



Повествование в судебном дискурсе: как юристы используют жесты при смене перспективы во вступительной речи

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Аннотация.

В исследовании рассматривается использование юристами вербальных и невербальных средств коммуникации во вступительной речи во время судебных процессов, в частности проанализированы случаи смены перспективы для использования «голосов» других участников процесса. Во вступительной речи излагаются позиции как обвинения, так и защиты, юристы используют при этом перспективу («голоса») различных сторон процесса – свидетелей, жертв, экспертов и обвиняемых для того, чтобы укрепить доверие и вызвать эмоциональный отклик у присяжных. Проведенное полимодальное исследование речевых паттернов, а также жестов, сопровождающих речь, в двух уголовных делах показало ряд особенностей в использовании юристами прямой и косвенной речи. Результаты анализа речевого поведения юристов показывают, что использование жестов не только способствует поддержанию линии повествования, но и помогает присяжным в восприятии уголовного дела.

Ключевые слова: жесты, смена перспективы, полимодальная коммуникация, судебный дискурс, анализ дискурса

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Original article

Narration in Law Discourse: How Attorneys Gesture When Changing Voices in Opening Statements

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Abstract.

This research examines how attorneys employ verbal and nonverbal communication means in their opening statements during trials, with a particular focus on how they use voices. Opening statement presents the stances of both the prosecution and defense teams, often incorporating various voices – such as those of witnesses, victims, experts and defendants – to bolster credibility

and elicit emotional responses from jurors. By conducting a multimodal analysis of speech patterns and co-speech gestures in two high-profile criminal cases, the study uncovers several distinctions in the use of direct and indirect speech. The results indicate that the incorporation of gestures not only supports spoken narratives but also assists jurors in grasping complex scenarios.

Keywords: gesture, stance, multimodal communication, law discourse, discourse analysis.

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INTRODUCTION

The language in court is considered as a tool used by the opposing sides to compete over the outcome of the process. In order to do that, the arguments and facts are presented. In the current study we concentrate on the very first step of a trial, opening statements, the roadmap that is presented to outline the major events and the position of each side. Opening statements quite often take a shape of a narrative, that describes past, present and even future events. To accomplish the narration and to make it more persuasive the attorneys can resort to different voices that they use throughout their speech in order to present facts and arguments which would make their statement more credible [Supardi, 2016]. As the opening statements are a roadmap, they are the first chance for speakers to address the jury and to present their versions of the same story, which is both informative and argumentative in its nature [Chaemsaithong, 2017]. One of the aspects of this nature is related to various use of stance by attorneys. Moreover, the strategic use of voice in opening statements not only enhances persuasion but also serves to construct a multifaceted narrative that resonates with jurors on emotional and cognitive levels. By integrating various perspectives—whether through direct quotations from witnesses or hypothetical scenarios — the attorney can evoke empathy and challenge preconceived notions held by the jury [Chaemsaithong, 2018]. This interplay of voices creates a dynamic discourse that reflects the complexities of human experience, compelling jurors to engage more deeply with the presented case. Furthermore, the effectiveness of these narratives often hinges on linguistic techniques such as metaphor, repetition, and rhetorical questioning, which serve to reinforce key arguments while

simultaneously inviting jurors to question their biases and assumptions about the events being recounted [Supardi, 2016]. In this way, the opening statement becomes not just an introduction to the trial, but a powerful tool for shaping perceptions and influencing outcomes right from the outset.

