perhaps the most direct way in which the listener/reader can be constructed (Thompson and Thetela 1995; Bamford 2000). Even in situations where they are not supposed to reply, the use of questions establishes contact with the reader, as it shows interest in the listeners, thereby keeping the channel of communication open. In addition, through questions, the speaker can assume a position of authority, as the device implies the right to demand information from the audience. In the corpus under study, the following types of questions are found.

- *Expository questions.* Some of the lawyers' questions were expository in nature, functioning to introduce a topic and providing textual scaffolding for the discourse that follows. The lawyers first picked an issue, and then turned it into a question, so as to demonstrate their argument/ or rebuttal. This creates interaction in the discourse in two ways. First, the question-answer pattern can split the speaker into two communicators: The questioner and, in most cases, the answerer. Second, expository questions serve as an organizing device that provides text continuity, thereby fulfilling the jurors' expectation of a cohesive opening statement. In (18a-c), the lawyer progressed in his narrative by means of a series of questions, which were then supplied with corresponding answers.

- (18) a. In the fall of 2000 Muslim fundamentalists drove a suicide boat into the USS Cole as it refueled in Yemen [...] *And the mastermind of the coal attack?* Khallad, ladies and gentlemen [...] And in this time period al Qaeda was very busy [...] Bin Laden planned to attacked our country using aircraft as weapons. *His plan?* To hijack planes and fly them into prominent buildings. (Zacarias Def)
- b. And I want to say, first and foremost, that the ranch is something that is a beautiful thing [...] But just like so many things in life, something very good can end up being[...]something very bad [...] And people who walk in there with manners walk out and can be described by some of the staff as hellions, rude, obnoxious. *And what is there about Neverland that can do that to somebody. What is there about Neverland Valley Ranch.* Well[...]for those of you who may not know where it is, I'll try to describe it to you[...] (Jackson Pros)
- c. It truly sickens me when I see my friend's—yes, my friend's—face portrayed on the front of Time magazine as the face of terror. *All of for that reason?* (McVeigh Def)

- *Focus questions.* Attention to a particular aspect of the discourse can be achieved through questions. In this case, the lawyers oriented the jurors to specific points by telling the audiences to fix the attention on such points. In (19a-c) below, the lawyers explicitly told the jurors to consider particular aspects of the crime through questions (with introductory clauses, such as “the question is...” and “the question you're going to be asking is...”). Such questions essentially constituted the key points that determine the innocence or guilt of the defendants.

- (19) a. And I think it fair to say that this was the largest criminal investigation in the history of those involved. *The question is did they get the right man.* (Zacarias Def)
- b. Because Michael Jackson, as you know, has been the subject of so much speculation, so much false reporting, so much embellished documentary [...] *the question you're going to be asking is, “who is he.”* (Jackson Def)
- c. *The question is did they get the right man.* Many of the witnesses that Mr. Hartzler said would testify [...] have never talked to us. So [...] we

will be asking them questions to find out for the first time [...] (McVeigh Def)

- *Rhetorical questions.* This type of question is not an answer-eliciting device, but an argumentative device. White (2003: 267-68) argues that this kind of question can perform two types of argumentative function: 1) present the proposition as one of a number of possible alternatives, and 2) present the proposition as self-evident or common-sense, so that it is up to the reader to supply the obvious answer. In either case, the argumentative strength of the question does not lie in what it asserts, but in what it implies. The purpose of the question is to make an indirect statement. In (20a), through the problematic question, the lawyer strengthened his claim that the molestation never happened. In (20b-c), the lawyers' questions conveyed their views on the case and the characters therein. Generating implicatures, these questions clearly displayed the speakers' doubt of the witnesses' testimony and showed disalignment with what they said/did.

