Fictive interaction in opening statements:

A comparison of the use of interactive linguistic devices between the prosecution and defense

Bart van de Graaf

Zeelandstraat 60-3

1082BZ Amsterdam

tel: +31 6 34054531

b.r.vande.graaf@student.vu.nl; vandegraafbart@gmail.com

Studentennummer: 2626133

Vrije Universiteit

Faculteit der Geesteswetenschappen

P Communication and Information Studies

Begeleider: Prof. dr. A.J. Cienki

Tweede lezer: Dr. G. Dreschler

Juni 2018

Bijlage 6: verklaring inzake Oorspronkelijkheid

In iedere scriptie dient de volgende verklaring na de titelpagina en voor de inhoudsopgave te worden opgenomen en met de hand te worden ondertekend.

> *Ik verklaar hierbij dat deze scriptie een oorspronkelijk werkstuk is, dat uitsluitend door mij vervaardigd is. Als ik informatie en ideeën aan andere bronnen heb ontleend, heb ik hiervan expliciet melding gemaakt in de tekst en de noten.*
>
> amsterdam
> 13-7-2018
> *(plaats, datum)*   *(handtekening)*

Engelse versie:

> *I hereby declare that this dissertation is an original piece of work, written by myself alone. Any information and ideas from other sources are acknowledged fully in the text and notes.*
>
> amsterdam
> 13-7-2018
> *(place, date)*   *(signature)*

Abstract

The phenomenon of fictive interaction was first discussed by Pascual, who draws on conceptual integration theory, or blending theory, and suggests that the schematic interactional structure of ordinary conversation is being used as a common organizing frame to understand, think, and talk about verbal as well as non-verbal entities, processes, and relationships. As Pascual focused on the application of her theory in a legal context, Chaemsaithong examined how the prosecution constructs fictive interaction in opening statements by the use of pronouns, questions, reported discourse and attitude markers. This research replicated the study of Chaimsaithong, but focused on opening statements by defense lawyers in comparison with those by the prosecution. The aim was to answer the question of whether or not the defense side adopts and applies the same or similar linguistic elements as the prosecution to fictively interact with the jury in order to strategically affect their interpretation of information and thereby the final sentence. Building on Hyland's concept of stance and engagement, a quantitative and qualitative research approach was adopted to analyze the transcripts of eight opening statements by defense lawyers in US criminal trials. It can be concluded that the prosecution and defense lawyers frequently adopt similar strategies to establish fictive interaction, as lawyers on both sides have the objective to affect the jury's interpretation of information and evidence. However, considering the different professional objectives of the lawyers, each side tends to make a different strategic use of specific interactive devices to reach their specific goal.

2

Table of Contents

1. Introduction

Pascual (2002) suggests that whole communicative sequences are often conceptualized as turns in a conversation-like interaction, which, in fact, never took place. In her work she refers to the example of "Debate with Kant", in which a modern-day professor sets up a conceptual configuration in where he is arguing with a philosopher from the 18th century, even though they are not in the same place or even the same time. The statements made by the philosopher in the 18th century, become arguments and counter-arguments to the modern professor, and the claims made by the modern professor, criticizing the statements of the philosopher, become counter-claims in a fictive schematic interaction or discussion (Pascual, 2002). Considering this structure of an imaginary discussion, both the philosopher and the professor have different perspectives on the same subject, of which one of them is considered to account for the facts. The arguments are not just put out there, but rather presented in order to convince a particular audience, as in this case the professor's students or the 18th century philosophical community. Therefore, this fictive discussion tends to adopt a triangular conversational structure as three parties are involved. This *imaginary trialogue* (Pascual, 2002), illustrates a situation where the arguments of one party, are constructed and presented in opposition to a second party, in order to convince a third party. Pascual (2002) argues that this phenomenon also occurs in ordinary thought and language use, and specifically studies the occurrence of fictive interaction in legal context.

The three parties in a modern legal context take shape in a situation where the prosecution, one party, and the defense, a second party, attempt to convince a jury, the third party. In U.S. criminal trials, the defendant is not judged by a judge, but by a jury, and more specifically, by 'a jury of peers'. 'Peers', in this context, does not necessary mean that the members of the jury in any way resemble the accused based on gender, race or any other categories. 'Peers', in this context, rather means the accused is judged by fellow citizens and members of society. As the structure of the jury is not made known prior the start of the trial, lawyers need to prepare a strategy that would apply to anyone. Therefore, as lawyers on both sides are by law provided with the same evidence, the only common strategy that remains is to deliberately present the evidence in such a way that affects the jury to favor one of the counsels in their decision. Accordingly, first the prosecution gets the chance to speak to the jury, followed by the defense. As the opening statements are typically not interrupted by any of the parties present, the story of the lawyers seems to be structured as a monologue. However, as both lawyers have the same evidence to build their story upon, simply presenting the facts of the crime wouldn't do the trick. Therefore, lawyers turn the jurors into co-constructors of the discourse by structuring their opening statement using specific interactive linguistic elements so that the jury may interpret the provided information in a certain way that could cause a certain conscious or unconscious reaction in their minds. This phenomenon of the jury having a specific reaction to the seemingly monologic utterance of one of the lawyers, is what Pascual (2014) calls *fictive interaction* in an imaginary conversation, which is constructed through the use of linguistic elements such as pronouns,

attitude markers, questions and reported discourse, as studied by Chaemsaithong (2014). Taking a historical perspective, she studied interactive patterns of the opening statements of the prosecution in criminal trials, and found that lawyers on the prosecution side clearly present their attitude towards past events, "directly address and engage the jurors as their interlocutors in the here-and-now moments, and re-animate the voices of other characters in constructing their opening statements" (Chaemsaithong, 2014, p. 16).

However, despite its critical role in criminal trials opposing the prosecution, the interactive patterns contained in the opening statements by defense lawyers have not yet been studied as specifically as Chaemsaithong (2014) studied those of the prosecution. This gives rise to the question of whether or not the defensive side adopts and applies the same or similar linguistic elements as the prosecution in their opening statement, to fictively interact with the jury in order to strategically affect their interpretation of information. Therefore, with a focus on opening statements by defense lawyers and the objective to contribute to the respective current linguistic literature, the present research replicates the study by Chaemsaithong (2014) and accordingly builds upon Hyland's (2005, 2008) concept of stance and engagement, to present a comparative analysis of the findings with regard to prosecution versus defense lawyer's strategic use of interactive linguistic devices to fictively interact with the jury.

This research may have practical implications for the development of linguistic strategies in the courtroom as is provides a better understanding of the occurrence of fictive interaction in a legal context. This could be beneficial for both the prosecution and the defense, but could additionally also improve the subjective view of the jury as they are made aware of the persuasive nature of the opening statements. Practical implications outside of a legal context, involve the unique setting and base for studying how discourse pressure affects conversational structures as fictive interaction.

This research begins by reviewing the current literature on fictive interaction and several related elements of language use in criminal trials, and pays specific attention to the findings of Chaemsaithong (2014). Based on this theoretical framework, the main research questions were formulated, concerning whether or not the defense side adopts and applies the same or similar linguistic elements as the prosecution in their opening statement, to fictively interact with the jury. This is followed by an overview of the research methodology used and the respective data, and the work proceeds with an analysis of the discourse data under consideration and a discussion of the findings. This research concludes with how these findings compare to the findings of Chaemsaithong (2014) and other recent literature on fictive interaction and language use in criminal trials.

2. Theoretical Framework

This chapter discusses the current literature on fictive interaction, several related elements of language use in criminal trials, and pays specific attention to the findings of Chaemsaithong (2014).

2.1 Literature review

In 2002, Pascual introduced her research on fictive interaction with the statement that the fact

that we as social human beings primarily make use of face-to-face interaction with others, "affects our conceptualization of experience as well as the internal architecture of language structure and use" (Pascual, 2002, p. 1). Accordingly, pioneering in examining the relation between language, interaction and cognition, she focused on a phenomenon never studied before, which she calls *fictive interaction*. Drawing on conceptual integration theory (Fauconnier & Turner, 1998), also known as blending theory, Pascual (2002) suggests that the schematic interactional structure of ordinary conversation is being used "as a common organizing frame to understand, think, and talk about verbal as well as non-verbal entities, processes, and relationships" (p. 1).

In her work she further discusses this phenomenon and draws attention to the occurrence of fictive interaction within everyday life situations with an emphasis on fictive interaction in criminal trials (2002, 2008). Building on her theory of fictive interaction, she suggests that important communicative performances in the courtroom are perceived by participants as turns in a fictive conversation. It is relevant to state here that these performances in the courtroom or the "counsels' discourses" (Pascual, 2002, p. 146), such as opening and closing statements before the jury or judge, are typically not interrupted by any of the present parties. Therefore, even though the prosecution, defense and jury do not directly reply to each other's utterances, the statement of Pascual (2002) implies that, whether the two sides are involved in an opening statement, witness testimony or closing argument, they are adopting a question-answer or even discussion pattern similar to ordinary conversation by taking turns in presenting their respective arguments towards the jury in an attempt to in some way 'answer' their question whether or not the defendant is guilty. This 'discussion' occurring in the courtroom is constructed through fictive interaction (Pascual, 2002). Additionally, due to the fact that the lawyers are not simply throwing their arguments "to the air", as Pascual (2002, p. 131) describes it, but intend to convince the jury, this imaginary conversational structure seems to be structured as a fictive conversation between the three parties involved, namely the defense, the prosecution and the jury, constituting a fictive trialogue as defined by Pascual (2002).