THEORETICAL FRAMEWORK

The terms stance [Biber et al., 1999], footing [Goffman, 1981], voice [Ivanič, Camps, 2001], and point of view [Simpson, 1993] are widely applied in linguistics when describing the attitude of a speaker towards some topic. They can be expressed through different lexical markers, e.g., hedges [Brown, Levinson, 1978], adverbs of evidentiality [Chafe, 1985], "speaker-oriented" adverbs [Jackendoff, 1972] or "disjuncts" – adverbs that are used to modify the whole sentence / expression, e.g., *truthfully*, *certainly*, etc., [Quirk et al., 1985], epistemic expressions (expressing precision / limitation, certainty / doubt), utterances indicating attitudes or feelings, and style-related collocations [Biber et al., 1999]. In legal discourse stance is also important and is expressed frequently through such evaluative adjectives and adverbs as *correct(ly)*, *reasonable(ly)*, and *appropriate(ly)* [Breeze, 2011]. Taking into consideration that one of the main objectives of the law discourse according to its genre is to be unbiased and impersonal, i.e., to present information as it is, several studies claim that this type of discourse is quite evaluative and interpersonal as the speakers use strategic word choice of different language means in order to support their claims, beliefs, intentions through evaluation, comparison and contrast [Harris, 2005; Cotterill, 2010]. M. Toolan mentions, that using stance markers turns such narratives into "evaluated point-laden" type [Toolan, 2005].

Other discourse-related markers are those which indicate other people's voices through speech and thought, e.g., *I heard / told / remember / thought* [Clift, 2006].

DATA AND METHODS

In this study we concentrate on voices that attorneys use when presenting their stance. The use of such voices can make the speech more credible, as it is not the attorney speaking, but the witness / expert / defendant / victim. Voices can also help to align the chronotope of the story as each voice tells a particular episode that he/she participated in [Chaemsaithong, 2017].

For the purposes of the study, the multimodal analysis has been conducted, i.e., it included the analysis of two communication levels: speech and gesture. To analyze both speech and gesture we used ELAN as an annotating tool¹.

The speech was first separated into elementary discourse units (EDUs) [Рассказы о сновидениях: Корпусное исследование устного русского дискурса, 2009] and then the markers of voices were searched for and annotated according to if the speech was direct: quotes (*boy, I've made a mistake; Brenda said "that's enough"*), shifts to the first person singular (*he gave it to her, I gave it to him*), addressing (*listen, if you're not working*) or indirect: past tenses (*thought she had a rebound marriage and what that did...*) use of third person pronouns (*he talks with them and tells them... that on that weekend, that he had Kylie*) [Chaemsaithong, 2017]. Also, each EDU was

¹ELAN (Version 6.6) [Computer software]. (2024). Nijmegen: Max Planck Institute for Psycholinguistics. The Language Archive. URL: <https://archive.mpi.nl/tla/elan>

annotated according to the voice the speaker used: witness, expert (police, paramedics, doctors, etc.), defendant and victim.

The nonverbal part of the communication, co-speech gestures, was studied from the angle of the functional approach to explore the alignment between speech and gesture based on semiotic studies of O. Iriskhanova and A. Cienki [Iriskhanova, Cienki, 2018]. Following this typology, we can differentiate several **types of gestures** based on 15 functions: deictic (pointing, touching, direction), representational (holding, molding, embodying, acting, tracing), pragmatic (discourse structuring, discourse representational, discourse emphatic, expressing attitude / evaluation, contact establishing gestures), adapters (self-adapters and object-adapters) (cf. [Iriskhanova O. et al., 2023]). For the purposes of our study, we exclude the latter category as there were only 2 cases of the adapter use in the current corpus.

The material is a video recording of two high-profile criminal cases, presented by both prosecution and defense. The total duration of the videocorpus is 76 minutes, the total amount of the analyzed EDUs accounts for 1531.

