

## **Dual Identities: Lawyers' Construction of Self in the Closing Arguments of Criminal Trials**

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### **1 Introduction**

Persuasion can be defined as “all linguistic behavior that attempts to either change the thinking or behavior of an audience, or to strengthen its beliefs, should the audience already agree” (Virtanen and Halmari, 2005:3). Using this definition, the closing arguments of criminal trials are prime examples of persuasive discourses as they are a genre of courtroom discourse in which the prosecution and defense lawyers are attempting to make the jury believe their side's argument is more accurate than the other side's and to strengthen the jury's convictions so that the jurors are not convinced by the opposing lawyer. The lawyers must use their linguistic and communicative resources to convince the jurors that the arguments the lawyer has presented are more believable than the other side's narrative.

Research on persuasion has shown that while speakers are appealing to the hearer's logic, the perceived credibility of that speaker seems to affect whether or not the persuasion is successful (Reardon, 1991:87). Research specific to courtroom discourse has found similar results. Mauet (1980) found that jurors believe lawyers with whom they feel a cultural or personal connection; someone they think shares their identity. Trenholm (1989) reported that lawyers put on a “lawyer persona” in order to portray themselves as being someone the jurors can connect with. Fuller (1993) showed that the lawyers in her data code-switched among a formal register, Standard American English (SAE), and African-American English (AAE) to “change alignment” among themselves and several other groups, namely other legal professionals, the jurors as a whole, the African-American jurors specifically, etc. Finally, Hobbs (2003) demonstrated that the lawyer in her study switched to AAE as part of “impression management” and to play a “character” that was professional but that the jurors could still relate to.

In other words, Fuller (1993) and Hobbs (2003) both found that lawyers present a “multiplicity of partial selves” (Ochs and Capps, 1996:22) in that lawyers style-shift or

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code-switch to negotiate their relationships with the jurors, the rest of society, the content, and the context. These two studies looked at specific contexts in which the presence of African-American jurors allowed the African-American lawyers to utilize the local currency of switching to a dialect that is marked in the context (AAE) from a locally less-marked dialect (SAE). However, these studies did not examine other forms of discursive re-alignment that do not involve shifting to a marked code as this is presumably not an option for all lawyers and all juries (e.g., when a lawyer does not share the same marked dialect as the jurors so cannot switch into it to mark solidarity). Consequently, this paper focuses on closing arguments when lawyers do not switch to such a marked code but instead switch among other linguistic and communicative forms in order to still create a multi-dimensional lawyer persona that connects with the jurors on multiple levels. The study answers the questions: what are the linguistic resources lawyers use as they create a “lawyer self” and what are major characteristics of that self?

## 2 Theoretical Foundations

Throughout a discourse, speakers change their contextual positions in relation to the material being presented and the interlocutors involved. Goffman (1981[1979]) described shifts in positioning as changes in “footing.” These are changes in the “participant's alignment, or set, or stance, or posture, or projected self ... a change in footing implies a change in the alignment we take up to ourselves and the others present as expressed in the way we manage the production or reception of an utterance” (128). According to Goffman, speakers are continually taking different alignments and stances towards the discourse material and towards the other participants, and, as part of this, they create different projections of their identity.

A related idea was presented by Bakhtin (1981, 1986) as “voicing,” a concept Wortham and Locher (1996) define as “an identifiable social role or position that a character enacts” (558). Through the words and syntactic forms a speaker uses, the hearers can determine what role the speaker is playing. An important aspect of this is that often a speaker will re-animate the words of another person, and in doing so, take on the role of that character.

The theoretical differences between footing and voicing are subtle and offer no necessary insights for the study discussed here. For the purposes of this paper, the importance of these two concepts is that speakers are constantly adjusting their relationship with the hearers, the context, and the discourse they are producing through the linguistic forms they select.

There are several related concepts to the ideas of voicing and footing which aid this analysis. The first is Labov and Waletzky's (1967) idea of evaluation. Evaluation is when a speaker includes personal or social stances towards the referential information being presented in the discourse. Evaluation involves constructions that comment on the consequences or meaning of the actions being presented. Some markers of evaluation include negatives, comparatives, and modals (Labov, 1997). Often, segments of discourses can serve both referential and evaluative functions (Silverstein, 1995 [1976]).

