

Text for context, trial for trialogue: A fieldwork study of a fictive interaction blend¹

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Biographical note

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Abstract

This paper deals with a prosecutor’s closing argument in a murder trial I did fieldwork on in California in 2000. This discourse is analyzed through the double-scope blend of the deceased victim ‘testifying’ through legal evidence. The emergence and argumentative power of this blend is examined vis à vis the participants’ knowledge of the embedding

discourse and trial as well as their conceptualizations and depictions of what a trial is. I suggest a definition of a trial as a ‘semantic network’ (Langacker 1987), which combines lawyers’ common definitions with the nature of factive and fictive interaction in Western courts (Pascual 2002, 2006). The claim is that language users (meta)operate with intertwined layers of context conceptualization, constraining conceptual blending operations. The paper integrates cognitive linguistics with cognitive sociology (Cicourel 1973) and cognitive and linguistic anthropology (Hutchins 1990; Duranti 1997). It also calls for the qualitative study of language through in-depth fieldwork that ensures data validity.

Keywords: legal argumentation, context, fieldwork, cognitive sociology, conceptual blending, fictive interaction.

1. Introduction

The theoretical basis of this paper is Fauconnier’s ([1985] 1994) mental space theory, later developed into conceptual integration or ‘blending’ (Fauconnier & Turner 1998, 2000, 2002). Mental spaces are abstract mental constructs of potential realities, as perceived, imagined, remembered, or otherwise understood by a conceptualizer. Examples are: the world defined by a picture, a world of fiction, the world of a person’s beliefs and desires, time slices, hypotheticals, or ‘umwelts.’ Conceptual blending theory is a development of mental space theory to account for cases in which the content of two

or more mental spaces is combined to yield novel inferences.² Selected aspects of the conceptual structure in two or more *input spaces* are combined in a *blended space*, which has emergent structure of its own.

In particular, the paper investigates the constraining effects of the overall communicative context – or rather, of the participants’ experience, knowledge and contextualization of the overall communicative context – on conceptual integration operations. The basic assumption is that, despite the important role of fictivity, imagination, and counterfactuality in thought and language, conceptual configurations are context-bound and socio-culturally meaningful. Thus, blending networks are not only constrained by the constitutive and governing principles outlined by Fauconnier and Turner (2002), but also by contextual and socio-cultural factors (Hutchins 2005; Sinha 2005; Coulson & Pascual 2006).

Empirically, this study is based on a murder trial at a Californian court I did extensive fieldwork on for about six months. The paper attempts to show that qualitative methods such as field research can be a useful means to access and analyze valuable and reliable naturalistic data, thereby properly helping to address theoretical questions raised by cognitive linguistics.

2. Cognitive linguistics and methodology

In recent years, cognitive linguistics has seen a growing interest in methodology. Papers and books have been written on the best empirical support for cognitive linguistic

theories that converges evidence from various techniques in psycholinguistics and cognitive science. Numerous successful attempts have been made to move away from introspection and carry out empirically sound studies, whether corpus-based or using either psycholinguistic or neuroscientific experiments, to substantiate theoretical claims (cf. Janssen & Redeker 1999; Gibbs 2006; González-Márquez et al. 2007). These efforts make use of appropriate scientific methods, which are critical for the prestige and development of our discipline. This notwithstanding, it is unclear whether this type of research always meets the right ecological validity standards to ensure that the results are generalizable to the real world of actual language users engaged in a situated communicative exchange. Indeed, experimental settings are subjected to what Cicourel (1996) calls ‘white room effects,’ which invariably turn (verbal) behavior artificial. Despite their numerous undeniable advantages, quantitative methods are by definition unsuited for the in-depth study of language production and interpretation in a naturalistic setting. It is understandable that one may want to trade ‘noisy’ and slippery ethnographic data for transparent and unambiguous experimental results. Still, the serious study of situated language use ‘in the wild’ should contribute much to a framework that gives equal primacy to denotation and connotation (Fauconnier [1985] 1994; Lakoff 1987; Langacker 1987, 1991) and postulates the existence of a fuzzy boundary between language competence and performance (Langacker 1987: 2.I.3, 2.I.4, 4.2, 1991: II.4, 508, 512, 532). It is unfortunate that neither of the two books on cognitive linguistics methodology (ie. Janssen & Redeker 1999; González-Márquez et al. 2007) include a single chapter devoted to the systematic qualitative study of language in context as a useful empirical method.

2.1. Methodology in blending theory

Fauconnier (1999: 97) claims that “[m]ethod must extend to contextual aspects of language use and to non-linguistic cognition,” as well as to the study of “full discourse, language in context, inferences actually drawn by participants in an exchange, applicable frames, implicit assumptions and construal.” However, apart from my own research (Coulson & Pascual 2006, Pascual 2002, 2007, 2008, in press), only a few works on mental spaces and blending incorporate to their analyses the socio-cultural and material grounding of the human mind (Alač 2006; Hutchins 2005; Sinha 2005; Williams 2004; Oakley 2002, Oakley & Hougaard 2008). Indeed, most work on mental spaces and blending has been almost exclusively devoted to the uncontextualized study of the cognitive processes of an idealized conceptualizer’s. This is regrettable, since this theoretical perspective views context as the clue to the disambiguation of the multiple conceptual configurations that one single form can generally prompt. It is assumed that the overall context within which a given linguistic or non-linguistic element is construed models its interpretation in such a way that pragmatic ambiguity due to its potential referents more often than not becomes a non-issue. To quote Fauconnier (1994: 2, footnote 4), my italics:

“[t]he speaker-listener does not consider all the interpretations of a sentence and then discard the inappropriate ones. He sets up a space of configurations starting from the configuration already available at that point in the discourse. There will of course be

choices and strategies, but *the potential of a sentence, given a previous configuration, is always far less than its general potential for all possible configurations.*”

Indeed, as I have shown elsewhere (Coulson & Pascual 2006, Pascual 2007, 2008, in press), the overall context of communication typically constrains the construction of particular mental spaces, mappings between their elements and projections to the blend. In this paper I try to show that in-depth fieldwork can be a powerful method for gaining insight into that context as well as into the way language users conceptualize and operate in it, and hence also into how it affects conceptual blending operations and language and discourse in general.

2.2. Methodological assumptions

This paper is based on the assumption that the production and interpretation of language is significantly modeled by: (a) encyclopedic knowledge of the issues dealt with (cf. Cicourel 1973, 1988; Duranti & Goodwin 1992); and (b) the conceptualization of the overall context of occurrence (cf. Cicourel 1973; Goffman 1974; Bateson et al. 1981; Hanks 1996). On the first issue, Fillmore (1982: 135-136) writes:

“words (etc.) come into being only for a reason, that reason being anchored in human experiences and human institutions. In this view, the only way in which people can truly be said to understand the use to which these meaning-bearing elements are being put in actual utterances is to understand those experiences and institutions and the

categories expressed by the words.”

This view is compatible with the common understanding in cognitive sociology that: “[t]he institutional context [...] can constrain the way activities are defined while allowing for emergent processes of talk that contribute to a more narrow sense of ‘context’ that is locally organized and negotiated over the course of social interaction” (Cicourel 1988: 262). This entails that language and context model each other and are hence also doors to each other. Critically, the communicative context is not in itself free of interpretation. To quote Hutchins (1990: 413): “Just as words depend upon context for their meanings, so do the meanings of symbolic actions. The meaning of any particular exchange event is not contained in the event itself, but must be established with respect to prior exchanges and relationships.”³ Thus, in order to understand a particular linguistic instance fully, one needs not only to consider its context of occurrence (e.g., trial, wedding), but also the way in which this particular context is conceptualized by participants (e.g., trial as entertainment, wedding as green-card avenue). It follows that the communicative event itself is a cognitive construction resulting from a situated, interactional process. Context therefore constitutes a mental space itself, or better, a mega mental space or mental space network (Pascual 2002: 79-84, 2007).

3. Data

The focus of this paper is on a prosecutor’s closing argument. The closing argument

phase is devoted to summing up the attorneys' interpretation of the criminal facts, as presented during the entire proceeding. This type of discourse is interesting to my purposes, since "[o]ur summaries display our comprehension of past events and activities," as they "are constrained by organizational group beliefs and norms" (Cicourel 1988: 103). The prosecutor's argument in the case at hand is examined vis à vis the participants' knowledge and understanding of the overall discourse and trial in which it occurred on the one hand, and their conceptualization and depictions of what a trial is, on the other hand.

In particular, the paper's case study is a high-profile murder trial I did extensive fieldwork on in California in 2000-2001 (Pascual 2002). The defendant in this case was a financial manager accused of brutally killing his wife in the couple's bedroom, so he could receive her three life-insurance policies, of which he was the sole beneficiary. The defendant was the only suspect and he was also the only witness for the defense. The transparent incriminatory nature of the evidence – admitted by the chief deputy defense attorney in my second interview with him (Int.9-DCi: 10) – contrasted with the defendant's insistence on his innocence. The proceedings lasted two and a half weeks, after which the jury found the defendant guilty of attempted murder (for an attempt to kill the victim two weeks before the actual murder) and first-degree murder for financial gain. The judge later sentenced the defendant to life in prison without parole plus seven years.