Accordingly, a brief observation of an average criminal trial opening or closing statement will appear to be just one person speaking. However, continuing on this topic of fictive interaction in oral legal discourse, Pascual (2002) argues that, even though the utterances of lawyers indeed may seem to be structured as monologues, there certainly seem to be some sort of 'conversation' going on. In her work she quotes the words of Harré (2002), who also remarks that, considering the point of view that if only one person is speaking, it indeed seems to be a monologue, it can be hardly true that the opposing party and jury listening do not have any nonverbal reaction, as for instance looks, sighs or signs, let alone reaction on the level of private discourse such as agreement, doubt, disagreement or other thoughts, which could potentially affect their judgement.

This phenomenon suggests that in order to affect the way the jury interprets the information, with the ultimate goal of affecting the jury's final verdict, lawyers fictively interact with the jury by carefully determining the way they present their case. More specifically, they will present a carefully

structured story that fits with the juror's knowledge and human experience (Snedaker, 1986) so that the jury pays specific attention to their discourse, which "engages the jury in such a way that, though silent, they become active participants in the construction of some mental image" (Pascual, 2002, p. 147) and therefore reinforce the arguments they proposed. There is a range of existing research on the way jurors interpret and receive information or evidence in court. For instance, in a study on language use in courtrooms, Hobbs (2008) suggests that a lawyer's effectiveness, regardless of what side he or she is on, involves not only uttering the right words, but also heavily dependents on the way the words are said. She states that "lawyers do not just speak, they perform, constructing displays of style and competence that command the attention of their audience and imbue their arguments with persuasive force" (Hobbs, 2008, p. 231). Moreover, according to D'hondt and van der Houwen (2014) performing what another speaker, as for instance the defendant, presumably has said as direct reported speech, the lawyer enacts a powerful rhetorical device. As also stated by Matoesian (2001), reporting direct speech as in the instance of "re-animating the voices of other characters" suggested by Chaemsaithong (2014, p. 16), transforms utterances into evidence with affective meaning. Furthermore, as in the opening and closing statements, the reporting of monologized versions of dialogical interaction during witness testimonies are often perceived by the jury as a truthful reproduction of what the respective person has said during the time of the crime (Komter, 2013).

In its essence, lawyers are providing the jurors information, which is unconsciously perceived as relevant and useful, and therefore helps them to make sense of the confusing and complex chain of events (Devine, Clayton, Dunford, Seying, & Pryce, 2001). This was also found by Cotterill (2003), who states that the characterization of the defendant by the prosecution lawyer provides interpretative frames for the jury to organize their perceptions. The structuring of these perceptions in the minds of the jury, which engages them with the thinking of either the prosecution or the defense, can be assumed to be a strategic part of what Pascual (2008) in a later study calls 'the battle of sympathy'. Pascual conceptualizes this 'battle of sympathy' as "a competition between prosecution and defense to win the jury's sympathy for the victim or the accused respectively" (Pascual, 2014, p. 174). Additionally, Pascual (2002) is drawing on conceptual integration theory developed by Fauconnier and Turner (1998), also known as blending theory, which refers to the cognitive operation of combining or 'blending' of, for instance, ideas in mental spaces to create new meaning. She therefore argues that it is unlikely that, the 'blend' of presenting evidence and engaging the jury by lawyers, is not aimed at affecting the jury emotionally to create sympathy, even though the law instructs the jury not to be influenced by subjective matters such as emotion. Nevertheless, it is generally a well-known fact that sympathy plays an important role in the jury's decision making process (Feigenson, 2000), which therefore implies that the jurors tend not to make decisions in the manner intended by the court, regardless how of they are instructed or legally obligated (Devine et al., 2001). So even though it might not be the way lawyers are 'officially' supposed to defend their case, winning the battle of sympathy would give both the prosecution and the defense the ability to construct the way the jury

7

interprets the evidence they will receive after the opening statements or provide a new perspective on the evidence during the closing arguments in their favor. This is suggested by both Goldstein (2001) and Pozner (2000), who agree on the importance of involving the jurors in the construction of the respective lawyer's version of the truth.

Accordingly, even though the literature suggests that lawyers of both the prosecution and defense make strategic use of the way they present their arguments and thereby fictively interact with the jury, current studies on linguistic approaches in the courtroom state some notable but straightforward differences in the way this occurs, based on the respective professional role of the lawyer (D'hondt & van der Houwen, 2014). For instance, when considering the role of a defense lawyer; his or her task is to minimize the guilt of the defendant. It is reasonable to assume that, in fulfilling this role, the lawyer adopts a language style that differs significantly from the prosecutor's style, even though they are both provided with the same information. In their study on linguistic strategies in the courtroom, Schmid and Fiedler (1998) conclude that subtle language strategies do have a noticeable effect on the attribution of blame and guilt in a legal setting. In regard to the two opposing views on the defendant's behavior, they state that the prosecution may adopt a linguistic strategy that not only highlights the defendant's negative behavior and externalizes positive aspects, but also increases the number of negative statements to express the defendant's intentions and responsibilities. An example of the adoption of such a language strategy was found in, for instance, the O.J Simpson trial, as studied by Cotterill (2003). She found that the prosecution repeatedly exploited the negative properties of terms such as 'encounter' and 'control' to negatively portray Simpson. In contrast, Schmid and Fiedler (1998) state that the defense lawyer may adopt a linguistic strategy where he raises his arguments in a more abstract and global language level and tends to refer to diffuse groups rather than to the individual defendant, as also found in the O.J Simpson trial where the defense framed the interactions between the Simpsons as 'discussions' and 'incidents' (Cotterill, 2003).

In more recent literature on language use in courtrooms, Maryns (2014) states, in her study on the interdiscursive construction of irresponsibility as a defense strategy in Belgian courts, that ordinary commonsense reasoning is preferred by the jury, as accomplished "through animation of other people's voices" (Maryns, 2014, p. 34). Similar to what the prosecution may do, this allows the defense counsel to present their understandings of the events, "while at the same time remaining sufficiently implicit, so that the jury members can still be attributed an active role in assessing the facts and drawing conclusions from tacit arguments" (Maryns, 2014, p. 34), as similarly suggested by Devine et al. (2001), Goldstein (2001) and Pozner (2000). Similar to the research of Maryns, D'hondt (2014) studied the vicissitudes of alignment and footing in Belgian criminal hearings and states that, specifically, the seemingly monolithic activity of defensive lawyers contains a complex and continual shifting of interactional alignments, each of which is connected in a distinct way to the context of the case. This phenomenon, known as 'footing', is conceptualized by Goffman (1981) as how the frame of

a conversation is determined by the position the speaker adopts in relation to for instance a person, group or thing. In this sense of footing in court room discourse, shifts in footing as, for instance, using pronouns to shift from first person singular to first person plural, allow the defensive lawyer to take a certain position towards the respective discourse, as implied by Goffman (1981), but also position the listeners towards the discourse by, for instance, using an inclusive *we* as suggested by Hyland (2005). This proposes a complex of associated interactional alignments towards both the jury and the prosecution (D'hondt, 2014) and thereby sets up the defensive lawyer in his or her preferred position in a fictive conversational framework, presumably similar to what the prosecution also does. As the literature discussed above suggests that lawyer's linguistic strategies in the courtroom are used to fictively interact with the jury to alter their perception of evidence without directly addressing any interlocutors, the statements of Pascual (2002), among others, imply that these strategies encompass several linguistic elements contributing to fictive interaction, as also suggested by Chaemsaithong (2014).

Chaemsaithong (2014) studied the interactive aspects and patterns of several linguistic elements in opening statements in criminal trials. Taking a historical perspective, she analyzed the transcripts of opening statements of 51 trials between 1759 and 1789 as recorded in a digital collection of criminal trial transcripts, held at London's central criminal court, called "Proceedings of the Old Bailey". Similar to many recent studies on language used in criminal trials, Chaemsaithong (2014) only investigates the opening statements made by the prosecutors. The study of Chaemsaithong (2014) states that lawyers use several different linguistic features in, for instance, re-telling past events during opening statements. They clearly present their attitude towards those events and directly engage and address the jury as interlocutors in the moment of the crime by for instance "re-animating the voices of other characters in constructing their opening statements" (Chaemsaithong, 2014, p. 16). Chaemsaithong (2014) suggests that the use of these interactive devices allows the lawyers to fictively interact with the jury and communicate their representation of what truthfully happened towards the jury.

Although, the majority of the research conducted on this topic is either focused on legal linguistic strategies in more general terms, or on very specific terms of the defense or prosecution side. As also the research of Chaemsaithong (2014), who only studied the prosecution side in regards to linguistic elements associated to fictive interaction. Therefore, the question remains as to whether or not the defensive side adopts and applies the same or similar linguistic elements as the prosecution in opening statements to fictively interact with the jury in order to strategically affect their interpretation of information and thereby the final sentence.

In order to answer this question, this study will replicate the research of Chaemsaithong (2014), presenting a comparison of her findings on the prosecution side and the findings of this study on the defensive side, in regards to lawyer's use of pronouns, attitude markers, questions and reported discourse to fictively interact with the jury.

