

Highlighting Audience Presence in the Legal Discourse of Opening Statements and Closing Arguments

Prof.Dr. Mahdi Mohsen Mohammed

College of Education for Human Sciences

University of Basrah

Assist Lect Shahad Hisham Khudher

College of Education for Human Sciences

University of Basrah

Keywords: audience, presence, engagement markers, interaction, legal discourse

Summary:

The objective of the study is to investigate the linguistic elements at the disposal of defense and prosecution attorneys when highlighting the presence of the courtroom audience. Drawing upon the engagement categories in Hyland's (2005, 2008 and 2019) framework of stance and engagement, this study examined the transcripts of twenty four opening statements and closing arguments delivered by defense and prosecution attorneys in six prominent American trials. The findings have shown that prosecution and defense attorneys adopt similar strategies to interact with the courtroom audience; however the density of these strategies varies.

1. Introduction

The concept of audience is widely recognized as being difficult to define (Hyland, 2019). According to certain analysts, the term audience refers to actual individuals who exist outside of the written text, and the writer must take them into account and adapt accordingly (Park, 1986; Adel, 2006). However, for other analysts, the audience is a concept that is represented through the writer's rhetorical decisions (Kirsch and Roen, 1990). It is quite obvious that the aforementioned two perspectives, along with numerous others, have primarily focused on audience in relation to written discourse. Due to the inherent agency of writers in constructing their audience depending on their familiarity with prior texts in comparable contexts, as well as their understanding of the readers' capacities, it becomes evident that the audience is an elusive and ever-changing entity, devoid of a definitive and fixed existence (Hyland, 2019).

In circumstances pertaining to small and immediate audiences, one can ascertain the identities of the audience members, thereby facilitating the task of perceiving the collective disposition of the audience as a whole, as well as the influential individuals within it. Consequently, adapting one's style to align with the prevailing characteristics of the audience in a broad and impressionistic manner should not pose a formidable challenge (Park, 1986).

Speaking about audience brings about some related concepts like: audience design, audience analysis, and audience awareness. Bell (1984) proposed a taxonomy for categorizing various audience types based on three key factors: the audience's membership of the speech context, the speaker's acknowledgment or validation of the listener's presence, and the directness of the speaker's address to the listener. Bell explains that an addressee can be defined as a recipient of a message who is recognized, approved, and specifically targeted for communication. An auditor is an individual who is not directly addressed but is recognized and authorized. Individuals who unintentionally listen to conversations and those who intentionally listen without being detected would not be officially recognized, but the person speaking would be conscious of the unintentional listeners and unaware of the intentional ones .

The concepts of audience analysis and audience awareness are closely connected, with the former serving as an introduction to the latter. According to Park (1986), the primary objective of audience analysis is to assist the writer or speaker in comprehending a given social context. It is recommended that the writer or speaker familiarize themselves with the audience's characteristics. By analyzing the audience effectively, the writer or speaker can tailor their discourse accordingly. According to McAlexander (1996), a writer or speaker's understanding of their audience can be assessed based on four factors: their capability to create a text that is easily understandable to the recipient, their capacity to deliver sufficient content, their ability to differentiate between their own perspective and that of the reader, and their willingness to respect the reader's viewpoint. Additionally, their proficiency in predicting reader reactions and adapting the text accordingly is also indicative of their awareness of the audience.

In a nutshell, though the audiences seem passive discourse participants, they play such a vital role in shaping the way the discourse is produced. It is the audience that determines things like; the degree of discourse complexity, the amount and type of information presented, and the acknowledgement of counter voice .

2. Engagement

The literature of metadiscourse studies has proven that interactions between writers/readers and speakers/listeners in the discourse world are established through the use of stance and engagement categorizations. Engagement refers to the process of aligning discourse producers with their audience by strategically acknowledging their presence. This active involvement aims to incorporate the audience as participants in the discourse and guide them towards specific interpretations (Hyland, 2001).