Fieldwork mainly involved: (a) direct observation of the trial and sentencing; (b) informal conversations with professionals related to the case (judge, jurors, court reporter, detectives, attorney's secretary, attorney of victim and defendant's children, journalists); and (c) in-depth interviews with the main trial participants (prosecutor,

defense attorneys, paralegal, alternate juror) and attendees (relative of victim and accused, local press reporter, novelist writing a non-fiction book on the case). The interviews ranged from 30 minutes to 4 hours and followed a conversation-like pattern, primarily using open-ended questions. This was motivated by validity concerns such as data contamination and damaging effects on the informants' memory (Cicourel 1964, 1974a, 1974b; Briggs 1986). Analysis is further informed by: (i) the official court transcripts; (ii) media coverage; (iii) the full case file; and (iv) a thirty-minute video-recording of the prosecutor's discourse, received from a television station. For privacy reasons, only initials are used.

The paper focuses on the discourse and metadiscourse of the prosecutor in this case. This was a highly successful and popular attorney, once nominated Prosecutor of the Year, who earned multiple victim-service awards and was recently nominated Superior Court Judge. As an attorney, he successfully prosecuted over a dozen high-profile homicide and murder cases – including a no-body case – and was the first prosecutor in his state to win a death-penalty case. In order to gain a better understanding of this prosecutor's style and views on law and litigation beyond his performance at trial and my feedback interview with him (Int.2-DA), I examined an interview of him in the local press (*The San Diego Reader*, Dec. 2002, p. 44); a public lecture he gave to fellow prosecutors (G. 2001); and the video recordings of the NBC reality television program 'Crime & Punishment,' which reported his work and that of his colleagues at the San Diego county prosecution office. The choice of focusing on this prosecutor's discourse was motivated by the availability of these data, as well as his obvious success and outstanding communicative skills.

In the examples to be discussed, direct quotes from the prosecutor's closing argument come from the official court transcript; quotes from the prosecutor's lecture and all interviews come from my transcription of the audio-recordings. Clarifications appear in square brackets (e.g., [victim]), italics are used to mark prosodic emphasis (e.g., *truth*), and underlining to mark relevance (e.g., testify).

4. The victim testifying

This paper primarily focuses on the following extract from the prosecutor's closing argument to the jury in the case at hand (Vol.6, 1376: 27-1377: 15):

- (1) 1 But interestingly enough, R. [victim] did, in a way,
2 testify through circumstantial evidence, and that is this:
3 the defendant readily admits on the August the 26th
4 interview that R. had no enemies. Everybody loved her.
5 There wasn't one person who came into this courtroom
6 over the last three weeks and said, "Boy, R.'s a bad person."
7 There isn't one person who has a motive to kill R. C.
8 There isn't one person who was stalking R. or
9 saying anything bad about R. or that R. had a boyfriend
10 on the side or anything like that. R. had no enemies.
11 People describe her as articulate, witty, assertive.

12 She was a career woman. But because of that, she speaks out,
13 because with no enemies, there's nobody who's gonna break
14 into that home, and there's no signs of forced entry
14 in the home and there's nothing stolen from the home.
15 So it points to the defendant.

In this fragment, different bits of circumstantial evidence, which were presented to the jury through the attorneys' examination of various witnesses at different times, appear "in a way" compressed into one sole testimony, namely the testimony of the victim's in the trial for her own murder.⁴ This image succeeds in presenting various pieces of diffuse evidence in a compressed and socio-culturally meaningful human-scale scene. A cross-space identity mapping is first established between the circumstantial evidence mentioned in the Present Prosecutor's Argument space and the evidence presented in the Past Witness Testimony space, which in its turn is mapped onto the victim's lifestyle in the Past Reality space prior to the crime. This evidence is mostly in the negative. The prosecutor's case is primarily based on the *lack* of evidence that would support a different hypothesis from the one he is arguing for.⁵ Hence, the conceptualization of the accusatory evidence itself involves conceptual integration in a negation network (cf. Fauconnier & Turner 2002: 241). It is through the sum of these missing pieces of evidence for an alternative theory of the case that the victim's fictive voice can be heard. Thus, the overall blending network set up in (1) is structured by the frame of the ordinary face-to-face conversation (cf. Pascual 2002, 2008). This frame (in the sense of Fillmore 1982) is in its turn further structured by the law-specific frame of under-oath testimony, since the

victim not only “speaks out,” but is actually presented as “testifying” (see Figure 1).

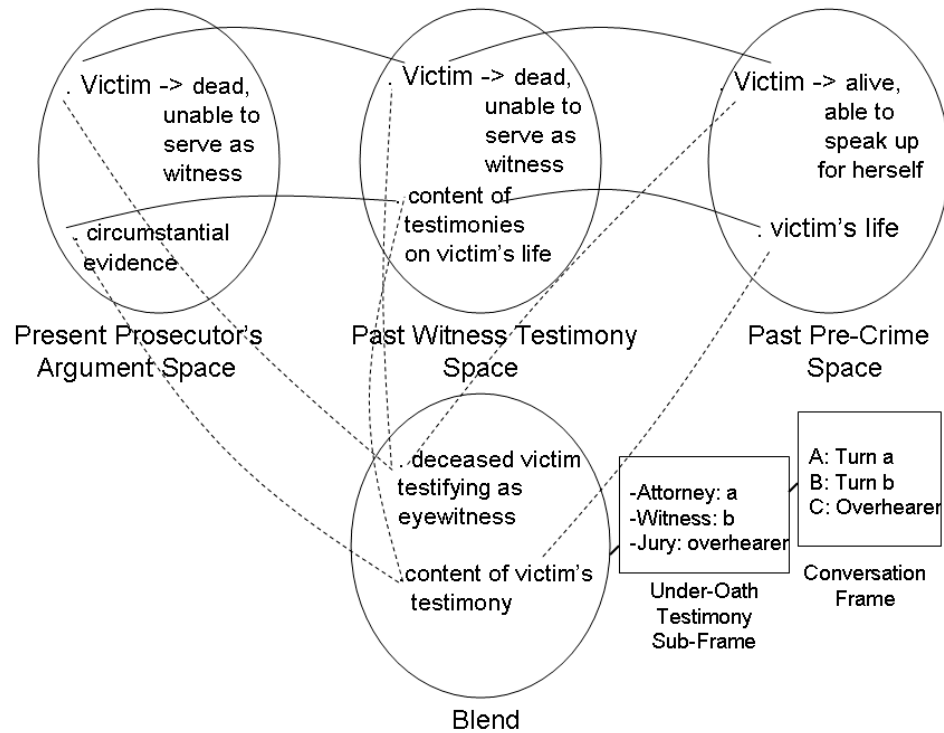


Figure 1. The testimony of the deceased

The blend has emergent structure, since the deceased ‘witness’ in it provides the definite counterargument to the defendant’s under-oath testimony in self-defense. That is why the murder victim’s fictive testimony “points to the defendant.” In other words, in the blend the murder victim is not merely testifying on her own virtuous life, but accuses the defendant of having killed her, since there is nobody else who would have a motive to.

5. Contextual analysis

In the following pages the blend of the murder victim's testimony is discussed in relation to the whole case as well as three different definitions of a trial. The first two definitions, namely the trial as a search for the truth and as a battle for sympathy, were given by the prosecutor who delivered (1) in different social settings. The third definition of a trial, namely that of the trial as a fictive dialogue, emerges from my own ethnographic work on the case (Pascual 2002, 2006).

5.1. *The trial as a search for the truth*

The impossible blend of the deceased victim 'testifying' in (1) has naturally more to do with rhetoric and the mental structure of cognitively modern human beings than with objective reality. In the context of the law, its use of the unreal in order to make a serious argumentative point should be somehow surprising. As it is, it is generally accepted that American evidential law does not deal with fiction but with reality. Indeed, the law is "conceptualized as organized around facilitating the presentation and contestation of what happened, of 'facts' and 'the truth'" (Philips 1992: 250). Thus, legal professionals commonly define the trial as "a search for the truth" (Pozner & Dodd 1993: 1). This is certainly how the prosecutor and the two defense attorneys defined what a trial is in my interviews with them. The prosecutor's exact words were (Int.2-DA: 18):

(2) [a trial is] the search for the truth. That's how I explain it to the jury, that's how I

explain it to everybody. [...] by having opposite sides litigate the issue the jury can determine who's telling the truth, who's not, it *sharpens* and focuses the evidence... and there is a truth! When they find-, if they say the defendant is not guilty, then that's the truth! He's not guilty, okay? It's over. If they say he's guilty? Okay, he's guilty! That's the truth! Pretty simple!