9

2.2 Categories of analysis

Chaemsaithong's (2014) analysis of the criminal trials is based on Hyland's (2005, 2008). framework of interaction, also known as his framework of voice. This framework was developed in order to allow the analysis of linguistic resources of intersubjective positioning (Hyland, 2005). The widespread context of this model provides a way of examining the means by which interaction is achieved in academic argumentation (Hyland, 2005). Hyland (2005), states that interaction in academic writing involves a writers positioning towards both the issues discussed and to the point of view others may have on that issue. Academic writers achieve an effective persuasive representation of their results and interpretations by adopting a certain writer-reader dialogue, which expresses their positions, represents themselves and engages their audience. This way writers display their competence as disciplinary insiders and anticipate themselves and the reader's response to a larger discourse, but also allow the reader to refuse claims, which provides them an active role in how academic writers construct their arguments and "locates the writer intertextually within a larger web of opinions" (Hyland, 2005, p. 176). Hyland suggests that there are two main dimensions relating to writer/reader interaction, namely stance and engagement. Stance can be seen as an attitudinal dimension and consists of features that refer to the way academic writers, or in this specific case lawyers, position themselves towards an issue and try to convey their judgements, opinions and commitments by using linguistic resources such as hedges, boosters and attitude markers (Hyland, 2005). Engagement, on the other hand, is an alignment dimension where writers acknowledge and connect to their audience, focusing their attention and including them as participants in discourse by using linguistic resources such as reader or second person pronouns, personal asides, appeals to shared knowledge, questions and directives (Hyland, 2005).

2.2.1 Pronouns

In her study Chaemsaithong (2014) extensively discusses the use and occurrence of these linguistic resources of stance and engagement as proposed by Hyland on the prosecution side. In general, she concludes that these interactive features are found in all opening statements, with pronouns being used most frequently. More specifically, she states that second-person pronouns are used most often to establish fictive interaction in the courtroom and states several different strategic applications. First Chaemsaithong (2014) suggests that second-person pronouns establish the jurors as experiencers or as an audience during the trial, and by taking their mental processing for granted, the jurors are placed in a position where they are willing to interpret the lawyer's argument as true. Secondly she found that, second-person pronouns are used by lawyers to remind the jury of their responsibility and that their verdict is in the benefit of the public and that they should act accordingly, even though their rational decision might not be an easy one, from the emotional point of view. Thirdly, Chaemsaithong suggests that second-person pronouns are used to remind the jury that they are the direct addressees of the discourse, that they are the ones being talked to, even though they are not allowed to reply. Fourthly, lawyers use second-person pronouns to tell the jury to do something.

For instance, the lawyer could tell the jury to actively think about a certain situation, as directly related to Hyland's (2005) conceptualization of directives. A fifth use of second-person pronouns is a lawyer's reference to an experience outside of the courtroom that jurors are more familiar with, which helps them to understand something better that may have been abstract before. Finally, Chaemsaithong (2014) suggests that second-person pronouns are used generically, which directly invites the jury to imagine a common or hypothetical situation or event expressed by the lawyer. This strengthens the arguments of the lawyer as the situation goes beyond the context of the trial and therefore appears more natural in the minds of the jury.

Additionally, first-person singular pronouns were also used frequently by lawyers in their opening statements. These however, make a lawyer's discourse more focused on the orientation of the sender (Berman, 2005; Hyland, 2000). In her study Chaemsaithong (2014) found that first person singular pronouns were used often by lawyers to refer to points they made earlier during their opening statement to emphasize their previous claims. Using expressions such as 'as I have told you', the lawyers become part of the narrative they are presenting and increase the social cohesion between them and the other contributors of the discourse (Mauranen, 2003). First-person singular pronouns are also used to emphasize the role the lawyer has as speaker or as creator of the discourse, in which he guides to the jury to interpret and process the provided information, using utterances as for instance 'as I mentioned…'. Additionally, Chaemsaithong (2014) states that first-person singular pronouns are used by lawyers to mention personal aspects of their lives outside of the courtroom, and connect them to the discourse of the case. This is similar to the strategic use of second-person pronouns to propose a hypothetical situation to engage the jury; the lawyer here, however, creates a more personal imaginary everyday scene to create analogy between the scene and the case to convince the jury of the defendant's guilt without necessarily inviting the jury to engage in this fictive situation.

Next to first-person singular pronouns, first-person plural pronouns tend to influence group membership and participant alignment (Chaemsaithong, 2014). As suggested in her study, Chaemsaithong (2014) observes that lawyers use the first-person pronoun 'we' to place themselves within a group of legal professionals, who therefore seem to become more trustworthy or capable of possessing the knowledge and evidence pertaining the case. This was also found by Duszak (2006) who states that, by using the first-person singular pronoun 'we', the speaker determines his "set of people" as a group, and he "explicitly states that he is a member of this group" (p. 31). Moreover, the lawyers used first-person plural pronouns to 'become one' with the jury and align themselves into the group of jurors to construct a shared identity. They present their arguments in such a way that assumes shared knowledge and mental experiences, as also proposed by Hyland (2005), who suggests that 'appeal to shared knowledge' is part of engagement or audience positioning. Consequently, "listeners will not question the speaker's argument and will accept that the speaker is genuinely speaking on their behalf (Chaemsaithong, 2014, p. 10). Not only do lawyers use first-person plural pronouns to join the jury in a group, they also use it to invite the jury and themselves to become part of a group outside

of the courtroom as they appeal to common social values, as for instance humanity as a whole. Instead of drawing upon a specific group, lawyers also used first-person plural pronouns to draw upon no group at all or rather at a group that involves everyone. This generic use of 'we' implies how specific situations apply to everyone. Chaemsaithong (2014) suggests that situations like common sense and universal statements "establish generalities and create a persuasive proposition" (p. 11).

2.2.2 Questions

As a lawyer, using questions in an opening statement is an obvious way of construing interaction between oneself and the jury. This is because even though the jury will not reply, and some questions are even rhetorical, asking questions can engage the audience and therefore it keeps the communication channel open (Chaemsaithong, 2014). Some of the questions lawyers used were expository questions. This type of question functions to introduce a topic, to organize the argument and to provide something to build on for the following discourse. Chaemsaithong (2014) suggests that adopting this strategy of using expository questions makes opening statements fictively interactive, not only because it positions the lawyer as both the questioner and the answerer, but also because it fulfills the juror's "expectation of a cohesive opening statement" (p. 11). In addition to the work of Chaemsaithong (2014), Pascual (2006) argues that this kind of question, when asked by the prosecution, indirectly involves the defense as the main questioner of their own argument, to subsequently question their version of the facts. She also states that, as this type of question also involves the opposing counsel, which means the involvement of three parties, namely the prosecution, the defense and the jury, this type of question reproduces a triadic structure of courtroom communication. Another strategic use of asking questions in opening statements, found by Chaemsaithong (2014), is when a lawyer wants the jury to pay specific attention to a certain aspect of the discourse. By asking particular questions, or focus questions, the lawyer foregrounds these aspects in the mind of the jury and essentially construct key points that determine the jury's verdict. Additionally, questions not only function as a question-answer device, but can also be used argumentatively by making indirect statements. As White (2003) suggests, this type of questions, which he calls pseudo or rhetorical questions, perform one of two functions. He states that they can either "be used to introduce a proposition in such a way that it is presented as but one of a number of possible positions" (2003, p. 267), or they can represent the proposition as so commonly agreed upon, by society, for instance, that is doesn't need to be answered by the writer or speaker, and the audience is left to supply the required meaning. Additionally, Pascual (2006) argues that this type of question "should be regarded as a powerful means of persuasion" (p. 393), as it manages to engage the jury in the reasoning process, it re-enacts the argument of the opposing counsel, and allows the lawyer to prepare an argument for 'counter attack'.

2.2.3 Reported discourse

Lawyers do not solely rely on their own voice. Their ability to re-animate voices, or the process of speech representation, allows them to use other people's voices through reported speech,

expressed in direct and indirect discourse (Chaemsaithong, 2014). As lawyers provide coherent stories to the jury, they adapt the voice of characters who are involved in the crime to interact with the jury. These characters could be, for instance, witnesses who are there to give information about the crime because they were present at the moment of the crime. By re-animating the voice of such a character, the lawyer "depicts the experience of the original utterance and puts an emphasis on the direct experience of the witnesses" (Chaemsaithong, 2014, p. 13). Additionally, lawyers may adopt the voice of personal authorities, which are characters in the story of the lawyer whose status has been granted by the current institutional context, such as, for instance, the judge, a coroner or police agent. The adoption of such a voice allows the lawyer to emphasize the credibility of his story, as he builds on the credibility of professionals. Similarly, lawyers may quote the voice of impersonal authorities, which, for instance, include the law and other non-authoritative sources such as social norms (Chaemsaithong, 2014). Using this "voice", additional credibility is granted to the lawyer, as he appeals to common factual knowledge which allows him, for example, to compare the acts of the defendant to a written law. Moreover, as related to the previous statements on 'questions', Pascual (2006) suggests an additional way a lawyer can use 'voice' to complement his arguments: e.g., by asking a question, taking the voice of his opponent. According to Pascual (2006), this fictively confronts the opposing lawyer verbally and thereby probably also voices the doubt of some jurors. Using his own voice and viewpoint, the lawyer can simultaneously tone both the question and its rhetorical answer, in his favor (Pascual, 2006)

2.2.4 Attitude markers

The presentation of a coherent narrative towards the jury is not something that occurs naturally. The lawyer chooses to take a certain position towards the discourse as he presents the information through various attitude markers. In this way, the lawyer guides the audience's interpretation of certain information by describing certain aspects of his story using evaluative expressions and indicates his or her personal affective attitude to propositions (Chaemsaithing, 2014). In addition, attitude markers are used to put emphasis on certain parts of the narrative by presenting them as a worthy consideration, such as specific pieces of evidence that could be used to prove innocence or guilt. Attitude markers are also used to convey necessity (Chaemsaithong, 2014). They portray the respective character's attitude towards the social information of permission, responsibility and obligation, by, for instance, leaving no doubt about a situation when the word 'must' is used. Finally, Chaemsaithong (2014) also states that lawyers used attitude markers to indicate their agreement or disagreement. Using adjectives such as 'afraid' and 'impossible', the lawyer expresses a certain superiority with regard to knowledge of the discourse and therefore aims to persuade the jury that his claims during the narrative were truthful and correct (Chaemsaithong, 2014).

