

Study on Lawyers' Closing Arguments and Narrative Construction from a Multimodal Perspective

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ABSTRACT

As an important part of the trial, closing arguments provides lawyers a golden and last opportunity to present evidences, demonstrate their views, and persuade judges and juries by means of multimodal resources. Multimodal discourse analysis, therefore, provides a new perspective for the study of legal discourse. This paper focuses on the closing argument in the trial of George Floyd case within an analytical framework based on the attitude system. It qualitatively annotates and quantifies the language and paralinguistic information contained in the closing arguments with the help of software, probing into the multimodal representation on the part of both the prosecution and defense lawyers. It is found that both the prosecution and defense lawyers utilize different multimodal resources such as language and paralinguistic to express their attitudes towards different participants while constructing different versions of narratives.

KEYWORDS

Multimodal; Attitude; Paralinguistic; Narrative Construction; Lawyers' Closing Arguments

1 Introduction

With the linguistic turn of Western philosophy, language and language issues have been given much more attention in the field of humanities research ever since the 20th century, resulting in the emergence of the interdisciplinary study of law and language. In this macro context, language and legal studies have become a key area in sociolinguistic research. Historically speaking, in ancient Rome, lawyers were referred to as "orators", and in medieval England, barristers were also known as "storytellers". These terms clearly sheds light on the legal value of language skills. However, participants in court, lawyers in particular, not only resort to the use of language. In most cases, lawyers may stare at witnesses with their eyes fixed on them, interrupt the pace of witnesses' speech with different gestures, and open their palms upwards when asking comparative questions to indicate the inconsistencies in testimony.

In fact, although language serves as an important symbolic resource for representing conceptual meanings, coordinating interpersonal meanings, and organizing discourse meanings, other symbolic resources such as images, gestures, body postures, sounds, etc. can also serve similar purposes (Jewitt 2011). In the judicial field, especially in the courtroom, in addition to language resources, other multimodal resources are also commonly and actively used by court participants throughout the whole judicial process in order to achieve their communicative purposes. Multimodal approach has therefore provided a new perspective for the study of legal discourse.

Trial is an indispensable part of judicial procedures, in which prosecution and defense lawyers will use various symbolic resources including language and paralinguistic to construct their own narratives, express their own attitudes and positions in the hope of persuading juries and judges. Most of previous researches have been conducted on the attitude expression of lawyers in the context of adversarial court hearings. For example, Cotterill (2003) analyzed the court statements in the Simpson case by means of a corpus, focusing on the persuasive function of semantic rhyme in the construction of narrative versions. Heffer later (2007) explores how lawyers convey their subjective attitudes during cross examinations, thus forming alliances with juries and isolating witnesses and defendants, based on the judgment system. Similarly, Gales & Solan (2017) evaluated and analyzed the cross examination language and strategies used by defense lawyers in sexual assault and non-sexual assault cases in US courts, unveiling that witnesses in sexual assault cases are more susceptible to the secondary harm of defense lawyers' language. By integrating attitudinal resources with cognitive psychology, Hunter and Grant (2022) shifted their attention away from lawyers to serial killers, exploring the psychological traits expressed in the writings of violent offenders. Unfortunately, the above-mentioned researchers mainly focused on the evaluative meaning expressed in language, while ignoring the role played by multimodality or paralinguistic, thus unable to fully demonstrate the attitude lawyers intend to express.

Meanwhile, those engaged in the study of courtroom discourse tend to pay more attention to courtroom interactive discourses, such as direct questioning and cross examinations, thus failing to pay due attention to closing arguments that deserve due attention and research. Closing arguments combine several testimony strands into one unified and coherent narrative after all information relevant to the case has been presented. That is to say, as the most complete and coherent narrative led by lawyers throughout the trials, closing argument serves as the last opportunity for lawyers to persuade judges or juries. What's more, when presenting closing arguments, lawyers don't need to interact with witnesses, free

from the distractions or interruptions by judges or opposing lawyers. Somehow, lawyers strategically highlight and silence different aspects of the case to compose different narratives in their closing arguments.

