

Elaboration and Code Glossing in Prosecution and Defense Attorneys' Opening Statements and Closing Arguments

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Abstract

This paper provides a metadiscourse analysis of how American prosecution and defense attorneys utilize code glosses to facilitate the courtroom audience's comprehension of what they have said. Drawing upon a corpus of 24 opening statements and closing arguments in six high-profile American trials, we examine the methods employed by the attorneys to effectively manage their speeches in order to convey information or illustrate points while constructing their arguments for the courtroom audience. Regardless of the somehow low frequency of code glosses, as revealed by the findings, they still have been found to play a vital role in the legal discourse of the opening statements and the closing arguments, serving as a complex and crucial rhetorical function.

Keywords: elaboration, code glossing, reformulation, exemplification

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شرح المصطلحات وتوضيحها في البيانات الافتتاحية والمرافعات الختامية لمحامي الادعاء والدفاع

المستخلص

يُقدم هذا البحث تحليلاً ما وراء خطابي لكيفية استعمال محامي الادعاء والدفاع الأمريكيين شرح المصطلحات لتسهيل فهم جمهور قاعة المحكمة لما قالوه. بالاعتماد على مجموعة مكونة من 24 بياناً افتتاحياً ومرافعات ختامية في ست محاكمات أمريكية رفيعة المستوى، يقوم هذا البحث بفحص الأساليب التي يستعملها المحامون لإدارة خطاباتهم بشكل فعال من أجل نقل المعلومات أو توضيح النقاط أثناء بناء حججهم لجمهور قاعة المحكمة. على الرغم من نسبة التكرار الضئيلة نوعاً ما، كما كشفت النتائج، وجدت الدراسة أن شرح المصطلحات وتوضيحها يؤدي دوراً حيوياً في الخطاب القانوني، حيث يعمل كوظيفة بلاغية معقدة وحاسمة.

الكلمات المفتاحية: الشرح، التوضيح، إعادة الصياغة، التمثيل

1. Introduction

Research into the exploration of metadiscourse in legal discourse in general and courtroom discourse in particular hasn’t gained that much of popularity among researchers. Nevertheless, researchers have recently shown a greater interest in metadiscourse as a discourse aspect that enables language users to define and reformulate or structure speech as well as reflect on it, remark on it, and make explicit any intended meanings.

The primary objective of this paper is to investigate the explanatory role of code glossing in courtroom transcripts, specifically in the opening statements and the closing arguments. It is hypothesized that both prosecution and defense attorneys may find it necessary to utilize code glosses in order to enhance clarity for the courtroom audience. However, it is expected that the use of code glosses will be limited, as the judge and jury are presumed to possess a high level of professionalism and comprehension, requiring minimal additional clarification beyond the provision of examples and definitions for scientific terms. The research also aims to determine the frequency of code glosses in the speeches of prosecution and defense attorneys, specifically focusing on density rates.

The focus of this paper pertains to the examination of elaborative code glossing markers, specifically exemplification and reformulation. By utilizing a corpus of transcripts containing opening statements and closing arguments, it is aimed to examine the manner in which attorneys effectively reiterate information or present illustrative examples while constructing their arguments.

2. Opening Statements and Closing Arguments

In the legal context of the courtroom, the opening statement and closing argument play crucial roles. The opening statement allows prosecution and defense attorneys to present their arguments as a cohesive and comprehensive narrative to the jury at the beginning of the trial. On the other hand, closing arguments serve as the final

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opportunity for attorneys to effectively communicate their case to the jury, summarizing the evidence and persuasively reinforcing their arguments. The speeches are characterized by their eloquence and persuasive nature, as they are specifically aimed at engaging the silent audience rather than simply being delivered in their presence.

The significance of the opening statement in a trial cannot be overstated. Based on a study conducted by Burke et al. (1992), it has been observed that a significant percentage, ranging from approximately 30% to 50%, of mock jurors retained their original position regarding the defendant's guilt or innocence after hearing the information presented in the opening statement. Thus, the opening statement in legal proceedings is considered to be of significant importance. Although it is not the only factor that determines trial outcomes, it provides the opportunity for attorneys on both sides to establish a strategic framework for organizing the subsequent presentation of witnesses and evidence (Heffer, 2005).