3. Data and Methodology

This chapter discusses the data used for analysis and provides a description of the methodology, operationalizing, research design and coding criteria used in this research.

3.1 Data

In regards to the data, Chaemsaithong's study was based on 51 criminal trials, between 1759 and 1789. To our knowledge, it is the most extensive application of Pascual's idea of fictive interaction to courtroom opening statements. The material was collected in the Proceedings of the Old Bailey, totaling 134,468 words. The Proceeding of the Old Bailey is a digital collection of transcripts, containing a total of 197,745 criminal trials held at London's central criminal court between 1674 and 1913. Chaemsaithong (2014) states that, even though the earliest available data of trials at the Old Bailey indeed dates from 1674, it was not until 1759 that opening statements were a part of criminal trials, hence the data period she studied. Moreover, all the opening statements studied by Chamesaithong (2014), were made by the prosecution, as in contrast to the data used in this research, which aims its focus on the statements of the defense counsel. The data of this research was made available by PhD student Anna Leonteva as part of her project on gestures used in narratives. The transcription of speech was done as part of the work in a thesis group. The data consists of transcripts of eight different defense opening statements from criminal cases from the United States, totaling 24,396 words. As the U.S court often video records criminal trials and makes them publicly available on online websites, all criminal trials used were originally transcribed from digital video from YouTube (see appendix A) and checked and revised by a second transcriber. For more detailed information, an overview of the used criminal trials, an indication of duration and a numeric frame of reference, see table 1.

Table 1 – *Criminal trials defensive opening statements.*

Nr.	Short name of trial	Duration	Word tokens
1.	Campbell, D.	00:31:21	5546
2.	Caronna, J.	00:16:29	2406
3.	Creato, D.	00:12:39	965
4.	Cloud 9.	00:12:39	2014
5.	Loya, A.	00:13:15	1672
6.	Moor, S.	00:19:31	3281
7.	Willis, J.	00:09:17	1414
8.	Woodward, S.	00:53:37	7098
	Total	02:46:46	24396

3.1.1 Data justification

Considering the fact that the data researched by Chaemsaithong (2014) is based on transcripts from the 18th century from the UK, or England at that time, and the data studied in this research is based on transcripts from the 21st century from the United States, a direct comparison between data could arguably be unreliable. In order to justify this comparison, several relevant topics are discussed.

As the legal objective and strategy highly determines the linguistic strategy used by the lawyers, the legal systems of both data sources should be addressed as this could affect the data. However, several facts on the historic construction of both the legal system in the US and England, justify the comparison between these two court systems. During the mid-18th century, private prosecutors and later also the defense council were introduced in the British legal system (Hostettler, 2006). This is considered to be an important shift in legal strategies, as this allowed the defensive counsel to expose the weaknesses of the prosecution's case on the behalf of the defendant. Additionally, it caused the prosecution to rethink their legal strategy, which consequently made them present their case with a great decency of language towards the jury (Hostettler, 2006). Considering the fact that the United States were a colony of the British Empire up until July 4, 1776, these developments in the British legal system, are considered to be the foundation for the legal system adopted in the United States (Friedman, 1995). This is why both courtrooms involve a judge to rule, lawyers to represent their client and a jury waiting to be convinced. Therefore, as lawyers in both the United States and England practice law based on the same basic legal principles and systems, their legal strategies can be considered to be similar enough to justify a direct comparison.

Additionally, the different moments and locations of data collection should be justified. In her work, Pascual (2014) suggests the wide spread nature of the phenomenon of fictive interaction and discusses its cultural dependence. For instance, she refers to the research of Güldemann and von Roncador (2002), who discuss the existence of language constructions, as in languages such as English, and the different implementations, in different languages around the world. Accordingly, Pascual (2014) discusses several culturally different implementations of language structures and reported speech, and even refers to cultures without written tradition, as studied by van der Voort (2002). He studied the structures and construction of reported speech in the unclassified language Kwaza, spoken in Southern Rondônia, Brazil, and found several cultural differences in language construction, as for instance; in contrast to Kombai (de Vries, 1993), Kwaza does not obligate the expression of emotion through direct speech. Other references of Pascual (2014) on the cultural dependence of linguistic structures such as fictive interaction, include de Vries (2010), who researched the different implementations and complications of fictive interaction in the process of bible translation around the world. He states several common features of language structures, but also highlights the complications of implementing fictive interaction cross-culturally. Additionally, in collaboration with Pascual, Xiang (2016) refers to the fact that, as similar to modern languages, many ancient and historic written texts have a clear conversational structure. This demonstrates that conversational structures, such as fictive interaction, occur in various languages, in ancient and modern discourse and across various genres and sociolinguistic groups (Pascual, 2014). This not only suggests that the phenomenon of fictive interaction is used across cultures, but also that is has been around for centuries. Therefore, despite the different locations and moments of data collection, the straightforward western-cultural similarities between England and the United States, their common

history, the broad nature and historic application of fictive interaction across cultures, the direct comparison between the 18th century data from England and the 21st century data from the United States, was considered to be justified for this research.

3.2 Methodology and operationalizing

In regards to the methodology and operationalizing, the analysis conducted by Chaemsaithong (2014) is based on the framework of voice as proposed by Hyland (2005, 2008), which is accomplished through a system of stance and engagement. Likewise, the coding and categorization of the different interactive devices was based on the criteria originally stated by Hyland (2005, 2008) and Chaemsaithong (2014). Due to limited time and resources available, no second coder was involved in the analysis. However, in order to aspire a reliable analysis, and to allow potential future replication of the study, the coding criteria were made as explicit as possible and strictly based on the original academic interpretation of the categories as proposed by Hyland (2005, 2008) and Chaemsaithong (2014).

Accordingly, in respect to the methodology of Chaemsaithong (2014), Hyland's model was slightly modified to "reflect the generic conventions and constraints of the opening statements" (Chaemsaithong, 2014, p. 5). Like Chaemsaithong (2014), this research placed Hyland's category of 'directives' under second-person pronouns, as Chaemsaithong observed the two occur together. Moreover, second-person pronouns, together with questions and reported discourse, are placed under engagement devices. In regards to stance-indicating devices, Hyland's hedges and boosters are placed under attitude markers as Chaemsaithong (2014) states both these devices indicate a speaker's view on a particular issue, but the possibility that attitude markers are used as booster or hedge is considered. More information and an extensive description of the categories, the interactive devices and the criteria applied, is discussed in the following.

3.3 Coding criteria.

The devices second-person pronouns, questions and reported discourse were placed in the category of engagement. Chaemsaithong (2014), relates second-person pronouns, for example in the form of; you, your, yours and yourself, to the category of directives as proposed by Hyland (2005). Accordingly, Hyland (2005) states that "directives instruct the reader to perform an action or to see things in a way determined by the writer" (p. 184) and are often signaled by the presence of verbs with an imperative nature. For instance, in the example of Chaemsaithong (2014) "your duty to the public requires that *you should* find him guilty" (p. 7), the second-person pronoun *you* and the imperative *should*, tell the listeners what to do, and is therefore categorized as a directive. However, the fact that second-person pronouns as for instance 'your', can for example also have a possessive nature, and therefore do not categorize as a directive, was considered and categorization decisions were based on the word's place in context.

Moreover, Chaemsaithong (2014) recognizes three different kinds of questions under the category of engagement. The first being *expository questions*, which were coded based on her

definition; questions that function to introduce a topic and provide textual scaffolding for the discourse to follow (Chaemsaithong, 2014). In practice this type of questions often comes in the form of lawyers answering their own questions, so they can advance on their own discourse, as for instance in the example of Chaemsaithong (2014); "It may be asked, if this is the description of the libel, why is it brought forward into the view of the public, and why is the defendant brought here to answer for it? I reply…" (p. 11). The lawyer asked a question and directly answered it to continue on the statement he made by asking the question, which signals and categorizes this type of question as expository.

The second type of questions are *focus questions* and are likewise coded based on the definition of Chaemsaithong (2014), which states that this type of question puts the attention on a specific topic of the discourse. The lawyers orientate the jury towards specific points by telling the audience to fix their attention to such points and consider particular aspects of the crime through the form of a combination of introductory clauses and questions, as for instance "there was nobody else to call her; there was no person present but themselves; Who then struck the blows? Who stabbed this poor woman when she was laying in bed, *it is for you to decide*?" (Chaemsaithong, 2014, p. 12). In this specific case, the lawyer puts the focus of the question on the key point that there was nobody else present at that moment to commit the crime, which makes these types of questions categorize as focus questions.

The last type of questions recognized in the analysis are *problematic questions*. This type of question is coded based on the statement of Chaemsaithong (2014) that this type of question often does not come in the presence of a direct answer by the lawyer, as it is often indirectly answered by the jury. However, in contrast to focus questions, which also do not necessarily need a direct answer, problematic questions are not focused on the key points the question asserts, but rather on what the question implies in context. In the example of; "if it was by accident, why was the pistol charged, why was it loaded, why was it presented, when the man could not get in, as evidently he could not? - I am sure I need not say any more" (Chaemsaithong, 2014, p. 12), the lawyer does not provide an answer as he draws to the commonsense of the jury to find the defendant guilty, which is characteristic for this type of question.

Next to second-person pronouns and questions, Chaemsaithong (2014) also places three types of reported discourse in Hyland's (2005) category of engagement. The first type of reported discourse, called *voice of character*, is coded based on the definition as stated by Chaemsaithong (2014); a lawyer adopting "the voice of lay witnesses and defendants, who are involved in the crime or are there to give information about the crime" (p. 13). Therefore, this type of reported discourse comes in the form of a lawyer directly, or indirectly, quoting the words of a witness.

