Storytelling in legal settings
A case study from a Crown Prosecutor’s opening statement

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A number of linguistic studies on courtroom discourse deal with witness examinations, however counsels’ opening statements have been given relatively little attention. Drawing on the analysis of a Crown Prosecutor’s opening statement in a murder trial held at the Supreme Court of New South Wales in Sydney, Australia, and using the Systemic Functional Linguistics framework (Halliday 1994), this study highlights the ways in which the prosecutor constructs his narrative of the crime in his opening statement in order to persuade the jurors of his views. Specifically, the analysis highlights the ways in which the narrative is made persuasive through its specific rhetorical organization and over-specification of orientational information, as well as more credible through quotations from participants with personal experience in the related events. It also shows the ways in which the prosecutor seeks to engage the jurors through his use of second-person pronouns, as well as his differentiated use of the crime participants’ names. Finally, this study highlights the dialogic and heteroglossic characteristics of the adversarial legal process, in that it both refers to what was previously stated and tries to anticipate the response of the jury, whose voice comes as the last word through their verdict.

Keywords: courtroom discourse, language of law, legal-lay discourse, narrative, opening statement

Whatever the commentators say, a trial is not really a struggle between opposing lawyers but between opposing stories
– Johnnie Cochran, lead attorney in the O. J. Simpson trial

1. Introduction

In 2012, I was selected to serve as a juror on a murder trial held at the Supreme Court of New South Wales in Sydney, Australia. Although the jury was discharged
on the second day, as a linguist and former law student, the whole process aroused my interest. In a criminal case, the Crown Prosecutor, also called ‘Crown’ or ‘prosecution’, presents the charge in the name of the Queen on behalf of the community in an outline of the case, or ‘opening’. Under the Australian adversarial system, the ‘accused’ (or person on trial) is presumed to be innocent of the charge alleged against them until the jury has been satisfied that they are guilty of the charge. The judge then decides the penalty. The burden is on the Crown to prove the guilt of the accused beyond reasonable doubt. This means that the prosecution bears the onus to create a persuasive narrative that will lead to a conviction. Since I was fortunate to obtain permission to use extracts from the Crown Prosecutor’s opening statement in the matter that I attended as a juror, I will analyze the prosecutor’s opening statement with the purpose of investigating whether some of its linguistic features might be considered persuasive.

A trial by jury is a form of macro-genre as it is organized into a predictable sequence of stages such as opening statements, calling and swearing in of witnesses, etc., each of them constituting their own legal genre (Gibbons 2003). In many respects, it conforms to the model of the narrative genre, involving a disrupting event that is evaluated and then resolved (Labov & Waletzky 1967; Martin & Rose 2008).

The opening statement exposes the members of the jury to the ‘master narrative’ that provides a skeleton for the more detailed evidence that emerges in the course of the trial (Gibbons 2003). It “sets the theme by outlining the plot, describing the characters, depicting the setting, attributing the motives, and portraying the action of the story” (Snedaker 1991: 134), highlighting the role of the lawyers as ‘storytellers’ (Chaemsaitong 2015a). As such, opening statements constitute very much a macro Orientation stage (Gibbons 2003). The crime Events are presented through the witness (cross-)examinations. The Complication forms the core of the legal narrative since it may constitute the issue that is being adjudicated (Gibbons 2003). The prosecution’s and defense’s closing arguments provide Evaluations of the story, while the jury’s verdict provides a Resolution. Lastly, the judge’s sentence, when a guilty verdict is reached, may be viewed as a macro Coda (Gibbons 2003). The courtroom rhetoric is directed to appeal to the primary audience of the jury members (Snedaker 1991), whose role is to assess the relative quality of the various alternative stories that are presented to them, and adjudicate between competing narrative accounts (Cotterill 2003). This is why opening statements can be characterized as “legal-lay discourse” (Heffer 2005: 35) since they are produced by legal professionals but aimed at jurors, that is, a lay audience.

In the Australian justice system, both the prosecution and the defense may open their cases with an opening statement. These statements are expository rather than argumentative and are limited to the outline of the case and identification of the matters in issue (Queensland Law Reform Commission 2009). In particular,
“the prosecution will always make some opening that will introduce the jury to some aspects of the issues in the case and the evidence that it will seek to lead and the conclusions that it will ask the jury to reach” (Queensland Law Reform Commission 2009: 267). Opening statements can be highly influential since they constitute the jurors’ first opportunity not only to hear of the crime story but also to hear it in its entirety (Chaemsaithong 2014, 2015b; Heffer 2005), and it has been suggested that opening statements construct the interpretative lens through which jurors will consider the subsequent evidence (Cotterill 2003; Lundquist 1982; Snedaker 1991).

