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Speech reporting in courtroom opening statements

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Abstract

This investigation critically analyzes the practice of speech reporting in the monologic genre of the opening statement. Drawing on the opening statements of three high-profile trials, this study analyzes the form, function, and frequency of reported utterances that manifest within the opening statement. The findings reveal that the opening statement is a highly heteroglossic genre, and the inclusion of voices is pragmatically motivated, serving five functions: narrative, evidential, disaligning, contextualizing, and discourse organizing. Reanimation of voices not only enables lawyers to create and negotiate different realities but also contributes to making the opening statement essentially argumentative.

Keywords: Courtroom discourse; Function of reported speech; Monolog; Opening statement; Speech reporting

1. Introduction

Recent discourse-pragmatic studies have revealed that an important characteristic of courtroom discourse is its multi-voiced and interactive nature (Galatolo and Mizzau, 2005; Galatolo, 2007; Vazquez-Orta, 2010; Garzone and Degano, 2012; Chaemsaithong, 2014; Garzone, 2016). That courtroom discourse can be considered essentially ''polyphonous'' in the sense of Ducrot (1984), or ''heteroglossic'' and ''interactionally dialogic'' in the sense of Bakhtin (1981) does not necessarily mean that there must always be an actual dialog between speakers, but rather that it incorporates and articulates a multiplicity of speaking perspectives and ideologies, resulting in the implicit or explicit presence of several enunciations in a single discourse.

Among many means by which dialogism and polyphony may be linguistically realized (e.g., irony, discourse markers, presuppositions, and footing), the practice of incorporating segments of speech of another author into a new text, or speech reporting, appears to constitute a critical factor influencing the trial outcome for both evidentiary/epistemic (Philips, 1986; Baffy and Marsters, 2015) and affective reasons (Matoesian, 2000, 2001). The former concerns the support that a voice can lend to an argument, due to the fact that it allows a reporter to accomplish a change in footing[1] (Goffman, 1981; Levinson, 1988). The latter augments the speaker-listener relationship, enabling the audience to ''relive'' the actions, emotions, and events of the reported situation (Matoesian, 2001, p. 106). However, to date, studies on speech reporting in courtroom

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[1] Footing, in the sense of Goffman (1981, p. 128), refers to ''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.'' That is, footing is the projection of a speaker's stance toward an utterance, including its truth value and emotional content (Levinson, 1988). In re-presenting the speech of another person, the reporter assumes not only the role of ''author'' of his or her own speech event, but also the role of ''animator'' of the character whose speech is being re-produced.

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discourse have focused almost exclusively on witness examination and cross-examination (see Rosulek, 2010, however). This, in turn, limits our view of the extent to which courtroom discourse is polyphonous and interactionally dialogic.

The current study, therefore, seeks to address this gap and explicate the process of speech reporting by exploring the understudied monologic genre of the opening statement, where lawyers from each side have the opportunity to introduce the jury to their party's competing theory of the case. In particular, this study analyzes the form, function, and frequency of different voices that manifest within the opening statement. Drawing on the opening statements of three high-profile trials, the quantitative and qualitative analysis is guided by four questions: (1) Which forms are used? (2) Whose voices are quoted? (3) What functions do quotations serve? and (4) To what extent do the two sides differ in the use of quotations?

This study begins by outlining the discursive characteristics of the opening statement and its role within the trial and proceeds to discuss theoretical issues regarding speech reporting and courtroom discourse. The findings will then be presented and discussed in detail. It will be shown that the opening statement is highly heteroglossic, and the inclusion of voices is pragmatically motivated, serving five functions: narrative, evidential, disaligning, contextualizing, and discourse organizing. Reanimation of voices not only enables lawyers to create and negotiate different realities but also contributes to making the opening statement essentially argumentative. Not only do the findings illuminate the nature and frequency of speech reporting practices in the genre of the opening statement in particular and in the courtroom in general, but the functional approach adopted in this study, which considers a re-animated strip of speech based on its function in a particular context, also makes methodological contributions to scholarship on speech reporting within a pragmatic perspective.

2. Opening statement

Setting aside voir dire, the opening statement constitutes the first opportunity for the trier of fact to hear a comprehensive statement of each party's factual claims. Hence, it is counsel's first interaction with the jury. This phase of a trial starts with the party with the burden of proof (i.e., the plaintiff's attorney in a civil trial or the prosecution in a criminal trial) and is then followed by the defense's presentation. In an adversarial system, when the defense takes up the ball, they try to construct facts to suggest either a counter-narrative, or the weakness of the prosecution's narrative. The narrative construction in this initial phase will later influence the type of facts that counsel will try to construct from the witness examination and that the defense will try to deconstruct in their cross-examinations. Although delivered early in the trial, its impact can be decisive. It has been suggested that many jurors draw at least tentative conclusions at this initial stage (Lind and Ke, 1985; Pennington and Hastie, 1991; Spiecker and Worthington, 2003). As a result, the opening statement, while not mandatory, is seldom waived because it offers a valuable opportunity to provide an overview of the case to the jury and to explain the anticipated proof that will be presented in later parts of the trial.

Generally speaking, the opening statement allows attorneys from both sides to introduce themselves and the parties involved in the lawsuit, outline the important facts of the case in the form of narratives, explain the applicable law, and make a request for a verdict. However, what makes the discourse of the opening statement distinct is its dual character, namely, highly persuasive, and yet non-argumentative. 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), as this part of the trial is limited to outlining the facts and is intended to be informative, rather than argumentative. Similarly, the Supreme Court characterizes the opening statement as ‘‘ordinarily intended to do no more than to inform the jury in a general way of the nature of the action and defense so that they may 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]; emphasis added). What this means in practice is that to create a successful opening statement, lawyers need to arouse the interest of jurors, build rapport, and, at the same time, come close to being argumentative (Tanford, 2009, p. 147). They can, for instance, offer a discussion of the anticipated evidence and ‘‘facts’’ they intend to prove, but they cannot assert personal opinions, comment about the evidence, discuss how to apply the law to the facts, or arouse the emotions of the jurors by making negative judgments about the other party in scurrilous terms (such as ‘‘a liar’’). In reality, however, such limits are hard to enforce, so they are usually left to the discretion of the judge. Indeed, research has found that the strategic lexical choices made in the opening statement can help prime the jury into viewing the events and participants in the intended way. Cotterill (2003) demonstrates that the prosecution's choice of words such as ‘‘encounter’’ and ‘‘control’’ was central to the conceptualization of O.J. Simpson, the defendant, as a violent man capable of murder whereas the defense preferred more neutral words, such as ‘‘incident,’’ ‘‘dispute,’’ ‘‘discussion,’’ and ‘‘conversation’’ to lexicalize the talk in the Simpson household, thereby refuting the defendant's capacity for murder and violence. In a similar way, this study will show how speech reporting enables lawyers to be persuasive while appearing non-argumentative.