Dualism of Courtroom Discourses

Olga Krapivkina*, *Nina* Druzhinina, and *Yulia* Sinyova

Irkutsk National Research Technical University, 664074 Irkutsk, Russia

Abstract. The article describes courtroom discourses as dueling constructs of reality. The purpose of the research is to identify and analyze linguistic and discursive means used to create opposing representations of the same criminal events and the same identities of key trial actors (defendants, victims, jurors and lawyers). The novelty of the article is due to the study of courtroom discourse through the category of dualism. The difference between the prosecution and the defense closing arguments is the types of narratives they focus on. Closing arguments allow lawyers to present their topics, narratives, arguments, and selves to the jury members. They strive to be persuasive, informative, and authoritative. Lawyers are able to achieve all of these things through focusing and de-focusing information. Focusing and de-focusing occur at the linguistic level and through discursive choices. Speakers' linguistic selections de-focus certain properties of the referent, but they also highlight or focus other properties. The article concludes that lawyers use many strategies in their closing arguments, but they always control what versions of reality are available to the jury members using a large variety of linguistic means. These means help them de-focus on harmful information and focus on topics that benefit their case.

1 Introduction

All discourses are representations of reality; they are descriptions of events, objects, or concepts that are part of the real or imagined worlds [1]. When speakers transform their knowledge into linguistic output, they re-create reality in a new form, in a discourse. The original event, object, or concept is recontextualized [2] into the discourse medium.

The distinction between reality and its discursive representation is a crucial issue for this research. In any trial, the jurors are unlikely to have observed events being analyzed and to be familiar with legal concepts being examined. The discourses presented by attorneys are the only sources of information they have in order to understand the crime and deliver a verdict. Discursive construction of a reality creates a new object that is different from a reality it represents. To construct a discourse, attorneys create order and analyze the relationships among objects, giving them additional layers of meaning. To this end, thy use different lexical items, syntactic forms, and discourse structures. They possess a diverse set of linguistic means to construct a "beneficial" reality by selecting events, actors, ways of description and presentation. The present paper analyzes linguistic tools applied by attorneys in their closing arguments to create opposing representations of the same reality, the same events and the same people.

2 Methods and material

For the purpose of the present research, we used an analytical method. The analysis was carried out using transcripts of 56 closing arguments available on the Internet.

3 Results and discussion

The Philosophical Encyclopedic Dictionary [3] defines dualism as co-existence of two opposing principles, ways of thinking, views, etc. For example, the following pairs of objects are dual: the world of ideas and the world of reality, God and devil, the spirit and the matter, the soul and the body, real and possible worlds, subject and object, belief and knowledge, etc. Courtroom discourses of the prosecution and the defense are examples of dueling processes pursuing opposing goals (conviction vs. acquittal). The prosecutor aims to convince the jury and the judge of the guilt of the defendant while the defense attorney wants to convince otherwise – of the non-guilty of his/her client. Dualism of courtroom discourses, opposing intentions of the attorneys allow the court to make a full and thorough examination of the case [4].

The attorneys create two different representations of the same reality constructing their versions so that they are the most reliable. Two speakers create two versions of the same reality (the same event, the same actors, the same legal values) for the same addressee.

Let us analyze which linguistic means help the attorneys create opposing representations of events and identities of actors.

Dualism of courtroom discourses is based on the ability of speakers to shift the focus of utterances from one

---

*   Corresponding author: koa1504@mail.ru

fact to another one or from one aspect of reality to another one. To this end, they use the focusing and de-focusing strategies, i.e. they shift the communication focus from harmful facts or topics which contradict their versions of reality and focus on those facts or aspects which support their arguments using various linguistic units (proper names, personal pronouns, passive constructions, metaphors, etc.).

O. Yokoyama [5] says that speakers shift different types of knowledge. The researcher distinguishes between seven types of knowledge emphasizing that communicants' attention is focused only on activated knowledge which is divided into the center and periphery. Activated knowledge of the speaker and addressee should overlap in order to achieve a perlocutionary effect.