Owing to the focus on interactions in witness examinations, the genre of opening statements remains under-theorized in the linguistic literature on legal discourse (Chaemsaithong 2014, 2015a). Chaemsaithong (2014), and Snedaker (1991), take a historical approach, drawing respectively upon opening statements in Anglo-American courts from the period 1759–1789 found in the Old Bailey records, and the 1886 Chicago Anarchists Trial. Drawing on a corpus of opening statements in three to five high-profile American trials, Chaemsaithong (2015a, 2015b) examines the lawyers’ interpersonal choices, such as first- and second-person markers, used to align the jurors with their version of the events, whereas Cotterill (2003) investigates the persuasive effect of the lawyers’ lexical choices relating to domestic violence in the O. J. Simpson trial. Professional trial consultant Lilley’s (1999) analysis of the opening statements in the O. J. Simpson’s trials on the other hand focuses on legal and ethical questions regarding the attorneys’ approaches and the effect of ‘telelitigation’, or television coverage, on their strategies. Finally, drawing on the opening statement by a pro se defendant, that is, representing himself, Hobbs (2008) highlights the crucial roles of the lawyers’ personality, as well as their very identity as courtroom actors, in the construction of legal persuasion.

In view of the paucity of linguistic research on opening statements, it might be useful to refer to the literature on closing statements. Felton Rosulek (2008), in her contrastive study of the defense’s and the prosecution’s closing statements in a sexual abuse trial in the US, highlights the ways in which the lawyers’ linguistic and discursive choices function to offer different representations of the case. She discusses in particular the various aspects of the case that the lawyers choose to include or, conversely, silence in their arguments as well as the ways in which the trial participants and their actions are described. More specifically, and extending her findings to ten closing arguments presented in five felony trials in the US, Felton Rosulek (2009) shows how the prosecution and the defense strategically name the trial participants in diametrically opposed ways, so as to personalize or, conversely, depersonalize these participants as seen fit for their persuasive goals (i.e., use of the participants’ names vs. use of their role in the trial such as ‘defendant’).
The present study aims to investigate the linguistic features of the prosecutor’s opening statement in the trial that I attended. More specifically, I will focus on the narrative of the crime. Research on legal discourse (e.g., Gibbons 2003; Heffer 2005; Jackson 1988; Maley & Fahey 1991; Snedaker 1991) has been drawing on storytelling, or narrative construction, since Bennett and Feldman’s (1981) seminal description of courtroom discourse as a process of ‘reconstructing reality’, in which competing versions of the same events are told. Indeed, Australia’s adversarial legal system means that, in a trial, prosecuting and defending counsels act as advocates for their parties, contending to win the favor of the jury through their construction of different stories or realities (Maley & Fahey 1991). In this context, opening statements allow the prosecution to present their main narrative to the jury. More particularly, they serve to develop the chronology of the facts that resulted in the indictment of the accused. If storytelling constitutes a useful concept, the study of opening statements needs to be further underpinned through lexicogrammatical analysis, so as to highlight the ways in which they may be constitutive of persuasive discourse. This is the objective of this study. While the findings are grounded in a single case study, they constitute valuable foundational work to highlight the persuasive linguistic traits of opening statements, even though further study involving a much larger dataset would indeed be needed to confirm these characteristics. The study also holds pedagogical applications since law students in Australia are not taught explicitly how to draft submissions or write opening statements as part of their law degree (Royer-Guthrie, personal communication, January 14, 2016) – although the Australian Bar Association Advocacy Training Council does provide trial advocacy training to barristers.

2. Data

The Crown’s opening statement followed the jury empanelment and a few words of introduction by the judge. It lasted about 40 minutes. The accused was charged with the murder of his former partner. The prosecution, for a guilty verdict, needed to demonstrate intention to do bodily harm, whereas the defense pleaded not guilty, invoking intoxication through consumption of alcohol and self-defense. Starting with explanations about the criteria for establishing guilt beyond reasonable doubt, as well as the reliability of witnesses’ evidence, the Crown’s opening statement proceeded with the story of the crime. The study focuses on this narrative. It must be noted that even though I was present as a juror during the delivery of the Crown’s statement, the present analysis is based on its written transcript by the court reporter, meaning that non-verbal and paralinguistic features of the original speech are not taken into account (see Eades 2010).
3. Theoretical framework

Systemic Functional Linguistics theory (hereafter SFL) views language as a semi-otic system, that is, as a resource for creating meanings through linguistic choices (Halliday 1994). As individuals choose to write or say one thing rather than another, they choose to mean one thing rather than another (Halliday 1994). Thus, writers’ and speakers’ choices can be interpreted in view of the linguistic (meaning) resources that were available to them, but were set aside (Eggins 1994). SFL models language as organized around three major strands of meaning or metafunctions: an ideational metafunction whereby the world around and inside us is represented, an interpersonal metafunction whereby social relations are enacted, and a textual metafunction in which the interpersonal and representational elements are integrated into a meaningful whole. Thus, investigating the ideational features of the opening statement will be useful for exploring the kind of linguistic resources that the prosecutor draws on for describing the crime to the jurors, the interpersonal features for examining the ways in which he strives to align with the jurors, while the textual features will highlight how some elements are made prominent to attract the jury’s attention.

