



## Intertextual Practice in Death Trials and Pragmatic Functions\*

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### ABSTRACT

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Adopting a discourse-pragmatic perspective, this study explores the intertextual practice of speech reporting in the context of capital trials, with an aim to propose a typology of the common pragmatic functions accomplished by incorporated voices. Based on the closing statements of five capital cases, the analysis reveals that, regardless of their orientation, opposing lawyers use external voices to support their stance on a death sentence. Four major functions of speech reporting are identified for this genre: narrating, contextualizing, deconstructing, and legitimizing. The reanimation of these voices not only allows lawyers to create different versions of facts and negotiate polarized perceptions of the person on trial but also contributes to making the closing speech genre highly heteroglossic and dialogic.

### KEYWORDS

closing statement, capital trial, intertextuality, pragmatic function

## 1. Introduction

An important characteristic of courtroom discourse is that it is multi-perspectival and interactive (Galatolo and Mizzau 2005, Galatolo 2007, Matoesian 2000, 2001). That the courtroom exhibits heteroglossia or dialogism, to use Bakhtin's (1981) terms, does not necessarily mean that there must be an actual ongoing dialog between two or more speakers. Rather, it refers to the fact that courtroom participants consistently engage with and respond to what others have said or written before. In presenting their case to the jury, lawyers, for instance, consistently incorporate witness testimony as well as what these individuals say about the defendant or relevant details of the case at hand. By way of speech reporting, a courtroom presenter, thus, becomes "a multidimensional space through which utterances of others speak" (Hartman 1992), and so her discourse becomes intertextual, "full of snatches of other texts which may be explicitly demarcated or merged in, and which may assimilate, contradict, ironically echo, and so forth" (Fairclough 1992).

Indeed, the practice of incorporating segments of speech of another author into a new text, or speech reporting, appears to constitute a critical factor that influences the trial outcome for both epistemic (Philips 1986, Baffy and Marsters 2015) and affective reasons (Matoesian 2000, 2001). The former concerns the argumentative support that a voice can lend to an argument, thanks to the authority of the reanimated voice. The latter augments the speaker-listener relationship, enabling the audience to "relive" the actions, emotions, and events of the reported situation (Matoesian 2001). However, to date, studies on speech reporting in courtroom discourse have focused almost exclusively on witness examination and cross-examination (see Rosulek 2010, however). This may be attributable to the perception that witness examination is the outcome-determining phase of a trial. However, this does not mean that other phases of a trial do not have a bearing on the outcome, and the absence of the investigation into how speech reporting works in other genres limits the strength of the claim that courtroom discourse is multi-perspectival, 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 closing summation in death trials, which represents the very last opportunity for lawyers of each side to persuade the jury to authorize the killing of the individual on trial. The closing statement constitutes "the dramatic highpoint of the capital trial" (Burt 2008), and "[r] egardless of the evidence, whichever attorney can send a trier off to deliberate with the most ringing and eloquent soliloquy will emerge victorious" (Bergman 1989). As such, this summation event can be consequential and goes beyond simply providing a summary of the facts and evidence to argue how the choice of death or life in prison is commensurate with the crime committed by the person on trial, as well as how a desired verdict fits the widely held legal and moral norms.

In particular, drawing on the closing summation of five American capital trials, the study analyzes the pragmatic functions of quotations in this monologic genre. The findings not only contribute to illuminating the nature and linguistic characteristics of such intertextual practice in the genre under study, but the discourse-pragmatic approach proposed in this study, which considers a re-animated strip of speech based on its function in context, also makes methodological contributions to scholarship on speech reporting.

## 2. Literature Review

One of the early studies that explored intertextual practices in courtroom discourse is Philips (1986). On the basis of an American criminal trial, the researcher investigates how different ways of speech representation affect

the degree of authority and reliability of a reported utterance. It is argued that when an utterance is directly reported, it is to foreground critical events or evidence, thereby signaling to the jury that the evidence is more significant. In contrast, when evidence is less critical, the quoted voice is rendered in indirect reporting. This is because “exact words” give more fixedness and credibility (Philips 1986).

Subsequent studies do not find Philips’ formal distinction as clear-cut, however. As Matoesian (2000) convincingly points out, even iconic replications of a voice (as in tape-recorded speech) “never just speak for themselves—never interpret their significance, their meaning.” Instead, it is the reporter that plays an active role in giving meaning to a reanimated utterance, for example, in instructing the jury on the significance of previously given testimony. More critically, the reporting voice may subtly leak into the voice of the reported speaker, thereby endowing utterances with affective and evidential force (Matoesian 2000, 2001). To illustrate, the following extract from an opening statement, also a monologic genre, shows how the lawyer’s subjective evaluation may be fused with the incorporated voice as he describes what the victim did and said after the rape incident:

She [the victim] goes into the house...and makes a call to her friend Ann Mercer who is an acquaintance. That’s the first time they have ever gone out together... She doesn’t call anyone in her family...the police...any relative...but she calls Ann Mercer, and says “I’ve been raped. Come and pick me up.” (Matoesian 2001).