Focusing and de-focusing mechanisms are based on the principles of the cognitive sciences. Among the most important ones are as follows: linguistic meanings represent cognitive structures rather than reflect the objective world existing independently on individuals; selecting between linguistic tools, the speaker selects a certain way of reality reconstruction; reality reconstruction is interactive with regard to the pragmatic situation [6]. That is, language provides the speakers with different ways of description of objects and situations, and they choose those tools which correspond to their intentions. For example, the attorneys can select different terms of reference to the defendant (first names, surnames, diminutive nicknames, roles *the defendant, my client, killer*, etc.):

So we can tell that the blunt force trauma which killed Chris Britt was the punch by **Don Selke** *and, therefore,* **Don Selke** *caused the death of Christopher Britt.*

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

The **defendant** *would come in once or twice a week for a period of a year, year and a half. And* **the defendant** *at various times would engage in different sorts of sexual abuse, but part of it, once or twice a week, was* **the defendant** *would . . .*

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

By using the defendant' names, the defense attorney attracted attention to his unique identity. By referring to the defendant with a functionalism *the defendant,* the prosecutor de-emphasized his unique identity and focused on his role in the trial. By using the diminutive name, the attorney emphasized the young age of the defendant, which should be taken into account by the jury members. Labelling the defendant as a *child killer*, the prosecutor ascribes her the most damnable aspect of the female identity and brings odium on her.

The analysis of 56 scripts of closing arguments showed that the defense attorneys tended to use nominations to construct a more respected identity for the defendant. The prosecution generally de-focused the unique identity as an individual person by using functionalisms to refer to him/her [7-8].
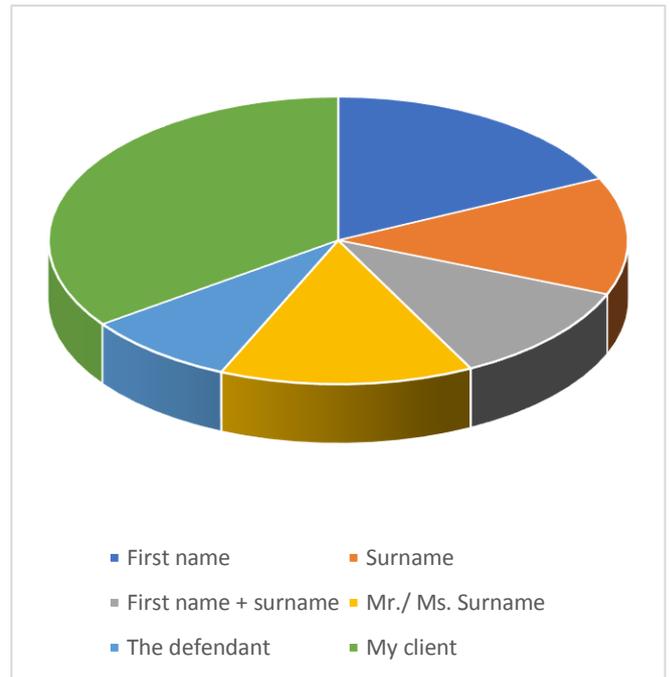

Fig. 1. Distribution of nominations and functionalisms for the defendant in closing arguments of the defense attorney.
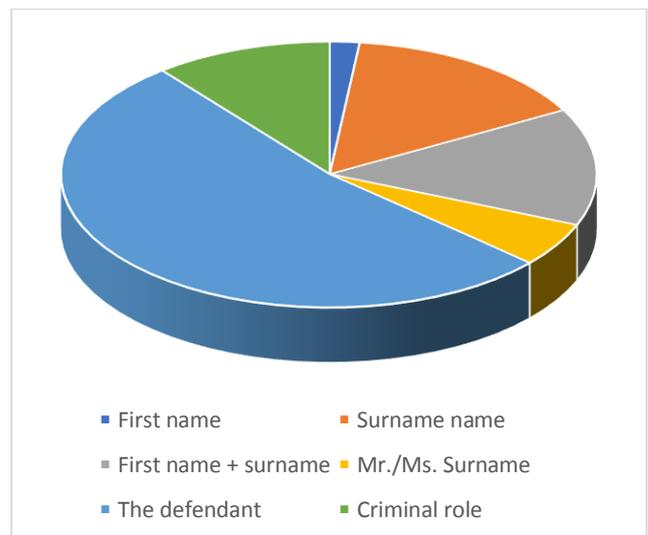

