# DUALITY OF THE CLOSING ARGUMENTS' NARRATIVE

## O.A. Boginskaya

*Doctor of Philology, Professor*
*Professor at the Department of Foreign Languages for Technical Specialties*
*e-mail: olgaa_boginskaya@mail.ru*

*Irkutsk National Research Technical University*

*The present study aims to analyze prosecution' and defense's closing arguments in jury trials as dueling versions of the same reality, identify linguistic and discursive tools used to construct opposing representations of the same criminal events and the same trial participants' identities. It is assumed that different representations of the same objects and phenomena are due to the different types of narratives the speakers create. In closing arguments, attorneys present their topics and arguments to the jury members in a different way, striving to be persuasive rather than informative. Focusing and de-focusing strategies are helpful tools in achieving the pragmatic effect of persuasion. These strategies are verbalized through different linguistic means and discursive choices. A large variety of linguistic and discursive means helps attorneys to de-focus harmful information and focus topics that benefit their case.*

***Keywords***: *closing arguments, courtroom discourse, focusing and de-focusing strategies, dual reality.*

## 1. Introduction

The courtroom narrative has been investigated by a great number of researchers [Delgado 1989; Berns 1999; Almog 2001; Cotterill 2003; Artemova 2008; Palashevskaya 2012, etc.], who have studied its various aspects and described it as the main tool for transferring knowledge and constructing reality [Bruner 1991: 56].

The narrative is studied within various branches of humanitarian knowledge (philosophy, psychology, sociology, linguistics), whose representatives define this concept as

– a special mode of thinking [Bruner 1991];
– a way of interpreting the event [Katyshev, Knyazkova 2006: 109];
– a discourse type [Tyupa 2006: 29];
– a way of organizing discourse [Alifanova 2010: 17];
– transmission of the time sequence of events [Labov 1996];
– a way of reconstructing and representing past experience [Schiffrin 2006];
– discursive recreation of the event [Artemova, 2008].

The above definitions demonstrate how broad the concept of narrative is in social and humanitarian studies and how different the vectors of its interpretation are.

The present study defines the courtroom narrative as a way of organizing discursive interactions in a courtroom. "The propositional content of courtroom narrative is the story with the participants involved in it, the scene and elements of the crime event in their chronological sequence" [Boginskaya 2020: 267]. The crime event is a change in the state of reality caused by actions or inaction of a subject and entailing legal consequences, i.e. the propositional content of the courtroom narrative is criminal actions performed by the defendant.

All courtroom genres (opening statements, closing arguments, interrogation of witnesses, verdicts and sentences) contain narrative elements, and the trial is a competition of prosecution and defense narratives that allow the construction of factual chains, the connection of disparate elements of the narrative in a sequence that responds the speaker's goals. Thus, the competing stories lie at the core of courtroom discourse, including closing arguments.

I assume that the courtroom narrative is aimed at both presenting the sequence of elements of the crime event and realizing the persuasion potential. This point of view is consistent with the opinions of other researchers. For example, Artemova believes that the narrator's reflection on the event is aimed at persuading [Artemova 2013: 55]. Palashevskaya argues that "the narrative activity of the participants in courtroom discourse is accompanied by an assessment of facts and argumentation. <…> Narration and argumentation, being multidirectional interdependent acts, constitute the specifics of courtroom narrative" [Palashevskaya 2012: 157]. Almog believes that the narrative determines consciousness, ways of perceiving and evaluating reality [Almog 2001: 488] and contains a manipulative element, which reflects its persuasive function.

To create dual narratives involving the same events and participants, recontextualization tools are used by the trial attorneys. All discourses are representations of reality rather than objective descriptions of events and objects [Halliday 1978]. When speakers transform their knowledge into the linguistic output, they represent reality in a new discursive form recontextualizing original events [Baumann, Briggs 1990].

Reality differs from its discursive representation. In a trial, the jury members are unlikely to have observed events being examined. The discursive versions of reality represented by the attorneys are the only sources of information the jurors have to deliver a verdict. The discursive construct of reality is a new object that differs from reality it represents. To construct a beneficial version of reality, the attorneys use a number of lexical means, syntactic forms, and discourse structures.

The present paper will analyze linguistic and discursive tools applied by the attorneys in their closing arguments to create opposing representations of the same criminal event and identities of trial participants.