Another related concept is intertextuality. Intertextuality is defined by Fairclough (1992) as “the property texts have of being full of snatches of other texts, which may be explicitly demarcated or merged in, and which the text may assimilate, contradict,

ironically echo, and so forth" (84). The importance of intertextuality is that it highlights that the dialogue between a discourse being produced and previously-created discourses is not just found in quotations, in the accurate reproduction of the words of others. It is found whenever the words or ideas produced in one discourse are re-created and re-evaluated in another.

Another related concept is the difference between the "here and now" and the "then and there" as discussed in Jakobson (1957), Goffman (1981[1979]), and Silverstein (1985) among others. Jakobson (1957) distinguishes between the "then" of the "narrated event" when speakers describe what occurred and how, and the "now" of what he calls the "speech event." In the "here and now" speakers are focused on the interactional or unfolding nature of the discourse. According to Silverstein (1985), speakers use deictics such as personal pronouns and *then, there, that*, etc., to set up a framework or structure to the discourse that allows the participants and researchers to identify the positions the speaker is taking in the context. Wortham (1996) proposes using these deictics to map the "interactional organization" of a discourse. For example, the presence of *you, I*, and *we* along with present-tense meta-discursive verbs is a marker of the "here and now." Finding past tense verbs along with *he, she* or even *I* or *you* as past characters when the speaker is describing events from a narrative mark the "then and there."

In order to combine the ideas of footing, voicing, evaluation, intertextuality, and deictic references, Koven (2002) provides a theoretical and methodological approach that synthesizes them all. She proposes that speakers take on three main roles in a discourse: interlocutor, narrator, and character; as well as combinations of these (e.g., Bakhtin's (1981) double voicing). In this approach, speakers in the narrator role discuss the "then and there" and appear to be simply presenting a description of events without evaluation and without overt interactions with the hearers. This allows the speaker to linguistically distance himself/herself from the discourse and to make himself/herself appear more neutral to what he/she is presenting. In this voice, when the speaker is referring to his/her past identity, it is as a character in the discourse, not as the current role of the speaker. This voice is marked by mostly conveying referential material without the speaker being overtly present in the discourse except as a past character.

Speakers are in the interlocutory role when they position themselves as their speaking self and interact with the hearers in ways that go beyond simply providing them referential information. This is interaction in the "here and now," when the pronouns *I, you*, and *we* represent the speaker's and the hearers' roles as interactants in the current context. The verbs describe processes happening as the discourse takes place. In this voice, the speaker might evaluate information he/she has presented, provide a sense of what he/she and the speakers should be doing with the referential information of the narrative in the present context, and position the hearers as helping to create the current discourse. In this role, the speaker appears more involved in and not neutral to the discourse.

Finally, speakers take on the role of a character when they speak through the words of others. This is when they re-enact the words of characters in the narrative as quoted or reported speech. This phenomenon has also been referred to as "constructed dialogue" (Tannen 2007) among other terms.

### 3 Methodology

This analysis was carried out using the personally transcribed closing argument of a defense lawyer in a case presented in January and February 2006 and broadcast on CourtTV, the official transcripts of the closing arguments of eighteen trials or thirty-six closing arguments, and the transcribed data from closing arguments quoted in other research publications. The bulk of the analysis comes from the official transcripts which were chosen by a neutral third party due to their availability when the corpus was created. The other transcripts are used to supplement the findings and were also chosen due to availability. The trials in the official transcripts all took place in a Minnesota district court in the last ten years, so while there is bound to be variation among the arguments, the sources of this variation were limited to the different lawyers and their levels of experience, the make-up of the jury, and the specifics of the cases at hand.

Using the deictic references as a guide, the corpus was analyzed for when the speakers were in each of the three discursive roles described by Koven (2002): narrator, interlocutor, and character. The functions of these voices were then determined by examining the topics discussed in each voice. For the narrator voice, the included narratives were classified by time period, characters, and setting. For the character voices, the types of speakers being re-animated was noted. For the interlocutor voice, the presence of different types of speech acts and types of verbal processes (Halliday 1994) was analyzed.