Fig. 2. Distribution of nominations and functionalisms for the defendant in closing arguments of the prosecution.

As can be seen, the most frequent term of reference in the closing arguments of the defense is *my client*, while the prosecution prefers the term *the defendant*.

We analyzed two closing arguments of the prosecution and the defense and found that the lexical unit *defendant* is the fifth in terms of usage in the prosecution closing argument, while in the defense closing argument, the most frequent units were the first name and the combination *first name + surname*. The results are presented in Figures 3 and 4.

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 %

Fig. 3. Analysis of the Prosecution Closing Argument (Jodi Arias' Case)[a].

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 %

Fig. 4. Analysis of the Defense Closing Arguments (George Zimmerman's Case).

Different terms of reference to the defendant as well as to other actors of the trial are due to the differences of communicative intentions of the attorneys. The same nominations in defense' and prosecution's closing arguments can serve opposing purposes: to lessen the social distance between the defendant and the jurors, to demonstrate close relationship and trust between the lawyer and his client, to show the respect or a lack of respect to the defendant.

By using various terms of reference (nominations and functionalisms), the attorneys can create opposing representations of reality and construct opposing identities of the actors and relations with them.

Opposing realities can be constructed by using different terms of reference to other actors of the trial (for example, victims):

It was their lives the State was attempting to justify. Who would miss them except their mothers? **Child rapists. Drug pushers**. *Would society miss* **such productive citizens**? *Wasn't Ford County safer without them? Were not the other children in the county better off now that* **two rapists and pushers** *had been removed?* (Grisham J. A Time to Kill).

Focusing on negative characteristics of the victims, creating their immoral images, the defense attorney is constructing a reality which is separate from the one created by the prosecution who focuses on their sufferings.

Thus, discursive representation both reflects a reality as it is and constructs it. The discursive world is a dynamic system of meanings which are created by speakers using different linguistic means and are interpreted by the addressee influenced by extra-linguistic factors.

The use of different terms of reference to construct opposing realities is illustrated by Danet [9]. The researcher described a criminal case of a Boston obstetrician K. Edelin who was on trial for a late abortion. The defense attorney called the victim *a fetus* while the prosecution referred to him as *a baby boy* and *a person*.

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.* (Commonwealth of Mass. V. Kenneth Edelin).

The terms *baby boy* and *person* helped the prosecution humanize the victim.

In contrast, by using such terms of reference as *fetus* and *product of conception*, the defense attorney dehumanized, erased his personhood. The attorney said that the alleged victim was not a human and could not be regarded a victim from a legal perspective. The basic facts of the crime did not change, but the definition of reality depended on the discourses being created by the opposing sides.

Let us analyze some more examples:

Defense: The **complainant** *was well past six when she began telling her story about Jakob Bergestad and changing it.*

Prosecution: What all of it does, all of this evidence, is it links the defendant to **the victim** *and the crime scene at Bundy.*

The defense attorney uses the term *complainant* (A complainant is a person who starts a court case in a court of law [10]) which does not generate negative feelings, while the prosecutor plays on the negative connotation of the term *victim*. These terms allow them create separate discursive representations of the criminal events. Among other terms of reference to the victim used by the defense attorneys are *accusers* and *alleged victims*, which defocus emotional semantic components typical of the term *victim.*

The terms of reference to opposing sides also contribute to the dualism of discursive representations and serve certain communicative intentions. Let us compare:

(1) And you think, well, gee, that's pretty unfair, **the State versus an individual person** . . . *if you think about the scariness of that title, and what does she have against the State of _____? Well, folks, she has you. You stand between her and the State of _____. That's a pretty awesome thing.*

---

[a] The key words were calculated using Text Optimizer (URL: http://www.seotxt.com/service/optimizer/).