This prosecutor gave this same definition in a trial broadcasted by the television (NBC, July 8, 2002). Critically, these were also the words with which he started his closing argument in the trial at hand (Vol. 6, 1350: 19-1353: 12):

(3) a trial is a search for the truth, nothing more, nothing less. The whole idea is that we bring in evidence, [...] within these four walls, the evidence of the case, and that you search for the truth; [...] a trial truly is a search for the truth and there is always an *objective, verifiable truth* [...] a verdict means the truth,

It is indisputable that the blend of the deceased victim “speak[ing] out” does by itself not bring the jury closer to the reality of the criminal facts. However, it would be hard to claim that this image is entirely unrelated to the classical idea of a trial as aiming for the truth. In the American system all sworn witnesses – including the defendant and the victim (if able and willing to testify) – are required by law to tell the truth. Therefore, since sworn testimony is technically the only means for the jury to gain access to the facts to be evaluated, a outer-space identity mapping is generally established between what is said on the stand and the jury's dynamic mental construction of ‘what happened’ (Pascual

2002: §3.2.2, 2007). Hence, as long as no contradictions are found with earlier statements, whatever is testified about is taken as standing for objective truth.⁶ Critically, as stated before, the circumstantial evidence in the Present Prosecutor Argument space is mapped onto the content of the witness testimonies in the Past Witness Testimony space.⁷ This being a (sworn) Verbal space within Law space, it is in its turn directly mapped onto Reality space (cf. Pascual 2007), in particular onto the Past Pre-Crime space, which is critical for understanding the crime as such.⁸

Note that the circumstantial evidence mentioned in (1) is solely supported by earlier testimonies at trial: the defendant ‘*admit[ted]*’ that the victim had no enemies (line 3); nobody ‘*said*’ that she was a bad person (line 6); all witnesses ‘*describe[d]*’ her as articulate (line 11), etc. Therefore, the Past Witness Testimony space, which serves as an input space to the murdered witness blend, constitutes in itself a blend of different input spaces. The testimonies of over 30 witnesses (including the defendant), questioned by both the prosecution and the defense for two full weeks, which involved a large number of question-answer exchanges covering 1,274 pages of the official transcript, become compressed into one key statement of only a few witnesses. Needless to say, as any compression, this is a selective one, which naturally mainly projects onto the blend those exchanges between prosecutor and witnesses that are relevant to the prosecutor’s argument (see Figure 2):

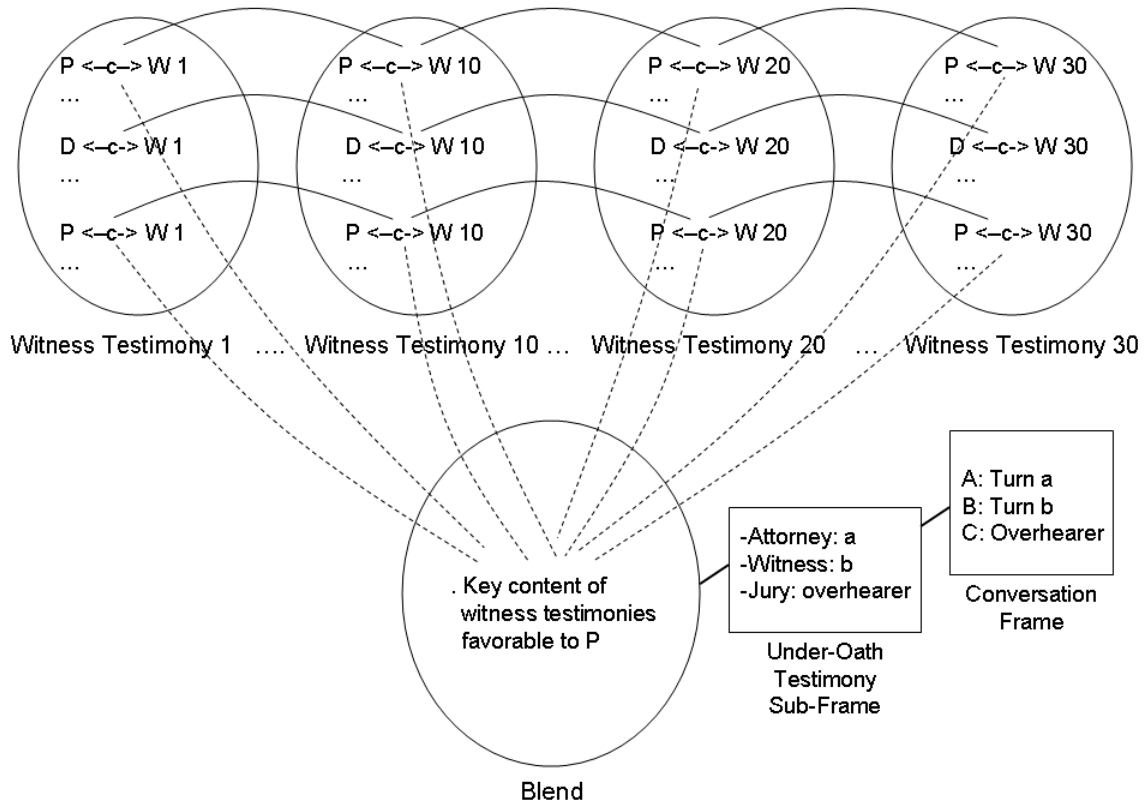


Figure 2. Compressed testimonies

It should be noted that the key content of the witness testimonies in the blend is mapped onto the content of the Prosecutor's Belief space, as expressed in the Present Prosecutor's Argument space, which putatively also has an outer-space relation of identity with the content of the Prosecutor's Wish space of the Juror's Belief space. In its turn, the content of the blend in Figure 2 also has an identity mapping with the content of the murder victim testimony.

Since blending operations are motivated and constrained by socio-cultural factors (Hutchins 2005; Sinha 2005; Coulson & Pascual 2006), it is important to emphasize that the blend of the victim testifying through circumstantial evidence, which in its turn

emerges from the compression of various actual testimonies at trial, is socio-culturally meaningful and fits the specific norms and beliefs of the legal institution. The deceased witness blend is possible and congruent given the status of witness testimony. As it is, witness testimony constitutes the institutionalization of the engrained cultural model that directly maps what one says onto what one truly believes, and onto objective reality (Sweetser 1987: 47-48). This cultural model, as well as the importance and use of witness testimony in court, seems to be based on the fact that language is often the most graspable indication of social activity, thought, and overall knowledge (Wierzbicka 1974; Cicourel 1973, 1978; Haiman 1989). Given the law's equivalence between sworn testimony and the 'truth,' that which is heard through testimony constitutes direct evidence. Thus, the presentation of the murder victim 'testifying' in (1) actually involves the construal of circumstantial evidence as direct evidence of the truth. This is non-trivial since, although circumstantial evidence against the defendant was "overwhelming" in this case, as admitted by his own attorney (Int.9-DCi: 19, 21), the prosecutor seemed worried about jurors not understanding the importance of it (Int.8-Nov: 7), especially since no direct accusatory evidence could be provided. As a matter of fact, the defendant's under oath testimony in self-defense technically constituted direct evidence of his innocence. It should be reminded at this point that the defendant's testimony was the only evidence provided by the defense. As the chief deputy defense attorney put it in an interview (Int.1-DCi: 18):

(4) everything *hung* on mister C. [defendant] when he took the witness stand. [...] everything depended on that, if you *believed* him, then he goes home!

Hence, reframing diffuse pieces of different kinds of circumstantial evidence as one concrete testimony of the best eyewitness succeeds in presenting the evidence against the defendant in the same form as the evidence in favor of him. The fact that the two main issues to be considered appear as the same kind of evidence and compressed into one human-scale scene enhances cognitive processing. This is an effective means of argumentation in legal communication (Coulson & Pascual 2006; Pascual 2008: 90-91⁹) and is also common in other persuasive kinds of communication, such as television commercials and public debates (Coulson & Pascual 2006). One would therefore expect that this facilitated the jury's weighting. Note that since the evidence provided by the defendant in his testimony contradicted the extensive evidence against him, his credibility was critical in this case. In fact, given the importance of the testimony phase, the truthfulness of witnesses is always crucial in court. Importantly, as his attorney admitted in an interview, the defendant's "ample experience deceiving people" (Int. 9-DCi: 7) was unequivocally manifested when he was questioned by the prosecutor. Specifically, the two-day long cross-examination of the defendant released such absurd allegations and transparent contradictions to cause the jury (Int.7-Jur: 8) and "even the family" of the victim (Int.5-Rel: 5) to laugh. In particular, the defendant changed his testimony on various occasions and confessed to having lied to the police and to the detectives investigating the death of his wife. More spectacularly, he came up with the name of two individuals to serve as his alibi, whom apparently the defense had never heard of (Int.8-Nov: 27; Int.9-DCi: 11) and whose actual existence the defendant could not prove (Vol. 6, 1225: 21-1229: 24; *The San Diego Union-Tribune*, November 3, 2000). Not

surprisingly then, a great part of the cross-examination and final summation were devoted to proving and making the jury aware of the different mismatches between the conceptual configuration of the Defendant's Verbal space and that of Reality space, as suggested by the rest of the evidence. Also, as one would expect, the district attorney saw to it that the jury understood that the defendant's allegations were solely grounded in a Verbal, rather than a Reality space. Take for instance the following extracts from his closing argument (Vol.6 1400: 11-21 and 1401: 14-16):

- (5) a. How do you know he was there? [sarcastic tone] You have his word. He told you he was there.
- b. so how do we know the door was locked, or why would we know that the door is locked? [sarcastic tone] Well, that's because we have the defendant's word, okay?

In his cross-examination of the defendant, his entire closing argument and closing argument rebuttal, the prosecutor also explicitly placed the defendant's allegation within that Verbal space through the use of space-builders such as *alleges/alleged/allegedly*; *quote*; and *to stage/staging*; and *his/your words*. Furthermore, when discussing the defendant's testimony in his closing argument, the prosecutor used the words and expressions 'untrue,' 'not true,' or 'not the truth' on as many as 35 occasions, and the noun and verb 'lie' on 45 occasions. In his closing argument and rebuttal, different parts of the defendant's testimony were characterized by the prosecutor as 'inconsistent,'

‘ludicrous,’ ‘bizarre’ (Vol. 6, 1359: 18). Not only were there imperfect correspondences between Reality and the Defendant’s Verbal space, but the very existence of such mismatches was presented as constituting the communicative space within which the defendant’s version of the facts needed to be understood (Vol.6 1359: 17-22):

- (6) There is proof that the defendant has had outright blatant dishonesty and been a pathological liar during this trial. What does that mean? If he says he’s at work [during crime] – forget whether or not the People have proved that he was not at work. We have his word that he was at work. That’s what he’s given us, and that is a bunch of baloney.

