Between solidarity and argument: Interpersonal negotiation in two legal genres

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Abstract

This study presents a comparative examination of interpersonal negotiation in two monologic courtroom genres: the opening statement and closing argument. Drawing upon a corpus of three high-profile American trials, the quantitative and qualitative analysis identifies the traces and degree of the jury's presence through lexico-grammatical resources, and reveals distinct interactional patterns, which are indicative of the interactive goals of the two speech genres. Such relational practice does not merely "oil the wheels" of courtroom communication, but also constitutes a key way in the meaning-making process of these genres. The findings attest to the centrality of relational work in accomplishing transactional goals in institutional discourses.

Keywords: closing argument, engagement feature, interpersonal negotiation, opening statement.

Resumen

Entre la solidaridad y la argumentación: la negociación interpersonal en dos géneros legales

Este artículo presenta un estudio comparativo de la negociación interpersonal en dos géneros legales de naturaleza monológica, la presentación del caso y los alegatos finales. Para el estudio se utilizó un corpus de casos mediáticos americanos. Tanto el análisis cuantitativo como el cualitativo permiten identificar rasgos de la presencia del juez a nivel lexicogramatical, así como patrones de metadiscurso interaccional recurrentes, indicativo del propósito comunicativo de los dos géneros orales. Esta práctica discursiva no solo es facilitadora de la comunicación en la corte sino que constituye un pilar fundamental en el proceso

de construcción del significado en estos géneros. Los resultados apuntan al papel central que juega el propósito transaccional de los discursos institucionales.

Palabras clave: argumento concluyente, rasgo interpersonal, negociación interpersonal, presentación del caso.

1. Introduction

The interpersonal dimension of courtroom discourse has attracted considerable scholarly attention in recent years. Advocating a view of courtroom communication as highly interactional, rather than simply informative, this social view of courtroom discourse locates interpersonal negotiation and participant relationships at the heart of a trial, arguing that every successful case presentation must display the lawyer's awareness of her audience and their needs. Writing about effective trial techniques, the late law professor Mauet (2013) contended that jurors believed the lawyer who they felt a personal connection with, while Hobbs (2008: 232) argues that "the speaker's personality and identity are key factors in determining how a verbal presentation will be received". The central point here is that lawyers must draw on conducive ways of expressing their arguments, representing themselves, and engaging the audience.

Two courtroom genres where interpersonal negotiation very likely functions as a "deal breaker" are opening and closing speeches. This is because, first, setting aside voir dire, they are the only opportunities for lawyers to speak directly to, and persuade, the "real", outcome-determining addressee (i.e. the jury), as opposed to the "apparent" addressee in display talk (i.e. the witness/defendant/judge). Second, a favorable verdict is dependent upon "how effectively the advocate's personality is projected towards the jurors than upon any other single factor" (Goldberg & McCormack, 2009: 409-410). Simply put, this audience-centered approach requires that lawyers explicitly acknowledge the silent jury's by giving them a voice and a role, transform them from passive observers into active participants, and conduct interpersonal negotiation with them.

Indeed, previous studies have documented several ways in which relational work in the courtroom can be conducted: through display of "similarity cues" (Fuller, 1993), dialect switching (Hobbs, 2003), violation of Grice's cooperative principle (Cotterill, 2010), footing management (Matoesian, 2001), referring expressions (Dettenwanger, 2011), and metadiscourse (Cavalieri, 2011). Although these devices allow speakers to position

themselves with respect to their interlocutors to influence beliefs, attitudes, expectations and modes of interrelating with the audiences, they do not constitute the speaker's direct and explicit construction of the addressee in courtroom discourse. What they primarily do is manage information flow, construct and ascribe a desired identity, and communicate speakers' affect and evaluation towards what it is they are saying. To use Thompson and Thetela's (1995) terms, they are "interactive", but not "interactional". Little systematic attention has been paid to overt interactional resources, which in turn partly limits the strength of the claim about the extent to which legal discourse is interpersonal.

Drawing upon a corpus of three high-profile cases, the current study proposes to quantitatively and qualitatively explicate the ways in which lawyers conduct overt interpersonal negotiation in the discourse of the opening and closing address. These much-lesser studied courtroom genres (as compared to, say, witness examination) constitute interesting sites to investigate traces and the degree of the real addressee's presence with respect to 1) the interactional lexico-grammatical resources used for carrying out interpersonal negotiation and their distributional patterns, and 2) what such patterns reveal about the presenter's interactive goals in these genres. This research, thus, contributes to unveiling the interactional patterns of the opening and closing address, and to attesting to the centrality of relational work in accomplishing transactional goals in institutional discourses.