Only the closing arguments were analyzed because these are the final time that each lawyer has the opportunity to make his or her case to the jury and so they are very crucial. Additionally, the closing arguments are only the second time the lawyers get to produce a monologue (the other being the opening statements) and therefore, they are times when the lawyers present their entire argument and persona directly to the jurors with few interruptions and few influences from their fellow interlocutors. Also, because the closing arguments follow the testimony of all of the other witnesses, they provide the most opportunities for the use of other's speech.

### 4 Analysis

#### 4.1 Narrator Voice

In this data set, the narrator voice, the voice that speaks about the “then and there” without evaluation of what is said, is used in multiple capacities. The first is that it is used to present the narrative of the crime as in the following example:

- (1) The night of September 15th this child is seriously hurt, she's nonresponsive, her eyes are deviating, she's not eating, she's vomiting. He's seen all these things before, the blood in her vomit, the feeling of her ribs, knows she's been sick and now she's apparently getting sicker.

Interestingly, this example is in the historical present rather than the past tense, but Stygall (1994) found this to be a relatively frequently used tense in closing arguments. By

presenting the narrative of the crime in the narrator voice, the lawyer simply presents a series of declarative statements as if there is no doubt that they occurred as he is saying they did and with no reference to the fact this is secondhand knowledge for him.

The narrator voice is also used by lawyers to present the narrative of the trial. In these instances, the jurors and the speaker were present for the events, and therefore they serve as characters in the discourse presented. An example of this use of the narrator voice is as follows:

- (2) You heard the testimony of Dr. \_\_\_\_\_ he was the neuroradiologist who testified, and he was testifying about the edema that he saw on [the victim's] skull and on her brain when he examined the CT scans from the evening of \_\_\_\_\_.

Since the lawyer was presumably present at the time of this event, his saying that the jurors heard this may be taken as true, even if they themselves don't remember the event. He uses his authority to inform them of their past experiences.

Finally, the narrator voice is used to present narratives from outside of the local context. An example is:

- (3) This happened back in London, England in 1645. William Penn was on trial in London, England. William Penn was the founder of the state of Pennsylvania, and he was on trial for unlawful assembly charge. It was a criminal charge. He had a jury trial. The jury came back with a not-guilty verdict. The judge didn't like that verdict and told the jury to deliberate again.

Other examples of outside narratives found in the discourse include personal narratives where the lawyer plays a character in the story (e.g., one lawyer talks about his hiking on his property and looking at the scenery), narratives the lawyer claims to have heard from a eye-witness to the events (e.g., one lawyer tells a story about a friend who almost made his child eat poisoned food because of circumstantial evidence), or narratives within the public domain as the example in (3) above. The production of these stories can have multiple functions for the lawyers. Within this corpus, some of the narratives help the jurors know more about the lawyer's life outside of the courtroom. Perhaps they will connect with him or her on a personal level. Other stories such as that in example (3) as well as the story of the poisoned food mentioned above, and many more like them are used as explanatory and legitimation (van Leeuwen, 2007) devices. The lawyers relate elements of the story to elements of the case or the tasks the jurors will have to do, and they use these connections to legitimate the actions they want the jurors to take. Finally, these stories demonstrate the lawyers' personal knowledge. Perhaps their knowledge base will impress the jurors or perhaps presenting a narrative that a juror also knows will create a personal connection between them because of the shared cultural knowledge. Therefore, narratives from outside of the local context can be used to utilize the information contained within those narratives, whether it is about the lawyer speaking or about information that could help explicate a difficult concept.

Overall, the narrative voice is used to present the narratives of the crime and trial with authority, as if there is no doubt that they occurred. However, they also can serve to make

the lawyer more personal to the jurors when the narratives include elements of his/her outside life or when they show knowledge of cultural products that the jurors may also share.

#### 4.2 *Interlocutory Voice*

The interlocutory voice, the voice of the “here and now,” is mainly used to build a relationship between the jurors and the lawyer speaking, but it still marks the authoritative position of the lawyer. First of all, by definition, the verbs in this voice are mostly in the present tense. Secondly, in this voice, the lawyer uses first-person singular and plural pronouns and second-person pronouns to refer to the participants not as characters in past events but as participants in the creation of this particular discourse, despite it being mainly a monologue (the only direct participation the jurors have is through non-verbal communication). The use of the first-person plural pronouns is particularly interesting as part of the relationship-building function of this voice. An example is as follows:

- (4) It seems like we've been together a long time.