It is also significant to note that the prosecutor began and ended his closing argument with the question: “why do people lie?,” and this was also a question he posed to potential jurors in the jury selection process. As a matter of fact, in his closing argument the prosecutor even defined the trial in these terms (Vol.6, 1352: 7-8):

- (7) that’s what this trial comes down to, why do people lie? Why is the defendant lying?

This metacomment, within the context of the entire discourse and proceeding, may even have affected the idea of a trial of some addressees and overhearers. As a relative of the victim and the accused put it (Int.5-Rel: 30):

- (8) I just think you can't have a trial if you don't have a liar. If nobody lied there would be no use for trials... [...] yeah! it's lies that had prompted it.

Significantly, in his closing argument, the defense counsel barely mentioned the defendant's testimony and did not present the defendant's allegations as facts, but solely as statements. This did not go unnoticed, as indicated by the following fragment from an interview to the reporter who covered a murder trial for the local newspaper (Pascual 2002: 102):

- (9) I remember Loeber [defense lawyer] *conspicuously* not telling the jury that his client didn't do this. I remember Loeber telling the jury: 'My client *says* he didn't do this!' And there's a *difference*! [laughs] [...] So the sense I got is that even Loeber was convinced his client was lying!¹⁰

Finally, after the guilty verdict the defense team did not tell the press that an innocent man had been unjustly convicted, but simply that the defendant had always maintained his innocence.

Going back to the blend in (1), note that the murder victim in this case was theoretically the only possible eyewitness for the prosecution, since only she and the defendant were at the crime scene at the time of the facts. This makes her posthumous testimony extremely powerful, even if it is a counterfactual one. By turning her into a living and out-spoken eyewitness, the prosecutor implicitly makes it a matter of her word against his. Bearing in mind the victim's exemplary life on the one hand and the proven

unreliability of the defendant's words on the other, it seems that the jury should easily agree on which testimony to believe.

In sum, even though the blend of the deceased testifying in the trial for her own murder only exists conceptually, it does seem to be grounded in: (a) the reality of the case (i.e. the defendant lying on the stand); (b) the norms of the trial proceeding (i.e. evidence as presented through witness testimony); and (c) the institution's definition of a trial (i.e. a search for the truth). Critically, the three were explicitly outlined by the prosecutor in his argument to the jury. By so doing, he implicitly framed the overall context within which he wished the entire trial as well as his own discourse to be interpreted.

5.2. The trial as a battle for sympathy

The previous section dealt with the trial's 'truth'-searching aspect. It was suggested that the construal of the victim "in a way" testifying presented circumstantial evidence as direct evidence of the truth. It would be hard to sustain, however, that this blend – which certainly did not represent an actual event – was not aimed at appealing to the jurors' emotions. This is interesting, since the American jury is obliged by law not to let subjective matters affect their deliberation. The prosecutor in this case for instance warned the jury that (Vol. 6, 1359: 27-1360: 3):

(10) [t]he first law is that sympathy, bias and punishment can never enter into your deliberations, and that is just common sense.

This law seems to be consistent with the institution's definition of the trial as a "search for the truth." Nevertheless, even though (at least some) legal professionals may genuinely believe that the ultimate outcome of the court proceeding is knowledge of the truth surrounding the relevant facts, there are enough features in (1) – and in most of this and other legal discourses, for that matter (Pascual 2002, 2008, in press) – that do not fit this metaphor of discovery. The adversarial trial is certainly not a detached pursuit for objective truth. Quite differently, trial litigation seems to constitute an "open head-on conflict between [two] identifiable 'parties'" (Philips 1992: 248), who "have as their ultimate goal the wish to win" (Woodbury 1984: 198). The idea is that the truth of the facts will emerge from the clash between the two opposed forces of the prosecution and the defense. As Emilio Gómez Orbaneza, a well-respected Spanish legal professional, put it (quoted in Cavero 1998: 8, my translation):

"what is critical is for [the trial] to offer the two sides – with equal weapons – the opportunity to deploy their means of attack and defense, and [offer] the judge the possibility of acquiring complete and objective knowledge of the facts to be evaluated."

Since, as Tannen (1998: 150) has noted, the court proceeding shows the structure of argument rather than conversation, it is conceptualized – and thus reasoned and spoken about – in terms of Lakoff and Johnson's (1980) ARGUMENT IS WAR metaphor (Tannen 1998; Cotterill 2003).¹¹ Indeed, trial lawyers – prosecutors as well as defense attorneys – generally use metaphors of war to refer to the legal proceeding and in legal

group gatherings they speak of the other side as foes.¹² The prosecutor in the case at hand was no exception. In an interview to the local press for instance the prosecutor in this case presented his profession as an institutionalized form of aggression (*The San Diego Reader*, Dec. 2002, p. 44):

(11) I get paid to beat up on the bully [defendant].

Consider now how this same attorney defined what a trial is to fellow prosecutors in a public lecture (G. 2001):

(12) when trials become, for those of you, many of you who've done 'em, and this is, *my* experience on this, and this is the most important thing, [...] is, trials are a battle for sympathy, no more, no less... if you win the battle of sympathy, and you can *outrage* the jury, of the defendant's conduct, and the way he acted when he killed the victim, then the jury is, *as they receive the evidence*, they receive it in favor of the prosecution!

In this view, winning the battle for sympathy involves the construction of an interpretation space within which the jury will construe the evidence. The idea of sympathy as key recurs in the way legal professionals, jurors, and trial spectators talk about the court proceeding. In a plenary lecture to defense counsels for instance, a well-known public defender advised the audience to “put jurors in the shoes of the client [...] paint an image of [the facts] that helps you so that the jurors can be in the picture with

you” (Pozner 2000). It does not suffice to present a version of the facts that supports one’s legal theory of the case. One needs to do so in a way that engages the jury, so that they themselves help in the construction of that version (Pascual in press). Thus, the trial is not only a “battle” between prosecution and defense. It is a battle to win the jury’s sympathy for the victim or the accused, respectively. Similarly, in an article on her own experience as a juror, Robin Lakoff defines legal persuasion as “the creation of sympathy” (1985: 172). In fact, it is well-known that sympathy plays an important role in the jury’s decision-making (Feigenson 2000: 74-80). Along these same lines, consider a comment that the prosecutor in this case made to his colleagues in an informal discussion on a case that he was litigating (NBC, July 8th, 2002):

(13) I just don’t want him [defendant] to appear too sympathetic. I don’t want him to build a sympathy barrier between me and a guilty verdict.

Critically, even though in the trial at hand the prosecutor had warned jurors against having sympathy play a role in their deliberations, as discussed above, his own performance at trial was certainly emotional. His cross-examination of the defendant turned into a highly aggressive exchange, which led to numerous objections for the argumentative tone of his questions. This prosecutor also showed great compassion for the victim and her family (Int.1-DCi: 11; Int.2-DA: 12; Int.5-Rel: 5) and an apparent dislike for the defendant (Int.2-DA: 2-3, 4, 6, 12, 17, 18; Int.4-Plgal: 10, 11). More significantly, he followed his definition of the trial as the jury’s “search for the truth,” discussed in the previous section, with the following warning and metacommentary

(Vol.6, 1350: 26-1351: 1):

- (14) It sounds like a fairly simple task. Yet emotions get involved at times, and this was an emotional trial. And it *should* be an emotional trial because this has to do with murder, and it's the murder of R. C.

The prosecutor further mentioned sympathy later in his closing argument (Vol. 6, 1355: 18-23):

- (15) And the defendant not only stole her life, but he also is trying to steal the empathy that she is due by getting up on the stand and crying – of course, there's no tears – by getting up on the stand and acting like a victim. He is not a victim. R. C. is the victim, and her death was so horrific.

By inviting the jury to first cancel any sympathetic feelings that they might have towards the defendant, the prosecutor created the conceptual space that allowed him to switch to the victim as the one to receive the greatest sympathy.

Going back to (1), the blend of the deceased's testimony is all the more powerful because it succeeds in making the victim more salient, after the defendant "reduced her to a two-dimensional figure" (Vol.6, 1383: 12). This is something this attorney was especially fond of doing (Int.2-DA: 12) and would actually recommend to others (G. 2001). In this particular trial it actually seemed that it was especially necessary to speak about and on behalf of the victim, who seemed to some to have become somehow

overshadowed by the defendant's overriding personality and dramatic performance in court (Int.8-Nov: 7-8).

