Korean Journal of English Language and Linguistics, Vol 21, December 2021, pp. 1246-1258
DOI: 10.15738/kjell.21..202112.1246

KOREAN JOURNAL OF ENGLISH LANGUAGE AND LINGUISTICS

ISSN: 1598-1398 / e-ISSN 2586-7474

http://journal.kasell.or.kr

Discursive Classification and Evaluation in Courtroom Discourse

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Received: November 4, 2021
Revised: December 15, 2021
Accepted: December 27, 2021

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ABSTRACT

Chaemsaithong, Krisda and Yoonjeong Kim. 2021. Discursive classification and evaluation in courtroom discourse. *Korean Journal of English Language and Linguistics* 21, 1246-1258.

This study examines the ways in which discursive classification constitutes the prime mechanism that aids in the creation of opposing representations of the individual on trial. Attending to the opening speech of a high-profile trial, the analysis identifies various social categories that are legally speaking irrelevant to the determination of guilt, and argues that, contrary to popular belief, what is being contested is not evidence or legal principles, but it is different social types and their associated normative expectations that are orchestrated to frame logical inconsistencies and assign blameworthiness to the defendant in the first place.

KEYWORDS

classification, evaluation, courtroom, identity, membership category analysis

1. Introduction

The view that one's identity is constantly accomplished and negotiated in discursive practices is gaining ground in the literature. Instead of being lodged in pre-determined labels, who we are in relation to others is interactionally emergent, and it is through talking that we "do" identity (Benwell and Stokoe 2006, Bucholtz and Hall 2005). In courtroom talk, identity construction and negotiation has been revealed to be at stake (e.g., D'hondt 2010, Hobbs 2008, Matoesian 1999). Lawyers have been observed to struggle over "impression management" (Hobbs 2003)—the verbal construction and assertion of self and others to frame how they themselves as well as the witnesses should be perceived by the fact finders. This includes, for example, codeswitching between Standard English and African American English (Hobbs 2003) and alternating between different speaking roles or footings (Matoesian 2001, Rosulek 2007). There has also been evidence that reference and labeling choices can position witnesses and create identities that impact their character perception. Matoesian (2001) finds that the defense lawyer labels the first person the victim contacts after an alleged rape as an "acquaintance" to construe her testimony as illogical, for the choice of the first contact, culturally speaking, is presumed to be whoever is intimate (e.g., a friend) or officially designated to deal with the issue (e.g., a police officer). The central point here is that "what happens in the courtroom depends crucially on how people are characterized by others, on how they characterize themselves, and on the features of themselves as individuals that are made relevant during the course of an interaction" (McKinlay and McVittie 2011: 124). All in all, these findings resonate with the tenets of critical discourse analysis in that they uncover and denaturalize the discursive behaviors that let the powerful (in this case, the lawyers) maintain control over the less powerful (the jurors) (Fairclough and Wodak 1997, Van Dijk 1993)

Despite their valuable insights, previous studies are limited on at least two counts. First, they tend to focus exclusively on the genre of witness examination, namely, the questioning of witnesses, leaving this issue unexplored in other courtroom genres. Second, those few studies that go beyond witness testimony attend to a specific linguistic resource. Rosulek (2009: 27), examining names in the closing speech, acknowledges the need "to look at other linguistic forms lawyers use to create representations of these social actors", for example, the depiction of the witness's emotions and thoughts. Thus, important questions that remain include: How is impression management conducted in other less-studied genres? and What resources, other than names, are employed in those genres to ascribe and challenge those identities, thereby enhancing the perception of and (in)credibility the witnesses?

The present study proposes to explore impression and identity management through the lens of discursive categorization—that is, the mundane, common-sensical classification of people into social types along with associated actions (Hester and Eglin 1997), and how this practice constitutes and sustains witnesses' (in)credibility and moral accountability. Attending to the under-studied genre of the opening speech—the first opportunity for lawyers to persuade the jury that the defendant is guilty or not, the study demonstrates how categorization practices are key to creating logical inconsistencies and, derivatively, the (in)credibility of the witnesses. As this genre is intended as a "roadmap" that offers a preview of the evidence and witnesses to be subsequently presented in witness testimony, it is not permissible to comment on the credibility of witnesses or evidence (Snedaker 1991). Yet, in this part of a trial, attorneys need to supply a frame into which jurors can fit the evidence that they will subsequently consider (Shuetz 2007), which will then create strong mental images that will endure throughout the trial (Powell 2001). Accordingly, the opening speech potentially influence the jurors to draw tentative conclusions early on (Lind and Ke 1985, Pennington and Hastie 1991, Spieker and Worthington 2003).