A second type of reported discourse is the adoption of the *voice of personal authorities*, which is also coded based on the definition of Chaemsaithong (2014) and accordingly states that lawyers adopt the voice of characters whose authority is granted by the current institutional context. Therefore, this type of reported discourse comes in the form of a lawyer's adoption of the voice of, for instance, a

17

police officer, judge, coroner or any other characters who could testify on the base of expertise and knowledge in a particular subject.

The third type of reported discourse recognized by Chaemsaithong (2014), is the adoption of the *voice of impersonal authorities*. This device comes in the form of a lawyer quoting, or referring to non-human authoritative sources, as for instance the law. A clear distinction was made between the above mentioned types of reported discourse and in the situation of uncertainty the categorization decision was made based on the original source of the reference. For instance, when a lawyer would refer to the words of a judge, who is quoting a certain written law, the type of reported discourse was categorized as the voice of an impersonal authority, as the written law is the original source of the lawyer's reference.

In the category of stance, Chaemsaithong (2014) places Hyland's (2005) hedges and boosters under attitude markers as they both refer to the view of the speaker. Additionally, first-person singular pronouns as for instance 'I, me, my, mine, myself, and plural pronouns as for instance 'we, us, our, ours, ourselves', were placed under stance taking devices as they also often refer to the point of view of the speaker. However, situations where these pronouns do not function as attitude marker, were considered based on context. *Attitude markers* were coded based on the definition of Hyland (2005), which states that attitude markers "indicate the writer's affective, rather than epistemic, attitude to propositions, conveying surprise, agreement, importance, frustration, and so on, rather than commitment" (p. 180). These devices come in the form of hedges or boosters. *Hedges*, which withhold complete commitment to a proposition, as for instance words like might and perhaps, allow information to be presented as an opinion rather than factual (Hyland, 2005). *Boosters* include words like clearly and obviously, and allow writers to express their certainty about what they say (Hyland, 2005).

3.4 Research design

As the Chaemsaithong's study is both quantitatively and qualitatively oriented, the software AntConc 3.5.0 was used to first search for the frequency of occurrence of the interactive linguistic devices. The frequency counts were then normalized to 10,000 words of text to allow a direct comparison of results despite the difference in data quantity, as also suggested by Chaemsaithong (2014). Finally, the results of each occurrence of the interactive features were reviewed in a qualitative discussion, in order to obtain a more in-depth understanding of how fictive interaction occurs in defensive statements compared to the statements of the prosecution.

4. Findings and discussion

Interactive linguistic devices are a vital part of defense opening statements and are used very regularly by lawyers, as presented in Appendix B. The quantitative analysis presents an average of 161 interactive devices per defensive opening statement, which is remarkably 81% higher than the average of 89 interactive devices in the opening statements of the prosecution (Chaemsaithong, 2014). Similarly, when looking at the total normalized values per 10,000 words, the defense uses 48% more

interactive devices compared to the prosecution as studied by Chaemsaithong (2014). It is therefore highly noticeable that there are several differences in regards to the occurrence of the different interactive devices, as presented in Table 2.

Table 2 – *Frequency comparison of interactive devices between the defense and prosecution.*

Features	Per 10,000 words Defense current research	%	Per 10,000 words Prosecution by Chaemsaithong (2014)	%	Per 10,000 words % Difference
Pronouns (total)	353	71	217	65	63
First-person singular	92	26	99	30	7
First-person plural	77	22	8	2	864
Second person	184	52	110	33	67
Questions	14	3	8	2	79
Reported discourse	67	13	28	8	138
Attitude markers	64	13	83	25	23
Total	498	100	336	100	48

However, despite these differences, the order of frequency of the interactive devices starts similar to the findings of Chaemsaithong (2014). Both counsels clearly use pronouns most often. More specifically: second person pronouns are used most frequent, followed by first-person singular pronouns and first-person plural pronouns. However, in contrast to the findings of Chaemsaithong (2014), reported discourse was observed slightly more frequently than attitude markers. In both studies, questions were used least often to establish fictive interaction. A closer examination of the frequency differences of the interactive linguistic devices between the prosecution and the defense, and the ways the interactive devices are used to construct fictive interaction, are discussed below.

4.1 Pronouns

The ways pronouns are used to construct fictive interaction between the lawyer and the jury on the defense side were found to be very similar to the findings reported in Chaemsaithong (2014) about the prosecution. However, pronouns were used significantly more frequently in opening statements of the defense than the prosecution namely, 353 per 10,000 words for the defense versus 217 per 10,000 words for the prosecution, as presented in Table 2. Accordingly, the defense was found to make more use of second-person pronouns (184 per 10,000 words for the defense versus 110 per 10,000 words for the prosecution).

This could be clarified considering the statement of Schmid and Fiedler (1998) in regards to linguistic strategies in criminal trials, as they suggest that defense lawyers tend to raise arguments in a more abstract and global way to refer to groups rather than to individuals. By frequently using second-person pronouns, the defense lawyer draws the attention more towards the experience of the jury

(Chaemsaithong, 2014) and away from the individual defendant. Even though there are some significant quantitative differences, both sides used second person pronouns in similar ways. For instance, both lawyers appear to rely on the mental processing of the jury and assume the jury draws certain conclusions and makes certain connections, by making them the experiencers of the discourse. Example (1a), presents a situation where the lawyer assumes the jury will understand his statements, he "takes the juror's mental process for granted" (Chaemsaithong, 2014, p. 6).

(1) a.   And what *you*'re gonna see from Mr. Scott, and so *you*'ll understand Mr. Scott, he is bigger than… my client's a large man. (4. Cloud 9)

Similar to the prosecution, the defense was often found to use second-person pronouns to remind the jury they are the direct recipients of the lawyer's message (2a). Likewise, defense lawyers use second-person pronouns the remind the jury that their verdict is in the benefit of the public. Even though no situations literally stating words like "*Your duty to the public*" (Chaemsaithong, 2014, p. 7), as found on the prosecution side, were found, lawyers on the defense counsel do use narratives to express that the jurors are there on behalf of a bigger community, which is, in this case, U.S citizens, and they continue to use a second-person pronoun to refer to the jurors as a part of that community (2b).

(2) a.   *You* will hear in this case about a trip to Mexico when Eric was eight years old. (1. Campbell)
    b.   My client is here and he has been put in a position to fight for his life. *You* will hear that the jury is the bedrock and the most important thing in a trial. (6. Moor)

Moreover, second-person pronouns are used to help the jurors relate their experience inside the courtroom to an experience outside of the courtroom. On the side of the prosecution, Chaemsaithong (2014) makes the distinction between actual situations and fictive, or generic, situations. Likewise, on the defense side, actual situations referred to by lawyers often consist of references to previous trials, as is the instance in (3a), to remind the jury to have a certain perspective on the case. Fictive, or generic, situations were likewise found on the side of the defense (3b). However, even though these uses of second-person pronouns slightly differ, they both refer to a situation outside of the courtroom the jury is familiar with, regardless of whether they are real or not. Therefore, the jury, to the degree they are actively listening to the proceedings, are engaged in the construction of a, possibly fictive, situation, which helps them to understand a statement that could have been abstract before, as similarly suggested by Pascual (2002), who describes the way these interactive devices are used as the construction of a mental image. In the example of (3b), the defensive lawyer creates a fictive situation at a lake to clarify the point that there is not enough

evidence to meet the burden of proof and find the accused guilty of a crime. This phenomenon is also complemented by the findings of Snedaker (1986), as the lawyer draws on the juror's general knowledge and human experience. She assumes they are familiar with the ripple effect of throwing a stone into a lake. The situation in which she presents her statement is easier to understand for the jurors than the complicated law of 'being presumably innocent', which therefore also complements the statement of Devine et al. (2001), as it helps the jury to make sense of the overwhelming chain of events. However, by drawing on general knowledge and experience, the lawyer takes the mental processing of the jurors for granted, as she does not actually possess the knowledge whether or not the jurors are familiar with this situation (Chaemsaithong, 2014), as similar to example (1a).

(3) a.   As I said (to *you*) yesterday, in many respects this trial is not going to be so much x about what was done, but why it was done and whether or not it's justified.
(8. Woodward)

b.   A boy threw a rock in the water. And *you* saw the ripples. *You* didn't see the boy throw the rock. But he threw a rock because there's ripples. Well, how about if *you*'ve got six boys standing there, on the bank. Can *you* tell me which boy threw the rock, based upon the ripples? If *you* didn't see it. No. (6. Moor)

In regards to the lawyer's use of first-person singular pronouns, also very similar results were found between the prosecution and defense. The quantitative analysis presents a slight difference of 7 percent of the use of first-person singular pronouns by the defense compared to the prosecution (92 per 10,000 words for the defense versus 99 per 10,000 words for the prosecution).

Similar to example (3a), both counsels also used first-person singular pronouns as part of the narrative by referring back to previous utterances, as is the case in example of (4a). Accordingly, by referring back to previous claims, in combination with evaluative expressions like *outrageous*, the lawyer reminds the jury of the positive or negative actions of the respective person (Schmid & Fiedler, 1998), and therefore repeatedly attempts to draw on the jury's sense of sympathy, which, as also suggested by Pascual (2008), plays an important role in the jury's decisions making (Feigenson, 2000).

(4) a.   They've already demonstrated, clearly, their willingness to burn various things at various times. *As I said,* the most *outrageous* one was they were burning the sheet, shouting insults and threats toward his family. (8. Woodward)

Moreover, the defense and the prosecution use first-person singular pronouns in similar ways, to express the lawyer's position as creator of the discourse, by combining them with verbs like *tell*, *say* or *mentioned*. In the example of (5a) the lawyer confirms her position as narrator of the story and

guides the jurors through it by putting a certain emphasis on the part that follows.

