

Reportative Term Of Evidentiality in Selected Opening Statements A Study in Legal Discourse

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Abstract:

The current study is mainly intended to shed light on Legal Discourse in general, and the evidential Sources in prosecutors and defense attorneys' opening statements in particular. Accordingly, a corpus of fourteen opening statements, is chosen to be analyzed according to Alexandra Aikhenvald's (2018) categorization for Evidentiality in the English language. Data analysis has shown that the reportative term of evidentiality has reoccured more than the directive and the inferential terms of evidentiality. And thus it has the greatest frequency. For that, it was used (233) times in the fourteen opening statements represented by prosecutors and defense attorneys. This result proves that attorneys tend to use quoted words in their statements to increase its level of reliability and fixedness. And consequently captivate the attention of the jurors and manipulate their decisions. Moreover, the study also shows that the frequency of the Reportative term of evidentiality in the defense attorney's statements is greater than in the prosecution statements.

Key words: Evidentiality, Reportative term, Opening Statements, Legal Discourse.

العنصر الدليلي المنقول في مختارات من الكلمات الافتتاحية : دراسة في الخطاب القانوني

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المخلص:

تهدف الدراسة الحالية بشكل أساسي إلى تسليط الضوء على الخطاب القانوني بشكل عام ، والمصادر الدلالية في الكلمات الافتتاحية للمدعين العامين ومحامي الدفاع على وجه الخصوص. وبناء على ذلك ، تم اختيار أربعة عشر كلمة افتتاحية تنتمي لسبع قضايا بارزة ، لتحليلها بالاعتماد على تصنيف المصادر الدلالية في اللغة الانكليزية المقترح من قبل الكسندرا أيخينفالد (٢٠١٨). حيث اظهر تحليل البيانات الافتتاحية ان دلالات الكلام المنقول قد استخدمت (٢٣٣) مرة في البيانات الافتتاحية الأربعة عشر التي قدمت من قبل المدعين العامين ومحامي الدفاع . مما يثبت ان هذا النوع من الدلالات قد تكرر اكثر من باقي المصادر الدلالية. تثبت هذه النتيجة أن المحامين يميلون إلى استخدام الكلمات المقتبسة في بياناتهم الافتتاحية من أجل زيادة مستوى الموثوقية والثبات. وبالتالي جذب انتباه المحلفين والتلاعب بقراراتهم. علاوة على ذلك ، تُظهر الدراسة أيضاً أن تكرار استخدام دلالات الكلام المقتبس في البيانات الافتتاحية لمحامي الدفاع أكبر مما هو عليه في بيانات الادعاء. **الكلمات المفتاحية: العناصر الدلالية ، العنصر الدليلي المنقول ، الكلمات الافتتاحية ، الخطاب القانوني .**

Section One: The theoretical framework

1.1. A sneak peek to Evidentiality:

In some languages of the world, it is a must to indicate the type of evidence speakers rely on when uttering their statements. For this reason, they have to specify whether they witnessed the action themselves by seeing it, hearing it, or learned it from another person, or if they made an inference based on a certain evidence. In other words, when speakers refer to the source of their information they are clarifying how they have known this information (Aikhenvald2004,P.1).This grammatical category that relies on the source of information as its main meaning in language, is known as Evidentiality. (Aikhenvald 2006:p.320). Though the topic of evidentiality can be traced back to Franz Boas the founding father of modern linguistics, who has introduced the term Evidentiality in his book (The Handbook of American Indian Languages) when Boas stated (1938,P. 133) as found in Aikhenvald (2006,P. 320) that :

While for us definiteness, number, and time are obligatory aspects, we find in another language location near the speaker or somewhere else, source of information — whether seen, heard, or inferred — as obligatory aspects.