RESULTS

The analysis of the speech showed that the attorneys used 231 EDUs that represented direct/indirect speech of the others, which allows us to observe a tendency to narrate events from a different perspective. In addition, the discourse of prosecution included 91 EDUs with voices, whereas the discourse of the defense 234 EDUs of the kind. It appears that the difference in proportions of the use of voices can

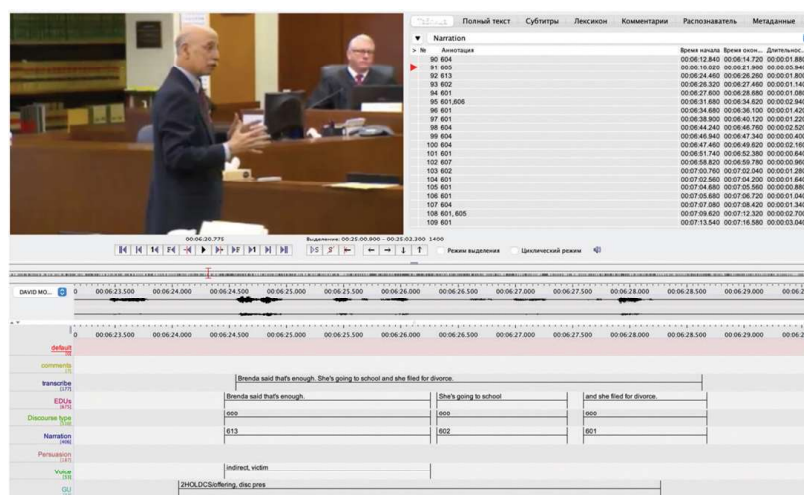


Fig. 1. The example of the analysis in ELAN

be observed between the two types of discourse. The difference in the use of voices between the opposing sides can indicate that the defense tends to narrate stories through the voices of others. The results are consistent with the those obtained by K. Chaemsaithong and might be a specific trait of the defense opening statements [Chaemsaithong, 2017].

Both sides use direct and indirect speech when using voices of other participants of the trial. The total amount of EDUs with indirect speech is 199 and direct speech amounts to 126 EDUs. Prosecution used 43 EDUs with indirect speech and 48 EDUs with direct. The defense used 156 EDUs with indirect speech and 78 with direct. Hence, the allocation of direct and indirect speech differs between the prosecution and defense. While the prosecution tends to use both types of speech equally, the defense relies more heavily on indirect speech. This preference for indirect speech by the defense may suggest an attempt to portray events more objectively, as if recounting them rather than reenacting them.

The distribution of the voices showed that the speakers spoke as experts (52), witnesses (68), opposing side (11), victims (43) and the defendant (107).

The scattering of the voices used by the prosecution is as follows: experts (26), witnesses (11), victims (38) and the defendant (16). The voice of the victim is the most frequently used by the prosecution, which can indicate the need for emotional response from the audience and can also be dictated by the absence of the victim at court. In addition, it adds to the credibility of the arguments, presented by the speakers.

Voices used by the defense illustrate a bit different tendency: experts (69), witnesses (57), opposing side (11), victims (5) and the defendant (91). First, it should be noted, that the voices of the opposing side were used only by the defense attorneys (e.g., *and the state talks about; now, the state may say, for them, that's good enough to call it arson*) and not by the prosecution. The use of the voice of the opposing side by the defense might be explained by the order in which the attorneys present their speech. The defense always presents second, so they might have time to listen and after that use what they have heard from the statements of the prosecution. Also, as it can be seen, the defense tends to speak from the defendant's perspective. It might be interpreted by the circumstances, i.e., the defense lawyers spend more time consulting their client, so they naturally take his/her point of view. In addition, as the defendant cannot take part in the discussion, the lawyers act as his/her voice during the statements. In addition, the defense uses

witnesses' and experts' voices quite often in order to support their arguments, presenting their point of view in favour of their statement.

The nonverbal analysis showed that EDUs were mostly accompanied by gestures: only 46 EDUs out of 231 were used without co-speech gestures. The prosecution used pragmatic (26), representational (22), and deictic (4) gestures. The defense also used pragmatic (128), representational (21), and deictic (58) gestures. The difference in the prevalence of gestures with the defense lawyers might be due to the distribution of voices in general (the defense tends to use voices more). The prosecution uses nearly the same amount of pragmatic and representational gestures, however, the defense resorts to pragmatic gestures, especially with the emphatic function (Fig. 2).