4. Findings

Unfortunately, evidence of persuasion of the prosecutor’s opening statement upon the members of the jury cannot be ascertained, since only the jurors themselves are privy to their deliberations. Yet, following SFL’s model of textual, ideational and interpersonal meanings, I will first discuss the prosecutor’s narrative and its rhetorical organization, since the literature indicates that linear, logical, stories have the best chance of securing a conviction (Cotterill 2003). I will then investigate the narrative’s credibility through the prosecutor’s use of orientational information, and examine the transitivity and agency patterns, in particular to explore the ways in which the prosecutor seeks to persuade the jurors of the accused’s responsibility for the crime events. Finally, I will turn my attention to the ways in which the prosecutor seeks to engage the jurors through his use of second-person pronouns, as well as his differentiated use of the crime participants’ names.
4.1 The narrative and its rhetorical organization

Bennet and Feldman (1981) state that

> [a]lthough it is doubtful that completely undocumented stories will be believed in many instances, it is quite possible that adequately documented but poorly structured accounts will be rejected because they do not withstand careful scrutiny within a story framework. Similarly, a well-constructed story may sway judgments even when evidence is in short supply. (p. 67–68)

This is supported by O’Barr (1982) who reports that witnesses’ lengthy narratives are better received than brief nonelaborative, or fragmented, responses. Wagenaar, van Koppen, and Crombag (1993) for their part report that evidence that is presented in story order, rather than random order, is two and a half times more likely to result in conviction. This shows that “coherent narrative structure plays a greater role than authenticity of narrative voice in determining whether or not evidence is accepted by juries” (Cotterill 2003: 35). This research seems to suggest that a logical and well-articulated narrative would be better able to persuade the jurors of the veracity of the facts.

The Crown’s narrative actually includes two stories. The first story spans from the break-up of the accused and deceased’s relationship, through events that took place in the lead up and on the day of the crime until the accused’s arrest. As such, its chronological order conforms to a linear narrative. The crime story is then told again, however in no chronological order, through quotations from the police interview of the accused, in order for the prosecutor to support his case.

The system of logico-semantic relations contributes to construing the rhetorical organization of a text as expansion (that is, elaboration; additive or adversative extension; or temporal, manner or causal-conditional enhancement) or projection (of idea or locution), while the system of interdependency distinguishes parataxis (clauses of equal status, as in coordination and direct speech) from hypotaxis (clauses of unequal status, as in subordination and indirect speech and thought) (Halliday 1994). As shown in Tables 1 and 2, hypotactic clauses are marginally more prominent (61.2%) than paratactic ones.

<table>
<thead>
<tr>
<th>Expansion</th>
<th>Projection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elaboration</td>
<td>+ Extension</td>
</tr>
<tr>
<td>27</td>
<td>10</td>
</tr>
<tr>
<td>(11.4%)</td>
<td>(4.2%)</td>
</tr>
</tbody>
</table>
As highlighted in Tables 1 and 2, the highest incidence (31.2%) of clause complex relations concerns hypotactic and paratactic extensions, more particularly paratactic ones (27%), as in the following excerpt:

(1) 18α You will hear  
    ‘β 1 that there was some argument about that [the accused wanting to be let in the deceased’s home]  
    +2 and that the accused left  
    +3 and the police were called  
    +4 and again attended  
    +5 and spoke to the deceased.¹

These paratactic extensions, with series of events succeeding one another, whereby this and that, etc., happened, contribute to presenting a linear story to the members of the jury, thus making the crime story, as told by the prosecution, more persuasive (Cotterill 2003).

If we consider the clause complex relations concerning enhancement, a count shows that 25 of these clauses, or 64.1%, deal with temporality, in particular succession or simultaneity. This prevalence of hypotactic temporal enhancements is unsurprising, since it contributes to a clear chronology of the crime story, as shown in the following excerpt:

(2) 74 1 xβ (temporal) After the police had arrived at the scene,  
    α the accused’s mother, (name), was taken to (location) Police Station  
    +2 α and she was there  
    =β talking to police  
    xy 1 (temporal) when, on the Crown case, the accused rang her  
    +2 and spoke to her.

Here again, the chronology of facts is well explicated: (1) the police arrive at the crime scene, (2) the accused’s mother is taken to the police station, (3) she ar-

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1. All the quotations from the opening statement are © State of New South Wales through the Department of Justice and reproduced with the approval of the Supreme Court of NSW. The names of all participants, as well as locations and dates, have been omitted as to protect their anonymity.
rives there and (4) while she talks to the police, (5) the accused rings her and (6) speaks to her.