In this sense, closing arguments can best showcase lawyers' attitudes that can be mixed and even conflicting. They will shed light on the persuasive techniques employed by lawyers, the construction of different versions of reality, and the overall dynamics of courtroom discourse. By approaching closing arguments from a multimodal perspective, we will deepen our understanding about how lawyers build their arguments and influence the jury's decision-making.

2 Theoretical framework

Attitude system, a subsystem of the Appraisal system, is adopted in this paper to examine the multimodal discourses used in court trials. Attitude system can be further divided into three systems: affect, judgment, and appreciation. Affect refers to feelings of human beings and can be examined in the following dimensions: happiness, satisfaction and security. Judgment refers to the assessment of characters and behaviors in line of ethical and moral principles and can be measured in two dimensions: social esteem and social sanction. The former refers to the evaluation of behavioral norms, abilities, and resilience, while the latter concerns the authenticity and legitimacy of behaviors. Appreciation refers to the evaluation of the value of things, including reaction, composition, and valuation. Moreover, affect, judgment, and appreciation can all be labeled as positive or negative, explicit or implicit.

Based on the Appraisal system and the paralinguistic system, this paper designs a multimodal attitude research and analysis framework to deal with lawyers' closing arguments. Both prosecution and defense lawyers choose specific symbols to call on different multimodal attitude resources in attitude negotiation. In the process, they come to construct different even competing versions of narratives of the same case. Multimodal attitude resources are implemented through language and paralinguistic. The conceptual meaning, interpersonal meaning, and discourse meaning conveyed by paralinguistic strengthen the interpersonal meaning realized by attitude resources in language, ultimately achieving the discourse purpose of prosecution and defense lawyers.

3 Data and methodology

The data resource used in this paper is taken from the closing arguments of the prosecution and defense lawyers involved in the case of George Floyd. On May 25, 2020, an African American man named George Floyd died after Derek Chauvin, a white policeman, pressed his neck for over 9 minutes. His death stirred a huge reaction across the United States and even the whole world, giving birth to a wave of protests and demonstrations against police brutality and racial discrimination. The trial of Chauvin began on March 29, 2021, and was live-streamed and therefore available to the public. Ultimately, Chauvin was convicted of second-degree unintentional murder, third-degree murder, and second-degree manslaughter in the death of Floyd and was sentenced to 22.5 years imprisonment.

This paper employs a multimodal discourse analysis method in processing the data. The video footage of the closing argument, which lasted 276 minutes, is obtained from the internet and transcribed into text. The defense lawyer's closing argument consists of 18,001 words, while the prosecution lawyer's one comprises 13,235 words. Then, the UAM Corpus Tool was used to mark language modalities based on the framework of the attitude system, analyzing the characteristics of using attitude resources in the closing arguments of the prosecution and defense lawyers. In addition, this paper also studies on how paralinguistic plays a role in courtroom discourse. Screenshots of paralinguistic appearing in the courtroom videos are taken and saved, with multimodal annotations made on transcribed text. For prosodic information, Praat, developed by Boersma and Weenink (2001), is employed to accurately depict sound graphs.

4 Research results and discussion

4.1 Attitude resources employed by prosecution and defense lawyers

By annotating attitude resources in the data of the closing arguments of the lawyers in the case of Floyd, we obtained the overall distribution of attitude resources of prosecution and defense lawyers. Both the prosecution and defense lawyers focus on three evaluation objects, namely, the defendant Chauvin, the victim Floyd, and a reasonable officer in an abstract sense.

It is found that there is little difference in the overall usage of attitude resources between prosecution and defense lawyers, with prosecution lawyers and defense lawyers using attitude resources 498 times and 480 times respectively. In addition, the distribution of attitude resources between the prosecution and defense lawyers is almost the same, with judgment used most frequently, followed by affect and appreciation. As for evaluation methods, prosecution lawyers

tend to use negative evaluations, while defense lawyers tend to use positive evaluations. Both prosecution and defense lawyers have conducted more explicit evaluations than implicit ones. It is worth noting that when making ethical and moral judgments, both lawyers are likely to adopt implicit strategies.