2. Opening statements and closing arguments

A trial proper begins with the opening statement from the party with the burden of proof (i.e., the plaintiff's side in a civil trial or the prosecution in a criminal trial), followed by the defense's presentation. Assuming (in principle) that jurors know nothing about the case, this initial phase proffers the first opportunity for the trier of fact to hear a comprehensive statement of each party's factual claims. In the opening statement, attorneys from both sides introduce themselves and parties involved in the lawsuit, outline the important facts of the case in the form of narratives, explain the applicable law, and request a verdict. What makes the opening statement particularly peculiar is its dual nature. The official website of the US federal courts states that "although opening statements should be as persuasive as possible, they should not include arguments" (Administrative Office of the US Courts,

2014), and it is "originally 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 be better prepared to understand the evidence" (*Best v. District of Columbia* 291 U.S. 411, 54 S. Ct. 487, 78 L. Ed. 882 [1934]; my own emphasis). What this means in practice is that, to create a successful persuasive opening address, lawyers need to come close to being argumentative. In reality, however, what counts or does not count as argumentative is hard to precisely distinguish, and is usually left to the discretion of the trial judge.

The closing argument, in contrast, is the concluding statement in which a lawyer reiterates important argumentative points for jurors to consider for the last time, after witness examination and before deliberation. This last phase generally, though not always, starts with the prosecution, and is followed by the defense team. In some jurisdictions, the prosecution is permitted a final rebuttal argument. The primary purposes are to summarize the testimony, "remind" jurors about key evidence, explain the significance of the evidence elicited during the trial, point out the inconsistencies in the case presentation, and instruct the jurors about how to apply the law and jury instructions to the case (Administrative Office of the U.S. Courts, 2014). Under the law, a closing argument may not introduce new information and may only use evidence introduced during the trial. This implies that the expression of personal opinions about the merits of the case or the credibility of witnesses are allowed so long as they are supported by evidenced introduced previously, while groundless opinion is not permitted.

The discursive characteristics of these two genres differ from those of other courtroom genres in many ways. First, instead of being a dyadic interactional situation, they are monologues delivered to silent, overhearing audience with no interruption (except in cases where objections are raised). Second, these speeches are not jointly constructed, but are produced under the lawyer's complete control, thereby showing the producer's pragmatic awareness of the audience and their needs. Third, unlike other courtroom exchanges, which are display talk that occur for the sake of the overhearing jury, they are directed specifically to jurors. Owing to these generic constraints and discursive characteristics, the two phases are linguistic sites where lawyers of both sides are highly motivated to construct and negotiate their relationships with jurors for a desired verdict.

3. Interpersonal negotiation

Interpersonal negotiation is rooted in the view that language use, be it a single turn in a conversation or a written text, involves intersubjective positioning, as all texts are "dialogic" (Bakhtin, 1986). That is, meaning is not simply the product of an addresser sending a message to an addressee, but rather is a joint creation, resulting from their collusion as interlocutors in a particular communicative event, even if only one person appears to do most of the talking (Tannen, 1985: 100). This is because whatever a language user says or writes constitutes "a response to preceding utterances…Each utterance refutes, affirms, supplements, and relies upon the others, presupposes them to be known, and somehow takes them into account" (Bakhtin, 1986: 91), with the addresser oftentimes anticipating and acknowledging potential response from the addressee.

Based on this heteroglossic nature of discourse, Hyland (2005) proposes a model of interaction in discourse, which nicely distinguishes between speaker-oriented and listener-oriented ones. The former, labeled "stance", serves to convey the speaker's attitudes and evaluation, consisting of such categories as hedges, boosters, attitude markers, and self-mentions. The latter, "engagement", accounts for the ways in which speakers attend to the listener overtly, thereby showing their recognition of the presence of the audience. Engagement features encompass categories such as pronouns, personal asides, appeals to shared knowledge, directives and questions.

Following Hyland (2005), this study conceptualizes relational negotiation in the courtroom as the ways in which a lawyer acknowledges jurors, overtly recruits them to the discourse and, in so doing, linguistically marks their presence. Resources that signal their presence include: inclusive first-person pronouns, second-person pronouns, questions, directives, asides, and references to shared knowledge. These engagement features are well in line with Bakhtin's notion of dialogism because they have a dialogic purpose in that they refer to, anticipate, or otherwise respond to the actual or anticipated voices and positions of the jurors and lawyer of the other side. The fine distinction lies in the fact that this way of conceptualizing engagement is somewhat narrower, and limited to the lawyer's choices to introduce jurors as real discourse participants, excluding her ways of signaling personal attitude or opinion towards propositions, hence "interactional" (Thompson & Thetela, 1995).

Previous discourse studies have documented some evidence as to how courtroom audiences may be oriented to. First-person plural pronouns, for

instance, have been found to help lawyers construct themselves and the jurors as sharing the same opinions and evaluations. A case in point is Danet (1980: 530), who noted that the defense attorney in a Jerusalem rape tried to use the first person pronoun "we" to suggest agreement between himself and the judges during the closing argument phase.

Also examining closing arguments, Stygall (1994) finds that when lawyers use "we", they are using it generically to position themselves and the jurors as part of a larger group, e.g. all human beings. Similarly, "you" is found to be the most common pronoun in the closing arguments, and it serves to put the jurors into a single entity (180).