Not only did the mere presentation of the victim indirectly guide the jury's sympathy towards her and away from the defendant, the circumstantial evidence listed in (1) actually highlighted the victim's exemplary life. Critically, every one of the victim's admirable qualities clashed with the defendant's notorious traits. The victim was presented as a lovable person with no enemies, whom nobody spoke badly of (lines 4-10). By contrast, the defendant was revealed in his testimony as someone who had refused to return loaned money; forged the signatures of his wife and children in credit cards and a traffic ticket; and removed his sons from the life-insurance policies of their mother, so he could become the sole beneficiary. Whereas "everybody loved" the victim (line 4), nobody testified in favor of the defendant besides himself and not even his family showed their support for him. Whereas the victim did not have "a boyfriend on the side" (lines 9-10), the defendant appeared as a womanizer, who propositioned to a friend of his wife's and proposed a toast "to all the women I've ever loved" at a party for his wife's birthday (Vol.6, 1379: 14-15). Finally, whereas she was "articulate" (line 11) and a "career woman" (line 12), he was a poorly educated former military man and Amway salesman, who had been proven to live out of different frauds. In sum, there were clear relations of disanalogy between the two individuals the case was about, the victim and the defendant, on all and every one of the pieces of character evidence that were relevant to the case.

Critically, not only did the defendant's version of the facts not convince the jury and most – if not all – of those present, the manner in which he responded to the prosecutor's

questioning revealed a character and personality that certainly did not help his case (Int.5-Rel: 16, 23; Int.7-Jur: 5; Int.8-Nov: 9, 18). On the stand, the defendant appeared as an arrogant and non-collaborative witness, who showed no emotion (Int.1-DCi: 7, Int.7-Jur: 17), and who refused to answer many of the prosecutor's questions, arguing that the information requested was either "confidential" or "not important." He also gave some the impression that he truly believed he would manage to lure the jury into acquitting him (Int.2-DA: 3; Int.9-DCi: 17; Int.7-Jur: 8, 17). Significantly, the prosecutor admitted in my interview with him that the defendant's apparent lack of sympathy for the victim, which was most blatantly revealed in his communicative behavior when testifying, could have affected the punishment asked for by the prosecution office (Int.2-DA: 17):

(16) I didn't expect that he would be *so careless* and so *unforgivable*, and so *inhumane*. I think had we been able to *see* that, [...] we probably would have gone for the death penalty. [...] I think had we *known* that we would, we would possibly had sought the death penalty. [...] and [...] I think the jury definitely *would* have voted for the death penalty!

Not surprisingly then, while all interviewees and the judge sympathized with the victim, none of them showed the slightest sympathy for the defendant. In fact, the defendant's own attorney described him as "the personification of evil" (Int.9-DCi: 7). Indeed, even though some did believe that the victim contributed to the financial stress that may have eventually led to the murder (Int.1-DCi: 3; Int.7-Jur: 5; Int.8-Nov: 16-17, 25), it seems that the difference in sympathy one would feel for the victim and the accused in this case

could hardly be greater.

It is important to note that by evoking an image of the victim speaking up, the prosecutor conceptually turned addressees, i.e. the jury, into direct ‘observers’ (in their mind’s eye) of the testimony of the best and most reliable witness, in such a way that they could weight it against the defendant’s testimony. Critically, here and in his overall discourse, the prosecutor succeeded in implicitly prompting an identity blend between the addressees (i.e. jury members) and the discourse characters, who were also the main trial participants (i.e. victim and defendant). In fact, in my interview with the prosecutor, he answered some of my questions about the case by having me imagine myself in the victim’s position, as when talking about the defendant having forged his son’s signature on a traffic ticket and used his wife’s credit card without consent (Int.2-DA: 12):

(17) I mean, how would you like it if your *husband*, your *mo:ther*, your *chi:ld* was signing up, was buying things on a credit card in your name and you were having to pay for it?

Significantly, in my feedback interviews with trial participants and attendees in the case at hand, interviewees – from the juror alternate to the defense counsel – often expressed their feelings about the case through drawing analogies with their own lives, as well as with how they believed they would feel under the same circumstances as the victim and the defendant. For example, the writer who wrote the manuscript and the juror interviewed – both females – tried to explain for themselves why the victim neither divorced the defendant nor suspected any malicious intent on his part by blending

themselves and their (ex-)husbands with the couple (Int.7-Jur: 16; Int.8-Nov: 13, 34):

- (18) a. you try to [put myself in her skin] ... and... it was difficult for me though [laughs] because you would, you would have clued into what was going on much sooner, or... [...] She was probably in denial for a long time, you know, I _____ was married a long time... so I'm sure, you know, it's difficult to... you don't wanna think that, your partner really is, you know... crazy!
- b. I'm thinking to myself, what was R. doing with this man? But, as you will find out when you marry, history counts for a lot, you know... It's very difficult to get out of marriages, trust me, I speak from experience! So sometimes it's easier just to endure! [...] I ask myself, what would save me and you from this situation? Would we be smarter than R.? Would we have better vision than R.? [...] All of us must be able to be in her shoes!

Thus, the prosecutor's image of the omniscient and perfectly honest and unbiased witness testifying in the trial for her own murder also emerges from the conceptual integration of the victim, which is presented to the jury through the different testimonies at trial, as discussed above, and the Prosecutor's Wish space of the Jury's space, namely what the prosecutor assumes the jury's life and values are like. This, in its turn, has a cross-space relation of disanalogy with the defendant's life, as presented through his own testimony in court, and one of analogy with the victim's. Therefore, the murder victim testifying needs to be interpreted as the testimony of a victim that the prosecutor expects jurors will relate to, as opposed to the defendant (see Figure 3).

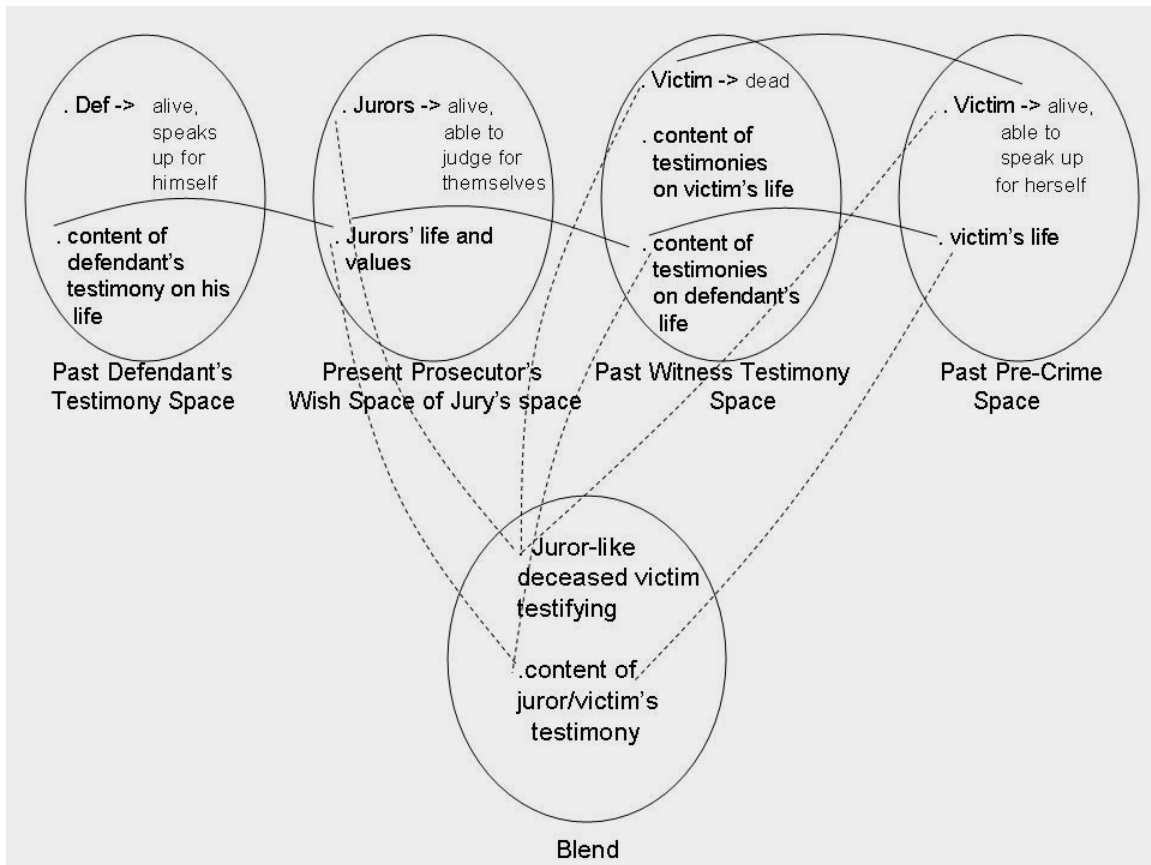


Figure 3: The jury-victim identity blend

I believe that this type of conceptual operation reflects the universal cognitive capacity to put oneself in someone else's position, which is fundamental to the experience of sympathy (Pascual in press).

To conclude, by setting up a blend of the deceased victim speaking through her upright life, the prosecutor succeeds in leaning the sympathy balance towards her rather than the defendant. Thus, the prosecutor's presentation of his version of the truth is consistent with the idea of a trial as a battle for sympathy. Critically, it is also consistent with the jury's knowledge of the case as revealed during witness testimony.

5.3. The trial as a fictive trialogue

As pointed out in the previous two subsections, the impossible blend in (1) serves to present the ‘truth’ of the criminal facts in such a way that the jury feels sympathy for the victim, rather than the accused. Critically, this sympathy competition occurs through talk-in-interaction. After all, law is undoubtedly the very profession of rhetoric (Sarat & Kearns 1994) and a courtroom trial is a “speech situation” in which almost “[e]verything [...] occurs through the spoken word” (Walter 1988: 1). In this light a trial becomes a “fight” or “war of words” (Spence 1989: 43; Tannen 1998), a verbal confrontation for the narration of a story with opposite interpretations of the relevant facts (Woodbury 1984; Tannen 1998).