Here, the quoted clause is embedded within an evaluative matrix clause (“She doesn’t call anyone in her family...but she calls Ann Mercer, and says...”) to suggest that when women are raped, they should contact the police or some family member, rather than a mere acquaintance. In addition, the quoted portion is re-animated without any affective intonation, which is indicative of an oddly prosaic, even cavalier, way to recount what has happened. This example demonstrates that strategic voicing is intertwined with the gendered ideology that a woman should verbally display the emotional trauma of rape.

Cotterill (2002) compares how the prosecutor and the defense in O.J. Simpson’s civil trial strategically incorporate a key witness’s utterances from an earlier phase of the legal process. The two sides differ remarkably in their reanimation of this voice. The prosecution reproduces portions of the witness’s earlier testimony that portrays him as reliable. The cross-examining lawyer, in contrast, selectively reproduces the witness’s utterances to call attention to inconsistencies in his testimony, thereby suggesting that the witness is not reliable. While based on one voice, this study illustrates that voice incorporation is far from neutral and pragmatically motivated by the presenter’s goals.

Galatolo and Mizzau (2005) and Galatolo (2007) focus attention on lay witnesses and examine how these individuals perform “active voicing,” along with the use of prosody and gestures. It was found that the reanimated voices help lay witnesses to bypass the legal requirement that allows only first-hand knowledge of facts and prohibits personal evaluations. Thus, lay witnesses, in voicing others, can “hide their personal perspective on an event behind the apparent objectivity and neutrality of literal quotes” (Galatolo and Mizzau 2005).

Baffy and Marsters (2015) show how, during cross-examination, an experienced attorney voices defendants during cross-examination. Such a manufactured dialogue not only adds evidential weight to the attorney’s claims, but also invokes different kinds of evaluation of the witnesses for the jurors. The voices of the defendants are called upon to construct an alternate reality and to highlight what they should have done but failed to do, thereby allocating the blame to them. Because the evidence is based on one attorney during cross-examination, the researchers acknowledge the need for further research in other settings and legal genres.

In the context of criminal trials, Rosulek (2010) reveals how this phase is heteroglossic. She finds that different voices are reanimated for four major functions. By presenting character voices, an attorney can legitimize their

claims, deconstruct the credibility of the original speaker, (re)contextualize the original statement to fit the current discourse need, and vividly depict verbal actions in narratives. However, the researcher does not discuss how to distinguish one function from another. Nor does the study investigate capital trials and, in particular, the penalty phase, whose communicative purposes and end point are entirely different from those of the guilt phase (see discussion in the next section).

All the studies above have done much to testify to the significance of voicing in some courtroom genres. However, to date, there has been no study on the pragmatic functions of speech reporting in capital trials, let alone the penalty phase. Identifying these pragmatic functions will add to the sparse body of linguistic research in understanding the purposes for which voices are incorporated, which clearly is not to simply report anyone's words. In addition, speech reporting has been shown to perform distinct functions in different genres. For example, in academic writing, quoting allows the writer to present oneself with a positive scholarly image, while it can serve as a face-saving strategy in message board communication (Arenholz et al. 2015). Given that quotations are multi-functional and their functions are dependent on the context of use, the present study takes the initiative to investigate the pragmatic functions of speech reporting in the closing statement. To that end, the study proposes a function-based typology of speech reporting in the courtroom, correlates these functions with specific linguistic devices, and applies the framework to a specialized corpus of capital trials. We now turn to describe our data source and analytical method in the next section.

### **3. Data and Method**

#### **3.1 Data**

As part of a larger corpus, the closing arguments for this study were drawn from the official transcripts of four capital trials, which were obtained from Indiana Prosecuting Attorneys Council. These cases came from different counties of Indiana and were produced by different lawyers. This data set was obtained by filing a request for the use of transcriptions to the court office. To enrich the data set, another capital case was added, which concerns a mass murder case allegedly committed by a 17-year-old minor in the Washington Metropolitan Area in October 2002. The transcript of this trial is publicly available online, as this is a highly visible case. Combining two major sources helps ensure that the linguistic patterns identified are not the idiolectal characteristics of only a few lawyers. All the five cases under study involve multiple killings and occur contemporarily. An advantage of this relatively recent timeline is that there have been no significant changes in the legislature or positions of the Supreme Court regarding death penalty, which otherwise may affect the linguistic patterns. We believe that the data set is sufficiently rich and allows for generalizations to be made about the functions of quotations in this genre.

The closing summation is drawn from the penalty phase, with the intended objective being to determine whether the defendant should be executed or imprisoned for a lifetime. This is different from the guilt phase, where the juror is tasked with finding whether the defendant is guilty as charged. In the United States, the penalty phase occurs after the guilt has been determined. The same set of jurors, who has found the defendant guilty in the previous guilt phase, is recruited to weigh aggravating circumstances (i.e., factors that increase the culpability of the crime) against mitigating ones before issuing a recommendation. In practice, anything can be argued to be a mitigating circumstance, for example, an abused childhood, mental problems, to name but a few. Considering that culpability has been determined, we are interested to see how external voices may function to augment or neutralize aggravating and mitigating factors and position the guilty individual as worthy of being killed or imprisoned

without parole.