(5) a.   *I*'m not a legal scholar. *I* haven't studied jury systems in Europe and stuff like that.
         But *I* will *tell* you this … (6. Moor)

In regards to connecting identity to certain situations, Chaemsaithong (2014) notes the prosecution's specific use of first-person singular pronouns to construct a hypothetical situation, referring to an imaginary personal situation of the lawyer, to construct analogy. This specific use of pronouns was not found on the side of the defense. However, other characterizing references, as for instance that the lawyer personally, as narrator in this case, is in fact a skilled lawyer, were found on both the side of the defense and the prosecution, to emphasize the lawyers' credibility (Chaemsaithong, 2014). In example (6a), the lawyer justifies her opining in regards to the U.S legal system, by stating she was educated this way, which therefore reinforces her credibility as a lawyer.

(6) a.   The first time that it really entered my mind, and *I* used to say it, "that was the best
         system in the world", and that was allowed of me. *I am a lawyer*, so *I* believe that. *I*'ve
         always heard that. *I*'ve been taught that. (6. Moor)

In contrast to the small quantitative difference of first-person singular pronouns between the prosecution and the defense, the use of first-person plural pronouns differs a significant amount (77 per 10,000 words for the defense versus 7 per 10,000 words for the prosecution).

This could also be clarified considering the statement of Schmid and Fiedler (1998) on subtle linguistic strategies, which suggests that a strategy, as for instance the more frequent use of first-person plural pronouns, draws the attention away from the defendant as individual, and rather focuses on an inclusive *we* as a group, which could create some sort to fictive relation between the defendant and the jury (Hyland, 2005). This phenomenon additionally mediates the statement of Pascual (2008) on the battle of sympathy, as the jurors would presumably have more sympathy for 'one of their own', which is indicated with *we*, rather than *he* or *him*, who is accused of a horrible crime. In example (7a), the lawyer refers to her being part of a group of legal professionals, drawing to a hypothetical situation of what to do in a certain case. Additionally, the defense lawyer uses first-person plural pronouns to speak on behalf of his counsel (7b), as if there were a true team, which was not found in the study of Chaemsaithong (2014) on the prosecution. In the example of (7b) the lawyer emphasizes her statement in regards to the innocence of the defendant. The lawyer shifts footing from *we*, including the defendant, to *he*, excluding the lawyer herself, which first puts the jury in the point of view (Goffman, 1981) to see the defendant as one of them (Hyland, 2005). However, as the lawyer shifts to the excluding third-person pronouns *he*, she individualizes the defendant, which contradicts with the proposed statement of Schmid and Fiedler (1998), as they state defensive lawyers tend to focus on

groups rather than individualism. Additionally, by presenting the defendant as an individual, and therefore as a character, the lawyer provides an interpretative frame for the jury to organize perceptions, as suggested by Cotterill (2003).

(7) a.   Now you got a person you arrested for a crime, and you gotta figure out now how to prove it. 'Cause *we* certainly can't dismiss it. You could, but that's the lesser of two evils (6. Moor)

    b.   This is gonna be straight what happened, straight what the witnesses said, and what does it mean. And *we* got an answer for everything, because *he* didn't do this. You are the judges of the fact. (6. Moor)

An additional way that defense lawyers attempt to become a member of the group of jurors, similar to what the prosecution does, is to frequently use an inclusive *we*, to draw on the assumption of shared knowledge and mental experience (Chaemsaithong, 2014). In the example in (8a), the lawyer uses the first-person plural pronouns *we*, to join the jury in the specific group of people who do not have enough knowledge or information to convict the defendant, and accordingly states a small list of evidential claims, made by the prosecution. The lawyer includes the defendant in *we*, implying his innocence by indicating it is also all *he*, the defendant, who knows what happened.

(8) a.   All *we* know, is that her phone pinged at the landing. Her car was found there. And that's it. There's no crime scene. There's no struggle. There's no physical evidence. (6. Moor)

Moreover, lawyers of both counsels used first-person plural pronouns to become part of a very general group, or, as Chaemsaithong (2014) describes it, as no group at all. Drawing on common social values that apply to everyone, the lawyers of both counsels aligns themselves with the jury. In example (9a) the lawyer refers to standard principles of law. Corresponding with the statement of D'hondt (2014), the example presents how each interactional alignment is connected to a specific part of the context of the argument of the lawyer. This way the lawyer positions the jury in a preferred position using the first-person plural pronoun *we*, which is in this case *we*; the group of people in the court room, and subsequently shifts his footing to *one*, to imply they are all part of a bigger society and suggest the values apply to everyone. Additionally, in example (9b) the lawyer uses *we* to refer to the common values of U.S citizens in general in regards to the processes of the legal system, as they are already on that level of footing.

(9) a.   Now it's a challenging case. *We*'re gonna be applying the same principles of law and so forth as *one* would in a trespassing case or a capital case of this nature. (5. Loya)

b. That's where they took those people. From there, probably a 20 minute trial, and hung'em in the soccer field. *We* don't do that. *We* don't do that. (6. Moor)

4.2 Questions

As suggested by Chaemsaithong (2014), a lawyer asking a question to the jury is perhaps the most direct way of establishing fictive interaction, as it positions the jurors as interlocutor to answer the question (Pascual, 2006). However, this is not necessarily a constant part of every defensive opening statement and was used least often by both lawyers. In regards to the use of questions to establish this fictive interaction with the jury, the results show that the defense uses several more questions than the prosecution does (14 per 10,000 words for the defense versus 8 per 10,000 words for the prosecution). Considering the fact that the defense can question the statements made by the prosecution, and not vice versa, this slight difference is not that remarkable. Chaemsaithong (2014) states that the prosecution uses questions in an expository nature, which was likewise found in the opening statements of the defense. Pascual (2006), suggests that this kind of question, when asked by the prosecution, indirectly involves the defense as the main questioner of their own argument. This phenomenon is also found with the defense counsel, as for instance in example (10a). The defense lawyer directly reproduces and answers a question that was, or could have been, used argumentatively by the prosecution, by agreeing with them; *Did they have a perfect life? No. Had there been infidelity? Yeah.* (10a). He re-animates and confirms the statements of the prosecution to be true, which presumably gives him credibility among the jury. Using this credibility, he then asks a question structured as a counter argument, by answering a similar question, as in this instance *Did they work through it? Yeah.*, disproving and questioning the prosecution's version of the truth (Pascual, 2006) and providing a firm base for himself to continue this narrative further (Chaemsaithong, 2014).

(10) a. 'She loved her Jojo, they were real close.' Did they have a perfect life? *No*. Had there been infidelity? *Yeah*. Did they work through it? *Yeah*. (2. Caronna)

Moreover, lawyers use questions to have the jury focus their attention to a specific aspect of the discourse. As similar to the examples of Chaemsaithong (2014) on the prosecution, defensive lawyers use questions to have they jury make a certain consideration, without answering it. In example (11a) the lawyer first asks the jury to pay precise attention to the testimony of what was going on. Subsequently, he pauses and states two questions, which are left to be unanswered, indicating it is up to the jury how to answer them.

(11) a. It's not about who done it, but I ask you look seriously at these uh this testimony of what was going on. (5. Loya)

What was he doing in the planning stages? *What* caused and what motivated him to do all this? And *what* was it the result of? (5. Loya)

Similar to the prosecution (Chaemsaithong, 2014), the defense structures questions as arguments to make statements. In example (12a) the lawyer asks the jury the question of why the defendant would kidnap the victim. He does not want the jury to think about possible motives, but rather draws on what is implied by the question. By directly providing a rather sarcastic answer, the lawyer engages the jury in the reasoning process, as suggested by Pascual (2006). Accordingly, the lawyer makes the statement that it does not make sense the defendant would become a kidnapper overnight, by drawing on the common understanding of society that this just does not happen, which is in accordance with the statement of White (2003) on the strategic use of argumentative questions.

(12) a. And you'll be asking yourselves 'Why would he kidnap her? Why?'. In thirty-eight years you just become a kidnapper overnight. (6. Moor)

4.3 Reported discourse

In regards to reported discourse, lawyers on both sides frequently tend to re-animate the voice of others to construct their narrative. However, a significant quantitative difference was found between the defense and the prosecution (67 per 10,000 words for the defense versus 28 per 10,000 words for the prosecution).

Using both direct (13a), as in-direct (13b) reported speech, lawyers frequently adopt the voice of people involved in the case, as for instance witnesses. In the example of (13a), the lawyer re-animates the voice of the father of the defendant, positioning the defendant as a victim. Moreover, as the statement of Komter (2013), suggests that the reporting of dialogic interaction in witness testimonies are often perceived by the jury as truthful, it can be assumed that these quotes in opening statements are also found to be truthful, considering the similar statement of Matoesian (2001) on reported direct speech transforming into evidence with affective meaning. Additionally, as in example (13a), the lawyer directly re-animates the voice of a witness, which, according to D'hondt and van der Houwen (2014), acts as a powerful rhetorical device, which could potentially help to construct the jury's mental image (Pascual, 2002).

(13) a. He berates Eric. He even *tells* Eric: "If you'd have just backed me up, none of this would have happened." (1. Campbell)

b. He *tells* Eric that family backs each other up and if you're not family you're just dead weight. (1. Campbell)

In addition, as similar to the previous point, lawyers of both sides often adopted the voice of

authorities. Chaemsaithong (2014) makes a clear distinction between personal and impersonal authorities. Personal authorities were found to often be key witnesses, as for instance police agents or doctors (14a), and impersonal authorities were almost always a reference to the law (14b). In example (14c), the lawyer re-animates the voice of the judge, which causes the statement of him representing an innocent person to be perceived as true, even though the judge probably made no such statement suggesting the defendant is in fact innocent.

