Stance Expressions in the Courtroom

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Chaemsaithong, Krisda. 2015. Stance Expressions in the Courtroom. *English Language and Linguistics* 21.2, 41-59. Drawing upon a corpus of three high-profile Anglo-American trials, this study explores stance expressions in legal opening statements. Specifically, the study analyzes the forms and functions of stance resources such as self-mention, hedges, boosters, and attitude markers. The study finds stance expressions to permeate the opening statement. These devices, I argue, enable the lawyer to subtly bypass the legal constraints that prohibit explicit display of personal opinions and comments on the evidence.

Key words: courtroom discourse, evaluation, opening statement, stance, stancetaking

1. Introduction

The process of conveying personal attitudes and evaluation, known as stancetaking, has long been of interest to linguists. Recent research in legal discourse has found legal professionals to constantly engage in such a process, and stance expressions to be a crucial semiotic resource to manage an appropriate voice, claim a position, and calibrate alignment with other interlocutors. This is evident in various genres: expert witness testimony (Chaemsaithong 2012), direct and cross examination (Hobbs 2003, Cotterill 2003, Heffer 2007), lawyer-client meetings (Kozin 2008), judges’ summing-ups (Henning 1999), and written opinions of judges (Finegan 2010, Hinkle, Martin, Shaub & Tiller 2012).

A legal genre where stance is likely to play a key role is the opening statement. It has been noted that in this genre lawyers make use of “those very resources
of belief, opinion, intent, and subjective evaluation which the rules of evidence prohibit” (Harris 2005: 222), and that lawyers constantly position themselves in relation to the jurors (Chaemsaiithong 2014). These are interesting observations, which warrant further investigation, as they stand in stark contrast to the legal requirement that lawyers may “do no more than to inform the jury in a general way of the nature of the action and defense” (Best v. District of Columbia 291 U.S. 411, 54 S. Ct. 487, 78 L. Ed. 882 [1934]; my own emphasis). To date, this genre has been under-theorized, which in turn limits the strength of claim about the extent to which legal discourse is evaluative.

This study, therefore, aims to explicate the process of stancetaking in the opening statement and its roles in persuasive storytelling by analyzing three high-profile Anglo-American trials. As will be shown shortly, stance expressions permeate the opening statement, and it is through these devices that lawyers are able to subtly bypass the legal constraints that prohibit explicit display of personal opinions and comments on the evidence. Through subtle stancetaking, lawyers may influence jurors to draw at least tentative conclusions at this initial stage (Lind & Ke 1985, Pennington & Hastie 1991, Spiecker & Worthington 2003).

The study begins with a description of the discursive characteristics of the opening statement, and proceeds to discuss the concept of stance and an overview of the corpus. It then presents the findings in details, and concludes with some observations on the use of stance in this genre.

2. The Opening Statement

The opening statement is the first opportunity for the trier of fact to hear a comprehensive overview of each party’s factual claims, hence counsel’s first interaction with the silent jury. Here, in monologic production, attorneys from both sides introduce themselves and the parties involved in the lawsuit, outline the important facts of the case in the form of narratives, explain the applicable laws and make a request for a verdict. However, what makes the discourse of the opening statement particularly peculiar is its dual nature. The official website of the US federal courts states that “although opening statements should be as persuasive as possible, they should not include arguments” (Administrative
Office of the US Courts). What this means in practice is that, to create a successful opening statement, lawyers need to stimulate the interest of jurors, build rapport with them and, simultaneously, come close to being argumentative (Tanford 2009: 147). They can, for instance, offer a discussion of the anticipated evidence and “facts” they intend to prove, but they cannot assert personal opinions, comment about the evidence, discuss how to apply the law to the facts, or arouse the emotions of the jurors by making negative judgments about the other party in scurrilous terms. In reality, however, such limits are hard to enforce and usually left to the discretion of the trial judge. The current study takes this as a departure point and seeks to investigate this discursive site, where lawyers solely manipulate their stance resources to be maximally persuasive while simultaneously appearing non-argumentative.