The importance of closing arguments has also been thoroughly examined. In the perspective of Robert H. Jackson, the Chief counsel for the United States during the Nuremberg Trial in 1946, the process of choosing concluding statements poses a formidable challenge for the attorneys. Based on the findings of Tarter-Hilgendorf's study conducted in (1986), it was observed that jurors tend to attribute greater significance to the closing argument as compared to the opening statement within the context of a trial. According to the research conducted by Walter (1988), the function of closing arguments encompasses two significant objectives. First and foremost, they symbolize the culmination of a jury trial in terms of both chronological and psychological aspects. Additionally, they provide legal representatives a final opportunity to engage in direct communication with the jury. As posited by Gibson (1991), the closing argument assumes a position of considerable significance within the trial process. Lief (1998) asserts that the concluding statement functions as the attorney's final opportunity to imbue the facts provided throughout a trial with

perspective, significance, and contextualization. The attorney's ultimate recourse is in attempting to sway the jury through the presentation of arguments that bolster his particular version of the 'truth'.

3. Elaboration

According to Halliday (1994), there exist three primary methods for expanding a clause: elaboration of its current structure, extension through addition or substitution, and enhancement of its surrounding context. Elaboration refers to the act of providing additional information or clarification to a specific clause by means of further specification or description. The secondary clause serves the purpose of elaborating on an existing element rather than introducing a new one. It accomplishes this by restating, clarifying, refining, or adding a descriptive attribute or remark to the already mentioned element.

Downing and Locke (2000) state that the concept of elaboration is associated with the utilization of non-finite supplementary clauses. These clauses serve the purpose of providing additional information or offering explanatory comments on another sentence, hence enhancing its specificity. Downing and Locke (2000) also state that these clauses are understood to possess elaborative, extending, and enhancing connotations. They offer supplementary information that is non-essential but serves to clarify or expand upon the preceding clause's substance. They stressed the significance of connective adjuncts, such as "*in other words*," "*for instance*," "*in fact*," and "*actually*," as tools to strengthen the elaborative, extending, and enhancing functions of the supplementary clauses.

A number of scholars and researchers have linked elaboration to apposition. Quirk et al (1985), Blackmore (1993), Biber et al (1999), and Downing and Locke (2000) all associated elaboration with apposition. Quirk et al (1985) described expressions like *in other words*, *namely*, *for example*, *that is to say*, *chiefly*, *at least ...etc.* as having an appositive role. Blackmore (1993) classified the aforementioned expressions as *apposition markers*, while Biber et al (1999) called them *appositive*

linking adverbials. Downing and Locke (2000) indicate that appositive clauses establish a syntactic relationship of equivalence without possessing a formal connection. The significance of the "clarifying" aspect of elaboration is crucial in establishing the semantic linkage between two concepts, as exemplified by the phrase "*it's no good - it doesn't work.*"

In summary, elaboration refers to the act of restating previously mentioned information, either by reformulating it or expressing it in a more clear manner. In numerous instances, elaboration is achieved by the use of exemplification, wherein the elaborative language is provided as information that is, to some extent, encompassed within the preceding text rather than being precisely comparable to it.

4. Code glossing

Although the precise word "code gloss" was not employed in traditional grammar, the concept of code glosses has been examined by traditional grammarians as instances of apposition and expansion (Quirk et al., 1985), (Blackmore, 1993; Halliday, 1994; Biber et al, 1999; Downing and Locke, 2000).

Code glosses are those phrases that provide the anticipated audience with extra information to help them recover the writer's/speaker's intended meaning and guide their interpretation, by restating, elaborating or elucidating what has been stated. Phrases like (*this is called, in other words, that is, this can be defined as, for example, etc.*) reflect the speaker's/writer's perception of the amount of knowledge that his/her audience enjoy. Thus, using such phrases indicates the speaker's/writer's care to have his/her audience understand his/her propositions, attitudes and evaluations (Hyland, 2005).

Code glosses primarily aim to enhance the clarity of the discourse producer's intended message. The term refers to a variety of fundamental communication strategies employed in the process of negotiating meaning across various contexts, encompassing both oral and written forms of language, with the aim of enhancing the

audience’s comprehension (Hyland, 2007). The producers of discourse identify areas where their audience need assistance in interpreting key points, where additional elaboration or specificity is necessary, and where clarification or examples are required. Hyland (2007) maintains that discourse producers employ small acts of propositional embellishment to enhance perception, facilitate better understanding of meanings, and establish connections between sentences and the audience’s experience, knowledge-base, and processing needs. The function of code glossing can be categorized into two sub-functions: *reformulation* and *exemplification*.