But, according to Fox(2001,p.196), the field was only commonly used and developed to make an interesting research area when Chafe and Nichols published their work concerning evidentiality (Evidentiality: The Linguistic Coding of Epistemology). The book that was published in (1986) discussed various systems of evidentiality within English and different languages, Furthermore, it attempted to define the type of relationship that ties evidentiality and epistemic modality causing an ongoing debate between linguists. Because the two topics deal with evidence, linguists have explained the closeness between them differently. It was explained in three different ways, it was either seen as a relationship of inclusion, as Chafe (1986,p.63) believes that one of them is taken to be a part of the other. Or, as Plamer(2001,p.8) suggests a relationship of overlap, which means they intersect. While Aikhenvald (2004,P4) adopts and defends the relationship of disjunction in which they are entirely separate from each other.

Other terms that are often confused with evidentiality because of their assumed closeness is the term evidence. However, this confusion is not reliable since the two terms 'evidence and evidence' differ drastically in meaning and usage in any language. The possibility of applying certain notions like the adjectives 'strong' or 'weak' as in 'strong evidence or weak evidence' with the term 'evidence ' marks one of the differences. Strong evidence can convict a suspect of a crime or a murder, while a weaker one can help a murder to appear as a guiltless suspect. These adjectives however cannot be used with 'evidentiality ' since there is no weak or strong evidential. Evidentiality as (Aikhenvald & Dixon 2003,P1) puts it "is understood as stating the existence of a source of evidence for some information" which means two

things First is declaring that there is actually evidence and second explaining what kind of evidence it is.

In conclusion, with the recent attention the term Evidentiality has received it has become a topic of interest to discourse analysts, typologists, scholars, psycholinguists, as well as anthropologists who are concerned in evidence, and authority (Fox 2001, p.167).

1.2. Aikhenvald's representation to evidentiality:

Across the world's languages, many evidential systems appear. These systems differ in their level of complexity, which is mainly related to the number of sources of information found and the different ways of marking them. The simplest systems of evidentiality consist of couple choices, a firsthand, and a non-firsthand evidential (direct and an indirect one). While a more complicated one has at least six choices. English, however, follows a three terms system with several sub-systems. These three systems are, the direct, the inferred, and the reportative terms, that are located within the indirect terms. The terms are represented optionally with lexical expression such as (verbs and adverbs) (Aikhenvald 2004,P.24).

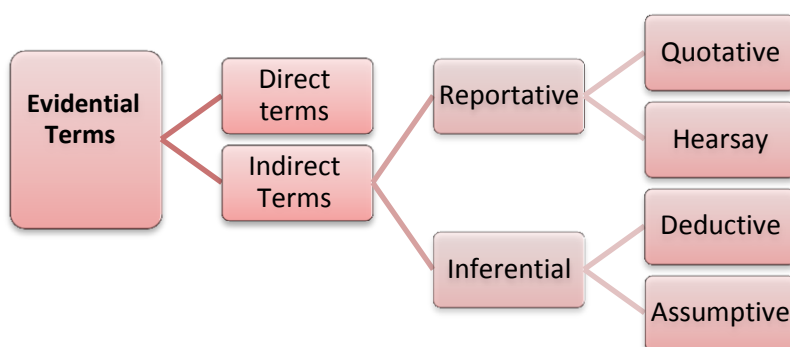


Figure (1) Main and sub-terms of evidentiality in English

1.2.1 Direct Term of Evidentiality:

Direct terms refer to any type of information that has been witnessed personally and received directly. This direct perception of the evidence can either happen visually by seeing the event. (Aikhenvald2004;P.43). The example below is taken from the defense attorney Steven Jones opening statement in the Oklahoma City bombing trial.

- "... she saw him in a Ryder truck ..."

Or, it could happen non-visually by other senses like hearing, touching, smelling, tasting, and feeling.

- Hearing: the example below is taken from the prosecution opening statement represented by David Walgner in Murry's trial:

"... sade Anding had **heard** the phone go dead... "

-Touch: The fur coat is soft.

-Smell: I smell freshly baked cookies.

-Taste: I taste chicken in the pie.

-Feel: I feel the earthquake happening.

1.2.2 Inferred term of Evidentiality:

This type of evidentiality is either based on a "personal sensory evidence" and this is known as (deductive), or based on an (assumptive) knowledge. (P.42). Deductive evidentiality requires the speaker's visual evidence for the situation, however, this deduction is made on the result and not on the entire situation. Example is taken from the defense opening statement delivered by Steven Jones in the Oklahoma City Bombing trial:

-" well, it must have been Tim McVeigh that he took..."