Regarding the evaluation objects, it is found that for the evaluation of the defendant, the prosecution lawyer gives a negative implicit judgment, while the defense lawyer adopts a positive implicit one. When it comes to the victim, the prosecution lawyer frequently uses affect and judgment, while the defense lawyer tries to avoid discussing the victim and only makes negative judgments about the victim a few times. And there is, however, a significant difference in the evaluation of a reasonable officer between the two lawyers, although they both give a reasonable officer positive and explicit judgments, but defense lawyers are clearly better at utilizing this strategy.

4.2 Multimodal attitude resources employed by prosecution and defense lawyers

4.2.1 The prosecution lawyer's evaluation of the defendant

The prosecution lawyer mainly employs negative language strategies, and often uses paralanguage to express negative attitudes. Let's look at an example.

His head had to be held to prevent from falling to ground. He was completely limp. The defendant had to know that. He was there. He was on top of him. And he was on top of him. On top of him.

When the prosecution lawyer said that the victim needed to be supported by his head, he simultaneously imitated the "lifting" action by tilting his arm and shaking his head. This mimetic gesture is a form of paralanguage that construes ideational meaning and concurs with the attitude resource to visually picture the victim's suffering. By doing so, he elicited empathy for the victim and invoked a negative evaluation of the defendant, blaming him for causing the victim's pain.

Then, "completely limp" was an explicit judgment, indicating that the victim lost the ability to resist. When saying this, the prosecution lawyer expressed sympathy for the victim's plight by using the facial expression of frowning. Such interpersonal paralanguage indicated that the defendant used excessive force, making implicit negative judgments about the defendant's behavior, thereby stimulating sympathy for the victim and negative emotions towards the defendant from the audience.

Moreover, the prosecution lawyer raised his tone when saying "had to". In fact, tone is an important medium to express emotional intensity. As the tone rose and fell, the prosecution lawyer tapped the table twice with his fingertips. This tapping gesture, as a paralanguage, can enhance language momentum and strengthen attitude. That is to say, the use of paralanguage escalated the prosecution lawyer's negative judgment of the defendant's kneeling and pressing behavior.

Finally, the prosecution lawyer changed the rhythm of their language to highlight the information when describing the defendant kneeling over the victim. There were pauses of 0.53 second and 0.39 second between the last three words of "on top of him". At the same time, he turned around his body to convey his negative attitude towards the defendant to audiences in different directions, thus achieving interpersonal significance.

4.2.2 The defense lawyer's evaluation of a reasonable officer and the defendant

The closing argument of the defense lawyer is characterized by the construction of an abstract reasonable officer. The defense lawyer made a large number of explicit positive evaluations of him, thereby forming an implicit positive evaluation of the defendant.

Here is an example:

It's not the proper analysis because the 9 min. and 29 s. ignores the previous 16 min. and 59 s. It completely disregards it. It says, "In that moment, at that point, nothing else that happened before should be taken into consideration by a reasonable police officer." It tries to reframe the issue of what a reasonable police officer would do.

The verbal rejection in the example above was actually accompanied by various types of "away" gestures of the defense lawyer, which strengthened the verbal message. Still, the lawyer also used a "sweeping away" gesture to suggest that the state wants the jurors to ignore the medical issues which could have contributed to Floyd's death. Again, we can see the use of the "holding away" gesture in his attempt to create the impression that Chauvin's actions were not causative in Floyd's death. Some of these gestures even went beyond the speaker's body frame (suggesting issues of greater significance) and required postural shifts. These "away" gestures obviously helped the lawyer to form an implicit positive evaluation of the defendant.

Here is another example:

So again, (...) a reasonable officer based on the totality of these circumstances, is gonna take all of these information, all of these policies and all of these trainings in... And a reasonable officer at that point would conclude that the amount of

force that was being used by officers Kim and Lane (..) was insufficient, was not enough use of force, to overpower Mr. Floyd's resistance to getting into the car.