4.1 Reformulation

According to Swales (2004) reformulations can fulfill a multitude of complicated purposes that extend beyond the mere act of summarizing or extracting the essence of what a preceding speaker has expressed. These linguistic devices are employed to articulate evaluation of the fundamental component that is considered to be of utmost significance in preceding discourse; to offer unique viewpoint or interpretation by incorporating personal standpoint into the ongoing conversation; or to challenge the boundaries of a particular interpretation or concept, thereby examining its validity or exploring alternative possibilities that may or may not have been conveyed through the words of others. Reformulations go beyond what is expressly said by other people in a conversation. Discourse producers themselves also have the ability to reword, reiterate, or clarify their own spoken statements.

In essence, the act of reformulation serves as a discourse function in which a discourse producer engages in the process of re-elaborating an idea with the aim of enhancing the audience’s comprehension. Reformulation serves as a discourse function in which the following unit serves as a restatement or expansion of the initial unit using different wording. This approach allows for the presentation of the information from a distinct perspective and enhances the overall message (Hyland, 2007).

However, it is important to note that although adjacent text elements may pertain to the same subject matter, the creation of meaning is not solely dependent on propositional material. The process of creating meaning in a text involves an interactive exchange between the discourse producer and the discourse receiver. The speaker/writer carefully selects formulations that are intended to promote comprehension and consensus. Reformulations can serve a range of functions that extend beyond summarizing or providing a general understanding. Speakers/writers often provide multiple interpretations of the same content, but it is important to note that different formulations of a single idea seldom convey identical meanings. These alternative formulations typically go beyond mere paraphrasing and instead aim to highlight the essential elements of a previous statement, as perceived by the writer (Hyland, 2007).

The following are some examples extracted from the corpus of the study. They represent the elaborative function of reformulation:

1. *"He was immunized; [that is], a court order was issued compelling him to testify" James J. Bulger Trial*
2. *"Shahied [means] martyr, and "Allah Akbar" [means] God is great" Dzhokhar Tsarnaev Trial*

Upon further examination of the aforementioned examples, it becomes evident that the utilization of code glossing reformulation markers *"that is,"* and *"means"* indicates the attorneys' acknowledgement that the initial formulation they presented was not effective in achieving successful communication. As a result, they opted to rectify their discourse by providing a more detailed explanation through reformulation.

4.2 Exemplification

Exemplification is a discourse strategy that aims to enhance the understanding of a unit with a general referent or element by providing a second, more specific unit or exemplifying element. In an exemplifying construction, the referent of the general term includes the referent of the specific term, which serves as an illustrative example of that general term. The significance of utilizing examples in communication stems from their ability to have a more profound influence on the listener compared to general statements, owing to their heightened persuasive capacity. In a similar vein, they also enhance the comprehensibility of a text by making abstractions more accessible (Zillmann and Brosius, 2000). In essence, the inclusion of examples serves to provide a more tangible and concrete element within the writer's otherwise abstract discussion. This, in turn, enhances the accessibility of the text for the reader, as noted by (Hyland, 2007).

According to Rodríguez-Abruñeiras (2017) exemplifying markers are semantically classified into four classes:

1. *Neutral*: The group of neutral markers consists of forms that introduce the exemplifying element without placing any emphasis on the chosen example. The neutral exemplifying markers include phrases such as "*for example*," "*for instance*," and "*e.g.*"
2. *Hypothetical*: The set of hypothetical exemplifying markers is represented by the terms "*say*" and "*let's say*." The marker "*say*" distinguishes itself from other markers by introducing examples that often involve suppositions or hypotheses. The exemplifying element introduced by the term "*say*" serves as a hypothetical illustration of the general element. However, it is important to note that there is no guarantee that the exemplifying element is inherently included within the general element.

3. *Comparative*: The category of comparative exemplifying markers comprises the forms "like" and "such as."
4. *Focalizing*: This category of exemplifying markers includes forms that, while not as forceful as specific markers like "especially" or "particularly," provide a subtle emphasize to the exemplifying element. In essence, the utilization of focalizing exemplifying markers provides a certain level of significance to the chosen example, eclipsing all other element that could have been employed to exemplify the general element.

Exemplification can be seen as an approach to help listeners or readers better grasp the concepts being discussed. It involves using specific examples or personal experiences to make abstract ideas more tangible. Consequently, it provides insights into the discourse producer's assumptions regarding the audience's level of familiarity with the subject matter and general knowledge (Hyland, 2007).