### 3.2 Analytical Method

Based upon Bakhtin's (1981) concepts of heteroglossia and dialogism—that a text always displays intertextuality of prior and future texts within its discursive space through interpenetration of voices and dialogic relations among these voices, this study conceptualizes the practice of intertextual voicing as involving the removal of a stretch of speech of an author from one context and incorporates into the current context, thereby creating an intertextual link between the two speech events. Encapsulated voices may be rendered as direct or indirect quotes, and can be identified through the presence of lexical expressions (including reporting verbs, such as *say*, *tell*, and *exclaim*), reporting nouns, such as *the saying that...*, and quotation marks, which can be verbalized as *quote* and *unquote* in spoken discourse. In addition, because quoters often do not simply animate other people's utterances but also assess them and their action “with highly varied degrees of accuracy and impartiality” in reaching out to some recipient (Bakhtin 1981, attention will also be paid to the dynamic interrelationship between the speech being reported (the quoted voice) and the speech doing the reporting (i.e., the quoting lawyer).

We first identify the use of voices in these closings. To do so, we adopt Sinclair's (1986) averral-attribution distinction, which distinguishes between the authorial and external voices. Namely, an averral denotes a statement originating from the writer, while an attribution signals that someone else is the agent of the statement. Through attribution, the writer voices someone else's views or beliefs and, in so doing, detaches herself from the content and signals explicitly that it is taken from a different source. With such a distinction, this study treats what is traditionally known as direct speech, indirect speech, and mixed speech reporting (or partial quotations) on an equal footing, as they all involve attribution, rather than averral. As the focus is on the pragmatic functions of the voices, this treatment should not affect the findings.

With respect to the pragmatic function, this study adopts the widely-accepted assumption that when quoting the speech of others, quoters do much more than merely reporting or paraphrasing (e.g., Holt and Clift 2007, Shibata 2021). That is, they take up different positions in relation to the quoted material while simultaneously appearing to objectively reproduce the quote material, signaling their stance overtly or covertly, before, during, and after a quotation.

To date, there has been no consensus on the functions of reported speech in courtroom discourse. This study synthesizes insights from past studies to propose an inventory of the pragmatic functions of external voices in the courtroom setting and attempts to identify contextual and linguistic cues that are commonly manifested for each function. Two functions, in particular, are widely recognized in the literature: narrating and evidentiary (or legitimizing) functions. The former refers to the reanimation of voices during the climax of a narrative in the sense of Labov's (1972) complicating action, so that the telling “point” of the narrative is highlighted (Mayes 1990). The latter takes an advantage of a voice, especially authoritative ones, to lend credibility to the argument being made (Rosulek 2010). Other notable functions include: contextualization, which establishes links between the current discourse and prior discourse (Lee et al. 2018) and deconstruction, which is comparable to Jacquemet's (1994) “metapragmatic attack.” Note that the notion of evaluation, which refers to the signaling of the speaker's attitudes, value judgments, and feelings toward the entity or proposition being presented (Hunston and Thompson 2005, Hyland 2005), is important in that the lawyer can manipulate the attributed voices for such purposes while appearing objective through the act of attribution (Coulthard 1994, Jullian 2011).

We first conducted a preliminary analysis of the data. The initial findings indicate that these four functions are well attested and should suffice for our analysis. During this pilot step, we gathered characteristic contextual cues and linguistic correlates of these functional categories, which are exhibited in Table 1.

**Table 1: Contextual and linguistic cues for identification of functions**

Functions	Contextual cues	Linguistic cues
Contextualizing	Features a clarification, illustration, reformulation, or reinterpretation of the quoted voice	Presence of metadiscourse markers (e.g. <i>that means...</i> ) or exophoric references to another portion of discourse. Authorial evaluation may be involved.
Deconstructing	Problematizes the validity of the quoted source	Negative evaluation through reporting verbs (e.g. <i>claim, lie</i> ), adjective comments (e.g. <i>false</i> ), and contrastive markers ( <i>but, however</i> )
Legitimizing	Lends evidential credibility and legitimacy to a lawyer's arguments	Positive evaluation through verbs (e.g. <i>confirm, affirm</i> ) and evidentials ( <i>as X points out</i> )
Narrating	Presents a verbal event that is part of the complicating action	Presence of a quoting verb against narrative clauses, without authorial evaluation ( <i>say, scream, echo, testify</i> )

Using the above linguistic and contextual cues, the researchers subsequently coded each attributed statement independently, recorded the frequencies, and double-checked the initial coding to resolve discrepancies and achieved the final results. The findings are explicated in detail below.