Of particular interest is how identity is accomplished and contested through classification, and how cultural inferences and presuppositions transform facts and evidence into relevant legal and logical inconsistencies,

ultimately affecting the improbabilities of unfavorable testimony. To that end, I employ Membership Categorization Analysis (hereafter MCA) as the main analytical tool in examining the trial of Conrad Murray, the late Michael Jackson's personal physician, who was charged with involuntary manslaughter. The research questions are: What categories are mobilized and made relevant in the opening?; 2) How do these categories activate a particular moral order through associative cultural presuppositions and ideologies?; and 3) How do these categories work to assign moral accountability?

This study begins with an overview of the theoretical framework informing this study (Section 2) and proceeds to introduce the data, describing the participants, major facts and legal issues, necessary to understand the counsel's arguments (Section 3). The categorization work is explicated in the findings section (Section 4), and important implications are discussed in the conclusion (Section 5).

2. Literature Review

In signaling who we are in relation to others, we routinely orient to categories to perceive and describe ourselves and others (Eskelinen, Olesen and Caswell 2010), not only as unique individuals but also as members of different social groups. The categories sometimes rely on gender (*clever blonde*), sometimes race (*blacks* are this; *white people* are that), or professions (*doctors* do this; *professors* do that). As they are cultural classifications, these social types short-cut and package common-sense knowledge about the members and their actions (Stokoe 2012: 37). Far from being a neutral activity, categories evaluate and carry normative assumptions about what is regarded as normal, valuable, or inappropriate for an incumbent of the category (Jayyusi 1984, Martikainen 2017).

Categories exhibit the following features. First, they are "inference rich" in that they serve as storehouses for shared knowledge that social members have about their society (Sacks 1992: 40). For instance, the statement *She is 45 years old, but she looks much younger* carries an inference that being middled aged is not considered young, and the following clause is aimed at countering that inference. Second, categories are usually accompanied by category-bound activities, which are expectably and properly performed by incumbents of that category. To use the already well-known example by Sacks (1992), upon hearing "The baby cried, the mommy picked it up", we not only infer that the "mommy" is the "baby's mommy", but also expect the mother to do so when her baby cries. Third, categories are moral and allow moral judgments to be made for the audience, as they make claims to how a particular state of affairs ought to be. In Jayyusi's words (1984: 166), categories have a built-in "moral infrastructure". So, if the mother's action in the previous example were to change to "the mommy slapped it", we would likely evaluate the mother as abusive and violent, as it is a "wrong" action to do for crying babies. Simply put, categorization results in the construction of social realities and moral order (Housley and Fitzgerald 2015, Tanner 2019).

More recently, category-bound activities have been extended to a more general notion, called category-bound predicates, which encompass not merely activities but also whatever can be "properly" predicated of an incumbent to the category, such as rights, entitlements, obligations, knowledge, attributes, and competences (Hester and Eglin 1997, Psathas 1999, Watson 1978). Although not on the face of it moral, these predicates provide grounds for making moral judgments (Jayyusi 1991).

As with everyday interaction, categorization appears to accomplish identity ascription and serve as a sense-making device in the courtroom setting. Examining a case of a juvenile sex offender, Titus (2010) explicates how categories such as age ("juvenile"), offense ("culpable criminal") or violence ("predatory pedophile") transform the male-minor defendant into a dangerous individual in witness testimony, thereby justifying the sentencing

decision. Licoppe (2015) draws upon French judicial hearing, conducted over a video link, to explicates how an expert witness (in this case, a psychologist) performs discursive categorization in question-answer sequences during his assessment of a long-term inmate in terms of dangerousness. Using an age-related device in his questioning (e.g., "What does it mean to be of age?"), the psychiatrist claims that the inmate's responses ("over eighteen", which is then repaired to "it's twenty one") indicate a potential threat of a sexual assault and, so, recommends that the inmate be locked up in jail for longer. This analysis demonstrates that categorization can produce an important contingency bearing on the determination of guilt and moral responsibility. Analyzing testimonies from abused mothers seeking sole custody, Ingrids (2014) finds that these individuals rely on gendered categories (e.g., male perpetrator and female victim) to support their claims of fearing the fathers of their children. In contrast, in cross-examination, these claims are contested by re-categorizing, for instance, "female victim" to "mad woman", thereby eliminating the mother's alleged fear away from the father.