Pascual's (2006) qualitative study specifically explores the use of questions in the closing statements of a high-profile American case, arguing that the use of questions creates "fictive interaction" in this monologic genre, which serves as an effective argumentative strategy.

Focusing on how lawyers use linguistic devices in the creation of opposing narratives, Rosulek (2015) finds that, through first-person pronouns, lawyers create groups (which either did not necessarily exist previously or did not have easily defined boundaries), thereby easing differences. At the same time, they also represent jurors as already accepting claims with phrases such as "you know" and "you saw", rather than telling the jurors to believe their propositions. These strategies have the effects of silencing the jurors' doubts and emphasizing their narratives.

From a diachronic perspective, Chaemsaithong (2014) explores a range of metadiscursive devices in opening statements between 1759 and 1789, including both authorial stance- and engagement-devices. Through metadiscursive resources, early lawyers could powerfully shape and control not only the ideational content of this type of discourse but also power relations between the lawyer and jurors.

Overall, while the studies discussed above do much to inform the present study, they focus on a few specific devices, analyze a single case without quantitative findings to substantiate the claims, or do not examine the typical audience orientation features of these two genres, thereby offering only a partial mapping of audience orientation in courtroom discourse. The present analysis seeks to build on the results of these studies, but will also go further to document what overt engagement features are possible and common in these two genres as well as the pragmatic motivations behind them.

4. Data and methodology

The corpus consists of transcripts from three American trials (hence, 6 opening statements and 6 closing arguments). These cases have been selected because of their very high visibility. A short description for each trial is provided below.

Case 1: United States v. Timothy James McVeigh, 1997 (Opening: 36,016 words; Closing: 33,971 words)

The incident, also known as Oklahoma Bombing, was deemed the most destructive act of terrorism on American soil before the 9/11 attacks. Motivated by his hatred for how the government handled the Waco Siege in 1993, which ended in the burning and shooting deaths of some 70 religious sect members, McVeigh detonated an explosive-filled truck in front of a federal building in downtown Oklahoma in retaliation for that incident, killing more than 160 people. McVeigh was executed by lethal injection.

Case 2: Commonwealth of Virginia v. Lee Boyd Malvo, 2003 (Opening: 18,843 words; Closing: 13,288 words)

Related to Case 2 above, this case involves a Jamaican-born 17-year-old Malvo, who was tried for his role in the same attacks. Having befriended Muhammad, Malvo learned to shoot and kill. Tests determined that the only fingerprints found on the rifle were Malvo's, while the defense's argument is that Malvo was brainwashed by Muhammad into committing the crimes. Malvo was sentenced to life in prison without parole.

Case 3: The State of California v. Michael Jackson, 2005 (Opening 36,257 words; Closing: 64,213 words)

World-famous singer Jackson was tried for sexually molesting 13-year-old Arvin Gavizo, who had suffered from cancer, and for exposing the teenager to strange sexual behavior. He was also accused of administering alcohol to the child, holding him and his family at Neverland, and exposing a minor to explicit sexual material. Jackson was found not guilty on all charges.

The corpus was analyzed using both quantitative and qualitative approaches. First, the transcripts were manually scanned for possible explicit markers of audience engagement in the texts. The software *AntConc 3.4.3m* was then used to help search the frequency of occurrence, and all frequency counts were then normalized to a common basis, per 1,000 words of text, to allow

for a direct comparison of the results. Finally, their pragmatic functions were examined in detail.

5. Findings

In this section, I first explicate the ways in which lawyers' argumentative work can be facilitated by the use of addressee features, including second-person pronouns, inclusive first-person pronouns, questions, asides, shared knowledge, and directives. I then proceed to present the quantitative findings with respect to the frequencies of addressee features and their patterns.

5.1. Second-person pronouns

In both genres, more than half of second-person pronouns refer to the jury. They are used for conducting several kinds of speech acts with silent jurors, thereby treating them as real players in the monologic discourse. This includes referencing (1a), suggesting (1b), formulating terms (1c), and exemplifying (1d).

(1)

a. From the photographs presented to *you*… (Jackson Pro Opening)

b. Let me suggest to *you* that Michael Jackson possessed this book in 1993, when he was sharing his bed…with one child. (Jackson Pro Closing)

c. It's another Tipton look-alike, if *you* will. (McVeigh Pro Closing)

d. To give *you* just two examples of the materials… (McVeigh Pro Opening)

The majority of these personal pronouns (approximately 70%), however, appear to be used for different purposes in the two genres: previewing in the opening statements and reviewing in the closing arguments. Each is characterized by strong lexico-grammatical patterning, involving verbs such as "learn", "see", "hear", and "recall" in the future tense (for previewing) or the past tense (for reviewing). In (2a,b), lawyers do not merely assist jurors in providing a roadmap or recapitulating certain pieces of evidence or testimony, but also facilitate their processing needs by providing informational links to a different part of the trial.