## 2. Methods and materials

The corpus was designed for the purpose of the study following the principles of Corpus Linguistics. Since the expressions collected were used as a repository of data, the approach employed in the present study to answer the research questions is corpus-based. The data was drawn from the video hosting YouTube and transcribed manually. A benefit of using the transcripts was that this prevented researcher's presence from affecting the behaviors of courtroom participants. To compile the corpus for this study, the texts were selected based on the following criteria:

1) presence of focusing and defocusing strategies;

2) time: all videos date back to the period between 2005 and 2020 as the aim is to focus on synchronically comparable texts.

The videos that met these criteria were shortlisted and selected to build the corpus. These videos were then transcribed. The main focus was on the focusing and defocusing strategies used in the corpus. The corpus built provides authentic examples to explore how focusing and defocusing strategies may be used to create opposing versions of the same crime events. The size of the corpus totaled 121,659 words distributed throughout 47 texts. This compilation can be called a small-scale corpus. However, even the small-sized corpora provide relevant contextual information, which makes them useful for a context-based analysis.

The collected materials were analyzed from various linguistic dimensions. Firstly, the selected expressions were interpreted. Secondly, possible interpretations of trial participants' intentions were investigated according to the theoretical framework of Discourse Analysis. The data analysis was mainly qualitative depending on the tradition of discourse analysts who research a small number of examples covering certain linguistic features. However, in order to analyze the frequency of focusing and defocusing strategies and linguistic units used to verbalize them, a quantitative analysis was conducted as well. Despite its small size, the selected corpus can give a comprehensive view of the dual nature of courtroom discourse.

## 3. Results and discussion

Focusing and de-focusing strategies are based on the assumption that linguistic meaning is a cognitive structure which does not reflect the objective reality independent on individuals. When choosing between linguistic means, the speaker selects a certain way of reality representation or reality reconstruction which is an interactive process [6], i.e. language provides the speakers with different ways of description, and they choose those tools which reflect their intentions, seeking to create a beneficial reality. For instance, terms of reference can be used to construct different identities of trial participants.

Here are some examples:

*When you think about reasonable doubt, you think about not only a doubt found in reason opposed to mere possibility as I talked to you about before, but you talk about something that's missing that you need to believe **that the Defendant** is guilty* (Prosecution's closing arguments).

*The fact that she might have said two different things to his mother does not mean that that came from Lizzie* (Defense closing argument).

*These statements of Mr. Zimmerman are precisely like those found to be admissible in the cases mentioned above and are clearly part of the res gestae in the Case before the court* (Defense closing argument).

*He's rushing to help a child killer avoid justice, which apparently is his major occupation these days* (Prosecution's closing arguments).

By referring to the defendant with his name, the defense attorney focuses on his unique identity as a human being. When using the functional marker *defendant* for the reference purpose, the prosecutor de-emphasizes his unique identity and focuses on his role in the trial. The diminutive name *Lizzie* helps the attorney to focus on the young age of the defendant. Labelling the defendant as a *child killer*, the prosecutor describes him using the most negative feature of human identity.

A corpus-based analysis showed that the defense attorneys prefer nominations to construct a unique identity of the defendant, while the prosecutors try to emphasize individual characteristics of the defendant focusing on his role in the crime event or in the trial [Krapivkina 2015; 2017]. Functionalisms are often used for this purpose.