## 4. Findings

### 4.1 Contextualizing function

Lawyers reanimate external voices to contextualize their speech, so that the argument becomes understandable to the jurors. This is often the case when specialized concepts are involved or when an utterance has multiple possible interpretations. For instance, in (1), while the prosecution lawyer encourages the jury to choose death by arguing that the case under consideration has more aggravating circumstances than mitigating ones. These legal provisions may be foreign to laypeople, including the jurors. Thus, a voice from the Webster's dictionary is called upon to simplify the concept of "mitigation":

(1) The second step or second stage of your analysis in this case is to determine whether or not those aggravating circumstances are outweighed by the mitigating circumstances you've heard in this courtroom today, and that's where the weighing process comes in. Out of the Webster's Dictionary is defined mitigation, or mitigate is defined as to cause to become less harsh or hostile, to make less severe or painful. And I guess fundamentally you are going to have to make a determination as to if what you heard today makes the murders of three human beings including a child less severe or less painful. And I submit to you that it doesn't. (Case 2, Prosecution)

A contextualizing voice can make relevant or foreground certain aspects of background knowledge for the jurors. For instance, lawyers may reference what they say earlier, thereby establishing a link that brings previous utterances and claims into the current context. In (2), the lawyer quotes his own speech from a different phase of the trial and, in so doing, he can emphasize his position and the purposes of the presentation:

(2) And we have told you from the beginning that we don't—by telling you what we've told you—we've already told you that we don't believe the mitigation that we presented on his behalf should outweigh the horrificness of this crime, but we believe that his life should be spared and that the penalty of life without parole will be sufficient to punish him. (Case 4, Defense)

Here, the defense restates his position that the mitigation offered to reduce the punishment severity should not outweigh the aggravation. This re-presentation of speech works to solidify his position and imparts an aura of a presenter who is consistent and honest about his purposes in the courtroom.

In addition, a contextualizing voice allows lawyers to furnish their prior statement with what may be thought of as a demonstrative example. This is a central strategy of exposition to support an argument. In (3-4), the lawyer can guide the jurors through his line of reasoning, thanks to the contextualizing quotations:

(3) And by the time she abandoned Lee in Antigua, where he had absolutely no family base or support system, he was desperate for a father. He was, in a phrase, "ripe for the picking." (Case 5, Defense)

(4) How about a drunk driver, a drunk driver who kills a family. That's less tragic? Is that less tragic? Are there less victims? Do victims take it better then? Drunk drivers aren't even considered murderers in Indiana. Why? Why? Because we choose our government to represent us, and our government says that's not murder. Why? Because that could be one of us. That's why. That could be somebody we know. That could be somebody we like. That could be somebody in our family who has a few too many drinks and kills a family. It's not even murder. So, of course, it's not eligible for the death penalty. Why? Because that could be one of us. This is your choice. Michael Baer today is laid in front of you. (Case 1, Defense)

In (3), as the lawyer is recounting the making of the defendant's life, he introduces a well-known metaphorical expression "ripe for the picking." Likening the defendant to a ripe fruit, such an expression illustrates his argument that the defendant is easily influenced to do anything, even crime commitment, by a particular adult whom he trusts. In (4), the lawyer pursues his argument that the defendant's crime is not any worse than drunk driving, considering that both crimes involve murder, although the latter is not qualified for death penalty in the state where the case is being tried. The voice of the government is quoted, in order to demonstrate that such a legal decision is politicized and has nothing to do with the essence of the crime.

In presenting a contextualizing voice, the lawyer may evaluate the quoted person or material in relation to his argumentative position. In (5), discussing the defendant's mental state and emotional hardship when committing crime, an expert voice is incorporated. While the voice testifies in the positive "Essentially, yes" and "it only appeared to be the case," the prosecution lawyer contextualizes it as a hedged statement ("essentially" and "only appeared to be") to suggest that there is no complete commitment from this expert witness.

(5) You're also to consider the follow mitigating circumstances if you find them to exist: The Defendant was

under the influence of extreme mental or emotional disturbance when the murder was committed. When asked if Ward was under the influence, Dr. Engum did not seem to be convinced and was only able to say "Essentially, yes." You're also to consider the following mitigating circumstances if you find them to exist: The Defendant's capacity to appreciate the criminality of his conduct and to conform that conduct to the requirements of the law was substantially impaired as a result of mental disease or defect. Once again, Dr. Engum does not appear to be convinced, saying that it only appeared to be the case. (Case 4, Prosecution)

Toward the end, the lawyer also comments on the way the expert testifies: "Dr. Engaum did not seem to be convinced," which implicates that this mitigating factor should not be given much weight.

Similarly, in (6), the lawyer not only reproduces an eyewitness's testimony, given previously, but also provides an interpretation of the quoted material. The metadiscursive expression "which means" functions to suggest that the defendant on trial commits a serious crime involving tormenting another human.