While the assumptive evidentiality is related to an earlier experience that the listener has lived . And thus it is known as reasoning (Palmer 2001,P.38).

1.2.3 Reportative term of Evidentiality:

Reportative evidential or a second-hand evidential (Palmer 2001,P.40) refers to the information that has been acquired from someone else and not by being exposed personally to the situation. Aikhenvald (2004,P.48) states that the reportative evidential has two sub-categories. It can either be acquired from a specific person and in this case, it is a quotative reportative evidential. Example taken from the defense opening statement delivered by Jay Carney in Bulger's trial.

-" John said, if you want my testimony,..."

Or, it is hearsay in general. A hearsay is defined as a statement that is considered to be an out of law inside the courtroom, and thus it's not reliable. (FindLaw website)

1.3 Legal Discourse:

Discourse as Crystal (2008,p.148) defines as" A term used in linguistics to refer to a continuous stretch of (especially spoken) language larger than a sentence. . . ". The stretch of language highlighted to be studied in this work is the legal discourse. Gee (2012,P.483) states that the phrases " language of the law" and " legal discourse" refer to several meanings. One of these interpretations is that they can refer to the language used in statutory law. Or, they can point the interpretation of statutory law in the different official and legal opinions. Third, the term legal discourse can further refer to the different forms of the languages that occur inside the courtroom, which includes opening and closing statements, the direct and cross-examination of

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witnesses as well as the jury instructions that happens in the courtroom. As well as, different written contracts that initiate various legal obligations such as "rental agreements, insurance policies, wills..."(P.483) .Similarly, Botezat(2010,P.250) states that legal discourse refers to any form of communication that is related to law, whether spoken or written. He clarifies that law represents two main functions, on one hand, it manages the different human relations and on the other hand, it deals with the public social order.

1.4 Opening Statements:

An opening statement can be defined as one stage of the trial inside the courtroom in which both attorneys (Prosecution and Defense) are allowed to deliver an introduction about themselves, their clients, as well as narrating the case to highlight the different facts about their clients(Kearney2010,3-4,6). This "persuasive monologue " (Chaemsaitong2014,P.758) represents a summary of the case that is displayed by each of the attorneys without showing any personal comments or opinions. Any opening statement must be written and planned carefully for that it would affect the final decision of the jury members. Therefore the legal interpretation of the statements should fit the hidden intention that the attorneys attempt to convey through their text.

1.5 Material:

For this study, fourteen Opening Statements that represent seven high profile trials, taken from different online Websites are chosen to be analyzed. These aforementioned fourteen opening statements contain almost (118,585) words in total, and they are presented and analyzed in a descending chronological order.

Out of the seven trials elected for this work, Christensen's trial that took place in 2017, is the first one. In this trial, the prosecutor Eugen Miller presented an opening statement that contains about (5,941) words. While the defense attorney, George Taseff, presented an opening statement that has almost (3,315) words.

The second trial chosen for this study is, James J. Bulger's trial in 2013, the prosecutor of this trial, Brian Kelly used in his opening statement almost (7,159) words. Almost (5,682) words are used in the opening statement represented by J.W. Carney, Bulger's defense attorney.

While the third case adopted for this study is Conard Murray's trial in 2011. In this trial, the opening statement of the prosecution contains about (8,952) words and was delivered by David Walgren. Whereas, Ed Chernoff, the defense attorney, employs (7,248) words in his opening statement .

The 2011, Zacarias Moussawi's trial is selected to be the fourth trial adopted in this study. In this trial, the prosecutor attorney Edward MacMahon uses about (7,470) words in his opening statement, while about (6,326) words are used in the opening statement represented by the defense attorney Robert Spencer.

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The fifth trial in this work is, the trial of Brenden R. Dassey in 2007. The prosecutor's opening statement which was represented by Kenneth Kratz contains approximately (5,694) words, the defense, however, that was presented by Mark Fremgen uses (2,800) words in his opening statement.