**Figure 1. Frequency of nominations and functionalisms in defense's closing arguments**
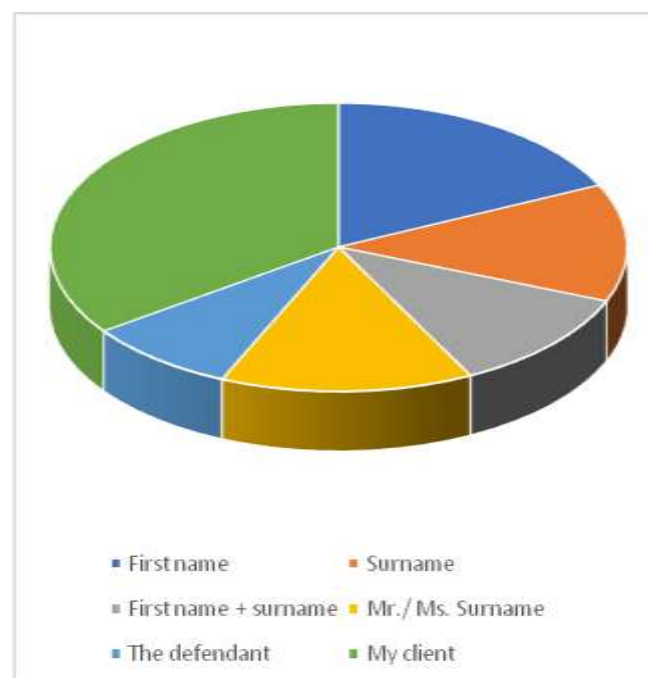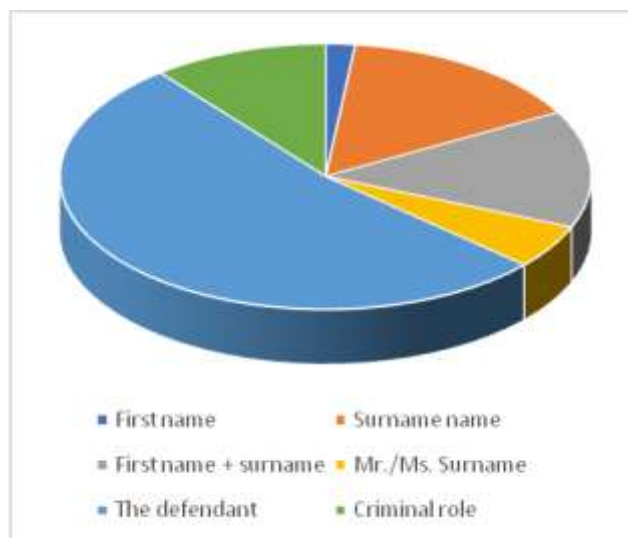
**Figure 2. Frequency of nominations and functionalisms in prosecution's closing arguments**



Figures 1 and 2 show that the most frequent term of reference in the defense's closing arguments is *my client*, while the prosecutors prefer the functional marker *defendant*.

A corpus-based analysis revealed that the lexeme *defendant* is the fifth most frequent term of reference in the prosecution discourse. In the defense discourse, the most frequent lexical units used to refer to the defendant are nominations. The results of the analysis are presented in Figures 3 and 4. The key words were calculated in Text Optimizer software.

**Figure 3. Statistical analysis of Prosecution's Closing Arguments**



Автоматически найденные слова (фразы)

| # | Слово | Повторы | Плотность |
|---|---|---|---|
| 1. | that's | 90 | 2.67 % |
| 2. | she's | 83 | 2.46 % |
| 3. | going | 82 | 2.43 % |
| 4. | fault | 45 | 1.34 % |
| 5. | defendant | 45 | 1.34 % |
| 6. | alexander | 37 | 1.10 % |
| 7. | don't | 34 | 1.01 % |
| 8. | things | 32 | 0.95 % |
| 9. | can't | 31 | 0.92 % |
| 10. | reason | 30 | 0.89 % |

**Figure 3. Statistical analysis of Defense's Closing Arguments**

Автоматически найденные слова (фразы)

| # | Слово | Повторы | Плотность |
|---|---|---|---|
| 1. | don't | 29 | 3.01 % |
| 2. | that's | 21 | 2.18 % |
| 3. | zimmerman | 20 | 2.07 % |
| 4. | george | 18 | 1.87 % |
| 5. | going | 17 | 1.76 % |
| 6. | george zimmerman | 17 | 1.76 % |
| 7. | state | 16 | 1.66 % |
| 8. | you're | 15 | 1.56 % |
| 9. | think | 15 | 1.56 % |
| 10. | talked | 14 | 1.45 % |

Through different terms of reference, the trial attorneys create different versions of reality and different identities of the participants in the trial. It is interesting that different and even opposing realities can be created through different terms of reference to other participants in the trial (e.g., victims). Danet illustrated how different terms of reference can help to construct opposing realities in the courtroom. As an example, she used the criminal case of K. Edelin, an American doctor who was on trial for a late abortion. She observed that the defense attorney repeatedly labelled the victim a *fetus* or *a product of conception*, while the prosecutor called him a *baby boy* and a *person* [Danet 1980].