...because the state wants to tell you...

Fig. 2. Example of a pragmatic (emphatic) cutting gesture

The distribution of gestures and voices showed the following results. The prosecution (see Table 1) mostly used pragmatic gestures while using the victim's voice.

This can be seen in the frequent case of the palm up / lateral / down open hand, which is usually used when addressing the listener and/or presenting information (17 cases). As it is represented in Fig. 3, the speaker enacts the action of the victim, recreating a dialogue between her and her attacker, the ex-husband.

Table 1

THE DISTRIBUTION OF VOICE AND GESTURE IN PROSECUTION DISCOURSE

Gesture Voices	Deictic	Pragmatic	Representational	Total (N)
Direct, expert	2	3	10	15
Direct, victim	0	15	6	21
Direct, witness	0	3	0	3
Indirect, defendant	0	0	0	0
Indirect, expert	2	4	5	11
Indirect, witness	0	4	0	4
Total (N)	4	26	22	52



Hey, make sure you have Kylie ready to go at 7. I'll be there at 7.

Fig. 3. Example of a pragmatic (addressing) offering gesture



(the only thing we can't eliminate) is arson

Fig. 4. Example of a representational (holding) gesture



but had her own garage door opener

Fig. 5. Example of a pragmatic (discourse presenting) offering gesture



(the defendant's voice) upstairs

Fig. 6. Example of a deictic (pointing) palm lateral up gesture

The distribution also shows some noticeable use of representation with experts' voice. It might be explained by the specifics of their speech, as their voice is used to introduce facts and details, which might be a bit complicated for the general public and thus, accompanied by illustrative representation (Fig. 4).

The analysis of the defense statements (see Table 2) revealed a prevalence in pragmatic gestures with different types of voices, especially when enacting the defendant (59 cases in total). It might indicate a need to appeal to the listeners and the jury from the defendant's side (Fig. 5).

Table 2

THE DISTRIBUTION OF VOICE AND GESTURE IN DEFENSE DISCOURSE

Gesture Voices	Deictic	Pragmatic	Representational	Total (N)
Direct, defendant	9	8	3	20
Direct, expert	4	17	0	21
Direct, victim	0	4	0	4
Direct, witness	11	12	2	25
Indirect, defendant	11	51	4	66
Indirect, expert	11	18	10	39
Indirect, opposite side	4	5	0	9
Indirect, witness	8	12	2	22
Indirect, victim	0	1	0	1
Total (N)	58	128	21	207

Deictic gestures are also quite frequent with the defense and were implemented when speaking from

the defendant's (20), witnesses' (19) and experts' (15) perspectives.

Deictic gestures can add to the organization of time and space around speakers, that is why their use can be relevant as for the attorney, in order to continue one's speech, and for the listeners, as these gestures can help recreate the location and, consequently, a scene from the past/future, which adds to the credibility of the overall argumentation (see Fig. 6 as an instance).

CONCLUSION

To summarize, the opening statements in legal proceedings represent a crucial moment where lawyers skillfully employ verbal and non-verbal communication to mold jurors' perceptions and sway case results. This research underscores the complex nature of narratives presented during these statements, stressing the significance of voice and stance in crafting persuasive arguments. A thorough examination of both speech and gestures demonstrates that attorneys adopt various personas, including those of witnesses, victims, and experts, to bolster credibility and elicit emotional responses, thus engaging jurors on deeper cognitive and affective levels. The study reveals significant distinctions in the use of direct and indirect speech between prosecution and defense, with the latter utilizing a wider range of voices to support their clients. The incorporation of multimodal elements, especially gestures, further emphasizes the dynamics of courtroom discourse as they reinforce spoken narratives and facilitate jurors' comprehension of intricate events [Yuan, 2019]. In essence, this investigation contributes to the understanding of legal rhetoric, demonstrating how the interaction between language and non-verbal cues can impact judicial proceedings [Lipovsky, 2017].

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