3. Stancetaking in Discourse

From a discourse-pragmatic perspective, the concept of stance has been investigated under several labels. Such labels, to a large extent, refer to the same phenomenon. Two of the most widely used terms are evaluation (Bednarek 2006, Holmgren & Vestergaard 2009, Hunston & Thompson 2000) and stance (Biber & Finegan 1988, 1989, Hyland 2005, Englebretson 2007a, Johnstone 2009). Other widely used terms include appraisal (Martin 2000, Martin & White 2005) and voice (Hyland 2008, Ivanic & Camps 2001).

To begin with, Thompson and Hunston (2000: 5) talk of evaluation as “the broad cover term for the expression of the speaker or writer’s attitude or stance towards, viewpoint on, or feelings about the entities or propositions that he or she is talking about”. The researchers convincingly point out that evaluation can be recognized when there are signals of comparison, subjectivity, and social value.

In a much similar way, Hyland (2005) sees stance as constituting a category distinct from engagement (through which speakers explicitly acknowledge and connect to listeners), although recognizing both categories as evaluative resources which may overlap. According to him, stance can be seen as an attitudinal dimension and includes resources which enable speakers to present themselves
and convey their judgments, opinions, and commitments. It is the ways that writers intrude into the discourse to stamp their personal authority onto their arguments or step back and disguise their involvement. (2005: 176)

Hyland (2005) identifies four components of stance:
1) hedges (devices which withhold complete commitment to a proposition), e.g., possible, may, could, tendency
2) boosters (devices which allow writers to express their certainty in what they say and to mark involvement with the topic and solidarity with their audience), e.g., should, definitely, of course
3) attitude markers (devices which indicate the writer’s affective, rather than epistemic, attitude to propositions, conveying surprise, agreement, importance, frustration, rather than commitment), e.g., believe, remarkable, extraordinary, interesting
4) self-mention (the use of first person pronouns and possessive adjectives to present information), e.g., I, we, our

Along the same lines, this study understands stancetaking as an activity in which speakers assess, evaluate and position themselves in relation to their objects of talk and interlocutors. For the purposes of this study, Hyland (2005)’s system of classification will be adopted. This is because his conceptualization of stance is comprehensive, ranging from authorial presence to the signaling of attitudes, feelings, and judgments about a proposition or entity in the text. Second, the main interest of this study lies in exploring how stance indicators are realized in the opening statement. Third, because the same expression may function differently in different contexts, this makes Hyland’s function-based system appropriate for this study.

Stance functions in legal discourse have received some attention. In addition to the previous studies cited in the introductory section, Matoesian (1999) demonstrates how a defendant in a rape trial, who is also a physician, uses modal perfects to encode an epistemic stance (on the possible cause of the victim’s injury), and as a result is able to index an expert identity and undermine the prosecution’s case.

Finegan (2010) chooses to examine adverbials of attitude and emphasis in written opinions or decisions of the U.S. Supreme Court and finds such
expressions to be abundant in the corpus (e.g., *properly, correctly, simply, indeed,* and *clearly*). The study offers a glimpse of the degree to which the language of emotion finds its way into legal opinions.

Mazzi (2010) offers a linguistic analysis of judicial evaluation strategies in U.S. Supreme Court judgments. It was found that judges take stances via a range of strategies, including straightforwardly evaluative verbal and adjectival items (e.g., *disagree* and *incorrect*) and the more fine-grained pattern “this/these/that/those + noun” (e.g., *omission, problem, argument, statement,* and *conclusion*). This study raises an awareness of how judges craft their reasoning through subtle stance-taking expressions, enabling them to persuade the reader to see things in a particular way.

All in all, the studies above do much to inform the present study. However, they tend to focus on particular features and constructions, thereby offering only a partial mapping of stancetaking in legal discourse. To present a more complete picture, this study will explore a range of stance features in the opening statements of a group of high-profile trials.

4. Data and methodology

The current study draws from a corpus which consists of written transcripts from three American trials. Such cases have been selected because of their high visibility, not because of any special characteristics of the cases, the lawyers, or the linguistic patterns. A short description for each trial is provided below.