*The jurors of the Commonwealth of Massachusetts on their own present that Kenneth Edelin did assault and beat a certain person, to wit: a male child described to the said jurors as a baby boy and by such assault and beating did kill the said person.*

The terms of reference used by the prosecutor helped to humanize the victim, while the lexemes such as *fetus* and *product of conception* employed by the defense attorney erased his personhood. The key facts of the crime event were similar, but the reality was determined by the constructs created by the opposing sides.

One more example was provided by Cotterill who examined the distribution of some words or phrases in the OJ Simpson's trial discourse and found that the prosecutor often used the word control to shape the image of the relationship between Simpson and Brown Simpson [Cotterill 2003].

These examples confirm the assumption that linguistic tools help to shift the focus of communication and construct different representations of the same crime events and the same identities of the trial participants. These representations assume features which are beneficial to the constructors.

Focusing on different aspects of reality and different identities of courtroom participants, de-emphasizing features of reality that are not beneficial, the attorneys strive to achieve the pragmatic effect of persuasive discourse.

Creating a new reality, the prosecution and the defense decide which processes should be emphasized and which ones should be de-emphasized from the representation of reality. As a response to the inclusion of the process by the opponent, the attorney may 1) recontextualize the same process; 2) negate this process; 3) replace actors in the same process; 4) replace the process with a very different one.

In addition, the same crime events can be interpreted in a different way which is dependent on the role of the defendant in the process (actor, recipient, patient, etc.). The role in the process determines the degree of guilt of the defendant.

Linguistic and discursive tools employed to encode processes that constitute the crime event help the attorneys to emphasize beneficial properties of the process and defocus the harmful ones. Even witnesses who observe the same events can conceptualize and present them in a different way due to differences in their intentions and experience. Here are some examples:

*(1) He **murdered** her at 10 p.m. – The **murder** occurred at 10 p.m.*
*(2) She **pushed** the victim violently. – The **push** was violent ...*

In the above examples, the second sentence defocuses the agent and de-emphasizes his responsibility for the crime committed. In the second sentence of example (2), the focus is shifted from the beneficiary to the action. Both speakers say about pushing, but the defense excludes the victim from the focus. Contrary to the defense, the prosecution emphasizes a violent nature of the defendant's behavior.

Linguistic tools can activate semantic properties. A corpus-based analysis revealed that the lawyers often describe the same processes using lexemes with different semantics which allows them to create dueling representations of reality. For example, the term *sexual encounter* defocuses the semantic component *violence*, while the lexeme *sexual abuse* emphasizes it. Here is an example of the case:

*Prosecution: Nothing that Jonathan Hill testified about with respect to the incident itself relies on Jonathan Hill's **testimony**.*
*Defense: I told you that after you heard his **story**, you were going to be left with no choice but to find it unbelievable. ...It is not possible for the story that you have heard to be true.*

Two lexemes are opposed in this dialogue of the attorneys. *Story* contains the semantic component *fiction* which helps the defense to imply the fact of falsification of the testimony. The lexeme *testimony* that means "official statement" implies witness' credibility. Although the lexeme *story* can have both positive and negative connotations, its frequent use with negative adjectives (e.g., unbelievable) allows the defense to present the prosecution version of reality as false.

We cannot by agree with Felton who argues that attempting to de-emphasize certain information about the topic, attorneys select terms that do not use the dispreferred characteristics. The words they use frequently emphasize the properties that they viewed more favorably [Felton 2015: 201].

The dueling realities can be constructed by describing processes constituting the crimes events with different parts of speech. For example, defense attorneys often employ generalizations to de-emphasize the crime details, while prosecutors prefer specifications. Prosecutors more often use verbs to describe defendant's actions, while defense attorneys prefer nouns, adjectives, and adverbs. Defense attorneys are more likely to use passive constructions, indefinite pronouns or nominalizations to defocus the responsibility of the defendant for the crime.

## 4. Conclusion

The article has presented how the trial attorneys create different representations of the same crime events and different identities of the same trial participants using a set of linguistic and discursive tools.