Clearly, the defense lawyer believed that a reasonable officer would consider the environmental factors when facing the stubborn resistance of the victim, and the defendant's behavior conformed to that of a reasonable officer, thereby achieving implicit positive judgment of the defendant. Along with the three occurrences of "all", the defense lawyer's arm circled three times, a behavior that symbolized the full consideration of the comprehensiveness of the case.

When the defense lawyer said "at that point", his thumb and index finger pinched together and moved rapidly downwards with the tone of voice, helping conveying the discourse information. It indicated an implicit positive judgment of a reasonable officer, and demonstrated that the defendant's behavior was reasonable, thus achieving an implicit positive judgment of the defendant's ability.

4.3 Narratives constructed by prosecution and defense lawyers

Narrative refers to the semiotic representation of a series of events meaningfully connected in a temporal and causal way. Although traditionally prominent in literary texts, narrative has increasingly been applied to the study of law. Since the selection of multimodal attitude resources actually waves through the whole process of the closing arguments, the prosecution and defense lawyers adopt different discourse strategies when evaluating different objects, thus constructing different legal facts and forming different versions of narratives. In fact, this can be viewed as a competition concerning the discourse ability between the prosecution and defense lawyers. The discourse ability of prosecution and defense lawyers directly affects the intensity of narrative conflicts in debates and the persuasiveness of their narratives to the audience.

In the case of Floyd, through intense multimodal confrontation of both language and paralinguistic, the prosecution and defense lawyers presented completely different versions of narratives to the jury and audience. As for the cause of death of the victim Floyd, they hold conflicting opinions. The prosecution lawyer believed that the defendant's kneeling and pressing was excessive and unreasonable, and was the main cause of the victim's death. On the other hand, the defense lawyer believed the death of the victim was resulted from his use of drug and his underlying diseases such as hypertension and heart disease. According to the defense lawyer, the defendant's kneeling and pressing was reasonable and was made based on the victim's intense resistance, which conformed to relevant law enforcement codes.

The use of language and paralinguistic will also help people to see the process of achieving justice. In this case of Floyd, the prosecution and defense lawyers made every effort to utilize all discourse resources that could effectively convey information and attitudes, presenting their respective and even conflicting narratives to the judge and jury. Specifically, the prosecution and defense lawyers used various attitudes to evaluate the participants involved in the case positively or negatively, explicitly or implicitly, supplemented by paralinguistic to reinforce the attitude, and tried to enhance the potential persuasiveness of their own narratives as much as possible. This intense debate reflects the adversarial nature of the Anglo American legal system, which helps to comprehensively present legal facts and make the public aware of details of the case. It also helps to guarantee the legal rights of the parties concerned and facilitate the improvement of the legal system.

5 Conclusion

Closing arguments are much more than about language, and in order to persuade the audience, lawyers need to skillfully integrate various modes of meaning-making, exploiting the rhetorical means available to achieve their communicative purposes. Prosecution and defense lawyers use multimodal resources to express their attitudes towards different evaluation objects and construct different versions of narratives. Our research has found that in terms of attitude types, there is no much difference in the overall quantity of attitude resources used by prosecution and defense lawyers, with judgments appearing most frequently, followed by affect and appreciation. In addition, when it comes to evaluation methods, prosecution lawyers tend to use negative explicit expressions, while defense lawyers are prone to use positive explicit expressions. However, when making ethical and moral judgments, both of them tend to adopt implicit strategies. For different evaluation objects, the language strategies adopted by prosecution and defense lawyers also differ correspondingly, especially for the evaluation of the victim, the defendant, and a reasonable officer. Moreover, with regard to the use of paralinguistic, both lawyers exhibit a strong ability to utilize it in concert with verbal language to effectively convey ideational, interpersonal, and textual meanings. The lawyers' coordinated use of the paralinguistic, intonation, facial expressions, and gesture included, helps enhance the expression of attitude and construct narratives, which in turn influences the audience's understanding of the narratives they are constructing, and ultimately enhances the potential persuasion of their opinions.

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