Importantly, given the strict rules of the courtroom procedure, this ‘argument’ primarily takes place in an implicit manner. There is no overt discussion between the opposite parties during the trial, nor can the (Anglo-American) judge or jury enter the debate by making evaluative comments or asking questions to the litigators or witnesses. The court’s fixed interactional pattern motivates the emergence of what I have characterized as ‘fictive interaction’ (Pascual 2002, 2006, 2008). This constitutes an invisible – although equally present and critical – channel of communication either underlying the observable interaction between participants or being set by their discourse. This type of communication is fictive as opposed to factive, in the sense of Talmy ([1996] 2000), as it is entirely conceptual in nature, even though it may be motivated by the actual interaction in the here and now. For instance, most communicative exchanges in court do not occur for their own sake, but as ‘display talk’ for a third party (Goffman

1981: 137). A clear example of this is the witness testimony phase. This appears to be a dyadic interaction, but is in effect a ‘multi-party’ one (Cotterill 2003: ch. 4). Since the members of the jury are the ultimate trial adjudicators, they constitute the primary intended recipients at whom the whole interaction between attorney and witness is aimed, even though (in American law) they are not verbally involved in the questioning process. Thus, the defendant’s answers to the prosecution’s questions in his cross-examination of him in this case can be treated as fictive answers to questions juries themselves had and would later have to deliberate upon in the jury room.¹³ Similarly, the counterfactual testimony of the deceased victim needs to be understood as fictively addressed at the jury.

Furthermore, the apparent monologues of attorneys to the jury seem to involve an implicit ‘two-way communication’ or ‘dyadic conversation’ between the attorney speaking and the jury counterpointing the attorney’s words with an inner discourse of their own (Harré 1985; Walter 1988: 110-112, 178, 206-207; Stygall 1994: 176). Indeed, when I asked the prosecutor in this case about his frequent use of the question-answer pattern in his discourse to the jury for example, he replied (Int.2-DA: 13, Pascual 2006: 385):

(19) I’m answering questions that I think the jury will be asking in, in the jury room,
[...] I’m just anticipating!

Note now that attorneys at trial are not only speaking for the judge/jury. They are simultaneously also taking the voice of the opposite team and/or indirectly addressing

them in order to challenge or refute their argumentation and defend their own version of the facts (Pascual 2006, 2008). Thus, even though the attorney's speeches to the jury are objectively delivered as serial monologues, they seem to be conceptualized by participants as a simultaneous discussion in which they exchange turns. As I have noted elsewhere (Pascual 2008: 82-83), this blend is similar to Fauconnier & Turner's (1998, 2002) "Debate with Kant," in which a modern-day philosopher engages in a fictive debate with the eighteenth century philosopher (see also Brandt 2008). As a way of illustration, consider how the prosecutor in the case at hand explained his use of questions and answers in his 'monologue' to the jury in this case (Int.2-DA: 12, Pascual 2006: 388):

(20) I understand the defense will bring up those questions in their closing argument, so I bring them up myself, and I *defeat* them. So when the defense brings them up, they've already heard it! They, th-the jury knows what my response is the defense argues [for].

Similarly, a lawyer interviewed by Walter (1988: 80) described his discourse in court as a means of attacking the opposite side, so that in their thoughts the jury may verbally silence them: "I want the jury to get annoyed at the other guy... Hopefully the jury is figuring: '*Shut up. We wanna hear what he has to say. Sit down, you nerd!*'."

In sum, I assume that Western courtroom communication typically involves a fictive trialogue between: (i) the prosecution; (ii) the defense; and (iii) the judge/jury. As it is, regardless their addressee, most of what litigators say is ultimately aimed at the silent

jury members, constituting a reaction to doubts or criticisms they may have (and which they might express overtly, were that allowed). At the same time, even though prosecution and defense do not address each other directly, the words of one team – whether addressed at a witness or the final evaluator(s) – typically constitute an attack or counterattack to a prior or anticipated future argument of the adversary.

As Figure 4 shows, I suggest that in (1) the fictive argument between prosecution and defense is reproduced in the opposed (actual and counterfactual) testimonies of those whom they represent: the victim and the defendant. The victim’s exemplary life is presented as a *counterargument* of or a *response* to the defendant’s testimony in self-defense. Moreover, as indicated before, in this case the jury had to look for the *answers* to their *questions* on the case mainly in the victim’s life on the one hand and in the defendant’s testimony on the other hand.

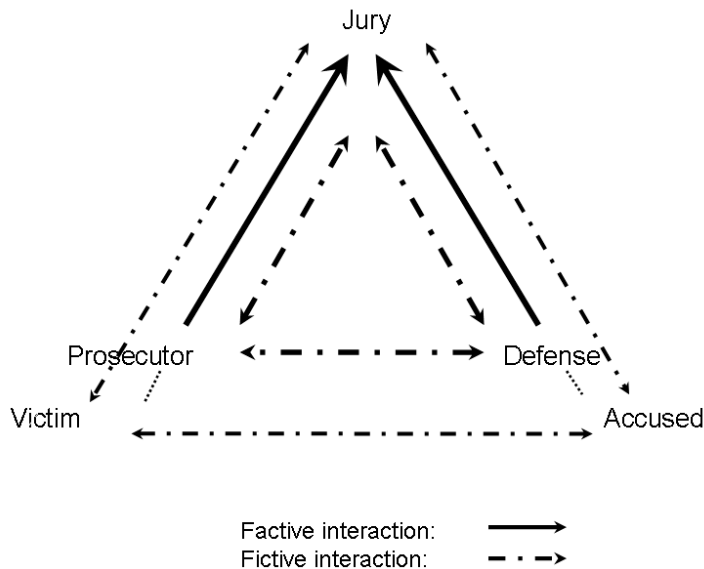


Figure 4. Fictive dialogue

Strange though it may seem, legal evidence is often presented in court as speaking in a similar fashion as a witness would (Pascual, 2002: 160ff., 2008). In fact, raising the dead for an imaginary conversation is not uncommon in litigation, poetry or everyday life (Quintilian 1921: Vol. IV, VI, IXX; Richardson 2002; Coulson & Pascual 2006: 171-175). Indeed, addressing oneself to the dead or presenting the dead as ‘speaking’ seems to constitute an ordinary cognitive phenomenon, rather than a mere argumentative or rhetorical device. An example is the novelist writing a non-fiction book on the case at hand, who reportedly came to this decision when ‘talking’ to the deceased victim (Int.8-Nov: 4-5):

(21) I found myself talking to R. [victim], [...] and I’m talking to R. and I’m saying, “Okay, [...] so I’ll tell you what I’ll do,” [...] so I said to her, [...] I’m sitting here talking to her aloud!! I don’t talk aloud to myself. I say, “Okay R., here’s what I’ll do, eh... do what’s necessary... for proposing a non-fiction book to a publisher, ‘tis very different than a fiction book” [...] so I said, “Okay, I’ll write the stuff to the point of sending it off, and if it gets accepted, I’ll carry the project through.”

More generally, the conceptual blend in (1) illustrates the culturally engrained blend in which our situated embodied experience of ordinary inter-subjective conversation is used as a general frame for the conceptualization and expression of verbal as well as non-verbal processes (Pascual 2002, 2008). Indeed, the presentation of an inference (e.g., since the victim had no enemies, nobody but the defendant had a motive to kill her) as the

victim “speak[ing] out” is a vivid exploitation of the conventional blend in which an observer’s inference on something appears as that something actually speaking to the observer. An example is the poem “The Dream of the Rood”, in which the Holy Cross appears to a sinner in a dream and speaks to him of his experiences (Turner 2002). Similarly, Oakley and Coulson (2008) show how the interpretation of different events as being related to one another can be construed and presented in discourse as dots *screaming* at the ones that should connect them and draw the relevant inferences. Also, it is not unusual for archaeologists to speak of what a mummy or an ancient vase tells them. These examples all seem to be motivated by the same underlying structure that allows the use of a verb of saying to represent an interpretation or inference (e.g., “see what it’s *telling* you,” Baynham 1996: 74).

Significantly, the victim’s posthumous “speak[ing] out” is presented as “point[ing] to the defendant.” Thereby, the two individuals the case is actually about are implicitly set in opposition to each other. Note that were the victim still alive, the jury would come to know about the circumstantial evidence in the case through her testimony in court, which would then constitute direct evidence. This testimony would then have to be weighted against the equally direct evidence of the defendant’s testimony, which was the only evidence of his innocence. Hence, in this case, the fictive argument between the prosecution and defense for the sake of the jury appears as a verbal confrontation between those from whom evidence for the one and the other version of the facts was obtained: (a) the victim (through her life, described by witnesses); and (b) the defendant (through his own testimony under oath).

This is not as far fetched as it may seem. The (often long) sequences of attorney-

witness exchanges are often portrayed as simultaneous turn-taking among the different witnesses to be overheard and evaluated by the judge/jury (Pascual 2008: 94). Take for instance the way in which an attendee to the trial at issue explained how the daughter-in-law of the victim and the defendant was purposely called to be questioned immediately after her husband's testimony (Int.8-Nov: 11):

(22) ...of course Ti. [daughter-in-law] followed Tr. [son], but they couldn't speak between each other's testimonies, and D. [prosecutor] used her to contradict her husband.