Other occurrences of hypotactic enhancement serve essentially to explain various events of the crime story to the jury, as highlighted in Excerpt (3):

(3) 115 The Crown case will be [[α that the accused was jealous of the deceased || xβ 1 (cause) being on this dating site, || +2 that he questioned her about it, || +3 that they got angry]],

where the enhancement paratactic clause being on this dating site could be rephrased as because she was on this dating site, highlighting a causal relation that helps the prosecution present claims about the credibility of their own version of the crime story.

4.2 Orientational information

A feature that marks the opening statement as a legal narrative concerns the over-specification of orientational information (Heffer 2005), that is, it is loaded with circumstantial details such as the place, date and time of the various events that are relevant to the crime story. A plethora of circumstances may serve to orient the members of the jury through the minutiae of the doing and happening: who did what to whom, how, when, where, etc. Moreover, Van Dijk (1988), when discussing news stories, argues that factual precision augments the plausibility of the events, thus contributing to enhancing the persuasive force of the story. The following excerpt for instance specifies date, location and discussed matter:

(4) 20 You will hear on (date) the deceased attended the Legal Aid office at (location) and obtained some advice about Family Law orders in relation to the custody of the children.

As shown in Table 3, spatial and temporal circumstances abound with 100 instances (36.71% and 26.58% of all circumstances respectively). Causal circumstances, similarly to the causal hypotactic enhancements, as illustrated in Excerpt (3), help the prosecution make a coherent and plausible account of the crime story, as in the following example:

(5) 36 The Crown case will be that as a result of that conversation there was an argument between the deceased and the accused.

If we consider the circumstances of angle, which allow a narrator to present various points of view, the prosecution uses them principally to present the views of authorities (police, expert witness and Crown), as in the following excerpt:
62 You will hear some detail of that from the police officers. This use of institutional voices adds authoritativeness to the crime narrative (Chaemsaiithong, 2014).

Table 3. Types of circumstances in the opening statement (adapted from Halliday 1994: 151)

<table>
<thead>
<tr>
<th>Type</th>
<th>Subtypes</th>
<th>N (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extent</td>
<td>duration HOW LONG?</td>
<td>2 (1.27%)</td>
</tr>
<tr>
<td></td>
<td>distance HOW FAR?</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>frequency HOW OFTEN?</td>
<td>4 (2.53%)</td>
</tr>
<tr>
<td>Location</td>
<td>time WHEN?</td>
<td>42 (26.58%)</td>
</tr>
<tr>
<td></td>
<td>place WHERE?</td>
<td>58 (36.71%)</td>
</tr>
<tr>
<td>Manner</td>
<td>means BY WHAT MEANS?</td>
<td>3 (1.9%)</td>
</tr>
<tr>
<td></td>
<td>quality HOW?</td>
<td>4 (2.53%)</td>
</tr>
<tr>
<td></td>
<td>comparison WHAT LIKE?</td>
<td>1 (0.63%)</td>
</tr>
<tr>
<td>Cause</td>
<td>reason WHY? HOW?</td>
<td>9 (5.7%)</td>
</tr>
<tr>
<td></td>
<td>behalf WHO FOR?</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>purpose WHAT FOR?</td>
<td>0</td>
</tr>
<tr>
<td>Contingency</td>
<td>concession DESPITE WHAT?</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>condition UNDER WHAT CONDITIONS?</td>
<td>0</td>
</tr>
<tr>
<td>Accompaniment</td>
<td>comitation WHO WITH?</td>
<td>15 (9.49%)</td>
</tr>
<tr>
<td></td>
<td>addition WHO/WHAT ELSE?; AND NOT WHO/WHAT?</td>
<td>1 (0.63%)</td>
</tr>
<tr>
<td>Role</td>
<td>guise WHAT AS?</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>product WHAT INTO?</td>
<td>0</td>
</tr>
<tr>
<td>Matter</td>
<td>WHAT ABOUT?</td>
<td>12 (7.6%)</td>
</tr>
<tr>
<td>Angle</td>
<td>ACCORDING TO WHOM?</td>
<td>7 (4.43%)</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>158 (100%)</td>
</tr>
</tbody>
</table>

4.3 Transitivity analysis

Narrative persuasion tends to be driven by the actions and representation of participants (Mazzocco & Green 2011), and the predominance of material processes is to be expected since the purpose of the prosecution’s opening is to familiarize the jurors with the events in the crime story. Indeed, the prosecutor’s focus on doing is evident from the high proportion of material processes, which make up nearly half of all processes (45.6%), as shown in Table 4. The narrative progresses via temporal
sequencing through the use of temporal enhancement clauses, material processes, and past tense, as in Excerpt (2) repeated below for convenience:

\[
(2') \quad 74 1 x \beta \text{ (temporal)} \quad \text{After the police had arrived at the scene,}
\]

\[
\text{a the accused’s mother, (name), was taken to (location) Police Station}
\]