3. Data and Method

The data is drawn from the recorded opening speech of the prosecutor and defense lawyer, which is publicly available through the website <www.courttv.com>. The transcripts were first machine-generated and subsequently manually cross-checked for accuracy by the researchers (totaling 16,694 words). Prior to the analysis, some background of the case under study is in order. This trial involved the late Michael Jackson's person physician, Conrad Murray, who was charged with involuntary manslaughter for the world-renowned singer's death in 2009 from a lethal overdose of the anesthetic propofol.

In 2006, Dr. Conrad Murray first met Jackson in Las Vegas when treating the latter's children. In 2008, Dr. Murray's 10-year certification in internal medicine (Cardiology) expired. Without reboarding, he would technically be not board-certified in that specialty. In May 2009, Dr. Murray signed on as Michael Jackson's personal physician for a $150,000 monthly salary and agrees to accompany the singer around for his world-tour comeback concerts. He gave up his practice in Nevada.

On June 25th, 2009, Jackson, exhausted from a long rehearsal session at the Staples Center in Los Angeles, returned home and tried to get some rest. A familiar routine followed: Dr. Murray intravenously administered propofol, together with lorazepam (an anti-anxiety medicine) and midazolam (a muscle relaxant and sleep aid). The doctor left Jackson's side for some time. When he returned, he found the singer with a weak pulse and had stopped breathing. Reportedly, he immediately started applying CPR to revive the singer. Eighty-two minutes passed before paramedics were called to the house. The singer was transferred to a university-based hospital, where medical personnel attempted to resuscitate him, to no avail.

The charge of involuntary manslaughter, which is a criminal offense, presents an intriguing twist to the case for a number of reasons. First, despite its seemingly straightforward definition of the unlawful taking of another's life with gross negligence, that is, acting in such a way as to disregard a known risk of injury or death, without the intent to kill or harm, involuntary manslaughter is an "amorphous" category covering too wide a range of unintentional (but culpable) killings, and it has been used as a catch-all concept for prosecuting medical cases (Quick 2010). Second, while the Supreme Court of California has held that criminal negligence is acting "without due caution and circumspection" (People v Stuart 302, P.2d 5, 9, Cal, 1956), its application tends to depend highly on the interpretation of the facts of a particular case. Third, even if Murray's medical actions could be proved to cause death, it might as well be possible to impose liability from the point of view of civil law. That is, Murray could have been charged with medical malpractice, which is a civil offense. The difference between the two is

medical malpractice is not about moral blame, but about whether the defendant should bear the loss. In contrast, the context of criminal law entails blameworthiness and is more about whether he deserves to be punished for the outcome caused by such negligence. Accordingly, the analysis will reveal how lawyers orient toward legally-irrelevant categories to shape the way in which factual realities and legal codes are invoked and rendered consequential.

Methodologically, I followed previous studies (Schegloff 2007, Stokoe 2012) by first locating the interactionally relevant categorization. I manually went through the transcripts looking for categories that lawyers orient to. In doing so, I distinguished between what I call "explicit" and "implicit" categorization. The former refers to those lexical expressions that are used to describe the defendant on trial and Michael Jackson, along with associated predicates. On the other hand, "implicit" categories are not realized as noun phrases but are manifested in category-resonant predicates and features that 'convey the sense…of being deployed as categories', involving, for example, actions, obligations, and characteristics (Schegloff 2007: 480, Stokoe 2012: 280). Because they do not exhibit particular lexical forms, these descriptions were identified semantically in context, guided by the question "what category is being invoked by a particular description?" For both the explicit and implicit categorization, I attempted a point-by-point comparison between the two sides, observing how the same categories are claimed and challenged, as well as what kinds of reasoning and inference these categories license in the service of the presenters' goals.

4. Findings

4.1 Explicit Categorization

4.1.1 Medical categories

Doctor title

Although the defendant is a licensed physician, this identity is nevertheless subject to negotiation. The struggle is most evidently manifested in the titles accompanying the defendant's name. As Table 1 reveals, a stark difference is that the prosecution rarely uses a medically-titulated surname (or surname by itself) but predominantly references the defendant semi-formally (124.78), while the defense exclusively uses titulated nominations: "Dr. Murray" (118.87).

Table 1. Nomination for the Defendant (per 10,000 words)

		Prosecution	Defense
Given name	Conrad	-	-
Given name and surname	Conrad Murray	124.78	-
Surname	Murray	3.17	-
Title + surname	Dr. Murray	11.63	118.87
Total		139.58	118.87

The defense's sole choice of this medical title serves to command respect and credibility from the jurors. In contrast, by stripping off the title, the prosecution deauthorizes the defendant and treats him as a layperson, or possibly, as a drug seller, folk healer, or outright quacks (all of whom also provide healing to the sick), as in (1).