Through a careful assessment of the audience's previous knowledge, interests, and expectations, a discourse producer can actively assess the audience's comprehension and reaction to the discourse. The primary focal point of this particular viewpoint lies in the close proximity to a specific audience, rather than the strategic positioning of the author. The concept of engagement revolves around the extent to which writers portray themselves as harmonizing their attitudes with the audience, thereby establishing a sense of interaction. As per the scholarly works of Hyland (2005, 2008, and 2019), discourse producers employ five strategies to establish audience engagement:

2.1 Audience Mention

The utilization of audience references serves the purpose of actively engaging the audience in a discourse, typically accomplished through the integration of second person pronouns "you", its possessive and reflexive forms. In addition to employing the use of exact names accompanied by suitable honorifics, such as Mr. Spencer, it is equally imperative to recognize designations that indicate occupational positions, such as 'Judge X' and 'Justice X'. Moreover, it is customary to employ vocative nouns, such as 'ladies and gentlemen', when addressing individuals.

2.2 Questions

In the realm of discourse, questions function as a fundamental means of cultivating meaningful conversation, encouraging individuals to engage actively, evoking a sense of curiosity, and directing interlocutors towards the speaker's particular viewpoint (Hyland, 2002). The employment of interrogative statements possesses the capacity to promote interaction, as they actively engage the audience by presuming that they have an interest in the subject matter under consideration.

2.3 Appeals to Shared Knowledge

Appeals to shared knowledge are distinguished by the utilization of explicit cues that prompt readers to recognize something as familiar or widely acknowledged. Expressions of solidarity serve as invitations for the audience to align themselves with particular perspectives, consequently influencing the formation of their identities by assigning them a role in the construction of the argument. This particular methodology recognizes the valuable input of the audience while simultaneously redirecting the attention of the conversation away from the writer/speaker, thus exerting an influence on the audience's role.

2.4 Directives

Directives encompass a set of instructions that are passed on to the assigned recipients, most frequently in the form of imperative statements and modal verbs denoting obligation. These instructions are formulated with the purpose of providing guidance to the audience in order to facilitate their engagement in a particular course of action or comprehension of information that aligns with the attorney's intended message.

2.5 Personal Asides

The incorporation of personal asides within written discourse affords authors and speakers the opportunity to establish direct engagement with their readers or audience. This is achieved by momentarily interrupting the primary line of reasoning to provide a commentary on the preceding material. Through the act of directly engaging with the reader or audience, the writer or speaker demonstrates an

awareness and responsiveness to an attentive audience, with the intention of fostering a brief exchange that is primarily interpersonal in nature. This particular approach prioritizes the cultivation of a meaningful connection between the writer/speaker and the reader/audience, rather than primarily focusing on the progression of the central argument.

3. Data Description and Methodology

A corpus of 24 opening statements and closing arguments from six famous American trials is used in the research. The corpus is split into two sub-corpus: six opening statements from the defense attorneys and six from prosecution attorneys. Furthermore, there are six closing arguments from the attorneys for the prosecution and six from the defense. There are 324,439 words total in the corpus. These words are distributed as follows across the speeches: 67,892 words were used in the prosecution's opening statements, 57,589 words in the defense's opening statements, 97,408 words in the prosecution's closing arguments, and 101,550 words in the defense attorneys' closing arguments .

All corpus texts are checked both electronically and manually. The electronic inspection is carried out with the Wordsmith text inspection software toolset, specifically version 4. This program is used to look for the previously listed elements that contribute to audience engagement. The human inspection is used to confirm the outcomes of the electronic analysis and to extract specific examples for discussion .

4. Findings and Discussion

Upon inspection of the corpus, it is evident that there are a total of 8325 occurrences of engagement markers. Among these, defense attorneys in closing arguments utilize the highest number of engagement markers, with a total of 3413 occurrences, accounting for 41% of the overall count. Following closely, prosecution attorneys in closing arguments employ 2624 engagement markers, representing 31.52% of the total. In third place, prosecution attorneys in opening statements exhibit 1238 occurrences, making up 14.87% of the total count. Lastly, defense attorneys in closing arguments utilize 1050 engagement markers, accounting for 12.61% of the total count. Table 1 below summarizes the findings:

Table 1. Engagement Markers in the Corpus

Engagement Markers	Prosecution						Defense					
	PAOSs		PACAs		Total		DAOSs		DACAs		Total	
	Frq.	%	Frq.	%	Frq.	%	Frq.	%	Frq.	%	Frq.	%
	1238	14.87	2624	31.52	3862	46.39	1050	12.61	3413	41	4463	53.61

The results suggest that there are notable differences in the density of engagement markers used across the corpus being studied. The defense attorneys demonstrate a higher level of engagement with the courtroom audience, as evidenced by their use of engagement markers, which account for 53.61% of the total occurrences. In contrast, the prosecution attorneys utilize engagement markers in 46.39% of the total occurrences .