(14) a. … and the officer says: 'Where's the registration? Is your license plate stolen? (1. Campbell)

b. Because the *law* is very clear: 'the threat does not actually have to be real'. The *law* is very clear: 'that the people making the threats don't even have to have the intention to carry out the threat'. (8. Woodward)

c. First, the judge has already told you this, but it's so important that I remind you of it, is that I represented an innocent person. (3. Creato)

In addition to the findings of Chaemsaithong (2014), the qualitative analysis presents that the defense lawyer also frequently adopts the voice of the lawyer of the prosecution, as similarly suggested by Pascual (2006), who discussed the adoption of the voice of the opposing lawyer when asking questions (10a). The lawyer would indirectly reproduce, or refer to, the statement of the opposing lawyer — for instance, to counter their statement (15a), or to enhance their own statement (15b). Considering the statute of law, that the prosecution always presents their opening statement before the defense, the prosecution does not have this advantage of being able to reproduce the voice of the opposing lawyer during their opening statement. This could potentially affect the jury's final verdict, as it allows the defense to directly disprove the statements of the prosecution. However, as the prosecution can make the first impression and therefore potentially set the mood for the way the jury will interpret the opening statement of the defense, the disadvantage of not being able to reproduce the voice of the opposing lawyer, could be countered.

(15) a. … and they went through this extensive thorough investigation as *Miss Shaw* described it, and none of it, none of it did anything to prove Mr. Creato guilty. (3. Creato)

b. Like *Mr. Glenny* and His Honor talked to you about keeping the open mind, I would likewise do the same thing. (5. Loya)

4.4 Attitude markers

Finally, in regards to the use of attitude markers by lawyers to construct fictive interaction and to present certain information from a certain point of view, the findings present a more frequent use on

the side of the prosecution (64 per 10,000 words for the defense versus 83 per 10,000 words for the prosecution), which is in accordance with the statements of Cotterill (2003) and Schmid and Fiedler (1998), considering that they suggest that the prosecution tends to repeatedly exploit negative expressions to highlight the defendant's negative behavior and intentions.

This strategy of emphasizing negative expressions, could however, be countered by the defense in their use of second-person pronouns and first-person plural pronouns, as these are used more often by the defense, and in contrast to the strategy of the prosecution, focus the discourse on the experience of the jury and include the defendant in their group instead of positioning him as an individual (Hyland, 2006; Schmid & Fiedler, 2003). By adopting such a legal strategy that emphasizes the negative behavior and intentions of the defendant, the prosecution attempts to have the jury perceive that information in the way they describe it. In narrating their story, lawyers of both sides make sure the jury interprets certain information in specific ways by connecting it to evaluative expressions, as the jury uses these evaluative expressions to construct their mental image (Pascual, 2002). In the example of (16a), the lawyer states his opinion on the things that were said to the defendant, to present him as a victim in this case.

(16) a.   Ed Campbell just rants and raves. And he tells Eric a whole bunch of *horrible* thing-
            horrible things from his childhood. Tells him that he's responsible. That Ed Campbell
            is responsible for killing Michelle, who would be Eric's older sister. (1. Campbell)

Moreover, attitude markers were often used to draw attention to a specific point. Often these occurrences would be connected to statements like *as the evidence will show* or *pay attention to*, to suggest the importance of certain pieces of evidence or statements of witnesses (17a). Additionally, similarly to the prosecution, the defense used attitude markers to refer to for instance social norms (17b).

(17) a.   Pay attention to all these details, *pay attention* to what you hear from the officers up
            here. (2. Caronna)
      b.   That's why we're here. I don't think we *should* be here. I think discretion should be
            that we not even put this in front of you. (6. Moor)

Similarly to the prosecution, defensive lawyers used attitude markers to express their agreement or disagreement with certain statements, to for instance claim that certain previous statements were correct or incorrect. Chaemsaithong (2014), refers to adjectives such as *afraid* and *possible/impossible*. However, these were not specifically found on the side of the defense. Though, the agreement and disagreement of lawyers did occur in several other situations. In the example of (18a), the lawyer disagrees with a statement made by the opposing lawyer by indirectly adopting one's

27

voice.

(18) a.   I don't want to call off anybody here but 9500 text messages sent back and forwards between a 17-year-old and a 22-year-old, over the course of months, it's just not that significant. (3. Creato)

5. Conclusion

This research questioned whether or not the defense adopts and applies the same or similar linguistic elements in opening statements as the prosecution to fictively interact with the jury in order to strategically affect their interpretation of information and thereby the final verdict. The conclusion can be made that there are several clear similarities in the linguistic strategies both counsels adopt, as both attempt to affect the jury, as well as several clear differences in regards to each of the interactive devices, considering the contradicting professional objectives of both lawyers.

One of the linguistic devices lawyer use to establish fictive interaction with the jury is particular use of certain pronouns. More specifically, three different kind of pronouns were considered, the first being second-person pronouns. These are used to position the jury as experiencers of the discourse and as direct recipients of the lawyer's message. In addition, second-person pronouns are used to help the jurors relate the experiences inside the courtroom with their experiences outside the courtroom, to potentially help them understand certain situations or potentially develop sympathy, as also suggested by Pascual (2002), who refers to these experiences as the construction of mental images. Accordingly, these help the jury to make sense of the complex and confusing chain of events, as they make the jury unconsciously perceive the information provided by the lawyers as relevant and useful, as suggested by Devine et al. (2001). Even though lawyers on each side make similar use of second person pronouns, the defense tends to use them more frequently, as accordingly suggested by Schmid and Fiedler (1998), it draws the attention of the discourse away from the defendant and focusses more on the experience of the jury. Moreover, first-person singular pronouns are used by both the defense and the prosecution to express the lawyer's position as creator of the discourse, to connect identity to certain relevant situations and to put emphasis on previous statements. This last is used more by the prosecution, potentially because it allows them to remind the jury of the negative behavior and intentions of the defendant, as well as to potentially create sympathy. Which is in accordance with the statements of both Schmid and Fiedler (1998) and Cotterill (2003), as they suggest the prosecution tends to adopt a legal strategy that highlight the defendant's negative intentions. The pronouns discussed last were first-person plural pronouns, which lawyers of both sides use to establish certain groups and take a certain position, as originally suggested by Goffman (1981) in his works on footing. However, the defense side uses first-person plural pronouns more often, which is in accordance to the statements of Hyland (2005) and D'Hondt (2014), as it includes the defendant in the same group as the jurors, to potentially construct a fictive relation between the

defendant and the jury and position the defendant as someone the jury may have sympathy for. Such a strategy, achieved by shifting in footing, was used by both sides to place the jury in a certain position towards the discourse, as suggested by D'hondt's (2014) statement based on Goffman's (1981) principle of footing. Moreover, both lawyers use first-person plural pronouns to become part of a very general group, often to refer to social values that apply to everyone, or to position themselves in a group of professionals, to gain credibility

The second interactive device lawyers use to establish fictive interaction that was discussed is the asking of questions. Questions were used more frequent by the defense than by the prosecution and directly position the jurors as interlocutors in a fictive conversation. Even though both the prosecution and the defense make use of questions to provide something to build and continue their story on, as suggested by both Chaemsaithong (2014) and Pascual (2006), the defense has the additional advantage they can question the statements of the prosecution as they speak second. This was similarly stated by Pascual (2006), as she suggests questions engage the jury in the reasoning process and thereby question a statement made by the prosecution. Furthermore, lawyers use questions to have the jurors focus their attention on a specific aspect of the discourse, and tend to structure their question as an argument by having the jury answer what the question obviously implies, as in accordance with the statements of White (2003).

Third, reported discourse was used often by lawyers, as, according to Matoesian (2001), the re-animation of direct speech is perceived by the jury as truthful and allows the defense counsel to present their understanding of the events, as also discussed by Komter (2013) and Maryns (2014) (see discussion of this in the previous chapter). Additionally, re-animation of indirect speech was often used to speak on behalf of key witnesses, the law or, in the case of the defense, the opposing lawyer. This also gives the defense a significant advantage, as it allows them to disprove the statements made by the prosecution, as also suggested by Pascual (2006).

Finally, attitude markers were found to be used by lawyers of both counsels to draw attention to certain aspects of the discourse, to refer to common social norms and to express agreement or disagreement with previously made statements or references. Furthermore, as suggested by Cotterill (2003) and Schmid and Fiedler (1998), the prosecution tends to adopt a linguistic strategy that emphasizes the negative behavior and intentions of the defendant, by using many more attitude markers than the defense. However, as in accordance to an additionally statement of Cotterill (2003) and Schmid and Fiedler (1998), the defense seems to divert these expressions away from the individual defendant and make them apply more to groups or communities, often using firs-person plural pronouns.

Using a combination of pronouns, questions, reported discourse and attitude markers, the defense lawyer, as well as the lawyer of the prosecution, interacts with the jury by narrating a well-structured, deliberate story, seemingly structured as a monologue. However, as the linguistic interactive devices that were discussed affect how the jury interprets the information provided by the

lawyers, and can cause certain conscious and unconscious reactions, and considering the fact that the story of the lawyer is typically not interrupted by any of the present parties, it rather adopts the schematic structure of a fictive dialogue or conversation, as suggested by Pascual (2002, 2006). Even though the prosecution and defense both have a different professional objective and adopt a different linguistic strategy in order to achieve that objective, the lawyers adopt the same implementation of fictive interaction in their legal strategy, which demonstrates the general applicability of fictive interaction.