(1) What we learn through that investigation is that propofol, lidocaine, diazepam, midazolam all testing positive in the heart blood, all administered by Conrad Murray on June 25, 2009. (Prosecution)

This category is not only invoked and challenged through titles. In (2), the prosecution presents direct reporting where the defendant self-categorizes. In the original context, the defendant's own statement "I am the doctor" was intended to authoritatively legitimize his decision and judgment about Jackson against a witness's concern, but when incorporated in the opening speech, it is also evaluated in such a way that portrays him as overconfident and heedless of valid medical concerns: "took a very hostile tone" and "scolded".

(2) And what you will hear from Kenny Ortega is that Conrad Murray took a very hostile tone he scolded Kenny Ortega for meddling in what evidently was Conrad Murray's area of expertise. He said things to Kenny Ortega when concerns were expressed, he said things such as I am the doctor not you. You direct the show and leave Michael's health to me. He said Michael was physically and emotionally fine. Don't let it be your concern. I am the doctor. (Prosecutor)

Specialist

By law, anyone with a valid medical license can practice medicine. Specialty training, along with board certification, is a voluntary process and brings with it opportunities for increased salary and admission into privileged institutions (Gunnar 2005, Smith 1995). Thus, whether the defendant is a specialist is not legally relevant to the charge of involuntary manslaughter. However, this category is made relevant for the legitimacy of the defendant's medical actions and judgments.

As shown in (3), the prosecution disavows a specialist identity to disqualify the defendant from administering propofol. Although introducing the category "medical doctor" to acknowledge this objective reality (with an untitulated nomination, however), the prosecution is quick to juxtapose the category "anesthesiologist" just to deny it. In addition, the predicate "not board-certified in cardiology" excludes him from the inferable category "cardiologist". This image is further cemented by a description of his action as "sitting a cardiology board review book", thus not having passed the examination.

(3) We know Conrad Murray was a medical doctor. He was not an anesthesiologist, he was not board certified in cardiology …. They observed on this table nearby where Conrad Murray would evidently sit a cardiology board review book designed to help someone take and pass cardiology board exam. (Prosecution)

Unlike the prosecution, the defense explicitly categorizes the defendant as a specialist as well as a sub-specialist in (4): "cardiologist" and "an interventional cardiologist", which effectively authorizes the defendant's administration of propofol.

(4) Dr. Murray … is a cardiologist. He is an interventional cardiologist. (Defense)

In fact, both sides' claims to these seemingly opposing categories are all objectively valid, although each foregrounds a particular identity aspect. The defense's basis lies the fact the defendant had trained in cardiology and passed the board examination. However, the prosecution opts to foreground the expiration of his board license at the time of Jackson's death. In any case, a highly possible detrimental effect is that the use of these opposing

categories will only confuse the jurors, who may not even understand the connection between propofol and being a specialist in the first place. More importantly, invoking these aspects shifts the focus of the criminal question to something that is not legally relevant.

4.1.2 Interpersonal categories

Employee-employer/ friend-friend/doctor-client/doctor-patient

Another frequent explicit device is that of relationship, which comes in standardized pairs. In one manifestation, the focus lies in the relationship between the defendant and Michael Jackson. As in (5), the prosecution invokes the pair "employer-employee", thereby creating a relationship that is based on mutual benefits and power differentials, where the patient (and, at the same time, employer) may influence the prescription of the treatment. These categories are further negatively evaluated by means of adverbial clauses that qualify their relationship, such as "where Conrad Murray was working not for the best interests of Michael Jackson" and "not for the health of Michael Jackson", "for $150,000 a month". Predicates are also supplied that spell out what the incumbent of the category "medical professional" was normatively supposed to do but did not: "he did not act as a medical professional …".

(5) No, what the evidence shows existed here was an employer-employee relationship where Conrad Murray was working NOT for the best interests of Michael Jackson. Not for the health of Michael Jackson. Dr Murray was working for $150,000 a month …. He was an employee, he acted as an employee, he did not act as a medical professional using sound medical judgment. (Prosecution)

A related category is that of a contractor, where both parties are bound by a contract. Even before providing medical treatment for Jackson, the defendant is portrayed as actively engaged in money talk, which places the doctor's own self-interest above the patient's welfare. Striking an impression that the defendant sets out on this path out of greed from the beginning, the processes used here are verbal processes that characterize the cooperate, rather than medical, world, including requesting, rejection, and counteroffer.