It has been observed that the attorneys utilized various techniques to effectively engage the courtroom audience, either by capturing their attention or involving them as active participants in the discourse. Consequently, the attorneys possess the capacity to either highlight or downplay the influence of the audience within the courtroom through the utilization of such devices. Tables 2 provides a comprehensive summary of the nouns, pronouns, questions, and imperatives that constitute engagement markers in the corpus. This table includes the raw frequencies of each engagement marker, as well as the corresponding percentages relative to the total number of engagement markers in the corpus .

Table.2 Summary of Engagement Markers in the Corpus

Category	Element	Pronoun/Noun/ Phrase/Structure	Raw Frequency		% of total Engagement Markers	
			Prosecution	Defense	Prosecution	Defense
Engagement Markers	Audience Mention	you	2699	3222	32.42	38.70
		your	264	318	3.17	3.82
		yourself/selves	32	32	0.38	0.38
		ladies & gentlemen	38	70	0.46	0.84
		counsel	5	20	0.06	0.24
		members of the jury	16	9	0.19	0.11
		folks	24	19	0.29	0.23
		jurors	2	0	0.02	0
	Questions	Wh/ & Yes/No	456	509	5.48	6.11
	Directives	Imperative and Modal	157	132	1.89	1.59
	Personal asides	As I	52	45	0.62	0.54
		By the way	23	20	0.28	0.24
		In my view	1	1	0.01	0.01
	Appeals to shared knowledge	Of course	58	36	0.7	0.43
		CPR	14	12	0.17	0.14
		Obviously	21	18	0.25	0.22
	Column Totals		3862	4463	46.39	53.61

4.1 Findings of Audience mention

It has been established earlier that audience mention is most explicitly represented by the use of the second person pronoun "you" and its possessive and reflexive forms. In addition, it is also represented by the use of the exact names, honorific titles, and occupational positions .

4.1.1 Second person pronoun "you"

The second person pronoun 'you' and its possessive and reflexive forms are the engagement markers that appear most frequently and exhibit the highest density in the corpus. Attorneys of both sides used them quite extensively. They appeared

3572 times in the defense's corpus, representing 42.9% of the total engagement markers in the whole corpus, while they appeared 2995 times in the prosecution's corpus, accounting for 35.97% of the total engagement markers in the whole corpus. It is noteworthy to mention that not all instances of the pronoun 'you' in the current corpus were included in the count, as they do not meet the criteria for being classified as metadiscourse marker of engagement. The generic occurrences of 'you' were not taken into account because they fail to be considered as engagement marker. Only examples that involved an adequate interpretation of the pronoun 'you' as pertaining to the audience present in the courtroom were considered .

The generic use of the second person pronoun 'you' in the examples below and in similar ones in the corpus doesn't make the discourse more involved or audience oriented and this results in disqualifying the pronoun to be regarded as an engagement marker .

1. *"Well, when[you're] dating someone who is a psychopath without a conscience, that's the last thing that person needs to know"*
2. *"If [you] take one Tylenol, [you] may get rid of headache; [you]take a bottle, [you] may get rid of your liver"*

In the aforementioned examples (1) and (2), the attorneys employ the second person pronoun "you" to express general statements. This strategic use enables them to back up their theory of the case by incorporating broader generalizations that extend beyond the walls of the courtroom, thereby presenting their arguments in an impartial manner .