Steven A. Avery's trial that took place in the same year as Dassey's, in 2007, is the sixth trial chosen for the sake of analysis on this work. In this trial, Kenneth R. Kratz representing the prosecution uses nearly (13,203) words in his opening statement. While the defense's opening statement that was represented by Dean A. Strang, contains about (8,769) words.

Last but not least is, the Oklahoma City Bombing trial on April 24, 1997. The prosecutor's opening statement of this trial was given by Joseph Hartzler, and it contains about (16,467) words, while almost (19,486) words are used in the opening statement delivered by Steven Jones who represented the defendant in this case.

Section Two: The Practical Part

2.1 Data Analysis :

All of the fourteen opening statements selected to be analyzed in this work go through two main steps. First, finding out concordances of the words used by the attorneys that mark the source of information by processing the selected data in the Wordsmith tools program. After that, the found frequencies of evidential terms, direct, reportative, and inferential for each opening statement are to be calculated in tables with clarifying examples.

2.1.1 Christensen's trial

The first two opening statements to be examined in the current study are taken from Christensen's trial. In 2017, Brendt Allen Christensen was accused of kidnapping, raping, and murdering Yingying Zhang. The trial ended with the life imprisonment without any possibility of parole sentence for Christensen in 2019 (Masterson, 2019).

In this statement, the prosecution attorney used about (5,941) words to represent his client. Using the concordance feature in the Wordsmith program to process the transcript of the opening statement, we realized that the prosecution attorney used some verbs as evidential markers.

Table (1) below summarizes and provides examples of reportative terms as they appeared in Miller's opening statement.

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Table (1) Reportative term of evidentiality in Miller’s opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Seventeen	He said that he was home playing video games all day.

Basing our analysis on Aikhenvald's categorization of evidentiality, we realized that prosecutor used the Reportative term of evidentiality (seventeen) times, represented with the verb (said).

In the same trial, the defense attorney, George Taseff, delivered an opening statement that contains about (3,315) words to represent the defendant. In his statement, Taseff uses the reportative verbs (say) and its past tense, (said) fifteen times to represent the reportative term of Evidentiality according to Aikhenvald's categorization of Evidentiality. Table (2) below summarizes and provides an example of the reportative term of evidentiality as it appears in Taseff’s opening statement.

Table (2) Reportative Term of Evidentiality in Taseff’s opening statement.

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Fifteen	she said that she wanted a divorce;...

2.1.2 James J. Bulger’s trial:

In 2013, James Joseph Bulger was found guilty for some crimes he committed including 19 murders. Thus, he was sentenced for a lifetime prison added to that an extra five years (McFadden, 2018).

In this case, the prosecutor, Brian Kelly used about (7,159) words to deliver his opening statement, and to support it many evidential terms were employed as reportative. Table (3) below displays the frequencies and some examples of the reportative terms taken from Kelly’s opening statement.

Table (3) Reportative term of evidentiality in Kelly’s opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Eleven	...he said there would be three bodies,...

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As the previous table illustrates, the reportative category found in Kelly's opening statement appears eleven times. And it is found within the meanings of the verbs 'said', 'says', and 'asks'.

While for the defense, Jay Carney used around (5,682) words in his opening statement to represent Bulger. Carney employs a number of verbs in his statement of the reportative term to strengthen his speech to defend his client. Table (4) below displays the frequencies and some examples of reportative markers taken from Carney's opening statement.

Table (4) Reportative Term of evidentiality in Carney's opening statement.

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Twenty	Weeks said he would agree that he was involved in five murders.

As table(4) shows, reportative term in carney's statement is expressed by the verb (said) and its inflection appeared twenty times in the statement to represent evidentiality.

2.1.3 Conard Murray's trial:

Few months after hiring Conard Murray to be Michael Jackson's physician, the pop star, in May 2009, dies with an acute Propofol intoxication caused by an extra dose of Propofol given under the supervision of Dr. Murray. Consequently, the doctor was found guilty and thus sentenced to four years in County jail in 2011 (BBC News Webpage 2011).