Table 4. Transitivity patterns in the opening statement

<table>
<thead>
<tr>
<th>Process type</th>
<th>Material</th>
<th>Behavioural</th>
<th>Mental</th>
<th>Verbal</th>
<th>Relational</th>
<th>Existential</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>154</td>
<td>5</td>
<td>48</td>
<td>63</td>
<td>41</td>
<td>27</td>
<td>338</td>
<td></td>
</tr>
<tr>
<td>(45.6%)</td>
<td>(1.5%)</td>
<td>(14.2%)</td>
<td>(18.6%)</td>
<td>(12.1%)</td>
<td>(8%)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Verbal processes are the second most frequent processes, accounting for nearly one-fifth (18.6%) of all processes, highlighting the significance of in/direct quotations in the narrative of the crime events. Locutions typically arise from quotations from the participants in the crime story, such as the accused, the witnesses and the police.

Since the lawyers did not attend the crime scene, this allows them to present the point of view of individuals who were, highlighting the lawyers’ role as ‘animators’ who voice utterances (Chaemsaithong 2015a). Table 5 presents a list of all the Sayers of the verbal processes.

Table 5. List of Sayers in the opening statement

<table>
<thead>
<tr>
<th>Sayer</th>
<th>N (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>the accused</td>
<td>40 (78.4%)</td>
</tr>
<tr>
<td>the deceased</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>witness</td>
<td>4 (7.8%)</td>
</tr>
<tr>
<td>the accused’s mother</td>
<td>4 (7.8%)</td>
</tr>
<tr>
<td>the police</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>forensic pathologist</td>
<td>1 (2%)</td>
</tr>
<tr>
<td>Total</td>
<td>51</td>
</tr>
</tbody>
</table>

As highlighted in Table 5, the Sayers mostly include participants who are directly involved in the crime, that is, the accused, the deceased, lay witnesses and the police, putting emphasis on direct experience of the crime events. The featuring of an expert witness (forensic pathologist) to confirm the cause of death also contributes to augmenting the credibility of the prosecution’s crime narrative (Chaemsaithong 2014).
Furthermore, the re-enactment of a few crucial events of the crime story through direct quotations, voiced by participants with personal experience in the related events, provides a first-hand account of what happened, creating immediacy between the jurors and the crime events, while coming across as a faithful account, contributing to persuading the jurors of hearing a trustworthy version of the crime story, as in Excerpts (7) and (8):

(7) 52 Sometime after 1.50pm the accused spoke to his mother on the telephone. 53 He asked her to come home. When she asked what was the matter, the Crown case will be he said, "I will tell you when you get home. I'm sorry you won't like it, I'm sorry." His mother then said, "What is the matter?" He said, "I'm sorry, I will tell you when you get here. I can't tell you on the phone."

(8) 103 The police said to him [the accused] "you are under arrest for murder".

The high incidence (78.4%) of locutions from the accused is due to the significant proportion of quotations from his police interview that is being used, as shown in the following excerpt:

(9) 90 He [the accused] told police during the interview that the deceased got angry.

The prosecution’s narrative account of the crime is indeed restricted by the requirement that the narrative voice be that of the trial participants (Cotterill 2003; Lilley 1999). This explains the prosecutor’s shift of responsibility for advancing his propositions to the accused and witnesses, presenting his own voice as engaging interactively with the voices of the crime participants. Forensic narratives are indeed multi-perspectival and multi-voiced, as they are mediated through numerous retellings such as police interviews (Cotterill 2003: 33–35). This lends the opening statement authorial complexity.

Furthermore, since the principal issue of law was to establish the guilt of crime beyond reasonable doubt, an obvious potential benefit of projecting locutions is that the prosecutor might be able to exploit possible discrepancies between the accused’s statements. Effectively, although neutral verbal processes (see Chen 2005),

2. Of course, it is not possible to assess, from these extracts, whether the narrative made by the accused may have been guided by his interrogators (see Eades 2010).