(6) And in that connection, I just want you to remember—and I don't have this on the board, but just remember the testimony of -- in that case. Melissa woke up to screams, went to the top of the stairs, saw a man on top of Stacy; both parties had on their clothes; thought Ward had on long pants, probably because he was kneeling; statement given by Melissa at the scene; screams continued until shortly before Matt Keller arrived, which means her throat wasn't cut immediately as the account that was given to Dr. Davis said. But just keep that in mind in evaluating his testimony. (Case 4, Prosecution)

In quite a few instances, lawyers may go so far as to repurpose and recalibrate the quoted material in such a way that fits their cases. In (7) and (8) below, note how the lawyer expands on the quoted voice:

(7) Please do not have the arrogance that our government has in this particular case and say, "So what." Because it's exactly the same thing. I can look at my mom back there and say, "So what that you raised me well." Do you know how arrogant and ridiculous that sounds? But Mr. Cummings asked you to do exactly that. So Michael Baer had a tough childhood. So what. It doesn't affect him as an adult. Get over it. Grow out of it. Suck it up. That's arrogance. (Case 1, Defense)

Here, the defense first re-presents the prosecution lawyer's seemingly nonchalant expression of "so what" in his closing summation previously delivered, when he discounts the mitigation that a problematic childhood influences the mind of the defendant to commit the crime. The presenting lawyer subsequently invokes a hypothetical voice to present a statement of similar nature, before raising an implicature in the form of a rhetorical question that such an expression is "arrogant" and "ridiculous." The final statement metalinguistically spells out the quoted material explicitly by labeling it as "arrogance."

(8) Put another way, the Court goes on, torture is the gratuitous infliction of substantial pain or suffering in excess of that associated with the commission of the charged crime. Although the victim here undoubtedly experienced suffering, the evidence does not show that the events fit the definition of torture. Ladies and gentlemen, I would suggest to you that torture is not an appropriate aggravating factor in this case. Doesn't torture, just by what I've read to you, suggest that it is the infliction of sublethal wounds to punish or coerce or to make the agony prolonged? The supreme court says: To give sadistic pleasure to the torturer. Ladies and gentlemen, this is a horrible, horrible, horrible, horrible crime but it happened so fast that...it was a certainty that [victim] wouldn't survive. They were violently and lethally and very quickly inflicted, perhaps, in less than



a few minutes. (Case 4, Defense)

As in (7), this extract shows that the reappropriated voice is interpreted in the context of the case at hand. The defense lawyer cites the court's as well as that of the Supreme Court's definition of torture, and re-purposes it to mean that the defendant's crime does not involve torture. While it is acknowledged that the crime is "horrible," the re-interpretation denies the prosecution's claim that the act involves "torture," because the victim passes instantly. In this way, this contextualizing quote invalidates the prosecution's aggravating argument.

#### 4.2 Deconstructing function

Deconstruction occurs when a lawyer signals disagreement with what a witness previously says, thereby taking issue with the veracity or authority of a voice. He or she may outrightly deny its validity (i.e., declaring the statement is not true) and supply what they consider the "right" way to view the issue, as exemplified in (9) below.

(9) On one hand they're saying he came up in a bad childhood, an abusive childhood, but on the other hand it's saying that he's a nice guy. It doesn't seem to make much sense. But if you go with their theory that he had a hard life, a hard childhood and that may have made him violent, well, that fact doesn't make him any less violent today. (Case 2, Prosecution)

First off, in this example, the prosecution quotes the mitigating arguments by the defense team and juxtaposes them to make them appear contradictory, before negatively commenting that "it doesn't seem to make much sense." Subsequently, he also cites the same mitigating argument and signals his disaffiliation to the discourse marker "well," thereby implicating that even if it is true, the defendant is still a dangerous person, worthy of being sent to die.

Instead of explicit deconstruction, disagreement can be implicitly signaled. In (10), the defense quotes the state's argument about the torture allegedly committed by the defendant and attacks its validity through the implicature in the subsequent counter-factual conditional ("if such were the case...").

(10) The State argues that the torturer or aggravator is satisfied by proof of infliction of severe physical and mental pain. This alone surely cannot be sufficient. If such were the case, any stabbing or shooting victim would also be tortured. (Case 4, Defense)

Similarly, in (11), the defense quotes an unidentified voice (or voices), presumably in response to the opposing lawyer, as the state's lawyer invalidates the mitigating factors (including abused childhood) by calling them "excuses" and "blaming." The presenting lawyer refutes that accusation implicitly through a rhetorical question "why do we all..." which invites the opposite meaning: "what happens in someone's early life is important."

(11) We hear this all of the time. Oh, he's making excuses, he's blaming everybody. Ladies and gentlemen, if what happens in someone's early life isn't important, then why -- why do we all in our community, wherever we are, direct so much attention at trying to make sure that children are parented in a proper way, are clothed, fed, nurtured and loved? (Case 5, Defense)

Finally, lawyers are observed to signal disaffiliation by calling upon another stretch of speech to construct contradiction. In (12) and (13), the lawyer deconstructs the opposing side's argument by first representing the original argument, before invalidating it with a quote from another authoritative witness. In this way, two voices

are strategically positioned against each other for deauthorization.

(12) Now, one of the things that the prosecutor was talking about is, Roy wasn't insane; he didn't have an organic problem; and he's not pleading insanity... And in our country, ladies and gentlemen, if you're insane, you can't be found guilty of an offense. Of course Dr. Engum didn't conclude that. We didn't ever say that. (Case 4, Defense)

(13) The Commonwealth will say to you this child is intelligent. They will say to you he's very intelligent. He should have known better. But remember the testimony of their expert Dr. Evan Nelson. Intelligence does not equate to judgment. Intelligence does not equate to maturity. (Case 3, Defense)

### 4.3 Legitimizing function

Legitimation encompasses the reason, the justifications, and the validations of how things are (Van Leeuwen 2007). In the case of the closing summation in the penalty phase, the prosecution endeavors to present their view on death as necessary, and the authority of an external voice helps to augment the persuasiveness and legitimacy of their argument.