(2)

a. Her actions refute the idea of a conspiracy, as *you* heard me say ad nauseam in my examination of witnesses. (Jackson Def Closing)

b. *You* will hear her husband testify to that handiwork. (Malvo Pro Opening)

What is more striking but has not received attention in the literature is the case where personal "you" can be maneuvered for strategic membership management. Found only in closing speeches, this strategy situates jurors in the opposing counsel team and, in effect, creates an argumentative exchange where lawyers successfully position themselves as logically superior and authoritative. In (3a, b), with "you" semantically referring to the opposing counsel, the lawyers problematize the other team's arguments, thereby undermining their validity.

(3)

a. If *you* really think there was a conspiracy of this magnitude, if *you* really think the actions were this serious, if *you* really think a family was being abducted and hidden and spirited away to their doom, why do *you* only charge Michael Jackson? (Jackson Def Closing)

b. No 1. is that the killing of Linda Franklin, no matter how *you* carve it up, the killing of Linda Franklin was a willful, deliberate, premeditated killing. (Malvo Pro Closing)

More frequent in the closing phase is impersonal *you* (23% as opposed to 12% in the opening phase). Objectively the jury is not in the reference set. However, the pronoun still functions interpersonally by inducing "hearer simulation" (Malamud, 2012), which implies "putting oneself into the shoes of anyone meeting relevant condition" (2012: 257), so that jurors are "invited to empathize with the (set of) protagonist(s) about which some statement is made - potentially but not necessarily, the speaker" (Gast et al., 2015: 150). This is evident in (4a), where the jurors are positioned as McVeigh at the time he was mistreated by the government, and in (4b), where the jurors are invited to enjoy the experience Neverland by themselves.

(4)

a. Timothy McVeigh and many like him unsuccessfully tried political methods. They tried the courts. They tried civil disobedience…So, they

looked to other, more direct methods. What happens with non-violent direct-action methods? The police put pepper-mace in *your* eyes, they handcuff you, and they throw *you* in jail. This has happened to environmentalists. (McVeigh Def Closing)

b. If *you* go into Neverland, *you* are struck by the childlike, Disneylike, fantasylike atmosphere. *You*'ll see statutes of children…*You*'ll see a train. *You*'ll see a lake…(Jackson Def Opening)

At the most extreme end, lawyers can broaden the simulation to encompass the public at large, thereby elevating the argumentative status of a proposition to a common sense or universal statement (Gast et al., 2015: 152). By positing a scenario that is true (only) in the hypothetical world (5a), and by generalizing that anyone can easily obtain a copy of the book (5b), the lawyers can objectify their theory of the case.

(5)

a. And to even consider it, *you* have to believe Janet Arvizo beyond a reasonable doubt that she escaped from Neverland, went back, escaped from Neverland, went back, escaped from Neverland, went back. It's absurd on its face. (Jackson Pro Closing)

b. 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 Opening)

5.2. Inclusive first-person plural pronouns

Previous studies on first-person pronouns highlight such issues as group membership, participant alignment, and positive/negative face needs. In particular, Duszak (2002: 6) observes that "we" can be managed "to construct, redistribute, or change the social values of ingroupness and outgroupness", thereby opening up several 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), thereby constructing a shared identity. This in turn overrides the jurors' motivation to consider alternative explanations, for the lawyer appears to speak on their behalf.

In both genres, first-person plural pronouns exhibit a similar range of

functions. They can be used to construct a cohesive in-groupness, with the members sharing the same knowledge or experience as the lawyer either from inside the courtroom (6a) or outside (6b).

(6)

a. We are not suggesting to you that Lee is crazy in the sense that most of *us* think about crazy people. As soon as the word "insane" comes up, *we* all think about "One Flew Over the Cuckoo's Nest", and *we* see them as "zombiefied". (Malvo Def Opening)

b. All of *us* have seen campers. This is a topper, runs flush to the cab. (McVeigh Pro Closing)

On some occasions, the boundaries of the constructed group are extended to encompass social members outside of the courtroom. In doing this, lawyers often draw upon the group's communally held social values. For instance, in (7a), the reformulation of the Kansas legislature as "our" legislature, which enjoys such widespread support from American people that acquitted the convicted Lt. Calley[1], serves to create an appeal for similar treatment of McVeigh. Similarly, in (7b), the lawyer alludes to the nation's founding principles to set up a moral basis for the trial.

(7)

a. After Lt. Calley was convicted, was he executed? Did he serve a hard time? Did he even serve a life sentence? No. The Kansas legislature, *our* legislature, echoed the sentiments of the majority of Americans and offered a solution calling for Lt. Calley's freedom. (McVeigh Def Closing)

b. 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… (McVeigh Pros Opening)

Alternatively, instead of highlighting similarities, the pronoun "we" may be called upon to aid in the contrastive categorization of other groups, the so-called "we-versus-they" cognitive dichotomy (Duszak, 2002). Found in both genres, this may influence the audience to disalign with and mistreat those defined as "they", while forcing "us" into tighter and closer union, and "when a more overt choice is made to name a 'we' (self) and a 'they' (other), other dangerous divides occur along many different lines" (Pennycook, 1994: 176-177). In (8a), defending McVeigh's motive, the lawyer fabricates a

dichotomy between the American government and American citizens, and in (8b) the lawyer creates an emotional appeal for Malvo by distinguishing his pitiable living condition from the jurors.