(6) Conrad Murray initially requested payment of $5 million for 1 year of medical service. This was quickly rejected and an offer of a $150,000 a month was put on the table. Dr. Murray was to be hired an independent contractor. (Prosecution)

In contrast, the defense defines the relationship between the two as that of friends: "friends, friends first", shown in (7). Lending power to this category is the inclusive "we", which creates a collectivity with the jury in the courtroom and establishes a shared understanding that everyone chooses a doctor based on trust. Activating the category "friend" along with expectable activities, such as "sharing with him things about his childhood", the presenter not only portrays the defendant as genuinely compassionate about and empathetic to Jackson, but also construes the relationship as fiduciary with a special bond to the extent of open, honest communication.

(7) When we choose a doctor, we simply want someone who will see us when we're sick, who takes the time to listen, who can draw on knowledge and experience to get the right treatment. But in his statement that he made to police, he explained that Michael Jackson and he became friends, friends first. Michael Jackson

would share with him things about his childhood, about his family, about his life, his dreams, his hopes. They were friends first. (Defense)

When it comes to Murray's relationships with others, polarized identities are also observed. In the prosecution's discourse, Murray's patients are labeled as "clients", suggesting a profit-based practice rather than a patient-based one. Notice in (8) the repair after the initial mention of this category, which clarifies what would otherwise be an unclear reference in the medical context.

(8) Conrad Murray made it so abundantly clear of his intention to go into this lucrative agreement that he soon told his clients, his previous medical clients, to find another doctor. He sent out letters in the June of 2009 advising his clients …. (Prosecution)

In the defense's discourse, the use of "patient/doctor" does not conjure such a commercial nuance, but a professional who deeply cares about other human beings. In (9), it is through these same categories that the defense is essentially arguing against the other side's classification and evaluating the defendant's character.

(9) Mr. Walgren said that because $150,000 was so lucrative …. Let me tell you about Dr. Murray's greed. We are going to bring to you patients of Dr. Murray. These are patients who understand Dr. Murray's character traits in the context of what matters most: as a doctor. (Defense)

4.2 Implicit Categorization

Practice of medicine

Just as critical as a medical identity is the negotiation of whether the defendant's actions are accepted as medicinal practice. This is not an insignificant issue, as what counts as medicinal depends on contextualization. For instance, prescribing a narcotic drug to an addict with a goal to alleviate the suffering of immediate withdrawal is a legitimate medical treatment, while simply handing the same drug without that goal is generally not recognized as a medical treatment and may cross into drug trafficking.

In the case under study, insomnia is a well-studied medical condition with standardized diagnostic procedures and medical measures. In fact, there are a few studies that investigate the use of propofol to treat insomnia (Tiruvoipati et al. 2019, Xu et al. 2011). Despite this fact, the opening speech witnesses polarized representation of the defendant's actions. The prosecution delegitimizes the defendant's actions as non-medical. As (10) shows, material processes portray the defendant as intentionally abusing his medical license to conveniently acquire the substance. Working in concert are modifiers that imply irresponsibility or ignorance of the possible adverse consequences, including "giving … unlimited supply" and "administered with complete disregard".

(10) And you will hear that Murray's primary use of his medical training and licensure was to give Jackson access to unlimited supplies of propofol that he administered with complete disregard to Michael Jackson's safety and for Michael Jackson's life. (Prosecution)

In contrast, the defense's frame the defendant's actions as having inquiry and curative goals. That is, the defendant is depicted as endeavoring to understand the cause of the ailment, delivers a diagnosis, and administers

treatment. This is achieved in two ways, as illustrated in (11). First, mental predicates (e.g., "surprised", "concerned", "believed") reveal Murray's emotional reactions upon first learning about his patient's condition, which would not have otherwise occurred to a doctor operating on financial incentives. The defendant's ultimate goal of treating the underlying affliction (i.e., addition) is also spelled out through mental process 'hope that he could switch' and a purpose-clause "to wean…so he could sleep naturally". Second, the verbal predicates ("agree" and "told") and material predicates similar to those used by the prosecution ("provide" and "order") situate his actions as part of a well-planned course of treatment. All of this is represented in both direct and indirect quotations, which are evidentials that constitute legal evidence.