Below are some corpus extracted examples that all contain 'you' . The pronoun 'you' in these extracts refers exclusively to the courtroom participants, therefore it makes the audience more involved in the world of the discourse:

3. *"The evidence I believe will cause [you] to cast doubt on the truthfulness of many of the things that Brendt says on that tape as well".*

4. *"And as [you] piece this evidence together, here's what [you] are going to have to conclude, bone fragments, parts of this body were found where they were not burned".*

In examples (3) and (4) above, the utilization of the second person pronoun "you" effectively emphasizes the jurors' position as direct recipients of the discourse. This feature enables the attorneys to effectively communicate with the jurors, emphasizing their role as the intended recipients of the message, evidence, or other relevant legal information .

4.1.2 Nouns representing occupational positions

As part of the audience mention strategy, nouns representing occupational positions that refer to the courtroom audience appeared 118 times in the defense's corpus, making 1.42% of the total number of engagement markers in the entire corpus, and they appeared 85 times in the prosecution's corpus, representing 1.02% of the total number of engagement markers in the entire corpus. The direct references to the members of the jury in examples (5) and (6) bring them to the attorneys' discourse as direct participants:

5. *"I'm confident, members of the jury, that after the conclusion of this, what could in fact be a six week trial, that you are going to agree with me".*
6. *"Well, ladies and gentlemen, the statements of our forefathers can never be televised to justify warfare against innocent children".*

4.2 Findings of Questions

Questions are the second most commonly used engagement marker in the corpus, appearing 509 times in the defense's corpus, accounting for 6.11% of the total number of engagement markers in the entire corpus. While in the prosecution's corpus, questions occurred 456 times, representing 5.48% of the total number of engagement markers in the entire corpus .

According to Thompson and Thetela (1995), the utilization of questions is considered to be one of the most straightforward methods through which the

audience can be constructed. Even in situations where it isn't anticipated that anyone will respond, the utilization of questions establishes a connection with the audience, as it demonstrates a genuine interest in their thoughts and opinions, thereby maintaining an open line of communication (Chaemsaitong, 2014).

Due to their high level of professionalism, intellectual prowess, and eloquence, the attorneys appeared to recognize the significance of employing questions during their opening statements and closing arguments to foster engagement with the jury. This is because, although the jury may not provide a response and some questions may be rhetorical, the act of posing questions can effectively captivate the audience and thus sustain an ongoing channel of communication. In the corpus under study, we found that the attorneys employed the following types of questions:

4.2.1 Expository questions

Several of the questions posed by attorneys were expository in nature. This type of question serves the purpose of introducing a topic, structuring the argument, and providing a foundation for subsequent discussion. The implementation of such kind of questions effectively creates a sense of fictive interactivity in the opening statements and closing arguments in two ways. First, by positioning the attorneys as both the questioners and the answerers. Second, expository questions function as a structural tool that ensures the coherence of the narrative, thus meeting the jurors' anticipation for a coherent opening statement or closing argument. In example (7) below, the attorney effectively advanced his narrative by employing a series of questions accompanied by their respective answers. In example (8), a question was posed and subsequently answered in order to address any potential doubts that the jurors may have had.

7. *"Do they volunteer to help look in the 4,000 cars? No. Do they volunteer to search Allen and Delores Avery's home? No. How about the pole barns or the outbuildings of the salvage property's business itself? No".*

8. *"You'll ask yourself. When you hear this, who would report gas cans missing? Who? Well, the answer is George Anthony will".*

4.2.2 Focus questions

Attorneys usually employ questions to direct the jury's attention towards a particular aspect of the discourse. In such instances, the attorneys guide the jurors by directing their attention towards specific points, instructing them to pay close attention to these particular aspects. In examples (9) and (10), the attorneys explicitly request the jurors to carefully consider specific aspects of the case by posing questions.

9. *"You're considering Dzhokhar Tsarnaev's character. And you're free to ask, does it really matter who came first in the long line of radicalization"?*
10. *"So as you hear the computer evidence, please ask: What's the source of the document? Where else was it? Who else had it? Where did it come from? Can I know by the fact that it's on there who put it there and why"?*

4.2.3 Rhetorical questions

A rhetorical question serves as an arguing tool rather than a means to elicit an answer. The objective of the question is to convey an indirect statement, typically one that contradicts its propositional content. White (2003) states that rhetorical questions can serve two dialogic functions: firstly, they can provide a thesis as one of several plausible choices; secondly, they can present an opinion as self-evident or common-sense, leaving the audience to provide the obvious answer. Regardless of the situation, the persuasive power of this kind of questions is not found in its explicit statement, but rather in its implicit meaning. In examples (11) and (12), the attorneys' questions convey their views on the case and the characters therein:

11. *"This is not a manslaughter case. This is a sad, tragic accident that snowballed outta control. Her death was covered up. Why did George do this? Why didn't he call 911 again"?*

12. *"If he is really going to plan to kill Teresa Halbach, specifically, why not just call her on the cell phone? Why leave a paper trail"?*

4.3 Directives

Directives come third on the frequency measure of the engagement markers in the corpus. They appeared 157 times in the prosecution's corpus, accounting for 1.89 % of the engagement markers in the entire corpus. In the defense's corpus, they appeared 132 times, representing 1.59 % of the engagement markers in the entire corpus .

In the analyzed corpus, directives were employed to guide jurors towards specific real-world actions. These actions encompass focusing attention or holding a memory, as in example (13), providing recommendations on appropriate (or inappropriate) steps to be taken, as in example (14), articulating the verdict they should deliver, as in example (15), setting up a new line of argument, as in example (16), and leading the jurors through an exposition, as in example (17).

13. *"Remember the ratio where he said, "Well, no, They may have died of something else "*

14. *"But, also, each of the four charges should be considered separately. You shouldn't group them together and decide if he is guilty of all four or none".*

15. *"I will ask at the conclusion of this case, that you return verdicts of guilty".*

16. *"Let's just assume that's what she did. Let's just assume that by Dr. Steinberg's own expert testimony, two minutes".*

17. *"Your level of detection is now much higher. In addition, the protocol was rushed. Think about that. Think about how this whole thing came about "*

4.4 Personal asides

As far as the frequency of occurrence is concerned, personal asides come fourth appearing 93 times in the prosecution's corpus which accounts for 1.12% of the total occurrence of engagement markers in the entire corpus, and 66 times in the defense's corpus, representing 0.79% of the total occurrence of engagement markers

in the entire corpus. Examples 18 and 19 demonstrate instances where the attorneys disrupt the continuous flow of their opening statements or closing arguments and engage the jurors in their own discourse, providing a metapragmatic remark regarding the preceding statements. Attorneys engage in a brief interpersonal dialogue with jurors when they address them during an argument. These additional remarks contribute more to the relationship between them and the jurors than to the development of the main points in their discourse:

18. *"So as I understand his testimony, what Dr. Baker was saying was that there was an unexpected result".*

19. *"I don't believe, by the way, that there was any testimony that Mr. – or Sergeant Orth was seated where Mr. Kratz said he was".*

4.5 Appeals to shared knowledge

Appeals to shared knowledge were not given that much of importance in the corpus under inspection. They appeared 76 times only in the prosecution's corpus, representing 0.91% of the total occurrence of engagement markers in the entire corpus, while they appeared 66 times in the defense's corpus, accounting for 0.79% of the total occurrence of engagement markers in the entire corpus. Examples 20 and 21 presented below demonstrate that the constructions of appeals for shared knowledge explicitly indicate the act of asking the jurors to acknowledge something as familiar or accepted. These expressions of solidarity motivate the jurors to align themselves with specific perspectives, thereby establishing a sense of audience by assigning them a role in shaping the argument. This approach acknowledges the jurors' contribution while shifting the focus of the discussion away from the attorneys, thus shaping the jurors' role in the process:

20. *"I asked many of the questions as to how did Caylee react to Casey because I thought it was important , you understand that it, of course, a child cannot fake this. A, a child cannot fake love".*

21. *"Just look through a little hole and think that you can be able to determine what's there when obviously there was something".*

5. Conclusions

The aim of the research was to inspect a corpus of selected opening statements and closing arguments in six high profile American crime trials for the linguistic resources that prosecution and defense attorneys use to highlight the presence of the courtroom audience. Based on the results of the study, the following conclusions can be drawn:

1. Recognizing the significance of fostering attentive listening among the jurors, both the prosecution and defense attorneys displayed a strong commitment to establishing and upholding a sense of solidarity with them.
2. The use of second person pronouns is indeed an effective method for constructing fictive dialogue between the attorneys and the jurors in the monologic discourse of opening statements and closing arguments. This can be observed, for instance, when jurors are portrayed as characters in narratives, active participants in the discourse, and recipients of directives .
3. The utilization of focus and expository questions, asides, and appeals to shared knowledge are strategies employed to foster mutual interest, anticipate and promptly address potential reactions, and establish a shared comprehension.
4. The attorneys strategically employed rhetorical questions to effectively undermine alternative perspectives without explicitly stating them.
5. The inclusion of engagement elements in the monologic discourses of opening statements and closing arguments serves a crucial role in the meaning-making process within the institutionalized discourse of the courtroom. These elements go beyond simply facilitating communication and instead play a significant role in shaping the overall meaning conveyed.

References

- Ädel, Annelie (2006). Metadiscourse in L1 and L2 English. Amsterdam/ Philadelphia: John Benjamins
- Bell, A. (1984). Language Style as Audience Design. *Language in Society*, 13(2), 145–204. <http://www.jstor.org/stable/4167516>
- Chaemsaihong, K. (2014). Interactive patterns of the opening statement in criminal trials: A historical perspective. *Discourse Studies*, 16(3), 347–364. <http://www.jstor.org/stable/24442008>
- Hyland K (2005) Stance and engagement: A model of interaction in academic discourse. *Discourse Studies* 7(2): 173-192. <https://doi.org/10.1177/1461445605050365>
- Hyland K (2008) Disciplinary voices: Interactions in research writing. *English Text Construction* 1(1): 5-22. <https://doi.org/10.1075/etc.1.1.03hyl>
- Hyland, K. (2001). Bringing in the reader: Addressee features in academic writing. *Written Communication* 18(4): 549–574. <https://doi.org/10.1177/0741088301018004005>
- Hyland, K. (2019). *Metadiscourse: Exploring Interaction in Writing*. London/New York: Bloomsbury Publishing
- Kirsch, G. and Roen, D. (eds) (1990) *A Sense of Audience in Written Communication*. Newbury Park, CA: Sage.
- McAlexander, P. J. (1996). Ideas in Practice: Audience Awareness and Developmental Composition. *Journal of Developmental Education*, 20(1), 28–33. <http://www.jstor.org/stable/42775702>
- Park, D. B. (1986). Analyzing Audiences. *College Composition and Communication*, 37(4), 478–488. <https://doi.org/10.2307/357917>
- Thompson, G. & Thetela, P. (1995). The sound of one hand clapping: The management of interaction in written discourse. *Text & Talk*, 15(1), 103-128. <https://doi.org/10.1515/text.1.1995.15.1.103>
- White, P. (2003). Beyond modality and hedging: A dialogic view of the language of intersubjective stance. *Text & Talk*, 23(2), 259-284. <https://doi.org/10.1515/text.2003.011>

تسليط الضوء على حضور الجمهور في الخطاب القانوني لبيانات الاقتراح والمرافعات المحتمالية

م.م. شهد هشام خضر

أ.د. مهدي محسن محمد

كلية التربية للعلوم الانسانية-جامعة البصرة

كلية التربية للعلوم الانسانية-جامعة البصرة



mahdi.mohammed@uobasrah.edu.iq

الكلمات المفتاحية: الجمهور، الحضور، مؤشرات المشاركة، التفاعل، الخطاب القانوني

الملخص:

تهدف هذه الدراسة إلى استكشاف العناصر اللغوية المتاحة لمحامي الدفاع والادعاء عند الإشارة إلى حضور جمهور قاعة المحكمة. وبالاعتماد على عناصر التفاعل الواردة في إطار عمل هاييلاند (2005، 2008، 2019) الخاص بالموقف والتفاعل، قامت هذه الدراسة بفحص نصوص أربعة وعشرين بياناً افتتاحياً ومرافعة ختامية ألقاها محامو الدفاع والادعاء في ست محاكمات أمريكية بارزة. وأظهرت النتائج أن محامي الادعاء والدفاع يتبنون استراتيجيات متشابهة للتفاعل مع جمهور قاعة المحكمة؛ إلا أن كثافة هذه الاستراتيجيات تختلف.