(8)

a. Bit-by-bit American government had taken *our* freedoms. *We* would have reacted strongly had the government tried to take *our* freedoms all at once. But since it was done little-by-little, each citizen went along to go along. (McVeigh Def Closing)

b. His [Malvo] mother was a seamstress. She learned to sew to make clothes… That's Lee in a suit that she made for him. That might not be the color that *we* would pick out, but he was very proud of it, and that's what she did for a living. (Malvo Def Opening)

At the most extreme end, like impersonal "you", first-person plural pronouns may be used generically to refer to no group in particular. This impersonal "we" is more frequent in the opening phase (8% as opposed to 4% in the closing speech). In (9a), the defense uses an analogy of a confluence to portray how Malvo and Muhammad got acquainted, with the two streams distinctly indexed by impersonal "we" and "you". In (9b), the pronouns draw upon lay-people's experience of familiar handwriting to identify McVeigh's involvement.

(9)

a. Like virtually everyone of us in our life, she's [Arvizo's mother] made mistakes. (Jackson Pro Opening)

b. All of *us* in *our* life's experiences know that over time, you can become acquainted with somebody else's handwriting. I mean all of *us* can think of people that *we* know and that *we* have seen enough handwriting to recognize similarities. (McVeigh Pro Closing)

5.3. Questions

The use of questions is perhaps the most direct way in which the addressee can be constructed (Bamford, 2000). Even in situations where response is not possible, contact is established with the audience, as the user appears to show interest in them. At the same time, because the device implies the right to demand information from the interlocutor, the user assumes a position of authority.

Common in both genres are focus questions that draw the jury's attention to specific aspects of the case, with introductory clauses such as "the question is" and "the question you're going to ask is", as in (10a, b). Such questions typically concern the key elements that determine the innocence or guilt of the defendants, which are necessary information in both phases.

(10)

a. The primary issue before you…is going to be…with regard to the killing of Linda Franklin: *Who was the trigger man? Who fired the fatal shot?* (Malvo Pro Closing)

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 Opening)

The opening statement is notable for expository questions (53% as opposed to 23% in the closing argument), intended to introduce a topic and provide textual scaffolding for the discourse that follows. This type of questions fulfills the jurors' expectation of a cohesive opening statement. In (11a, b), the lawyers first pick an issue, turn it into a question, and immediately supply the answer for the jurors.

(11)

a. The central focus of those acts was to isolate and to control the Arvizo family and to keep them away from the media, and to convince them to participate in a network planned rebuttal video to be produced by the defendant and his co-conspirators. *Who are these co-conspirators and what are their relationships to the defendant in this case?* Well, first of all, let's start with…(Jackson Pro Opening)

b. They have a saying in Jamaica…It's called "save the eye". *Have you ever heard that phrase? Do you know what it means?* Save the eye means… (Malvo Def Opening)

The closing statements, in contrast, are replete with rhetorical questions (45%, as opposed to 17% in the opening statements). An argumentative device conveying an implicature, these questions make an indirect statement, which is usually contradictory to its propositional content, hence "polarity shift" (Ilie, 1994). They are commonly employed to express the lawyer's doubt of the witnesses' or the opposing side's testimony and show

disalignment with what they said/did. In (12a, b), the illocutionary meaning is that the prosecution's witness and evidence are not to be trusted, and that McVeigh should be supported just as before as he has not changed, respectively.

(12)

a. *You're going to trust him [Prosecution's witness] over Macaulay Culkin?* They want you to. If you listen to them, Macaulay, Wade, Brett all came here to lie under oath and say they weren't molested. *Do you buy any of that?* (Jackson Def Closing)

b. Timothy McVeigh was one of those troops you supported in the Gulf War. He fought for your liberty. He was a law-abiding citizen, friend, son, and brother. If he was what he was before April 19, 1995, *hasn't he also been the same man since then?* (McVeigh Def Closing)

5.4. Asides

Using asides, lawyers interrupt the ongoing flow of discourse and bring the jurors into the text to offer a metapragmatic comment on what has been said. By attending to jurors in the middle of an argument, lawyers initiate a brief interpersonal dialogue with them. These asides, therefore, add more to the addresser-addressee relationship than to the propositional development of the discourse.

Common in both genres are asides that clarify information (13a), manage terms (13b), and make a repair (13c), while asides that display an evaluative stance on the opposing side and their argument, such as "his mean questioning" and "they're not sure which way they're going" in (13d), are almost exclusively found in the closing arguments. In these cases, lawyers show they do not take a statement for granted, but rather they appeal to the jurors' willingness to follow their reasoning.