To create opposing versions of the same reality, the trial attorneys focus on different events, different processes and different roles of participants in these events. Instead of negating the reality created by the opponent, the attorney creates a new one through focusing and defocusing strategies. The same participants in the trial are usually represented in a different way by the defense and prosecution attorneys (e.g., either as agents or recipients).

To summarize, the reality can be created through a number of linguistic and discursive means that help to recontextualize crime events. The result of recontextualization is a new output that differs from the reality being determined by discursive processes and discursive tools employed by the constructors.

Closing arguments as a courtroom genre can tell us how attorneys present their arguments, how they persuade the jury members. Jurors' interpretations of reality are shaped by courtroom discourses, and it is crucial to understand how they function, to be aware how jurors may be affected by them, to be critical to what they hear, and to understand why certain topics were emphasized while others were de-emphasized by the attorneys.

To conclude, a trial attorney's task is to provide the jury members with information about the crime, witnesses, defendants, victims and law.

For these purposes, attorneys use various strategies while managing information provided to the jury members and constructing beneficial versions of reality. A large variety of linguistic and discursive tools help them to de-emphasize harmful information and emphasize those properties and topics that are beneficial to their versions of reality.

## *References*

*Alifanova O.G.* Cognitive and discursive potential of the narrative: on the example of the narrative of the Holy Scriptures: Thesis. Irkutsk, 2010. 167 p.

*Almog S.* As I read I weep: In praise of judicial narrative // Oklahoma City University Law Review. 2001. Vol. 26 (2). Pp. 471–501.

*Artemova T.V.* Narrative as a component of the rhetorical strategy of accusatory speeches AF Koni: Thesis. Kemerovo, 2008. 232 p.

*Artemova T.V.* Narrative as a mechanism for implementing the speaker's plan (on the example of A.F. Kony's courtroom speeches) // Modern problems of science and education. 2013. No. 6. 767 p.

*Bauman R., Briggs C.L.* Poetics and performance as critical perspectives on language and social life // Annual Review of Anthropology. 1990. Vol. 19. Pp. 59–88.

*Berns S.* To speak as a Judge: Difference, Voice and Power. Routledge, 1999. 241 p.

*Boginskaya O.A.* The theory of discursive interaction in the conditions of asymmetry of knowledge and power: Thesis. Irkutsk, 2020. 383 p.

*Bruner J.* The narrative construction of reality // Inquiry. 1991. Vol. 18 Pp. 1–21.

*Cotterill J.* Language and power in court: A linguistic analysis of the O. J. Simpson trial. New York: Palgrave MacMillan, 2003. 245 p.

*Danet B.* "Baby" or "fetus?" Language and the construction of reality in a manslaughter tria" // Semiotica. 1980. Vol. 32 (3-4). P. 187–219.

*Delgado R.* Storytelling for Oppositionists and Others: A Plea for Narrative // Michigan Law Review. 1989. Vol. 87. Pp. 11–41.

*Felton L.R.* Dueling discourse. Oxford: Oxford University Press, 2015. 249 p.

*Halliday M.A.K.* Language as social semiotic: The social interpretation of language and meaning. London: Arnold Publishers, 1978. 256 p.

*Katyshev P.A., Knyazkova T.V.* Evolution of the narrative structure in the speeches delivered by A.F. Koni // Jurislingvistika. 2006. No. 7. Pp. 109–123.

*Krapivkina O.A.* Expert-lay interaction in jury trials (case-study of closing arguments) // Journal of language and cultural education. 2017. Vol. 3. Pp. 77–92.

*Krapivkina O.A.* On the dialectic of the subject and the other in institutional discourses // Bulletin of Irkutsk State Technical University. 2015. Vol. 1 (95). Pp. 269–273.

*Labov W.* Narrative analysis: Oral versions of personal experience // Essays on the Verbal and Visual Arts: Proceedings of the American Ethnological Society. Seattle: University of Washington Press, 1996. Pp. 12–44.

*Palashevskaya I.V.* Narrative organization of judicial discourse // Man. Society. Culture. 2012. Vol 3. Pp. 155–158.

*Schiffrin D.* In other words: variation in reference and narrative. Cambridge: Cambridge University Press, 2006. 373 p.

*Tyupa V.I.* Theory as a discursive practice // Humanitarian science today: conference proceedings / Ed. by Yu.S. Stepanov. Moscow: Kaluga, 2006. Pp. 29–43.