- (20) a. The networks start negotiating to have a responsive show to the Bashir documentary, which ultimately happens. So they're converging on Neverland[...]And guess what happens, they say, in the middle of all of this. That's when they say the child molestation begins. I submit to you we will prove it never, ever happened. *Can you imagine a more absurd time for it to ever happen* (Jackson Def)
- b. The proof will show that Mr. Eilliot and Ms. Beemer and Mr. Kessinger are mistaken about two men being there on Monday and in their confusion described to the FBI—honestly, I'm sure—the people on Monday for the people on Tuesday; and our proof is if they're not even sure about where there is a second one, *how can they be sure what the first one looks like?* (McVeigh Def)
- c. People have always made mistakes and errors of judgment. *Seriously, who in this room has not?* And unfortunately, ladies and gentlemen, that's what happened in our country before September 11th. (Zacarias Def)

- *Embedded narrative questions.* Unlike the preceding types, this kind of question is neither asked by the lawyer nor addressed to the jurors. Instead, the lawyer constructs the question and embeds it in the narrative. However, similar to problematic questions, this type of question orients the jurors' perception of the narrative or the character therein. In my corpus, only one instance of this question is found. As (21) shows, the embedded questions paint the picture of the female witness in the story as someone who was motivated by monetary gain.

- (21) But she has one problem: She wanted money, and she didn't see it coming. We will prove to you, throughout this trial, that her reaction to this film was primarily, *"How do I profit. How do I get distribution rights. What documents should I sign. How do I negotiate the document."* (Jackson Def)

4.3. *The animator role*

Instead of solely relying on their own voice at the time of speaking, the lawyers also speak through the voices of others by means of reported speech, expressed in direct and indirect discourse. Using reported speech, the lawyers can adopt a footing as they change roles within the production format. In the opening statements under study, the lawyers reanimate the following voices.

4.3.1. *The voice of trial participants*

This group includes the voice of defendants and lay witnesses, who are involved in the crime or are there to give information about the crime. Since the lawyers were not present in the scene, this strategy presents the narrative from the point of view of a person who was, as can be seen in (22a-c). In these examples, the reported discourse appears to depict and to emphasize the direct experience of the reporters who were involved in the cases. Note also the value-laden lexical items such as “admitted”, “instructs” and “concludes”, and it-cleft structure. These devices conveyed the reporters’ attitudes on the original speakers and the reported utterances.

- (22)
- a. *They asked him about the source of his money that he used to pay for the expensive simulator training. He said: Oh, that money came from a business in England called NOP.* (Zacarias Pros)
 - b. We are going to bring in witnesses to tell you about their behavior. For example, Janet and Gavin called Comedian Jay Leno and tried to get money from Mr. Leno. *Mr. Leno has told the Santa Barbara police, “Something was wrong. They were looking for a mark. It sounded scripted. The mother was in the background, and I terminated the conversation”.* (Jackson Def)
 - c. Over time McVeigh’s anger and hatred of the government kept growing; and in the late summer of 1994—and this is nine months before the bombing—he decided that he had had enough. *He told friends that he was done distributing antigovernment propaganda and talking about the coming revolution. He said it was time to take action, and the faction he wanted to take was something dramatic, something that would shake up America, he said, and would cause ordinary citizens, he thought, to engage in a violent revolution against their democratically elected government.* (McVeigh Pros)

4.3.2. *The voice of personal authorities (including judges, expert witnesses, and well-respected people)*

Personal authorities feature the characters in the lawyer’s narrative whose status has been granted to them by the current institutional context, including expert witnesses who testify by virtue of their expertise and knowledge in a particular subject, and the judge who holds power in the courtroom. This is an important tool for the lawyers to amplify the credibility of their crime and investigation narratives. The lawyers benefited

from the authoritativeness of the judge's speech (23b) and the expert witnesses (23c). In (23a), while the sources of the reported utterance were not specified in detail, the lawyer still benefited from the fact that it was made by people in the government, and therefore it lends power to his criticism of the government's investigation system. Interestingly, the lawyers represent these authoritative views as aligning with their own position.