5.1 Limitations

Several limitations on this research should be considered. The first being the fact that, in contrast to the transcription process, the data analysis was conducted by one person and did not involve a second data analyst. However, in order to aspire to a reliable analysis, and to allow potential future replication of this research, the coding criteria were made as explicit as possible and based strictly on the original academic interpretation of the categories. Future research should potentially involve a second, or even a third, data analyst. Additionally, data sets of different sizes were compared in this study, which originally resulted in varying quantitative results. This was however overcome due to the normalization process of interactive devices per 10,000 words, as also advised by Chaemsaithong (2014) for potential future research to allow a reliable direct comparison of data. Moreover, considering the fact that the current data sets come from two varying times and locations, future similar research or possible replication of this study should aspire to use data sets collected on similar times from similar places in order to have a more reliable analysis. However, as presented in chapter 3.1.1, the wide-spread nature of fictive interaction not only suggests it's use across diverse cultures, but also demonstrates that the phenomenon has been around for centuries. Based on these statements a direct comparison between the two data sets is considered to be justified for this research.

5.2 Practical and academic implications

As this research studies the similarities and differences between the prosecution and the defense in regards to the use of linguistic devices to establish fictive interaction, the findings could have practical implications for the further development of legal strategies on a linguistic level. Being aware of how fictive interaction occurs in the courtroom, could help lawyers or paralegals construct their case and better prepare themselves on both the side of the prosecution and the defense. Moreover, as the jury is not supposed to be affected by subjective matters as emotion and sympathy, this research could make them aware of the linguistic strategies lawyers use to affect them, in order to make them base their verdict on the objective facts presented during the trials.

Additionally, the findings of this research may have practical implications outside of a legal context in other professions where persuasive language strategies could be of use, as for instance in sales or advertising. More on the level of academic implications, the findings of this research contribute to the current literature on fictive interaction and provide a possible basis for future research to further study the phenomenon and it's broad practical implications. An interesting suggestion for

further research is how the construction of fictive interaction might differ per legal strategy of the defensive lawyer, as for instance the difference between pleading guilty and minimalizing the sentence, pleading not guilty or pleading presumably innocent and drawing on a lack of evidence and the burden of proof.

Bibliography

Anthony, L. (n.d.). AntConc Homepage. Retrieved from
http://www.laurenceanthony.net/software/antconc/

Berman, R. A. (2005). Introduction: Developing discourse stance in different text types and
languages. *Journal of Pragmatics*, *37*(2), 105-124.

Chaemsaithong, K. (2014). Interactive patterns of the opening statement in criminal trials: A historical
perspective. *Discourse Studies*, *16*(3), 347-364.

Cotterill, J. (2003). *Language and power in court: A linguistic analysis of the OJ Simpson trial.*
Cardiff: Springer.

Devine, D. J., Clayton, L. D., Dunford, B. B., Seying, R., & Pryce, J. (2001). Jury decision making: 45
years of empirical research on deliberating groups. *Psychology, Public Policy, and Law*, *7*(3), 622.

de Vries, L. (1993). *Forms and Functions in Kombai, an Awyu language of Irian Jaya*. Canberra:
Australian National University Press.

Duszak, A. (Ed.). (2002). *Us and others: Social identities across languages, discourses and cultures.*
Amsterdam: John Benjamins Publishing.

Fauconnier, G., & Turner, M. (1998). Conceptual integration networks. *Cognitive Science*, *22*(2), 133-
187.

Feigenson, N. (2000). *Legal blame: How jurors think and talk about accidents*. Washington:
American Psychological Association.

Friedman, D. D. (1995). Making sense of english law enforcement in the
eighteenthcentury. *University of Chicago Law School Roundtable* 2(2), 475-506.

D'hondt, S. (2014). Defending through disaffiliation: The vicissitudes of alignment and footing in
Belgian criminal hearings. *Language and Communication*, *36*, 68-82.

D'hondt, S., & Van der Houwen, F. (2014). Quoting from the case file: How intertextual practices
shape discourse at various stages in the legal trajectory. *Language and Communication, 36*, 1-6.
doi:10.1016/j.langcom.2013.12.008

32

Goffman, E. (1981). Footing. In E. Goffman: *Forms of Talk*. Oxford: Blackwell, pp. 124-159.

Goldstein, D. (2001). Prosecuting fatal child abuse. Lecture given at the *15th Annual San Diego Conference on Responding to Child Maltreatment, San Diego*, CA, January 22–26, 2001.

Hobbs, P. (2008). It's not what you say but how you say it: the role of personality and identity in trial success. *Critical Discourse Studies*, *5*(3), 231-248.

Hostettler, J. (2006). *Fighting for justice: The history and origins of adversary trial*. Waterside Press.

Hyland, K. (2000). Hedges, boosters and lexical invisibility: Noticing modifiers in academic texts. *Language Awareness*, *9*(4), 179-197.

Hyland, K. (2005). Stance and engagement: A model of interaction in academic discourse. *Discourse studies*, *7*(2), 173-192.

Hyland, K. (2008). Disciplinary voices: Interactions in research writing. *English Text Construction*, *1*(1), 5-22.

Komter, M. L. (2013). Travels of a suspect's statement. In C. Heffer, F. Rock, & J. Conley (Eds), *Legal-lay communication: Textual travels in the law* (pp. 126-146). Oxford: Oxford University Press.

Langbein, J. H. (2003). *The origins of adversary criminal trial*. Oxford: Oxford University Press.

Maryns, K. (2014). The interdiscursive construction of irresponsibility as a defense strategy in the Belgian Assize Court. *Language & Communication*, *36*, 25-36.

Mauranen, A. (2003). "But here's a flawed argument": Socialization into and through Metadiscourse. *Language and Computers*, *46*, 19-34.

Pascual, E. (2002). Imaginary trialogues: Conceptual blending and fictive interaction in criminal courts. Utrecht: LOT.

Pascual, E. (2006). Questions in legal monologues: Fictive interaction as argumentative strategy in a murder trial. *Text & Talk*, *26*(3), 383-402.

Pascual, E. (2008). Text for context, trial for trialogue: An ethnographic study of active interaction blend. *Annual Review of Cognitive Linguistics* 6: 50–82. DOI: 10.1075/arcl.6.04pas

Pascual, E. (2014). *Fictive interaction: The conversation frame in thought, language, and discourse.* Amsterdam: John Benjamins Publishing Company.

Pozner, L. (2000). Killer cross-examination. Lecture organized by the San Diego County Department of the Public Defender Training & Career Development. California Western School of Law, December 2, 2000.

Schmid, J., & Fiedler, K. (1998). The backbone of closing speeches: The impact of prosecution versus defense language on judicial attributions. *Journal of Applied Social Psychology*, *28*(13), 1140-1172.

Snedaker, K. H. (1986). Storytelling in opening statements: Framing the argumentation of the trial. *American Journal of Trial Advocacy*, *10*, 15.

The Proceedings of the Old Bailey Online, 1674–1913. Available at: www.oldbaileyonline.org, version 6.0.

White, P. R. (2003). Beyond modality and hedging: A dialogic view of the language of intersubjective stance. *Interdisciplinary Journal for the Study of Discourse*, 23(2), 259-284. DOI:10.1515/text.2003.011

Xiang, M., Pascual, E., & Sandler, S. (2016). Real, imaginary, or fictive? Philosophical dialogues in an early Daoist text and its pictorial version. *The conversation frame: Forms and functions of fictive interaction*, 63-86.

Appendices

Appendix A – *Original video links.*

Nr.	Name	Counsel	YouTube Link
1.	Campbell, D.	Prosecution & Defense	https://www.youtube.com/watch?v=rTM_axsfcA8
2.	Caronna, J.	Prosecution	https://www.youtube.com/watch?v=YNIGhIoF8g0
		Defense	https://www.youtube.com/watch?v=cpqJrTNy4UU
3.	Creato, D.	Prosecution	https://www.youtube.com/watch?v=dINEq4oMdEY
		Defense	https://www.youtube.com/watch?v=vMve4nje8hw
4.	Cloud 9.	Prosecution	https://www.youtube.com/watch?v=4jQJ9vDwy40
		Defense	https://www.youtube.com/watch?v=EdkWFq2DxD0
5.	Loya, A.	Prosecution	https://www.youtube.com/watch?v=1L-EV4qe1o8
		Defense	https://www.youtube.com/watch?v=rMwysUZqssg
6.	Moor, S.	Prosecution & Defense	https://www.youtube.com/watch?v=cpqJrTNy4UU
7.	Willis, J.	Prosecution	https://www.youtube.com/watch?v=LznqhWK-bmI
		Defense	https://www.youtube.com/watch?v=1dbMv-xBsog
8.	Woodward, S.	Prosecution & Defense	https://www.youtube.com/watch?v=QgbOKPB6UfM

Appendix B – Frequency of interactive devices in defense opening statements by Chaemsaithong.

Features	Raw Occurrences	Per 10,000 words	%
Pronouns (total)	911	353	71
First-person singular	237	92	26
First-person plural	199	77	22
Second person	475	184	52
Questions	37	14	3
Reported discourse	172	67	13
Attitude markers	165	64	13
Total	1285	498	100

Appendix C – *Frequency of interactive devices in prosecution opening statements.*

Features	Raw Occurrences	Per 10,000 words	%
Pronouns (total)	2926	217	65
First-person singular	1337	99	30
First-person plural	109	8	2
Second person	1480	110	33
Questions	110	8	2
Reported discourse	376	28	8
Attitude markers	1119	83	25
Total	4531	336	100