In (4) and in the other constructions similar to it, the lawyer represents a group that includes the jurors and himself/herself. By creating a single entity completing a process as a whole, the lawyer who is speaking creates, at least linguistically, a sense of unity between himself/herself and the jurors.

Next, the interlocutory voice is characterized by the inclusion of many interactional speech acts such as greetings:

- (5) May it please the Court, counsel, Mr. \_\_\_\_\_, and ladies and gentlemen of the jury.

apologies:

- (6) We all, and I think the defense counsel will agree, we all ask you to forgive us for our weaknesses because we all feel very strongly about our clients and our cases.

questions:

- (7) How much do you ask of a child before you say enough is enough? How much do we ask a child to give when we adults would not tolerate it?

commands:

- (8) I ask you to return the only verdict that makes sense out of all of this.  
(9) Go back to the photos.

Greetings and apologies such as those in (5) and (6) are solidarity-building speech acts as they are directed at the hearer's positive face needs. Commands and questions may

challenge the face needs of the jurors and thus demonstrate the position of power the lawyers occupy. In the case of (7) and many others like it, lawyers are in the position to ask the jurors questions and to sometimes provide the answers, but the jurors can't directly reply based on the rules of the context. Lawyers also have the power to command the jurors to do a certain action (whether they will complete the action is not of consequence here), and while the example in (8) is a slightly mitigated command, many, like (9), are not.

The interlocutory voice is also used in the production of a meta-discourse as in the following example:

- (10) Before we get into it too far, I do want to step back just for a second and talk a little bit about some of the instructions that the judge has just read.

Not only do such meta-discourses provide the jurors explicit information on the path of the narrative, but in examples such as (10) in which the first person plural pronoun is used to refer to the jurors and the lawyer as a unit, there is a sense that both parties are creating this discourse together when in reality, it is just a monologue and not a dialogue. According to Pascual (2006), it is a "fictive dialogue" as really the jurors do not have an active role in its creation.

The interlocutory voice is also where the lawyers talk about their own mental processes (i.e., verbs such as *think*, *feel*, *want*, etc) (Halliday, 1994).

- (11) I don't think that I can prove to you beyond all doubt that there are not little green men living on the back side of the moon.

The interlocutory voice is also where the lawyers add evaluation to the discourse. They include their own opinions, as allowed by the law, as in the following examples:

- (12) And that's just not very realistic and human, especially for a young girl.  
(13) This was not an accident...This was a brutal assault.

These evaluations are presented as facts when they are just the lawyers' opinions. The lawyers can present these statements as such presumably because of the position of power they hold.

Overall, the importance of the interlocutory voice is that it involves interactions in the "here and now." It therefore creates a relationship between the jurors and the lawyer, and this, theoretically, could create a sense of a shared identity. However, there is still evidence when lawyers are in this voice of their position of authority over the jurors in the current context. For instance, they produce unmitigated commands as in example (9) and evaluations as in (12) and (13).

#### 4.3 Character Voices

The final type of voice in discourses as identified by Koven (2002) is that of

characters. Within this corpus of closing arguments, there are four groups of characters whose voices are represented. The first are the witnesses:

(16) “\_\_\_\_\_ got mad at me.” She made a long distance call, international call. “He went off on me and shoved headfirst into a furnace.” “Is the furnace a wood-burning furnace, a wood stove?” “We had a wood stove out in the fish house. Burned it down.” Might explain the burn on her arm there too. She said, “That’s why I don’t have hair on my arms. He beat me up.”

(17) Dr [X] said children may be convinced or manipulated into saying or believing something is true when it is not.

In the example (16), the lawyer re-animates the words of a witness to the crime, in this case the victim. Since the lawyer wasn’t present for the crime, this presents the narrative from the point of view of a person who was. While this utilizes the local authority of the speaker, it also brings into question the credibility of the witness being quoted (either directly or indirectly). In (17), an expert witness is quoted, and this again allows the lawyer to call upon the authority of the character.