Lawyers accomplish this goal by drawing on the voice of a witness who testifies about the event. One group of the witnesses commonly quoted includes eyewitnesses. While the presenting lawyer is an outsider to the crime and the events leading to the crime, thus having limited epistemic qualification in that regard, the quoted voice can provide legitimation to the lawyer's narrative, as in (14) and (15):

(14) She acknowledged that drugs had ruined her family and she even told you that the defendant needs to be punished. She acknowledges that. (Case 5, Prosecution)

(15) You heard from Mildred Muhammad. She said John was a magnet for children. You heard from the Douglasses where John Muhammad moved in with Lee or brought Lee in to live in their home and from "Yellow" Jerome Martin and his wife, Leonie Martin, from Antigua. And they all describe John Muhammad as a pied piper--that he had an attraction that brought children to him, and none more so than Lee. Remember that when he took Lee physically into his home and into his family, John Muhammad (Case 3, Defense)

In (14), the prosecution takes advantage of a person in the defendant's family and the statements she makes to support the position that the defendant deserves to be punished, although it is unclear whether what the witness refers to as punishment is in fact imprisonment or death. Similarly, in (15), the defense quotes from those individuals who are intimate to the defendant and the adult (John Muhammad) who reportedly "brainwashes" the defendant to commit the crime. This is to strongly support the argument that the aforementioned individual has such a powerfully persuasive persona that can mentally influence the defendant to commit the crime.

Other than witnesses to the crime, individuals with socially-accepted credentials are also deferred to. They are the voices of authority, that is, expert authorities (Van Leeuwen 2007). As lawyers have no personal expertise in the area at issue, they utilize the words of such individuals to legitimate the argument, as (16) shows:

(16) Now, also, a part of aggravator number one, Ward mutilated Stacy Payne while she is still alive. I shouldn't have to go over this with you, but I'm going to. Stacy's neck, hand, abdomen and back areas were cut open to the point that she was cut almost completely in two while she was still alive and conscious. Mutilation is not defined by law. Use your common sense on that and remember the brutality of her injuries and how they looked.

Remember that under the mutilation part, Dr. Edwards called this a carving. (Case 4, Prosecution)

Although mutilation, which is part of the state's aggravating factors, is not defined by law, the pathologist's description of the body as "a carving" certainly categorizes the defendant's action as falling under scrutiny. Similarly, the defense lawyer in (17) also cites a psychiatrist to support their theory that the defendant has been mentally influenced by a father figure and its enduring impact. Note, however, that it is unclear whether the following statement ("It's not something that is going to happen overnight") constitutes part of the indirect quotation by the expert, or it is an averred statement by the lawyer.

(17) Word is bond, and the degree of that indoctrination is such that in spite of efforts and in spite of time, there will be relapses. There will be times when Lee returns to that questioning and that indoctrination. That's what the experts told you. Dr. Martin said relapses are quite common. It's not something that is going to happen overnight. You take John Muhammad away from Lee, and suddenly, Lee's entire thought process from that indoctrination of two full years from age 15 to 17 simply chages overnight. It doesn't. (Case 3, Defense)

Other than witnesses, another set of voices that lawyers reanimate includes impersonal authorities (Van Leeuwen 2007), particularly codes of law and written sources. Lawyers use these impersonal sources to authorize their stance on death or lifetime imprisonment, as in (18) and (19):

(18) Our death penalty statute is the same thing, but it's used for our society. It's a self-defense mechanism for our society, and it says in certain circumstances that juries of our society can protect our society from people that would attack it, and that's what I'm asking you to do in this case today. (Case 2, Prosecution)

(19) The law will tell you, the instructions will tell you that in order to come back with a decision recommending death, you have --you're obligated to look at all the circumstances. And the Court will tell that you're obligated to look at the circumstances of Roy's --surrounding Roy's life and surrounding (Case 4, Defense)

In (18), the prosecution cites from the death penalty statute to argue that a death sentence is acceptable and should be thought of as self-protection. In doing so, he effectively constructs the individual on trial as someone who would attack the society, which is a way to create a distinction between "us" (including the jurors) and "them" (i.e., serious offenders). In (19), by contrast, the defense cites the law and the court. However, this time, a different aspect is cited: that jurors should carefully consider the personal background of the defendant, which can serve as mitigation, before rendering a verdict.

Finally, lawyers utilize cultural or symbolic voices, which serve as "voices of tradition" (Van Leeuwen 2007). As (20) demonstrates, the defense ends his speech with a reference to an accepted socio-cultural norm.