(13)

a. Our evidence is that the spotter's job is to look around and make sure that nothing can interfere with the job at hand - *look out for cops, look out for other witnesses, look out for people who can spot them, that's the spotter's job.* (Malvo Pro Closing)

b. Spotlight is the company - *and I'm not sure of its full legal name, but that's for ease of convenience, what we'll call it*, they market this debt calling card service. (McVeigh Def Opening)

c. Mr. Jones stood before you in closing - *in opening, I should say* - and said… (McVeigh Pro Closing)

d. In a library of thousands and thousands of books, they found a couple of books that focused on men. And they wanted you to think that someone Mr. Jackson was some - *I don't know whether they're trying to say he's a gay man, or, as Mr. Zonen in his mean questioning, try to suggest he's asexual, they're not sure which way they're going* - but… (Jackson Def Closing)

5.5. References to shared knowledge

Appeals to shared knowledge are explicit signals that serve to mark a statement as unproblematic, familiar or accepted. These appeals therefore manifest the lawyer's sensitivity to the needs of the audience and constant monitoring of the state of mutual understanding.

Projected shared knowledge can be achieved by presenting a claim as an incontestable fact requiring no further proof: it is what jurors already know about or are expected to know. In (14a), by attempting to suggest that the models of X-rated magazines in Jackson's bedroom are underage, the prosecutor marks the age-related statements as evident to the jurors, while in (14b) Muhammad's significant role in indoctrinating Malvo is construed as indisputable through a metaphor. This technique is particularly critical to creating favorable first impressions in the initial phase of a trial, as it can determine whether a crime narrative is credible and logically coherent and whether the jury will continue listening.

(14)

a. When you see them [x-rated magazines Jackson was testified to show to Arvizo] and you will see them it is *clear* that if these young ladies are 18 years old, which they're supposed to be, they *sure* don't look 18 years old. (Jackson Pro Opening)

b. Mr. Muhammad created what Lee became *just as surely as a potter molds* clay. (Malvo Def Opening)

Alternatively, lawyers may assume a role of dialogic partner in approving a particular argument from the jurors. Discourse markers such as "yes", "you know", and "of course" are found to realize this purpose. In (15a), "yes" sets up an affirmative response to a previous dialogic turn, thereby appearing to reaffirm Jackson's positive aspects. About sixty per cent of these discourse markers in the closing speeches serve further as a mitigating strategy for a

following disaffiliative move. In (15b), for example, by conceding an argument that the jurors may raise, the lawyer introduces what he considers a more interesting piece of evidence.

(15)

a. He [Jackson] talks about children who need attention and affection, and something must be wrong with all the violence in the world. *Yes*, that's Michael Jackson's idealism, some might say, to some extent, naivete. (Jackson Def Opening Closing)

b. What Tim McVeigh was saying and talking about to other people are, *of course*, his thoughts and beliefs, but he certainly got reinforcement about those views from one book. (McVeigh Pro Closing)

5.6. Directives

Broadly speaking, directives encompass a broad category of illocutionary acts that impose an obligation on the addressee to carry out an action, thereby presupposing the presence of the addressee. Directives may be realized by: 1) the presence of an imperative, 2) a modal of obligation addressed to jurors, 3) explicit verbs of request (such as "ask", "let", "request") or 4) a predicative adjective (or its nominal form) expressing the lawyer's judgment of necessity or importance (such as "necessary", "important", "essential"). In both genres, they function to direct jurors to some desired real-world action. This ranges from inviting them to an activity (16a), recommending steps they should (not) take (16b), and to spelling out the verdict they should render (16c).

(16)

a. Now *listen* to this. This is all from Frank…(Jackson Pro Closing)

b. The [the defense] want you to have Tim McVeigh's face vanish from your calculations… You shouldn't *take* that invitation. (McVeigh Pro Closing)

c. I will ask you to *convict* him of capital murder. I ask you to *do* that for one little reason. (Malvo Pro Opening)

The majority of directives (62% in the opening and 73% in the closing phase), however, require the jurors to engage in cognitive activity. Interestingly, in the opening phase, such cognitive activity virtually entirely involves "emphatic" purposes (Hyland, 2002: 218), such as focusing

attention or holding a memory, as in (17a, b). The closing phase, in contrast, exclusively contains directives with rhetorical purposes. Unlike blunt directives which seek to settle matters above, rhetorical directives seek to accomplish closure by setting up a new line of argument (17c), or by leading the jurors through an exposition (17d).