3. Most hypotactic projections of ideas (14.8%) indeed occur with the words you will hear, or you are going to hear, or it is anticipated [[that you are going to hear]], as shown in Excerpt (1). Forthcoming evidence is often signaled within downranked clauses, as in the following example:

(10) 6 The evidence will be [[α that the accused and the deceased remained in regular contact || xβ after they separated]].
such as *told* and *said*, prevail in the opening (with 29 and 11 instances respectively), as shown in Excerpt (9), there is one major exception:

(11) 75 The Crown case will be that the accused *admitted* to her [his mother] and *said* to her, "I can't believe I have killed someone",

whereby the accused confesses his agency for the crime through the redundant attitudinal negative verbal process *admitted*, which both supports the Crown’s guilty plea, and serves to cast doubt in the minds of the jurors about the veracity of the defense’s forthcoming non-guilty narrative. Excerpt (11) is indeed in sharp contrast with Excerpt (12), which relates to events taking place at a later time in the chronology of the events, during the arrest of the accused by the police:

(12) 103 He [the accused] told police “that he didn’t know [that the victim had died] until he was spotted up there, referring to (location), where the police said to him “you are under arrest for murder”.

104 He told police that *that was the first that he knew that she* [the victim] *had died*.

Thus, the use of reported speech allows the prosecutor to draw the jurors’ attention to discrepancies in the quotations from the accused, and let jurors make inferences about the accused’s credibility, without putting forward an argument and while maintaining an appearance of objectivity.

Given the fact that the prosecution, for a guilty verdict, needed to demonstrate the accused’s intention to do bodily harm, the use of mental processes is a fitting way to highlight the accused’s thoughts. The accused is indeed the ‘Senser’ (or “conscious being that is feeling, thinking or seeing”, Halliday 1994: 117) in 16 of the clauses with a mental process, while in 14 instances the ‘Phenomenon’ (or “that which is ‘sensed’ – felt, thought or seen”, Halliday 1994: 117) involves the deceased, or (the events leading to) her death. The clauses that include a perceptive mental process are of particular interest, since they can serve to highlight the accused’s perspective as in clauses 92 and 93, where the process *remember* is linked to the negated modal Finite *can’t*, and the process *recall* is linked to a negative polarity and intensifier:

(13) 92 He [the accused] told police he just *can’t remember what happened*.

93 "We [the accused and the deceased] were there, she got angry, jumped up and then after that I really *don’t recall what happened.”
4.4 Agency: ergative analysis

Since the issue of blame is of paramount importance in a trial, it is essential that legal narratives assign responsibility for events to specific participants (Gibbons 2003). Therefore, the prosecution may endeavor to assign agency of the crime events to the accused, whereas the defense may try to understate their responsibility. For instance, in O. J. Simpson’s trial, the defense opening statement de-emphasized “Simpson’s role in his violent attacks towards his wife by removing his agency role through the use of intransitive processes and passivization” (Cotterill 2003: 82).

Thus, social actors can be assigned either active or passive roles. “Activation occurs when social actors are represented as the active, dynamic forces in an activity, passivation when they are represented as ‘undergoing’ the activity, or as being ‘at the receiving end of it’” (van Leeuwen 1996: 43–44). To this effect, an ergative analysis will uncover whom the prosecution represents as having committed the crime. Essentially, ‘effective’ clauses represent processes as being brought about by an ‘Agent’, or external cause, which impacts on or affects another participant, such as the ‘Goal’ in a material clause (Halliday 1994). Even if the Agent function can be found in projecting clauses of the mental type and being clauses of the relational type, Agency, or causation, ‘is most easily perceived in material clauses because only in the field of doing has the Agent the physical power to impact on things’ (Caffarel 2006). Effectively, in a crime narrative where almost half of all processes are material (see Section 4.3), it is not surprising that all the Agents are found in material clauses in which some Actors are presented as having the ability to impact on others (be they persons or objects). In total, the opening statement includes 31 effective clauses (9.2% of all clauses). Moreover, a breakdown shows that the accused appears as the Agent in 80.7% of all effective clauses, as shown in Table 6. The following example shows an instance of the accused as an Agent impacting on an object:

(14) The Crown case will be that there was an argument and that during the course of that argument the accused broke the deceased’s mobile phone.

In most instances (N = 22) however, Agents in the opening statement impact on persons. The accused and deceased’s children appear as Goals in seven clauses, whereas the deceased appears as the Goal in 11 clauses, as shown in the following excerpt:

(15) The Crown case will be he [the accused] told (friend’s name), “I’ve killed (deceased’s name)."
Most particularly, in a number of clauses the deceased appears as the Goal while the accused appears as the Agent, clearly foregrounding his control over his actions and responsibility in the death of the victim, as highlighted in Example (16):

(16) 42 In short, the Crown case is that the accused struck the deceased a number of times to the head and then strangled her by applying compression around her neck, and it was that that resulted in her death.