- (23) a. *Khallad, our government says in e-mails that you will see in this case, was a major league killer...But according to the government's case, it was the information found in Moussaoui's notebook or in the Statement of Facts that would have led them to these two men before September 11th (Zacarias Def)*
- b. *The Judge has told you that that is not evidence itself [...] (McVeigh Def)*
- c. *Because that statement is also on a tape that was seized during the search warrant of his [Jackson] office [...] you'll hear from experts...that that tape has all kinds of blanks in it, and that it was edited, and that it was stopped and it was started [...] (Jackson Pros)*

4.3.3. The impersonal voice

Impersonal voice includes the law and other non-human sources (such as newspapers or TV documentaries). The lawyers used this device to legitimate their claims about the law itself (24a), or to legitimate their argument about the case they are presenting (24b-c). In (24a), the lawyer referred to the expression on the defendant's shirt. In doing so, he argued that the expression could be misrepresented and misunderstood. In (24b), the lawyer cited the constitution to call for a fair judgment, despite the fact that the defendant was an al Qaeda member, and in (24c), the lawyer used the information given by a local newspaper to suggest the Arvizos' monetary motive.

- (24) a. *But on his shirt, he had sic semper tyrannis, the words spoken by John Wilkes Booth when he assassinated Abraham Lincoln in Ford's theater. And the Government suggests to you that as an expression of his motive. Well, sic semper tyrannis is also the official slogan of the state of Virginia and had been for almost 100 years before John Wilkes Booth appropriated it [...] It has a meaning in the historical conservative community of people who follow the revolutionary rule and its antecedents. (McVeigh Defense)*
- b. *Our constitution also requires that person charged with capital offenses, even admitted al Qaeda terrorists, be provided with court-appointed lawyers when they can't afford them. It is said that our justice system can only be judged by how it treats the poorest, the most despicable person who is charged with the most heinous of crimes. (Zacarias Def)*
- c. *On November 29th, 2000, the El Monte newspaper reported that it was costing the Arvizos \$12,000 for the treatment of chemotherapy. All of that was being paid by the Teamsters insurance. (Jackson Pros)*

As to the functions of these voices in the opening statement, they are used to

- legitimate the narratives with verbal evidence

Legitimation is the reasons, the justifications and the validations of how things are (van Leeuwen 2007). The lawyers tried to present their stories as valid and as necessarily true. The authority of other speakers was used as a means to increase the persuasiveness and legitimacy of their own argument. The lawyers selected the voices of authorities that supported them, and they mainly silenced those that supported the other side's depiction of reality. The voices of expert witnesses and of impersonal authorities carry out this function well, as seen in examples (23) and (24) above.

- contextualize the narratives

In this case, the lawyers reproduced a voice so that they could recast it and expand on it in their own words. They constructed it as having a meaning that fit their case, one that would contradict a possible counter-narrative. In example (25), the lawyer reproduced Jackson's words in a direct quotation. This contributes to the vividness at the narrative's peak, or to use Wierzbicka's (1974) term, the theatrical feature. This vividness in turn signals a shift to a scene that the prosecution team pieced as a key event leading to the molestation of child.

- (25) And he [Jackson] talked, and he remembered that Gavin wanted to be an—in entertainment. And he said, “Why don't we have a cussing ontest, and we'll use cuss words. I'll use a cuss word, you use a cuss word. We'll just go back and forth. You pretend like it's an audition,” and he did. *Well, the cuss words escalated until they involved very sexually graphic cuss words* that I'm sure all of you have heard on a number of occasions, on the playground or the gym, or other places [...] (Jackson Pros)

- undermine or falsify the witness's narratives

Another reason for which lawyers used reported discourse was to argue that what someone has said was not true. Thus, they recreated discourses so that they could undermine or falsify them. By de-constructing the truth-value of others' discourses, the lawyers attempted to deny the validity of the utterances (usually by saying that it contradicts what the person said on other occasions, etc). In (26), for example, the lawyers presented the testimony of the witnesses just to contradict it immediately afterwards. This in effect functioned to offset the strength of the other side's arguments.

- (26) they [FBI agents] asked him [Moussaoui] about the source of his funding. *He lied*. He said he got his funding from associates in England and from a business called NOP. *This, of course, was false*. (Zacarias Pros)

5. Conclusion

By way of conclusion, let us return to Levinson (1988)'s question of “who stands in which when”. More specifically, why do we find this set of speaking roles in the opening statement phase of all the trials under consideration? And why do we find footing shifts in the opening statement? Let me answer these questions along the following lines.