(20) Temper the punishment that you choose, and as Una James did with all of the caretakers that she gave this child to, I leave you with a phrase. It's a phrase that both invites you to mete punishment out but also to temper it, to draw the line short of the ultimate, and I leave you with that phrase. Punish this child, save the eye. (Case 3, Defense)

The phrase quoted is commonly known in Jamaica, where the defendant grew up, which refers to the Jamaican tradition of telling a person entrusted with the care of a child to "punish this child, save the eye." The reanimated

saying serves to emphasize to the jury the extent to which the defendant is isolated from his real parents. For a major portion of his life, a series of caretakers had complete control over him. By ending his closing summation with this phrase, the defense lawyer is able to recall the evidence to which the phrase related in a way likely to resonate with the jurors, reminding them of the defendant's troubled history while at the same time conveying to them that they, like the defendant's prior caretakers, now are responsible for determining his fate.

Regardless of the specific voice, these voices add credence to his or her narrative and evaluation. A lawyer could omit these sources of information and present the narratives and evaluations as his or her own, but by creating a heteroglossic discourse, the lawyer utilizes the authority and credibility the original speaker may have to legitimize their argumentative position.

#### 4.4 Narrating function

A voice has a narrating function when it is used to depict a character who is engaged in a verbal process (e.g., process of saying), as opposed to doing or being. Most commonly, a voice is re-created at the point of a complicating action, and the quotation reenacts what a character says during that event. Neither is the quoted statement concerned with the truth value, nor the authority of the speaker is at issue here. Additionally, the voice does not function as evidence to the lawyer's argument, although this does not mean that the representation is neutral. In fact, as will be demonstrated below, what a character says can be strategically used to position the quoted individual as part of a certain group or having certain characteristics.

In (21), referring to a different criminal case, the defense lawyer inserts a crime narrative in the middle of the closing summation. The said incident is intended to show similar criminal elements, including the act, intent, causation, attending circumstances, consequences as the one committed by the person on trial, although for that case, the defendant is not qualified for a death sentence. In the narrative, the children are quoted as screaming, whose mother (along with her partner) is murdered, and this coincides with the complicating action of the story. Reanimating the scream serves not only to create sympathy for the affected family, but also to re-create a similar incident for comparative purposes.

(21) A few years ago in this county, a man stood outside his girlfriend's window and fired an AK-47 14 times executing his ex-girlfriend and her boyfriend in her home. In the next bedroom were her children, sleeping. Of course, the gunshots woke them up. "Mom, Mom." They found her body the next morning when they got up to go to school. I can't do anything for them. He didn't face the death penalty in this county, though he could (Case 1, Defense)

Unlike (21), Example (22) illustrates a quote from the defendant at the moments just before he commits the crime. Interestingly, this is an instance of direct quotation, and in the closing summation, the purportedly verbatim representation is marked by the introductory "quote" (as opposed to quotation marks in writing). While it is impossible to say for certain whether the quotation is faithful to the original, it is most likely that this is a hypothetical voice, based on the lawyer's rendition of the defendant's thought, as supposed to what he actually says. In any case, the representation of his voice, be it thought or verbal action, foregrounds the perverted nature of the defendant and suggests malice aforethought. The reanimation of these voices, thus, can be an implicit way to evaluate the action and personality of the defendant.

(22) He had to have had that weapon in his hand when he walked in and said, quote, I felt where her head was

with my hand real soft, and then I hit her and broke her eye socket and cut her ear and slit her throat. What did it sound like when he took that hammer and crushed Sydne's skull on both sides of her head? At what point did she cover herself up with her little hands when she was subjected to the 27 impact injuries on her head, her face, her neck, her shoulders, and her hands? (Case 5, Prosecution)

## 5. Discussion and Conclusion

As demonstrated above, the closing summation in the penalty phase of capital trials, albeit objectively monologic, is clearly a polyphonous and dialogic genre, consisting of not only the voice of the lawyer in the form of averred statements but also diverse voices to whom the content is attributed. The major contributions of this study are two-fold. First, a linguistically-grounded approach, which attempts to correlate linguistic and contextual cues with pragmatic functions, is proposed. Second, the framework is applied to the data set to explicate how attributed voices function in this genre, including contextualization, legitimization, deconstruction, and narrative retelling. This in turn provides a springboard for further study that features a quantitative dimension.

As the analysis shows, regardless of their orientation, lawyers use speech reporting to support their stance on a death sentence. More critically, the orchestration of voices is a deliberate strategy in this part of capital trials, and these voices are expected to have impact upon the ensuing verdict by the jurors. In addition to the immediate discursive goal of persuading the jurors for death or lifetime imprisonment, the findings from this study also explicate how speech reporting may contribute to sustain different versions of facts and create different perceptions of the individual on trial. First, by selecting different voices to quote from (authoritative voices), a lawyer can silence information contradictory to her argument. Second, through these voices, lawyers can subtly validate or invalidate a version of facts through the practice of reporting, which contributes to objectifying that version of the facts. Once an utterance is attributed to an external voice, the quoting lawyer may then elaborate on, signal her support for, or signal disalignment from, the source and the quoted material. In effect, even though the quoted utterance may be objectively attributed, it is littered with ideological evaluation on the part of the quoter, whether this is manifested in the reporting frame or the content of the quoted statement.