By contrast, the accused strives to diminish his responsibility in the crime in his police interview, as shown in Example (17):

(17) 112. He also said to the police, "I think I might have choked her."

| Table 6. List of Agents in the opening statement |
|------|------|
| Agent              | N (%)      |
| Accused            | 25 (80.7%) |
| Deceased           | 5 (16.1%)  |
| Accused’s mother   | 1 (3.2%)   |
| **Total**          | **31**     |

4.5 Prosecution’s use of first- and second-person pronouns

An analysis of the use of first- and second-person pronouns may reveal the ways in which the prosecution presents themselves and relate to their audience of jurors (Chaemsaithong 2015b). There are only three occurrences of the first-person pronoun *I* and none of *we* in the prosecutor’s opening statement (apart from the quotations from the crime participants, which are excluded from this analysis). This contrasts with Chaemsaithong’s study (2015a) whereby inclusive first person pronouns account for 20% of jury-oriented features, and Felton Rosulek’s (2016) study where first-person singular pronouns *I, me,* and *myself* and possessive adjective *my* account for 85 per 10,000 words in the prosecution arguments, and plural ones for 53 per 10,000 words.4

Nevertheless, the prosecutor still acknowledges his own presence through the repeated occurrence (*N* = 26) of an explicit subjective modality, as shown in the following excerpt:

(18) 11 The Crown case will be that there was an argument and that during the course of that argument the accused broke the deceased’s mobile phone.

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4. In Felton Rosulek’s (2016) study of 17 criminal trials in the US, the prosecutors also tend to talk less about themselves and their role than the defense lawyers do.
This provides the prosecutor with an authoritative stance, serving not only to proclaim overtly and explicitly the prosecution’s opinion in the legal narrative, but also to invite the members of the jury to endorse and share his perspective on the case. This also highlights the prosecutor’s repeated endeavors to emphasize the warrantability of his view of the case, in his effort to assert himself against the upcoming dialogic alternative that will be presented in the opening statement by the defense. Unlike the first-person pronouns I and we, the second-person pronoun you (meaning ‘the jurors’) occurs quite frequently with 37 instances, or 132.95 per 10,000 words, similar to the count of second-person pronouns in Chaemsaithong’s studies (2015a, 2015b) of five contemporary American trials. This highlights the prosecutor’s desire to engage the jurors. Out of these, 28 instances (or 75.7%) occur within variations of the words (It is anticipated that) you are going to /will hear, as in Excerpt (19):

(19) 1 It is anticipated that you are going to hear […] that the deceased (name) and the accused were in a relationship which commenced in about (date).

The high modality it is anticipated that, occurring six times through the opening statement, allows the prosecutor to claim explicitly that his propositions are objective. The use of high modality may indeed help strengthen the prosecutor’s discourse, providing it with authoritative stance. This is also congruent with research (Huisman 2014) stating that legal discourse favors explicit and objective values, due to its social claim to institutional authority.

Excerpt (19) also highlights the jurors’ role as silent ‘Receivers’ (or “the one[s] to whom the saying is directed”, Halliday 1994: 141), with no verbal involvement in the uninterrupted monologue of the prosecution (Chaemsaithong 2015b). Excerpt (20) however highlights the jurors’ role as adjudicators of the trial talk:

(20) 83 It is anticipated that during the course of the trial that disc will be played to you and you will be in a position to see and hear the accused whilst he was being interviewed and make an assessment of the answers he gave to the questions that he was asked.

Most of the other occurrences of second-person pronouns take place when foretelling the witnesses’ testimonies, as in the following excerpt:

(21) 50 (Witness’s name) will tell you about some further conversation he had with the accused in relation to that,

whereby the jurors are again the Receivers in a verbal clause. Such use contributes to focusing the jurors’ attention on the prosecution’s discourse (Chaemsaithong 2015a). Thus, although the opening statement is a monologic address directed at a “silent participant” (Cotterill 2003: 91), the use of second-person pronouns allows
the prosecutor to bring in the members of the jury as participants in a fictive dialogue (for a similar use, see the Old Bailey Proceedings in Chaemsaiithong 2014). This also foregrounds the jurors’ function as the real recipients of all the talk that takes place during the trial as well as their decisive judicial role, since the burden of determining the defendant’s guilt or innocence rests solely on them.

Another way to engage the jurors consists in the use of an expository question that serves to provide textual scaffolding for the discourse that follows (Chaemsaiithong 2014, 2015a), as in the following example:

(22) 21 Can I take you now to the events of (date).

This underlines the prosecutor’s intention to interact with the jurors.

4.6 Use of crime participants’ names

Further involvement, or on the contrary distantiation, of the jurors can be sought through the prosecutions’ differentiated use of the crime participants’ names. The ways in which the prosecutor chooses to name the individuals who are implicated in the crime story may indeed indicate attempts to either establish a closer relationship, or, on the contrary, increase the distance, between the participants in the crime story and the members of the jury. Naming options include the use of first name (FN) only, last name (LN) only, FN and LN, title and LN, title FN and LN, kinship and/or role name alone or with any of the previous combinations. Effectively, while the accused is called ‘the accused’ throughout the opening, the victim and witnesses are also called through their FN and/or LN. Figure 1 highlights the use of participants’ names in the opening statement.