(11) Dr. Murray told police investigator he was surprised that he knew so much about propofol. He was concerned for Michael Jackson said he was going to use propofol irrespective of Dr Murray. So, Dr. Murray told investigators that yes, he agreed. He agreed to help Michael Jackson sleep, he agreed to provide propofol …. But what Dr. Murray told police investigators is that he believed his role in this partnership was to find a way to help Michael Jackson sleep normally. He had always told Michael Jackson 'you can't keep using this. What happens when you Tour is over. Why can't you sleep normally? Why won't you let me work with other sedative that will help you to sleep?' … You will see in those Applied Pharmacy records Dr. Murray also ordering Midazolam and Lorazepam because he'd hoped that he could switch to those sedatives, to wean Michael Jackson off of propofol so he could sleep naturally. (Defense, Opening)

Medical ethics

Presuming that the defendant's prescription of propofol is a recognized medical practice, the lawyers are still left with the justification of whether the standards of care are followed. Known as the "non-maleficence" principle (Beachamp and Childress 2012), this means that physicians are obligated to minimize potential harms to patients. As illustrated in (12), the prosecution first lays out the accepted standard of care through impersonal constructions, including an inanimate subject in "[p]ropofol requires…", non-referential pronoun "you", and the expletive "it is absolutely critical". Note here that the defendant is indirectly cast as a "type that is willing to abandon" the patient. Impeachment work is also enacted through the juxtaposition with the defendant's seemingly trivial perception: "the preoccupation with the email". What appears to be presupposed here is that if such mechanisms had been in place, Jackson would have survived, which may or may not be true. Just as questionable is how the category used and the actions so described constitute a criminal offense, rather than civil malpractice.

(12) Propofol requires continuous presence, visual monitoring and vigilance. And if you are the type that is willing to abandon your patient, then you need to make sure that there is another individual who is skilled in the area of resuscitation and medical care to monitor that patient with two eyes on the patient. It is absolutely critical when you are dealing with an agent such as propofol but we know from Murray's own words that he abandoned Michael Jackson, including the abandonment, including the preoccupation with email amounts to another extreme deviation gross negligence. (Prosecution)

A completely opposite account is proffered by the defense in (13). Occurring in direct reporting, which offers an aura of authenticity, material predicates are selected to reconstruct the event before Jackson's death as adhering to reasonably safe practices: "checked the pulse oximeter; checked to see if his pulse was normal …", "I sat and I watched and I left only when I felt comfortable". In addition, as (14) shows, the defendant is represented as being

firm and cautious about prescribing propofol ("would not give him propofol"), whereas Jackson is characterized as very mentally-disturbed through mental processes: "the drug that he wanted", "wanted to sleep", "was frustrated", "needed to sleep" and "needed to succeed". Working in concert are adverbial modifiers that evaluate these actions as violating what is expected of a patient: "without telling his doctor", "without permission from the doctor", thereby assigning responsibility to Jackson for bringing his own lethal consequence.

(13) What he said was 'I checked the pulse oximeter to see his oxygenation; it was in the 90s which is very good. I checked to see if his pulse was normal, it was in the 70s which was normal for Michael Jackson. And I sat and I watched and I left only when I felt comfortable. (Defense)

(14) Michael Jackson wanted to sleep for 10 hours, was frustrated, unable to sleep, couldn't sleep, needed to sleep, needed to succeed. And his doctor would not give him propofol, the drug that he wanted and Michael Jackson swallowed, while he was up and around in other rooms and the bathroom, up to 8 pills on his own without telling his doctor, without permission from his doctor. And when Dr. Murray gave him 25mg and Dr. Murray left the room, Michael Jackson self administered an additional dose of propofol and it killed him. And killed him like that and there was no way to save him. (Defense)

All in all, implicit categorization also serves to call into question and neutralizes the required quality and character of the defendant in terms of ethical and professional aspects.

5. Discussion and Conclusion

This study has demonstrated that knowledge, competency, professionalism, and other aspects of identity are not simply static reflections of previously-acquired qualifications or objective facts, but are reflexively embodied and negotiated in the lived moments of the opening speech. In particular, polarized categories, along with associated actions and characteristics, are invoked and denied in this monologic genre and are capitalized upon as legal evidence to make moral evaluations and negotiate moral blameworthiness to the person on trial.