The following are some examples extracted from the corpus of the study. They represent the elaborative function of exemplification:

1. "And you're gonna see throughout this case, how some of this evidence came to be, [**for example**], when Casey came home and told her family that she was pregnant, used to be quite quiet" Casey Anthony Trial
2. "[**For instance**], when I read a story, sometimes I get a little anxious and I want to find out, what -- what happened?" Brendan R. Dassey Trial

After thoroughly analyzing the examples provided, it is clear that the use of code glossing exemplification markers like "for example," and "for instance," shows the attorneys' recognition of the significance of exemplification. The markers in question fulfill the function of indexing a familiar and easily retrievable reality, thereby ensuring that the connection between a known reality and the ongoing discussion

remains transparent and unambiguous. Examples play a vital role in fostering engagement between attorneys and their courtroom audience, as they prompt the audience to recognize and connect with concepts through relatable experiences.

3. Methods and Data

The paper is conducted using a corpus comprising 24 opening statements and closing arguments from six prominent American trials. The corpus is divided into six opening statements presented by prosecution attorneys, six opening statements delivered by defense attorneys. Additionally, there are six closing arguments given by prosecution attorneys, and six closing arguments presented by defense attorneys. The corpus contains a total of 324,439 words. The distribution of these words across the speeches is as follows: 67,892 words in the opening statements of prosecution attorneys, 57,589 words in the opening statements of defense attorneys, 97,408 words in the closing arguments of prosecution attorneys, and 101,550 words in the closing arguments of defense attorneys.

All texts of the corpus are inspected both electronically and manually. The electronic inspection is done using the Wordsmith software toolkit for text inspection, specifically version 4. This software is utilized to search for specific features which could potentially perform elaborating code glossing functions. The manual inspection is utilized for the purpose of verifying the results of the electronic analysis and extracting specific instances for further discussion. A compilation of 11 search items with potential productivity has been created. These items were derived from sources such as grammars (Halliday 1994; Biber et al. 1999; Dowling and Locke 2000), previous research on metadiscourse (Hyland 2000 and 2004), and our thorough analysis of the texts.

4. Findings and Discussion

Inspecting the corpus shows that there are 477 occurrences of code glosses in the corpus, with defense attorneys in the opening statements (DAOSs) employing the most glosses overall (33.33% of the total), prosecution attorneys in closing arguments (PACAs) come second (26.21% of the total), prosecution attorneys in opening statements (PAOSs) come third (24.32% of the total), and defense attorneys in closing arguments (DACAs) come last (16.14% of the total). Table one below shows that prosecution and defense attorneys employed code glosses at approximately similar density.

Table. 1 Code gloss markers in the corpus

Code Glosses	Prosecution			Defense		
	PAOSs	PACAs	Total	DAOSs	DACAs	Total
	116	125	241	159	77	236

The elaborative function of code glosses as it is employed by the attorneys is expressed mostly by *reformulation markers* rather than *exemplification markers*. Table 2 below highlights that exemplification is about 13% only of the overall code glosses in the corpus, and that reformulation is about 87% of the overall code glosses in the corpus.

Table. 2 Code gloss Markers of Exemplification and Reformulation

Code gloss	Prosecution				Defense			
	PAOSs	PACAs	Total	Percentage	DAOSs	DACAs	Total	Percentage
Exemplification	27	10	37	7.76	15	10	25	5.24
Reformulation	89	115	204	42.76	144	67	211	44.24
Totals	116	125	241	50.52	159	77	236	49.48

The analysis of the corpus under investigation has shown that the attorneys do resort, sometimes, to reformulate the keyword(s) of their early propositions because they feel that such words are not so effective or they lack clarity. The use of “*in other words*” and “*which means*” in the following two examples extracted from the corpus

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clearly shows how reformulation is done by the attorneys to secure effectiveness and clarity.

1. *"[In other words], you are not going to learn what plane he would have been on if he hadn't been arrested" Zacarias Moussaoui Trial*
2. *"Now the way that works is, is that this Spotlight, [which is] a newspaper put out by Liberty Lobby in Washington, D.C., [which is] kind of a political organization, advertised these debt cards; and in fact debt cards are a new and fast growing way that people use the telephone" Timothy McVeigh Trial*

Similarly, the analysis has also shown that the elaborative code glossing of exemplification is employed by the attorneys whenever a need to highlight some familiar and easily retrieved reality arises. The attorneys' inclination to employ exemplification is a strategy that help them build a connection between some known reality and their ongoing discussion. The use of "such as" and "specifically" by the attorneys in the following two extracts help them guide the courtroom audience to recognize and connect with the content they provide through relatable experiences.