In this case, David Walgner, in the prosecution used about (8,952) words to deliver his opening statement. And within which, Walgner made use of certain verbs fall into the reportative terms of evidentiality. Table (5) below displays the frequencies and examples of the reportative term taken from Walgner's opening statement.

Table (5) Reportative term of evidentiality in Walgner's opening statement.

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Nine	He said I can't function If I don't sleep.

The reportative terms in this opening statement, that represent evidentiality, appeared nine times that are mainly represented by the verb (said).

Whereas, for the defense, Ed Chernoff, used about (7,248) words in his defense opening statement to represent his client. Following Aikhenvald's categorization of

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evidentiality in English, we noticed that the defense attorney employed many verbs as evidential markers. Table (6) below displays the frequencies and some examples of reportative terms taken from the defense attorney's opening statement.

Table (6) Reportative term of evidentiality in the defense attorney's opening statement, Ed Chernoff.

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Forty-five	He said "I'm tired of being a vagabond,. I just want a house for me and my kids.'

According to the results in table(6), the forty-five found verbs fall into the categorization of the reportative term. These verbs were represented in the meanings of the verbs (said, told, asked, and says).

2.1.4 Moussaoui's trial:

When Al-Qaeda attacked the Twin Towers on December 11, 2001, and caused a genocide, nearly 3,000 people died. The U.S government blamed Zacarias Moussaoui for it, even though he was arrested a few months before the attack. Five years later, Moussaoui was sentenced with a lifetime prison for his part in plotting the 9/11 attack. (Famous Trials Website)

In this trial, Robert Spencer in the prosecution used (6,327) words to deliver his opening statement, and within his statement, many words were used as evidential resources. Following Aikhenvald's categorization of evidentiality in English, our analysis has shown that Spencer reinforced his statements with words that fall into reportative terms of evidentiality. Table (7) below displays the frequencies and some examples of reportative terms taken from Spencer's opening statement.

Table (7)Reportative term of evidentiality in Spencer's opening statement.

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Eleven	He said: Oh, that money came from a business in England called NOP.

As demonstrated in table (7) the reportative term appeared eleven times as evidential sources.

For the defense, however, Robert Mac Mahon used (7,542) words in his opening statement. In which he used the reportative term suggested by Aikhenvald to represent evidentiality in English. Table (8) below gives us a summary and examples of the reportative term in Mac Mahon's opening statement.

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Table (8) Reportative term of evidentiality in Mac Mahon’s opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Eleven	He once said he was here as part of a hijacking plot designed to free a Muslim fundamentalist....

The reportative term brought by Aikhenvald appeared eleven times in this statement and was represented with the three verbs (said, says, and say).

2.1.5 Dassey's trial:

Turner (2019) writes for the Digital Spy Website that, Brenden Ray Dassey is an American convicted murderer who was in 2005 suspected to be Teresa Halbach's murderer when he was only sixteen years old. As a result of the investigations, Dassey was sentenced to a lifetime prison with a chance of parole in 2048.

The prosecutor, in this case, Kenneth Kratz, used about (5,694) words to deliver his opening statement. Within his opening statement, a number of the evidential markers are used. Table (9) below gives us a summary and examples of the reportative term in Kratz’s opening statement.

Table (9) Reportative term of evidentiality in Kratz’s opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Four	Ms. Halbach says, I'm on my way.

According to the information in table (9), in this statement the reportative term was represented with the three forms of the verb say; (said, say, and says) which appear in four-time frequency.

For the defense, Mark Fremgen used almost (2,800) words to deliver his opening statement, and within them, he employed certain words to represent evidentiality. Table (10) below, in numbers, sums up the frequency of the reportative term in Fregmen's statement and it provides explanatory examples taken from the statement.

Table (10) Reportative term of evidentiality in Fregmen’s opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Eight	Brendan says Steven Avery killed Teresa Halbach,...

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The category shown in the previous table to represent evidentiality is the reportative one, this category appeared eight times that were shown through the three verbs (said, says, and say).

2.1.6 Avery's trial:

According to Tikkanen (2019), Steven Allan Avery is an American convicted murderer from Wisconsin, who in 2005 was accused of murdering Teresa Halbach the 25 years old photographer along with his nephew Brenden Dassey.