The case closed with a finding of guilty, for which Murray was sentenced to four-year imprisonment. While it is hard to say that this verdict is the outcome of identity management alone, it is clear that discursive categorization as well as locally-made relevant activities affect the perception and impression of witnesses in the courtroom. Based on the analysis above, the following theoretical and practical observations can be made. First, in the opening, the criminal offense is by and large made sense of and reasoned by placing witnesses into types and making those types situationally relevant *in situ*. However, the categories used and their predicates offer the jury no clear-cut guidance to distinguish this case from a civil malpractice. What is more, what is being contested and undermined in the opening speech is not the "real" character, motive or qualification of these witnesses, which no one can ever truly access or know. As a result, it is possible that the trier of fact takes a broad view of these categories and category-bound actions to assign moral blameworthiness. With no medical training, the jurors may pay attention to actions which intuitively appear to be inattentive or incautious, taking for granted that these constitute criminal negligence. In fact, in an interview following the verdict, a juror reasons that "[w]e had decided the three issues we were going to focus on were the not calling 911, not having the medical equipment and him leaving the room. That was the bottom line for this case" (Duke 2011). In this way, the finding of criminal negligence may have been motivated, at least in part, by category-bound activities exhibiting broad personal carelessness, which legally

belong to the realm of medical malpractice, rather than involuntary manslaughter.

Second, the categorization practice causes the discourse of the opening statements to become not only argumentative but also evaluative, which is, in principle, prohibited by the law. As overt discussion of witness credibility is procedurally prohibited due to its argumentative nature, categorization allows counsel to bypass such legal requirements without overt argumentation and evaluation. At several points in the trial, objections could have been made regarding the specific categories used, which in turn would give the impression that the presenter violates courtroom constraints and, consequentially, would affect his credibility with the jurors.

Finally, while we tend to think that physical entities such as the amount of the substance in the bloodstream or witness testimony constitute "real" evidence that can somehow be verified by forensic medicine, this study shows that the very reality of such evidence is constructed in the first place through categorization in context. Accordingly, the presenter who can master the use of these categories will be able to dominate the interpretation and evaluation of what happened and, ultimately, prevail in this contest of identities.

References

Beachamp, T. and J. Childress. 2012. *Principles of Biomedical Ethics,* 7th ed. Oxford: Oxford University Press.

Benwell, B. and E. Stokoe. 2006. *Discourse and Identity*. Edinburgh: Edinburgh University Press.

Bucholtz, M. and K. Hall. 2005. Identity and interaction: A sociocultural linguistic approach. *Discourse Studies* 7, 585-614.

D'hondt, S. 2010. The cultural defense as courtroom drama: The enactment of identity, sameness, and difference in criminal trial discourse. *Law & Social Inquiry* 35, 67-98.

Duke, A. 2011. Conrad Murray sentenced to four years behind bars. CNN (Nov. 30, 2011) Retrieved from http://www.cnn.com/2011/11/29/justice/california-conrad-murray-sentencing/index.html

Edwards, D. 1998. The relevant thing about her: Social identity categories in use. In C. Antaki and S. Widdicombe, eds., *Identities in Talk*, 15-33. London: Sage.

Eskelinen, L, S. Olesen, and D. Caswell. 2010. Client contribution in negotiations on employability: Categories revised? *International Journal of Social Welfare* 19: 330-338.

Fairclough, N. and R. Wodak. 1997. Critical discourse analysis. In T. A. Van Dijk, ed., *Discourse Studies: A Multidisciplinary Introduction, Vol. 2*, 258-284. London: Sage.

Fitzgerald, R. 2012. Categories, norms and inferences: Generating entertainment in a daytime talk show. *Discourse, Context & Media* 1, 151-159.

Gunnar, W. 2005. The scope of a physician's medical practice: Is the practice adequately protected by state medical licensure, peer review, and the national practitioner data bank? *Annals of Health Law* 14, 329-359.

Hart, W. and R. Blanchard. 2006. *Litigation & Trial Practice,* 6th ed. New York: Cengage.

Hester, S. and P. Eglin, eds. 1997. *Culture in Action: Studies in Membership Categorization Analysis*. London: University Press of America.

Hobbs, P. 2003. 'Is that what we're here about?': A lawyer's use of impression management in a closing argument at trial. *Discourse & Society* 14, 273-290.

Hobbs, P. 2008. 'It's not what you say but how you say it': The role of personality and identity in trial success. *Critical Discourse Studies* 3, 231-248.

Housley, W. and R. Fitzgerald. 2015. Introduction to membership categorization analysis. In R. Fitzgerald and W. Housley, eds., *Advances in Membership Categorisation Analysis*, 1-22. London: Sage.

Ingrids, H. 2014. Category work in courtroom talk about domestic violence: Gender as an interactional accomplishment in child custody disputes. *Feminism & Psychology* 24, 115-135.