Even though these two witnesses did not engage in any verbal exchange during their testimonies, the various interactional sequences between the prosecutor and the second witness are construed and presented as the witness's fictive response or counterargument to what the previous witness had told the prosecutor as addressee and the jury and court as overhearers. An effective compression to a human-scale question-answer sequence is involved, such that in the blend, the ones being questioned in actuality appear as fictively exchanging turns with each other.

Note too that presenting the victim and defendant – rather than the attorneys – as the ones debating the opposed version of the facts successfully brings together: (a) the crime and subsequent trial on it; and (b) the presentation of evidence through testimony and its subsequent evaluation.¹⁴ This blend fits well with the characteristics of the case at hand, in which, counter to what is customary, the defendant – rather than the defense team – seemed to be the one doing the actual 'fighting.'¹⁵ Indeed, even though the prosecutor

who produced (1) did speak of his argument as a “response” to the defense’s (Int.1-DA: 12), as pointed out earlier, it does seem that it was the defendant rather than the defense team who needed to be most clearly counter-argued. For instance, the prosecutor began his discourse following the defense’s with the following metacommentary (Vol.6, 1452: 10-15):

(23) The purpose of my rebuttal closing argument is to specifically address some of the points that Mr. L. [defense attorney] addressed. And what I think is important that you realize before I make this argument is my comments are not directed at Mr. L. personally. The comments are directed at the defendant and the law as it applies to the defendant.

In fact, some of my interviewees expressed their feeling that the defense in this case was weak merely because of their client (Int.4-Plgal: 14; Int.5-Rel: 6, 7, 12, 32; Int.8-Nov: 7, 27; Int.9-DCi: 7). The fictive debate between defendant and victim that seems to underlie the attorneys’ arguments before the jury as well as the image of the deceased testifying in the trial for her own murder can be represented in Figure 5 below:

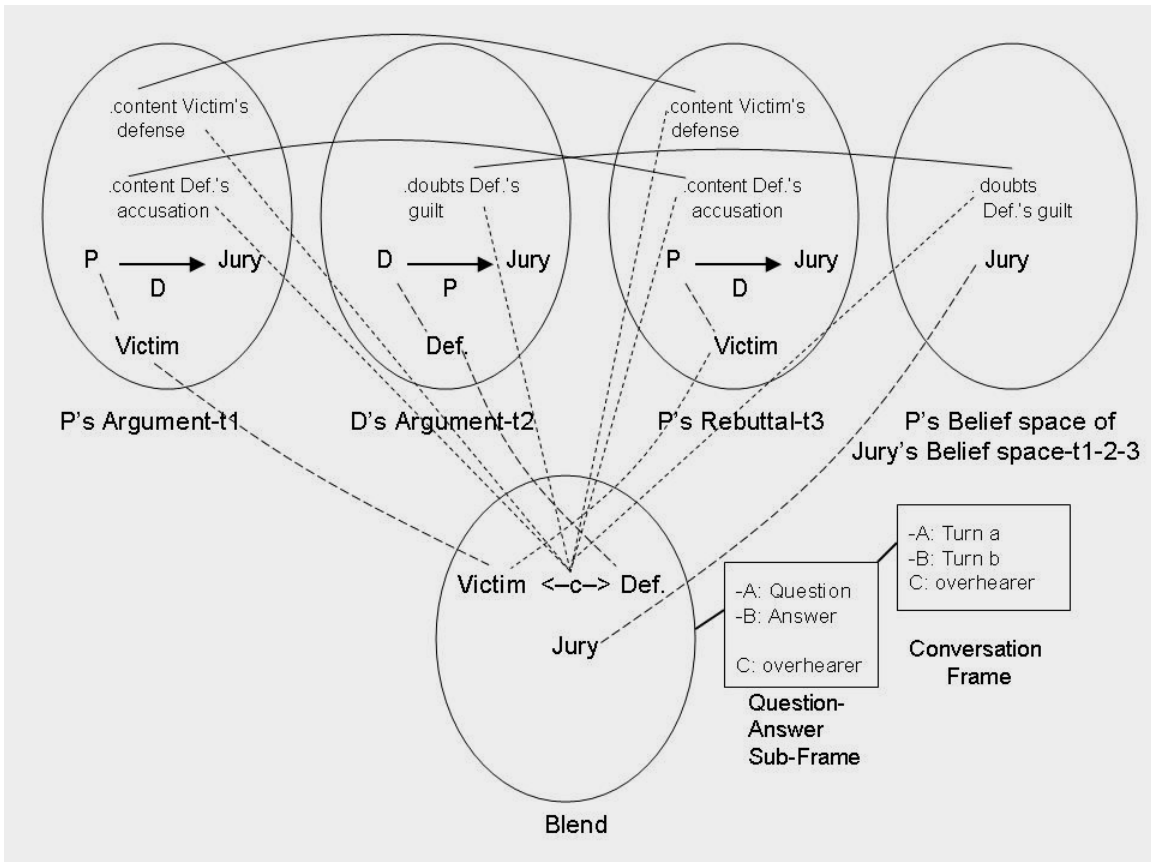


Figure 5. The Victim-Defendant Debate

The Prosecutor (P) and the Victim, as well as the defense counsel (D) and the defendant (Def.) are linked by an inner-space representation vital relation (Fauconnier & Turner 2002: 97-98). This is not a *visual* relation of representation, as in the painting or photograph that represents an individual in actuality, but a social one, in which one individual speaks for another. Thus, even though the ones delivering their closing arguments are the prosecutor and the defense counsel, the representation relation between them and the victim and the defendant respectively is what allows compression into uniqueness in the blend.

To sum up, I believe that the conversational blend in (1) is argumentatively effective,

partly because it sets up and reproduces the assumed fictive triadic participant structure of the courtroom, in which a party's interpretation of the case is presented to the judge/jury for evaluation in opposition to the opponent's interpretation of the same facts. At the same time, this blending configuration fits with the trial at hand, in which the only eyewitness to the crime could not testify, and in which the only evidence contradicting the circumstantial evidence against the defendant was the defendant's under-oath testimony in self-defense, which was in actuality not supported by the defense team.

6. Summary and conclusions

This paper analyzed the double-scope blend of a murder victim 'testifying' through circumstantial evidence, produced by a prosecutor in his closing argument to the jury. It was suggested that this blend was argumentatively effective, mainly because it reproduced the participants' knowledge about and overall conceptualization of the institutional context in which it occurred. Analysis was based on in-depth ethnography on the case, involving investigation of the prosecutor's definition of what a trial is in different social settings.

First, the blend of the murder victim speaking through circumstantial evidence fitted the case, since the only eyewitness to the crime could not testify, and the only evidence contradicting the accusatory circumstantial evidence was the defendant's under-oath testimony in self-defense. Second, the blend of the deceased victim 'testifying' reproduced the norms of the trial proceeding, as it mimicked witness testimony, which is

the means through which evidence is presented for evaluation. As an institutionalization of the cultural model of language as informational (Sweetser 1987), in Law space, sworn testimony is mapped with the truth. Thus, the blend at issue was consistent with the institution's definition of a trial as a search for the truth. Third, the blend served to highlight the victim's virtuous life, which indirectly prompted a relation of disanalogy with the unsympathetic defendant. This is consistent with the common idea of a trial as a battle for sympathy. Fourth, the victim's posthumous testimony set up and reproduced the assumed fictive dialogic interaction of the courtroom, in which a party's interpretation of the case is presented to the judge/jury for evaluation in opposition to the opponent's interpretation of the same facts. In sum, I suggest that a 'trial' is conceptualized by participants as a fictive dialogic war of words in which the evaluators' sympathy towards the victim or the defendant is fought for and through which (subjective) truth is to emerge. This definition of 'trial' illustrates Langacker's (1987) idea of extensive '*semantic networks*,' including encyclopedic and even **episodic** information associated with individual words, as opposed to the idea of a static lexicon.

The paper also sought to show that language users cognitively experience and (meta)operate with different intertwined layers of context awareness and understanding. Critically, these permeate their discourse and inform their metadiscourse differently in different social domains: (a) when metaoperating to outsiders (e.g., 'staging' for an interviewer); (b) when metaoperating in a daily setting (e.g., lecturing to fellow attorneys); (c) when using everyday professional knowledge before outsiders (e.g., delivering a discourse to the jury); or (d) when using everyday professional knowledge among insiders (e.g., brainstorming with colleagues).

It follows from this that fixed-choice questionnaires and feedback interviews are necessarily insufficient for understanding a given socio-cultural or linguistic behavior, since they only reflect the subject's responses in one social setting, namely when 'staging' for or using everyday knowledge before outsiders, these being the researchers themselves (cf. Cicourel 1964, 1974a). Bearing this in mind, I believe that the study of language and cognition needs to involve a multi-level methodology. Consequently, useful and necessary as they are, the use of corpus-based studies, experiments, surveys or even interviews, may not always properly ensure data validity as in-depth field research can. Indeed, serious fieldwork in a naturally constraint environment in which the phenomenon analyzed is relevant provides a level of ecological validity that can reveal much about the object of study. This paper is thus a call for an integration of various empirical methods, quantitative as well as qualitative, converging evidence and techniques from cognitive science as well as from cognitive sociology (Cicourel 1973) and cognitive and linguistic anthropology (Hutchins 1990, 2005; Duranti 1997). At the same time, this paper is a call for an approach to blending and cognitive linguistics in general which takes into account both the content and the context of language production and interpretation. As it is, language is essentially context-bound and interactively organized (cf. Cicourel 1973; Duranti & Goodwin 1992; Verhagen 2005; Janssen 2007). Lastly, I believe the paper also shows that understanding discourse and communicative phenomena can help us better understand linguistic phenomena. It seems therefore useful to study language data within a broad, situated discourse context.