1) From a practical and functional perspective, such shifts in footing operate as a strategic discourse method to bypass the legal requirement that the lawyer refrain from using overt evaluation and persuasion. As we have seen, the lawyers weave in and out of different speaker roles to manage and create a hegemonic effect in the situated details of verbal performance, with each role representing a unique way of framing the discourse. That is, assuming the role of animator, the lawyers can imply a lack of responsibility for the content, as they are incorporating utterances of other people and authoritative sources. Alternatively, the lawyers may switch to the role of storyteller to signal their own stance and attitudes as they narrate incidents through evaluative devices, but at times, they also perform as interlocutors, directly inviting the jurors to share their stance and direct their attention to specific aspects of the narratives.

By manipulating these speaking roles, the lawyers are likely able to lead the jurors to make certain inferences (such as inferences about the evidence, or the credibility of a witness), although they are not found to assert personal opinions, or give comments on the evidence or the credibility of a witness. While it is certainly true that the power to finesse reality in the courtroom is contingent upon what is (not) included in the ideational content of a lawyer's speech, this research shows that such power also lies in large part in the mastery of role performance. This seems to support what other researchers have found in the closing statement, that is, lawyers must manage multiple aspects of their identity: Both their position of authority and their similarities to the jurors.

2) In a more theoretical sense, this study has examined the discourse of the opening statement, not so much for differences in referential content, but for different kinds of speaker role performances. What we have seen is the non-monolithic role performance of lawyers, and such dynamic roles point to the lawyers' pragmatic awareness of not only stance-taking but also interactional strategies. Laminated or embedded within the broad professional label of lawyer, such speaking roles allow the speaking subject to anticipate and respond to the inner reasoning of the jurors while maintaining an appearance of objectivity, thereby avoiding a reprimand from, and satisfying, the court. At the same time, these footings challenge and provide counterarguments to the opposing team. In a more speculative vein, this study appears to show that the opening statement is as much about social interaction and dramatic performance as it is about describing the preview or providing information about the crime.

More importantly, these speaking roles provide evidence for the fact that the opening statement is fundamentally complex and multi-party in nature, despite its, objectively speaking, monologic form. Such different speaking roles serve to set up what Pascual (2002, 2006) calls "fictive" interaction, as this type of interaction is entirely conceptual in nature and independent of the overt communicative structure. That is, while the opening statement involves an overt fictive type of communication from the lawyer who is speaking to the jurors, it simultaneously involves a fictive communicative channel between the lawyer, the jurors, and other witnesses in crime narratives. Through shifts in speaking roles, lawyers can incorporate different voices in their speeches. By asking questions and pronouns, for example, the addresser (i.e. the lawyer speaking) assumes the role of a co-conversationalist as if the jurors could actually respond, and at times, also overtly provides an answer to the addressee (i.e. the jury listening), whose inner reasoning and decision-making the lawyer tries to anticipate, formulate, and satisfy.

Finally, this study adds to our understanding of Goffman and footing in that instead of aiming to discover a universal set of participant role categories as Levinson (1988) does, a simple set of primary categories has been posited based on the indexical devices commonly found to occur in each category. In contrast to Goffman's less linguistically systematic discussion of footing, this study has emphasized the specific, formal discursive devices that mediate speaker's verbal performances. It is through attention to language- and genre-specific indexical strategies that we can determine how speakers weave in and out of different speaker roles. Therefore, to scholarship of footing, the analysis provides a linguistically informed framework that thoroughly specifies indexical strategies through which speakers enact these multiple role perspectives in a particular genre of discourse.

While this study is based on three cases, I believe that its merits can be extended to the genre of the opening statement as a whole. For example, this research may have implications for training jurors to be aware of, and less easily swayed by, persuasive interactive techniques, and it explicates the workings of role shifting and internal dynamics of legal proceedings in general. An interesting question that should be pursued in future research is how individual lawyers may differ in their fictive interaction techniques as well as what may be held constant among lawyers' opening statements. Additional analyses in other court systems would also deepen our understanding how the genre of the opening statement works in other countries and cultures.

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