The defense attorney presents the opposing party as a monolith huge mechanism which is working against an individual – the defendant. By using the term *the State*, the defense attorney implies that the prosecution has more power in the trial.

Personal pronouns can also be used as tools of creating dueling discourses. For example, the first-person plural pronoun allows the speaker to create social groups (the attorney and the jury):

*Ladies and gentlemen of the jury, the judge has told you that **we** must prove three things. There is absolutely no question about the first two things **we** must prove.*

Such groups are not natural or uniform. Their participants play different roles in the trial. The attorneys play the role of speakers, and the jurors play the role of hearers. They are not allowed to change their roles. The attorneys have more power than the jurors do. The lawyers make decisions about which side of the case they are in agreement with, but the jurors do not do so. And finally, the jurors make the final decision in the case, but the attorneys do not have any active role in that process. For these reasons, the jurors cannot consider themselves to be members of the social group with the lawyer [4]. However, the first-person plural pronouns silence these differences and focuses only on their similarities, create an aura of "solidarity" [11].

In other examples, *we*-pronoun included not only the jurors and the attorneys, but more people:

We are all humans, and can understand him.

In addition to erasing differences, the first person plural pronouns permit the attorneys to reference certain characteristics of the jurors' identities which are relevant for their version of a reality represented.

These examples support the idea that linguistic means can be used to shift the communicative focus and create two different discursive representations of the same reality, two opposing possible worlds. Such a world assumes the features which are beneficial for its constructor.

Dualism of courtroom discourses is resulted from both focusing on different aspects of a reality and identity of actors and varying the degree of their involvement in the process. The prosecution and the defense portray the defendants as having different experiences with the world, and silence or at least de-emphasize those included by the other side [4].

A discourse is a set of utterances describing processes which constitute an event [12]. Constructing the reality, the attorneys decide which processes should be included and which ones should be excluded from the discursive representation. When the one side includes a process in the reality construct, the opposing side can 1) include the same process but recontextualize it; 2) include the same process with the same actors but negate it; 3) include the same process but with different agents and recipients; 4) replace the replace with a very different one involving the same actors.

Besides, the same event can be interpreted in a different way depending on the role of the defendant or the victim in the process (recipient, agent, patient, etc.). The form of involvement in the process determines the degree of guilt.

Linguistic means used to encode processes help focus on beneficial properties of the process and shift the focus from the harmful ones. For example, separate constructs of the crime can be created using the verbs *to shove* and *to nudge* suggesting different degrees of violence. Social actors can interpret and conceptualize events in a different way even if they observed them. It is due to differences of their intentional horizons, phenomenological experience and knowledge gap. The language provides speakers with a wide variety of means to emphasize or de-emphasize any aspects of events and situations described. Let us analyze two examples:

(1) He abused her. - The abuse happened.

(2) She had shaken the baby, shaken her violently for about a minute. – The shaking that she did . . .

In (1) and (2), the second sentence defocuses the agent and de-emphasizes his responsibility for the crime. In the second sentence of (2), the focus is shifted from the beneficiary to the action itself. Both speakers say about shaking, but the defense attorney excludes the victim – a baby - from the focus. Besides, contrary to the defense attorney, the prosecutor emphasizes a violent nature of defendant's behavior (*shaken her violently*) which caused death of the child.

According to van Leeuwen, signs to refer to processes do not just categorize and evaluate. They can also limit or increase the information provided about the process [13].

Any linguistic unit or construction can activate certain semantic properties. According to the analysis of closing arguments, the attorneys describe the same processes using lexical units with different meanings, connotations which allow them to play with the focus and create dueling discourses (cf., *push vs. lash out; shove vs. throw; sexual encounter vs. sexual abuse*). For example, the term *sexual encounter* shades the semantic component "violence", while *sexual abuse*, in contrast, focuses on it.