(17)

a. *Remember*, when he went in on Saturday and paid the money, he didn't take the truck with him… (McVeigh Pro Opening)

b. I ask you to *consider* that as you look at the evidence. (Jackson Pro Opening)

c. But Stracke says so. Let's *assume* he did. What does that tell us? (Malvo Def Closing)

d. This is not the first time civil lawyers have tried to manipulate the criminal process to get their work done for them. *Think* about it. You don't have to hire experts. You don't have to hire investigation…Because if somebody is convicted… the civil burden of proof, preponderance…is already established. (Jackson Def Closing)

Now that the pragmatic functions of the addressee features in both genres have been discussed, an overall quantitative comparison is in order. In lines with the qualitative results, the addressee features display quite substantial differences in frequency. As Table 1 below shows, the overall frequencies suggest that audience interaction in both genres can be characterized by the predominance of second-person pronouns (>50% of all the features), and this feature shows a slight increase of 3.62% at the closing phase. This in turn reflects the lawyers' high pragmatic awareness of overtly addressing the jurors. The other features pattern differently in the two genres, however. In the opening statements, shared knowledge and inclusive first-person pronouns, occurring at about the same rate (19.50% and 18.37%, respectively), outnumber asides (7.42%) and directives (3%). Questions are rarely used (0.60%). This is in stark contrast to the closing arguments, where questions (15.67%) and inclusive first-person pronouns (12.63%) appear on top of the list. Note, in this concluding phase, a significant increase in the use of questions (of 15%) is witnessed, whereas shared knowledge appeals and inclusive first-person pronouns decline significantly (to 14.24% and 6.87%, respectively). In addition, a slight increase (of about 1.30%) is seen in asides and directives in this phase.

Category	Total tokens		Per 1,000 words		% of total tokens	
	Opening	Closing	Opening	Closing	Opening	Closing
2nd pp	1,242	2,121	13.63	19.03	51.11	54.73
Question	15	608	0.16	5.45	0.60	15.67
Aside	180	335	1.98	3.01	7.42	8.66
Directive	72	162	0.80	1.45	3.00	4.17
Shared k	447	160	4.90	1.44	18.37	4.14
Incl 1st pp	474	489	5.20	4.39	19.50	12.63
Total	2,430	3,875	26.67	34.77	100.00	100.00

Table 1. Overall frequency of engagement markers across trials (total 161,696 words).

The frequency counts at the level of each trial, shown in Table 2, yield a more illuminating picture. Despite individual variation, relatively similar frequencies and patterns of distribution can be observed. In all of the trials, second-person pronouns consistently predominate in both genres, and increase in the final phase. Similarly, questions are rare in the opening phase, but peak in the closing phase, while asides and directives show a slight upward trend at the end of the trials. The opposite trend can be observed in the cases of shared knowledge and inclusive first-person pronouns. The former drop sharply in the closing speeches, while the latter, excluding Jackson's case, decline slightly.

Category	Total tokens		Per 1,000 words		% of total tokens	
	Opening	Closing	Opening	Closing	Opening	Closing
2nd pp	10.72	20.99	18.55	21.30	14.01	17.52
Question	0.06	3.27	1.80	7.90	0.30	6.10
Aside	1.19	3.09	2.12	3.31	2.12	2.90
Directive	0.47	1.77	1.91	2.26	0.39	1.12
Shared k.	6.11	1.35	5.62	1.51	3.39	1.46
Incl 1st pp	5.91	4.97	8.11	5.72	3.06	3.80
Total	24.46	35.44	38.11	42.00	23.27	32.90

Table 2. Frequency of engagement markers in each trial (per 1,000 words).

What the quantitative results show, it can be argued, is a marked decrease in the use of shared knowledge appeals and inclusive first-person pronouns on the one hand, and an increase in the rest of the features on the other, notably the use of questions. Because shared knowledge appeals and inclusive first-person pronouns primarily allow lawyers to represent the audience as concurring and being in agreement, such a distributional contrast likely suggests that lawyers are less concerned with establishing and solidifying common ground and affiliation at the final stage. Rather, they are more concerned with setting up jurors in a dialogically contrary position in order to raise opposition and show disalignment.

6. Conclusion

As we have seen, both the opening and closing address stand out in terms of constant negotiation of interpersonal relationship, evidenced through six key features. Viewed from the perspective that language is a system of choices (Halliday, 2013), these linguistic resources are among many other choices the lawyers could have chosen (including, of course, no overt audience interaction at all), and thus the distinct interactive patterns above suggest that the presenters are motivated by different goals. In the opening statement, the interactive goal appears to be establishing and maintaining solidarity with the audience, while in the closing statement, the presenter's goal appears to be challenging and invalidating the opponent's theory of the case. This seems to be in line with the legal constraints of each genre, described in Section 2. As the trial moves from the initial to the concluding phase, the interactive goals change from constructing and fostering solidarity and in-group membership to challenging and being argumentative.