Another group of characters whose voices are represented are the other participants in the trial, specifically the judge and the lawyers. This can be seen in the following examples:

(18) Knives which are, in the words of the judge, “something that in the manner it is used or intended to be used is known to be capable of producing death or great bodily harm, so the knives are dangerous weapons.”

(19) Now, Mr. \_\_\_ says, “Well, why would he do that?” Well, I would suggest to you that a clear answer to that is because he’s mad.

Quoting the judge involved in the case as in (18) allows the lawyer to utilize the authoritative position of the judge. Ventriloquating (Bakhtin, 1981) the voice of the other lawyer, as in (19), allows the lawyer who is presenting his argument to then recast, explain, or respond to the other person’s words in such a way that suits the speaker’s case. This is clear in the example in (19). The other lawyer asked the jurors a question during his argument, and he apparently intended them to reach a certain response. The lawyer speaking in this example repeats the utterance and then responds to it directly and in a challenging manner.

The next character’s voice utilized is the voice of the law. This is when the lawyer switches into the highly ritualized register of legal texts as in the following example:

(20) What that instruction tells you is if a person aids another intentionally, advises the other, hires, counsels, conspires with, or otherwise procures the other person to commit the crime, then the person who counsels or conspires with the person who actually does the crime may incur criminal liability.

When the lawyers take on the voice of the law they do three things. First of all, they

utilize the authority of that voice. Second of all, they present themselves as someone who has knowledge of legal texts and therefore has the authority to discuss such matters. Finally, they sometimes use these as opportunities to explain the law to the jurors. There are many examples in the texts of the lawyers presenting the voice of the law, and then recreating it in SAE or a vernacular form in such a way that explains the highly esoteric text to the jurors. As is expected, the lawyers in all of the cases explain parts of the law that suit the argument they are making. For example, defense lawyers often explain reasonable doubt while the prosecution lawyers are often silent with regards it.

Finally, lawyers take on the voices of characters from outside of the local context as in the following examples:

(22) The rotunda of the Justice Department in Washington, D.C. has engraved in it, "The United States of America wins a case every time justice is done to one of its citizens."

(21)

The inclusion of the voices of outside characters allow the lawyers to call upon the legitimating authority of those discourses as in (21) and to show the lawyer's knowledge of cultural products such as famous poems as in (22). It is possible such forms as (22) create a sense of a shared identity between the jurors and the lawyer if the jurors were aware of these outside discourses and appreciate the shared cultural knowledge.

## 5 Discussion and Conclusions

Throughout the corpus of closing arguments analyzed here, every lawyer takes on the three voices described by Koven (2002); the narrator, the interlocutor, and characters. In doing so, the lawyers create two selves. First of all, they create an authoritative self by presenting the narratives of the crime and the trial as if they were facts instead of disputed. They show themselves to be competent in the highly ritualized and esoteric register of legal texts; they utilize the authority of characters such as witnesses, experts, and the judge; and when in the interlocutory voice, they use their own authority to question and command the jurors as well as to evaluate elements of the discourse they are presenting. Secondly, lawyers also create a personal self through the use of pronouns and speech acts that create a sense of a shared identity in the interlocutory voice, the inclusion of personal narratives or information, and the presentation of narratives and voices that are part of the shared cultural inventory.

In other words, lawyers use verb tenses, pronouns, speech acts, topics, and linguistic codes to create a dual-faceted lawyer persona that is both an authority that can convince the jurors on a logical level and a person who can appeal to the jurors' need for a shared identity. Even when lawyers don't have distinct dialects available to them as in Fuller (1993) and Hobbs (2003), they utilize different voices or discursive positionings to create the same effects.

What is needed now is to determine how lawyers vary within this framework to create their own individual persona and to examine the variation that exists among lawyers as well as what is held constant among all lawyers' closing arguments. The variation could

be shown by determining how frequently individual lawyers use each voice. Also, the purposes and effects of the voices should be further explored. Next, it would be useful to determine which characters' voices lawyers are drawing on for authority, and which cultural resources they commonly utilize. Finally, it would be helpful to determine jurors' reactions to the different combinations of these voices and to examine lawyers' knowledge of the different "interactional positionings" they inhabit when they present their closing arguments and their beliefs about the "self" they are presenting.

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