Let us analyze one more interesting example.

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.

There is an opposition of two terms – *story* and *testimony*. The first term contains the semantic component *fiction*, which allows the defense attorney to imply the fact of falsification. The term *testimony* suggesting "official, formal action" suggests witness' credibility. Although the term can have both positive and negative connotations, its frequent use along with negative adjectives (unbelievable, not possible), allows the defense attorney to plant doubt in jurors' minds. The same effect can be created using the verbs *to testify* and *to say*.

The effect of dualism is created by describing the processes with different parts of speech. Defense attorneys use de-activations and generalizations to de-emphasize the details of the crime and the defendant's agency. According to our analysis, the prosecutor use more verbs to describe the defendant's actions, while the defense attorney use nouns, adjectives, and adverbs.

Iriskhanova [14] says that focusing / de-focusing follows perception laws and principles. There is a universal set of markers of different degrees of emphasis – lexical, grammatical, and prosodic ones. There are certain trends of using linguistic means for focusing or shading objects and events. For example, the defense attorney is likely to use passive constructions, indefinite pronouns or nominalizations to shade the responsibility of the defendant for the crime.

4 Conclusion

The paper described how the attorneys linguistically construct opposing representations of the same reality, the same events and the same people.

To create dueling discourses, along with the negation of views of their opponents, the attorneys focus addressee's attention on different events, different roles of actors in these events, construct different identities of key participants. Instead of explicitly denying the reality created by the opposing side, the attorneys create their own realities using different linguistic means. According to the material analyzed, the prosecutor often focuses on the victim and the defendant while the defense attorney – on the victim and the jury members. The same participants are also represented in a different way in the defense and prosecution closing arguments. They can be either agents (responsible for the process) or recipients (affected by the process). The prosecution often includes defendants as agents of processes while the defense includes them as recipients.

When the attorneys negate the other side's claims, the main force of their arguments is constructed around various sets of events and processes involving the participants.

To summarize, it is necessary to note that there is no neutral discourse [15], no neutral understanding of reality, no uninterpreted facts. The process of representing reality through linguistic means recontextualizes it. Some relationships are highlighted, and others are excluded. The result is a new output that is different from reality and is determined by the discursive processes that created it.

References

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

2. R. Bauman, C.L. Briggs, Annual Review of Anthropology **19**, 59-88 (1990)

3. Phylosophy Encyclopedic Dictionary (2010), URL: http://terme.ru/slovari/filosofskii-enciklopedicheskii-slovar1.html (date of access: 2 March 2018)

4. L.R. Felton, *Dueling discourse* (Oxford University Press, Oxford, 2015)

5. O.B. Yokoyama, *Cognitive model of discourse and the Russian word order* (Yazyki slavyanskoy kultury, Moscow, 2005)

6. R. Lakoff, *Talking Power: The Politics of Language in Our Life* (Harper Collins Publisher, New York, 1990)

7. O. Krapivkina, Journal of language and cultural education **3**, 77-92 (2017)

8. O. Krapivkina, Bulletin of Irkutsk State Technical University **1(95),** 269-273 (2015)

9. B. Danet, Semiotica, **32(3-4),** 187–219 (1980)

10. Merriam Webster's Dictionary of Law (2011), URL: https://www.merriam-webster.com/legal 9 (date of access: 2 March 2018)

11. P. Tiersma, *Legal language* (University of Chicago Press, Chicago 1999)

12. Y. Sinyova, O. Krapivkina, Bulletin of Irkutsk State Technical University **12**, 448-452 (2014)

13. T. van Leeuwen, Discourse & Society **6(1),** 81-106 (1995)

14. O.K. Iriskhanova, *Playing with a focus in language. Semantics, syntax, and pragmatics of de-focusing* (Yazyki slavyanskoy kultury, Moscow, 2014)

15. D. Bolinger, *Language: The loaded weapon* (Longman Press, New York, 1980).