Note

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² Even though most work on conceptual blending discusses networks with solely two input spaces, situated argumentative data is usually so complex that more input spaces are necessary (cf. Coulson & Pascual 2006; Pascual 2008, in press). This is consistent with Ruiz de Mendoza and Peña's (2005) multi-space model, the *Combined Input Hypothesis* (CIH), which equally allows for the accommodation of multiple source inputs.

³ This view is in line with the understanding of context in cognitive sociology (cf. Cicourel 1973, 1991); cognitive anthropology (see Duranti & Goodwin 1992 for a review); and the communicative context model of discourse analysis (Van Dijk 2006; Van Dijk & Kintsch 1983).

⁴ The example of the deceased victim "in a way testifying" shows how metaphor – though in this case weakened by "in a way" – is not characteristically a class inclusion phenomenon (Ruiz de Mendoza 2005: 28). The victim is merely presented as resembling a witness, as she can also 'tell' us something through her exemplary life. In the alternative "The victim is the best eyewitness," however, there is classification, as the victim is metaphorically presented as part of the group of witnesses.

⁵ It is not uncommon for attorneys to argue upon evidence that is 'conspicuous by its absence' (Pascual 2002: 68-72) or even to have this negative evidence 'say' something to the one to draw the inference, as in the following (Pascual 2002: 160-161, 2008: 91):

(i) there is an absence of spatter on those pills that tells you that the pills had to be deposited after her injuries, [...] which is what tells you the killer had time. (Vol.6: 1462: 25-28, appendix J12)

⁶ The term ‘truth’ should of course be understood within the Law space and may therefore not correspond to the objective state of affairs in Reality space. Within the informed Belief space of legal professionals, an element *p* is or is not true in the Law space, which, though a subspace of Reality space, imposes particular modeling processes that may differ slightly or greatly from those of what we understand to be the reality of everyday life. In fact, the eighteenth century scholar Edward Bertham and others postulate that the entire judicial process rests on a foundation of legal fictions (Kevelson 1980: 71), since the legal professionals’ “construction of what is ‘real’ or ‘true’ or ‘right’ is dependent on the ‘set of schemas’ [they] select to interpret the world” (Moore 1989: 340). To borrow Schutz’s wording (1955: 198) on social groups and institutions in general, my italics: “[s]ocial collectivities and institutionalized relations [...] are as such not entities within the province of meaning of everyday reality but constructs of commonsense thinking which *have their reality in another subuniverse*, perhaps that which William James called the subuniverse of ideal relations.”

⁷ Since in Western law direct evidence can only come from testimony under oath, the witness testimony phase is considered the most important and interesting part of the trial by both lay participants and legal professionals (cf. Pozner & Dodd 1993). For instance, when asked to define the legal process, one of the public defenders in the case at hand did so by means of a construction metaphor focused entirely on the witness testimony phase (Int.1-DCi-1: 19):

(i) Think of every witness as a piece of a puzzle... you put that piece here, you put that piece there, you put that, and pretty soon you see the face of a lion! Yes? So, witnesses are called to put a little, piece of the picture! And the picture increasingly becomes clear!

Also, in a lecture organized by the American National Association of Democratic Lawyers (N.A.D.L), a public defense lawyer and university professor of law reminded the attendees, all public defenders: “the jury don’t wanna hear it from you, they wanna hear it from the witness.” See Coulson (2005) for a conceptual blending analysis of a humorous exploitation of the law’s strong reliance on verbal interaction for the presentation – and not only the evaluation – of evidence in a cartoon showing two American presidents engaged in the following cartoon conversation:

(i) WASHINGTON: I cannot tell a lie.

CLINTON: If everybody’s on record denying it, you’ve got no problem.

⁸ In this case, it seemed that in the defendant’s Belief space the connection between his Verbal space and Reality space was one of identity. To quote a spectator in the US.SD’00-1 trial (Int.8-Nov: 3):

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- (i) I had never seen somebody carrying the belief that something is true because they say it [...] when I saw him testify I saw that he thought that if he said it, it made it true, [...] he truly believed that our very words make it real!

According to the defendant's counsel, this was reinforced by external feedback from his family and customers (he was a successful salesman in the pyramid Amway corporation), who would believe all he said (Int.9-DCi: 4):

- (ii) Mister Coff had allowed his family, his wife, his children... were people that he could tell, that it's raining outside, there's a thunderstorm, and they look outside and you will see a thunderstorm.

For a discussion on the nature of the Verbal space and an analysis of its relation to Reality space in this and other cases, see Pascual (2002: 101-104, 2007).

⁹ A common image that is similar to the one of the dead victim 'testifying' is that of the victim's injured body as speaking up. Take for instance the example below, from a brainstorming session among three Californian prosecutors on a sexual assault (Pascual 2008: 90-91):

- (i) He left *all* kinds of evidence that he won't tell us out of his mouth! The broken jaw, the semen... I assume there's physical findings... [...] So, basically, her *body* is telling us what he won't!

In this case, the statements of the victim and the defendant as to the nature of their sexual contact were contradictory. Since both statements had the same legal value, the prosecution's accusation in this case relied almost exclusively on physical evidence from forensic doctors, who would be called to testify in court and show the jury pictures of the victim's bodily injuries. By so doing, the victim's battered body can 'tell' the story. This is convincing, since as opposed to ordinary witnesses, bodies cannot lie. The presentation of the physical evidence on the victim's body as the body telling its observers about its violent past allows for the setting up of an identity mapping between the confession that is conspicuous by its absence in the police interrogation of the defendant (structured by a negation network) and the inference that can be drawn from the victim's injuries after the attack. Just as in the example of the murder victim testifying, this makes comparison of the one with the other easier and helps draw the inference that the defendant is lying.

¹⁰ The reporter's answer in (9) was given when asked to describe the defense's performance and when asked to talk about unforgettable parts of the trial. It seems relevant that he should come up with the same observation in both questions. This point is also seen in the notes this journalist took during the trial. The first out of the 12 quotes in the 6 pages devoted to the defense's final report in his notebook is the

following: “Mr. Coff has said over and over and over and over to anyone who will listen that he didn’t kill his wife.” Whereas most of the press articles on the closing arguments written by this reporter were devoted to the prosecutor’s speech (66 out of 98 lines), only 23 were devoted to the defense. Significantly, they start with a sentence that highlights the point made in the interview: “Coff’s lawyer, however, reminded jurors that Coff has always maintained his innocence” (lines 86-87).

¹¹ In legal argumentation the ARGUMENT IS WAR metaphor is generally not used to exaggerate the intensity of the debate, as in “It was not a debate; it was a nuclear war” (Ruiz de Mendoza 2005: 34). Rather, argument in court is merely experienced and presented as engaging in a battle between enemies equipped with weapons, and the possibility of losing or winning. The use of a conceptual metaphor to account for a complex blending network should not be surprising. Conceptual integration theory does not only share many characteristics with conceptual metaphor theory (Ruiz de Mendoza & Peña 2005). The two theories are compatible, since dynamic meaning construction, which often involves blending operations, cannot occur without the conceptual structures of meaning representations, which often involves conceptual metaphors (cf. Ruiz de Mendoza 1998, Coulson & Pascual 2006).

¹² By way of illustration consider the extracts below from trial skill seminars for and by prosecutors and defense counsels respectively (Cavero 1998: 9-10, my translation; Pozner 2000):

- (i) One should foresee that it will be then that the Prosecution’s Office will have to *confront* a bigger *foe* in trial in which the most *devastating* means available to the most *powerful* ones will be tried out. Against this *powerful adversary*, one should expect that the Prosecution will count on its own *weapon*.
- (ii) [there are] two ways to win: *beat* the story or *beat* the storyteller [...] Let’s get up [and] *do_some damage* [...] [with a] *buffet of weapons*.

¹³ The jury’s conceptualization of witness testimony as being directly addressed at them can be illustrated with the following extract from a juror’s comment to the press in the Michael Jackson case:

- (i) I disliked it intensely when she [witness] snapped her fingers at us [...] I thought, “*Don’t snap your fingers at me, lady.*” (*New York Times*, June 14, 2005)

¹⁴ Such a blend, in which the the criminal facts and the trial on them appear compressed into uniqueness is not unusual in legal argumentation. See for instance Pascual (2002: 96-97).

¹⁵ Apparently, the defendant’s attorneys had first tried to convince him to confess to the crime, when that failed they tried in vain to dissuade him from testifying, and later admitted to the press that the accusatory verdict against their client would not be surprising “to anyone who has followed the case” (*The San Diego*

Union-Tribune, November 8, 2000). Not surprisingly then, one attendee thought their performance at trial “didn’t seem much of a defense” (Int.8-Nov: 7).

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