All in all, this study offers a means of demystifying the highly interactively complex genre of the closing summation in death trials. The findings may also have practical implications for training jurors and the public at large to be aware of and more critical of the lawyer's use of voices. That is, while it is commonly thought that lawyers present facts and information for the jury to consider, it is in fact how such facts and information are sourced and constructed as credible (or invalid) in the first place, in this case through the intertextual practice of voicing. An interesting direction to be pursued in future research is to include quantitative results from a larger corpus for a more comprehensive account of speech reporting in this genre. Finally, it would also be fruitful to compare the use of multiple voices in other genres and examine to what extent speech reporting in such genres differs in frequency and function.

## References

Arendholz, J., W. Bublitz and M. Kirner-Ludwig. (Eds.). 2015. *The Pragmatics of Quoting Now and Then*.

- Berlin: De Gruyter.
- Baffy, M. and A. Marsters. 2015. The constructed voice in courtroom cross-examination. *International Journal of Speech, Language and the Law* 22, 143-165.
- Bakhtin, M. 1981. *The Dialogic Imagination*. Austin: University of Texas Press.
- Bergman, P. 1989. *Trial Advocacy in a Nutshell*. St. Paul: West Publishing.
- Burt, M. 2008. The importance of storytelling at all stages of a capital case. *UMKC Law Review* 77, 877-910.
- Cotterill, J. 2002. 'Just one more time...': Aspects of intertextuality in the trials of O.J. Simpson. In J. Cotterill, ed., *Language in the Legal Process*, 147-161. New York: Palgrave.
- Coulthard, C. 1994. On reporting reporting: The representation of speech in factual and factional narratives. In M. Coulthard, ed., *Advances in Written Text Analysis*, 295-308. London: Routledge.
- Fairclough, N. 1992. *Discourse and Social Change*. Cambridge: Cambridge University Press.
- Galatolo, R., 2007. Active voicing in court. In E. Holt and R. Clift, eds., *Reporting Talk: Reported Speech in Interaction*, 195-220. Cambridge: Cambridge University Press.
- Galatolo, R. and M. Mizzau. 2005. Quoting dialogues and the construction of the narrative point of view in legal testimony: The role of prosody and gestures. *Journal of the Swiss Association of Communication and Media Research* 5, 217-232.
- Hartman, D. 1992. Intertextuality and reading: The text, the reader, the author, and the context. *Linguistics and Education* 4, 295-311.
- Holt, E. and R. Clift (Eds.) 2007. *Reporting Talk: Reported Speech in Interaction*. Cambridge: Cambridge University Press.
- Hunston, S. and G. Thompson (Eds.) 2000. *Evaluation in Text: Authorial Stance and the Construction of Discourse*. Oxford: Oxford University Press.
- Hyland, K. 2005. Stance and engagement: A model of interaction in academic discourse. *Discourse Studies* 17, 173-192.
- Jacquemet, M. 1994. T-offenses and metapragmatic attacks: Strategies of interactional dominance. *Discourse & Society* 5, 297-319.
- Jullian, P. 2011. Appraising through someone else's words: The evaluative power of quotations in news reports. *Discourse & Society* 22, 766-780.
- Labov, W. 1972. The transformation of experience in narrative syntax. In W. Labov, ed., *Language in the Inner City*, 354-396. Philadelphia: University of Pennsylvania Press.
- Lee, J., C. Hitchcock and J. Casal. 2017. Citation practices of L2 university students in first-year writing: Form, function, and stance. *Journal of English for Academic Purposes* 35, 1-11.
- Matoesian, G. 2000. Intertextual authority in reported speech: Production media in the Kennedy Smith rape trial. *Journal of Pragmatics* 32, 879-914.
- Matoesian, G. 2001. *Law and the Language of Identity: Discourse in the William Kennedy Smith Rape Trial*. Cambridge: Cambridge University Press.
- Mayes, P. 1990. Quotation in spoken English. *Studies in Language* 14, 325-363.
- Philips, S. U. 1986. Reported speech as evidence in an American trial. In D. Tannen and J. Alatis, eds., *Language and Linguistics: The Interdependence of Theory, Data, and Application*, 154-170. Washington DC: Georgetown University Press.
- Rosulek, L. 2010. Legitimation and the heteroglossic nature of closing arguments. In D. Schiffrin, A. De Fina and A. Nylund, eds., *Telling Stories: Language, Narrative, and Social Life*, 181-194. Washington DC: Georgetown University Press.

- Shibata, M. 2021. Reported speech as persuasion: A discourse analysis of Japanese journalism. *Japanese Studies* 41, 221-239.
- Sinclair, J. 1986. Fictional worlds. In M. Coulthard, ed., *Talking about Text: Studies Presented to David Brazil on his Retirement*, 43-60. Birmingham: University of Birmingham Press.
- Van Leeuwen, T. 2007. Legitimation in discourse and communication. *Discourse & Communication* 1, 91-112.

Examples in: English

Applicable Languages: English

Applicable Level: Tertiary