Jayyusi, L. 1984. *Categorization and the Moral Order*. London: Routledge.

Licoppe, C. 2015. Categorization work in the courtroom: The 'foundational' character of membership analysis. In R. Fitzgerald and W. Housley, eds., *Advances in Membership Categorisation Analysis*, 71-98. London: Sage.

Lind, A. and G. Ke. 1985. Opening and closing statements. In S.M. Kassin and L.S. Wrightsman, eds., *The Psychology of Evidence and Trial Procedure*, 229-253. London: Sage.

Martikainen, J. 2017. Categorizing leaders based on their gaze. PEOPLE: International Journal of Social Sciences 3, 1603-1618.

Matoesian, G. 1999. The grammaticalization of participant roles in the constitution of expert identity. *Language in Society* 28, 491–521.

Matoesian, G. 2001. *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial*. Cambridge University Press, Cambridge.

Matoesian, G. and K. Gilbert. 2018. *Multimodal Conduct in the Law: Language, Gesture and Materiality in Legal Interaction*. Cambridge: Cambridge University Press.

McKinlay, A. and C. McVittie. 2011. *Identities in Context: Individuals and Discourse in Action*. London: Blackwell.

Pennington, N. and R. Hastie. 1991. A cognitive theory of juror decision making: The story model. *Cordoza Law Review* 13, 519-557.

Powell, G. 2001. Opening statements: The art of storytelling. *Stetson Law Review* 31, 89-104.

Psathas, G. 1999. Studying the organization in action: Membership categorization and interaction analysis. *Human Studies* 22, 139-162.

Quick, O. 2010. Medicine, mistakes and manslaughter: A criminal combination? *Cambridge Law Journal* 69, 186-203.

Rosulek, L. 2007. Dual identities: Lawyers' construction of self in the closing arguments of criminal trials. *Texas Linguistic Forum* 51, 154-164.

Rosulek, L. 2009. The sociolinguistic creation of opposing representations of defendants and victims. *International Journal of Speech, Language and the Law* 16, 1-30.

Sacks, H. 1992. *Lectures on Conversation. Vols. I and II*. London: Blackwell.

Schegloff, E.A. 2007. A tutorial on membership categorization. *Journal of Pragmatics* 39, 462-482.

Schuetz, J. and L. Lilley, eds. 1999. *The O.J. Simpson Trials: Rhetoric, Media and the Law*. Carbondale: Southern Illinois University Press.

Smith, A. 1995. Criminal or merely human?: The prosecution of negligent doctors. *Journal of Contemporary Health Law & Policy* 12, 131-146.

Sneadaker, K. 1991. Storytelling in opening statements: Framing the argumentation of the trial. In D.R. Papke, ed., *Narrative and the Legal Discourse: A Reader in Storytelling and the Law*, 132-157. Liverpool: Deborah Charles Publications.

Spiecker, S. and D. Worthington. 2003. The influence of opening statement/closing argument organizational strategy on juror verdict and damage awards. *Law and Human Behavior* 27, 437-456.

Stokoe, E. 2012. Moving forward with membership categorization analysis: Methods for systematic analysis. *Discourse Studies* 13, 277-303.

Tanner, D. 2019. Opening communicative space: What do co-researchers contribute? *Qualitative Research* 19,

292-310.

Tiruvoipati, R., J. Mulder, and K. Haji. 2019. Improving sleep in intensive care unit: An overview of diagnostic and therapeutic options. *Journal of Patient Experience* 7, 697-702.

Titus, J., 2010. Ascribing monstrosity: Judicial categorization of a juvenile sex offender. International *Journal of Speech, Language and the Law* 17, 1-23.

Van Dijk, T. 1993. Principles of critical discourse analysis. *Discourse & Society* 4, 249-283.

Watson, R. 1997. Some general reflections on categorization and sequence in the analysis of conversation. In S. Hester, and P. Eglin, eds., *Culture in Action: Studies in Membership Categorization Analysis*, 49-75. Washington: University Press of America.

Watson, R. 2015. De-reifying categories. In: Fitzgerald, R., Housley, W. (Eds.), *Advances in Membership Categorisation Analysis*, 23-50. Sage, London.

Xu, Z., X. Jiang, W. Li, D. Gao, X. Li, and J. Liu. 2011. Propofol-induced sleep: Efficacy and safety in patients with refractory chronic primary insomnia. *Cell Biochemistry and Biophysics* 60, 161-166.

Examples in: English
Applicable Languages: English
Applicable Level: Tertiary