1. *"You will learn about things [such as] the authorized use of force, proportionality of force, excited delirium, defensive tactics, including prone handcuffing, neck restraints, maximal restraint technique, the swarm technique" Derek Chauvin Trial*
2. *"Ms Schadrie provides some important parts of this particular record. [Specifically], at 11:43, that was the call to Barb Janda's that you heard about." Casey Anthony Trial*

Given the considerable size of the corpus, it is evident that the frequency of code glosses occurring is relatively low. Nevertheless, it is possible that the reason for this is the presence of exceptionally intelligent and skilled individuals within the courtroom community. In the light of this, it appears unnecessary to rephrase, clarify, or expand upon what has been proposed aimed at ensuring that the attorney's intended

meaning is understood. The attorneys' decision to minimize the use of code glosses can be seen as a strategic response to their prediction of the judge and jury's level of understanding in this matter.

3. Conclusions

The primary objective of this study is to investigate elaborative code glossing markers utilized by prosecution and defense attorneys to elaborate on what they have already said. It has been found that the attorneys were able to identify areas in which the courtroom audience may require assistance in interpreting key points, as well as areas that may benefit from further elaboration, specificity, clarification, or the inclusion of examples. Based on the findings, the following conclusions have been derived:

1. Prosecution and defense attorneys' successful expectation of their audience's knowledge and argument preferences resulted in a limited employment of code glossing markers.
2. The use of elaborative code glossing markers, such as reformulation and exemplification, not only strengthens the arguments put forth by attorneys, but also enhances the overall effectiveness of their speeches. Additionally, these markers serve to structure the way in which attorneys connect a text to a specific social and interactive context.
3. The attorneys' arguments are enhanced by using subtle forms of enhancement. These enhancements are designed to enhance understanding, clarify meanings to align with the attorneys' goals, and create links between statements and the audience's background, knowledge, and cognitive needs.
4. The analysis of the corpus also reveals variations in the frequency of elaborative code glossing markers used for reformulation and exemplification, with more emphasis placed on reformulation compared to exemplification.

References

- Biber, D., S. Johansson, G. Leech, S. Conrad, and E. Finegan. (1999). *Longman Grammar of Spoken and Written English*. London: Longman.
- Blakemore, D. (1993). ‘The relevance of reformulations,’ in *Language and Literature* 2:101–20.
- Burke W, Poulson R and Brondino M. (1992). Fact or fiction: The Effect of the Opening Statement. *Journal of Contemporary Law* 18(2): 195-210
- Downing, A. and P. Locke. (2000). *A University Course in English Grammar*. Hemel Hempstead: Prentice Hall.
- Gibson, D.C. (1992) *The Role of Communication in the Practice of Law*. Lanham, MD: University Press of America
- Halliday, M. A. K. (1994). *An Introduction to Functional Grammar*, 2nd edn. London: Edward Arnold.
- Heffer C. (2005). *The Language of Jury Trial: A Corpus-aided Analysis of Legal-Lay Discourse*. Basingstoke: Palgrave Macmillan
- Hyland, K. (2000/2004). *Disciplinary Discourses: Social Interactions in Academic Writing*. London: Longman/Ann Arbor, MI: University of Michigan Press.
- Hyland, K. (2005). *Metadiscourse: Exploring Interaction in Writing*. London/New York: Bloomsbury Publishing
- Hyland, Ken. (2007). “Applying a Gloss: Exemplifying and Reformulating in Academia Discourse”. *Applied Linguistics* 28 (2): 266-285.
- Lief, M.S. Caldwell, H.M., Bycel, B. (1998) *Ladies And Gentlemen Of The Jury: Greatest Closing Arguments In Modern Law*. New York: Scribner
- Quirk, R., Greenbaum, S., Leech, G., Svartvik, J. (1985). *A Comprehensive Grammar of the English Language*. London: Longman.
- Rodríguez-Abruñeiras, P. (2017). Exemplification then and now: A historical overview of English exemplifying markers. *Miscelánea: A Journal of English and American Studies*.
- Swales, J. (2004). *Research Genres*. Cambridge: CUP.
- Tarter-Hilgendorf, Barbara (1986). Large and small juries; is there a difference. *Social Action and the Law* 12(1): 10-14.

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Walter, B. (1988) *The jury summation as speech genre: An ethnographic study of what it means to those who use it* . Amsterdam: John Benjamins.

Zillmann, D., & Brosius, H.-B. (2000). *Exemplification in communication: The influence of case reports on the perception of issues*. Lawrence Erlbaum Associates Publishers.