It can, therefore, be concluded that lawyers are faced with two distinct, but interrelated, kinds of communicative work. First and foremost is the need to effect an in-group membership of the current discursive interaction, and of performing solidarity and cooperative interactions. At the very least, jurors need to be encouraged to at least continue listening attentively, if not accept the lawyer's arguments, and this is perhaps of immediate importance in the initial phase of the trial, where jurors are still mostly ignorant about the parties, the facts of the case, what really happened or why it happened, so that they can develop first impressions about these elements. Here lawyers must meet the jury's expectations of inclusion, thereby appealing to their positive face needs in securing cooperation (Brown & Levinson, 1987). All of the lexico-grammatical devices examined enable the lawyer to handle such expectations not only by turning silent jurors into co-constructors of the discourse but also by addressing jurors' desire for consensual identity, namely, to be endorsed by others. Despite their low semantic content, hearer-inclusive pronouns are indeed an effective means to construct addresser-addressee dialogue in the monologic discourse, for example, when jurors are construed as characters in narratives, as participants in a preview/review session and speech acts, and as the recipients of directives. In addition, focus and expository questions, asides, and appeals to shared knowledge constitute attempts to stimulate common interest, anticipate and readily respond to possible reaction, and ensure a common understanding.

Also important is the argumentative task, which appears to be the focus of the concluding speech. Because the jury has been presented with relevant information and facts, and because lawyers are well aware that the success of the presentation rests largely on audience approval and a positive judgment of their contribution, engagement devices can be called upon to execute argumentative demand. In doing so, skillful lawyers selectively pick and emphasize particular parts of their evidence that affirm their argumentative strength, and connect them to facilitate processing. Rhetorical questions, in particular, assist the presenter in invalidating alternative points of view without having to spell them out. Asides serve to clarify and highlight certain elements as the discourse unfolds while managing membership and inviting the jurors to a simulation through personal, and impersonal pronouns contribute to how the speaking lawyer's party should prevail. At the same time, these engagement markers may also be used to challenge and undermine the opponent's theory of the case or credibility.

It needs to be pointed out, though, that engagement devices can satisfy both communicative needs at once; that is, lawyers are trying to reach out to the jurors and simultaneously making their discourse argumentative. However, each phase of the trial may present lawyers with different dominant communicative demand, which in turn affects the patterns of addressee features.

All in all, the relational practice found in these monologic genres does not serve to merely "oil the wheels" of courtroom communication, but rather constitutes a key way to the meaning-making process in this institutionalized discourse. This is perhaps what Kennedy (2007: 594) has in mind when he writes "lawyers must transform himself into a salesperson - marketing ideas that makes the jury buy one version of the facts over the other in order to influence the jury's decision". Indeed, as this study shows, to achieve such an end necessarily involves a good command of interactional features. Lawyers have to know when to distance themselves from and challenge jurors, when to position themselves as authoritative, and when to encourage solidarity, shared experience, and commonality. The findings, therefore, offer invaluable support to previous studies on institutional discourses: engagement devices are multifunctional, and relational management is the *sine-qua-non* of communication, even in contexts where interlocutors seem to be more concerned about getting things done, hence transactional goals (Koester, 2006: 106).

In a more critical vein, it is worth considering that in reality many of the interactional devices do not necessarily include the jurors. This point is illustrated in (18) - an extended excerpt from Jackson's closing speech by the prosecutor. The overt pronominal expressions show disparate personal references as well as pragmatic functions. With the exception of "you"$_3$, the rest of the second-person pronouns do not referentially index the jurors, but are intended for simulation, directing the jurors to assume the role of "we"$_1$ who actually did the investigation. Similarly, "we"$_{1\text{-}3}$ give off an inclusive impression to the jurors, as if they had participated in the search.

(18) Now, in his bedroom, when *we*$_1$ went in there and *we*$_2$ started opening drawers conducting *our*$_3$ search, is a drawer that contains, as—just as *you*$_1$ open the drawer, that is the magazine that *you*$_2$ see that's in there. In that drawer, the testimony to *you*$_3$ was also found photographs of the Arvizo children. That picture of the Arvizo children, with Davellin in her uniform as an LAPD cadet and the other two boys, was found in that drawer at that time. This was found in a box at the foot of the bed. Just like that. I mean, it may have been closed, but all *you*$_4$ have to do is open it up.

In real time, it is not likely that the jurors could take their time to consider whether they were actually included in this group. It is precisely through these linguistic devices that the lawyers make the discourse essentially argumentative and lead the audience to make certain inferences.

It is hoped that this research demystifies how lawyers communicate with jurors in the initial and last phases of the trial. The findings may have practical implications for training jurors and the public at large to be aware of, and less easily swayed by, persuasive interactive techniques. An interesting topic to pursue further is to examine those cases where lawyers fail to bring in the audience and investigate what may have caused such a failure. It will also be illuminating to compare these genres across cultures as well in order to present a more complete picture of the kinds of engagement that are acceptable as well as expected cross-culturally, as the linguistic resources lawyers select are likely to be relative to a particular audience and the socio-cultural contexts in which they are used.

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NOTES

[1] Lt. Calley was found guilty of murdering 22 Vietnamese civilians during the Vietnam War, with a life sentence. However, the majority of Americans disagreed with this verdict and were outraged by it, which ultimately led to a presidential pardon after he served 3 years of his sentence.