As shown in Figure 1, the victim is not only named on a role-based basis (the deceased, 40 instances), but is also identified through her title and LN (1 instance), her role + FN and LN (2 instances), and her FN only (4 instances, always in quoted conversations), whereas the accused is systematically named on a role-based basis only (49 instances). The accused is also the only participant, with the expert witnesses (forensic pathologist and crime scene officer), whose name is never ever mentioned. As a result, the distance between the accused and the jurors is increased, whereas a closer relationship may be established with the victim. This is consistent with Felton Rosulek’s (2008, 2009) findings about trials in the US. For instance, in a sexual abuse trial, the prosecutor uses her nickname to refer to the victim so the jurors can better identify with her, while frequently using the term ‘defendant’ for the other party. Excerpts (23) and (24) illustrates the use of names:
(23) It is anticipated that you are going to hear, and I expect there is not going to be any dispute about this, that the deceased [FN + LN] and the accused were in a relationship which commenced in about [date].

(24) Later in his interview he [the accused] told police that he had gone to the house after picking up [child’s FN] and his mother had told him [FN] was dead, that she had called the police.

5. Conclusion

The use of stories to reconstruct the evidence highlights the bias of trial justice. Since the jurors were not present when the original events of the crime and investigation took place, the crime story needs to be recreated so they can have a clear idea of what is alleged to have taken place (Bennet & Feldman 1981). Eventually, the jury’s verdict reflects their favored version of the crime narrative, the prosecution’s or the defense’s, since the actual events are unverifiable. This highlights the rhetorical aspect of legal cases since the accused is found guilty only if the prosecution manages to persuade the jurors that this is the case (Cotterill 2003).
This analysis has highlighted the ways in which the prosecutor’s linguistic and discursive choices contribute to making his opening statement persuasive. Since a number of researchers suggest that linear, logical stories might contribute to persuading the jurors of the veracity of the facts and have the best chance of securing a conviction, the rhetorical organization of the prosecutor’s crime narrative was examined. The analysis highlights a high incidence of clause complex relations concerning paratactic extensions, whereby series of events succeed one another, contributing to presenting a linear story to the members of the jury and offering persuasive appeal. Besides, amongst the clause complex relations concerning enhancement, nearly two-thirds deal with temporality, in particular succession or simultaneity, contributing to a clear chronology of the crime story. Finally, occurrences of hypotactic enhancement serve essentially to explain various events of the crime story to the jury, highlighting a causal relation that helps the prosecutor to present claims about the credibility of his own version of the crime story.

The opening statement also demonstrates commitment to precision regarding the timing and location of the events in the crime narrative through over-specification of orientational information. This contributes to enhancing the plausibility of the events and heightening the persuasive force of the story (van Dijk 1988).

The narrative is made more credible through quotations from participants with personal experience of the related events. Locutions typically arise from quotations from the participants in the crime story, especially the accused, allowing the prosecutor to present the point of view of individuals who attended the crime scene and emphasize direct experience of the crime events. This contributes to creating immediacy between the jurors and the crime events, while appearing to be a trustworthy version of the crime story.

The assignation of agency for the crime events may persuade the jurors to ascribe blame to the accused (Gibbons 2003). An ergative analysis reveals that the accused acts as an Agent impacting on either an object or persons, in particular the deceased, in more than 80% of all effective clauses. This clearly foregrounds the accused’s control over his actions and responsibility for the death of the victim.

The analysis also shows the ways in which the prosecutor seeks to engage the jurors through his differentiated use of the crime participants’ names. He fosters distancing from the accused by systematically naming him ‘the accused’ throughout the opening, never ever using his name. In contrast, involvement is promoted with the deceased through the use of her first and/or last name.

Finally, although the prosecutor makes almost no use of first-person pronouns, he still asserts his self through his repeated use of the phrase ‘The Crown case will be’, whereby he invites the jurors to share and endorse his perspective on the case. The analysis also shows the ways in which the prosecutor seeks to engage the jurors through his use of second-person pronouns, contributing to focusing
the jurors’ attention on his discourse. Even though the opening statement is a monologic address directed at a ‘silent participant’, the use of second-person pronouns allows the prosecutor to include the members of the jury as participants in a fictive dialogue. This highlights the role of the jury as a ‘ratified recipient’ (Heffer 2012) of the trial’s interactions whose presence is acknowledged and involvement sanctioned. Effectively, the courtroom interaction is multi-party rather than monologic, or even dyadic as the lawyer-witness exchanges for instance could make us believe, since the ultimate audience and adjudicator of the trial talk is the silent third-party jury (Goffman 1981).

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References


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