For the prosecution, Kenneth Kratz used almost (13,203) words in his opening statement to present the case. Within his statement, the reportative term has failed to represent evidentiality in this statement since the prosecutor has mainly relied on a data show screen to clarify some facts visually and audibly.

While the defense attorney, Strang, used about (8,769) words to represent his client in the courtroom. Within his opening statement number of words was used as evidential markers located in some terms including the reportative ones. Table (11) below, in numbers, sums up the frequency of the reportative term in Strang's statement and it provides explanatory examples taken from the statement.

Table (11) Reportative term of evidentiality in Strang's opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Twenty-three	He said consistently that he was innocent, that he had not done it.

As the table explains that the reportative one in this statement appeared twenty-three times found in the three verbs (said, say, and says).

2.1.7 Oklahoma City Bombing trial:

Ninety minutes after the massive explosion that took place outside the Alfred P. Murrah Federal office causing the death of more than one hundred people including 19 children, Timothy Mc Veigh was arrested and two years later he was convicted with the bombing and was later executed. (History website)

The prosecution for this case represented by Hartzler, used about (16,467) words to deliver his opening statement. And when looking closely at these words, a number of them were used as evidential markers. Table (12) below displays the frequency of the reportative term in Hartzler's statement and it provides explanatory examples taken from the statement.

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Table (12) Reportative term of evidentiality in Hartzler's opening statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Twenty-eight	he said, "Something big is about to happen."

As shown in table (12), the reportative term in this statement appeared twenty-eight times found in the meaning of the verb (said).

While for the defense, Steven Jones delivered an opening statement that contained almost (19,486) words to represent his client. Within his statement, some words were used as evidential markers found in the reportative term of evidentiality suggested by Aikhenvald. Table (13) below displays the frequency of the reportative term in Jones' statement and it provides explanatory examples taken from the statement.

Table (13) Reportative term of Evidentiality in Jones' Opening Statement

Evidentiality Term	Evidence	Frequency	Example
Reportative	Quotative	Thirty-four	...Mr. Hartzler says, fertilizer was found at Terry Nichols house,...

The reportative terms in this statement, as illustrated in table (13), appeared thirty-four times found in the meaning of the three verbs (said, say, and says) in this statement.

2.2. Final Results:

Based on the results shown in the prior sub-section of this paper, it is obvious that attorneys use diverse reportative terms in their opening statements to represent their clients inside the courtroom, however, their use differs in amount, and frequency. Table(14) summarizes and compares the frequency of appearance for reportative evidential terms located in the fourteen opening statements delivered by prosecutions and defense attorneys.

Table (14) Reportative Term of Evidentiality: Comparison of Frequencies

Evidential terms	Prosecution's O.S	Defense's O.S	Results
Reportative terms	80	153	233

Conclusion

The final results of the analysis clarified previously in this paper show how the reportative term has the highest frequency in all of the chosen opening statements. This category has appeared (233) times in the fourteen statements presented by prosecutors and defense attorneys.

In language, reporting any speech refers to a shift in the frame of attention, therefore, whenever attorneys employ reportative terms in their statements, they attempt to shift the attention to their clients. This shift of speech is seen as a necessity since it increases the statement's factuality, and helps to negotiate the case from the client's side. Moreover, using reportative markers explicate that attorneys endeavor to reflect credibility while delivering their opening statements. Jacquement (1996,p.166) describes reported speech as "... one of the most effective credibility-boosting strategies..." which explains how including the client's voice and existence when delivering an opening statement adds to its level of credibility and truthfulness.

Moreover, the total results have also shown that the frequency of the reportative term in the defense attorney's opening statements is more than in the prosecution statements. Prosecutors are the ones who bring the case to the court with irrefutable evidence that the defendant is guilty. This would ensure their clients a strong position in the case. Whereas the defense attorneys represent a defendant rejected by the society, whether this defendant is accused of a minor offense or a mass murder. Hence, defense attorneys try to develop an acceptable argument that would help to get the best deal or settlement for the defendant by employing more evidential markers to prepare an effective opening statement.

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