One of Alabama’s most sensational murder cases, the trial involves Betty Wilson who was tried for allegedly hiring James White to murder her husband Jack Wilson, an ophthalmologist, at their house in Alabama. The motive was said to be for inheriting Dr. Wilson’s $6.3 million estate. Since there was no physical evidence connecting Mrs. Wilson to the murder, the only thing prosecutor had to convict her was the testimony of White, a known alcoholic, drug addict and a diagnosed delusional schizophrenic. Thus, discursive evidence is critical to the outcome of the trial. Both Wilson and White were convicted and sentenced to
The case involves a 17-year-old defendant who stood trial for his role in the 2002 sniper attacks around Washington, D.C. He, together with 42-year-old Muhammad, was involved in killing ten people and wounded three others, and the defense team claimed that Malvo was brainwashed by Muhammad into committing the crimes. Nevertheless, Malvo was found guilty and sentenced to life in prison without parole (while Muhammad faced death sentence in a separate trial).

This case started to be investigated after a British documentary had been broadcast in March 2003, presenting an interview of Michael Jackson and a (then) 13-year-old boy named Gavin Arvizo. In one scene of the show, Jackson was seen holding hands with Arvizo and, at one point, Arvizo rested his head on Jackson's shoulder. Moreover, the film also showed the guests’ discussing sleeping arrangements. Jackson was charged with four counts of molesting a minor, four counts of intoxicating a minor in order to molest him, one count of attempted child molestation, and one count of conspiring to hold the boy and his family captive at his Neverland Ranch.

The corpus was analyzed using a text-driven approach. The transcripts were manually scanned for markers of stances. Since I was interested in seeing how evaluation was manifested in the opening statements, I manually collected instances of evaluation instead of setting out to find pre-determined expressions or syntactic structures. I then categorized such evaluative expressions according to the framework adopted and examined their pragmatic functions in detail.

5. Findings

5.1. Self-mention: First-person singular pronouns
As self-expressive forms, first-person pronouns index the speaker who is taking a stance (Du Bois 2007: 143). Stancetakers actively use these forms, often in tandem with other expressions (e.g., verbs) in a particular context, to construct locally-relevant aspects of identity, epistemicity, affiliation, agency and responsibility (Englebretson 2007b), thereby delivering a more subjective and personalized statement (van Hell, Verhoeven, Tak & van Oosterhout 2005).

In my corpus, the lawyers reference themselves using pronouns to the exclusion of nominal expressions. First-person singular pronouns frequently co-occur with speech reporting verbs. Quoting themselves, the lawyers create a relationship between the current topic and a prior part of the presentation through such linking phrases as “as I said before” (1a), thereby making their claims appear uncontested and the presentation coherent in the jurors’ memory. In contrast, when explicitly attributing the statement to others, lawyers were found to signal disalignment with the other side. For example, the lawyer in (1b) evaluates the defendant’s speech as coming from an insane person through a rhetorical question.

(1) a. As I said before, Michael said he slept on the floor one time. It wasn’t at all the way Bashir was trying to make it look. (Jackson Def)

b. He stresses it is a two-man job. He said, and I quote, “We are a team, a team, team.”... Does that sound like utterings of an insane man? (Malvo Pros)

Second, accompanied by mental verbs, first-person singular pronouns are used to indicate the lawyers’ commitment to the truth of their narratives. In (2a), the lawyer recounts a narrative in which he signals his uncertainty about the time and his certainty about its evidentiary value to the case. In (2b), the lawyer intrudes into the discourse to pre-empt objection from the audience.

(2) a. I guess last summer sometime, when there was another District Attorney over in Madison County, who since has gone out of office, he was given a deal, and I’m sure that will be a part of the case. (Wilson Pros)

b. The logs show they were brought back to the ranch. I don’t think there will be any dispute to that. (Jackson Pros)
Third, first-person singular pronouns can be used to bring aspects of the lawyers’ identity outside of the courtroom into the present context. In (3a), the lawyer assumes a witness identity, thereby signaling his attitude toward the expression “five minutes of blur” and how this expression is one of the keys to understanding the crime. In (3b), to construe James White as an unreliable defendant, the lawyer uses his personal military background so as to discredit him.

(3)  a. You’ll hear this reference “five minutes of blur”. When I first heard that, I thought what in the world? (Malvo Def)
    b. I came from the generation that went to World War II. In fact, I came back here to this city and enrolled in a great university, five months after the Japanese surrendered and two months after I landed in San Francisco. James White was discharged from the Army…on account of character and behavior disorders…he shirked his duties and deserted his post. And if everyone in my war had deserted their post and shirked their duties, we would have been speaking either Japanese or German. (Wilson Def)

5.2. Self-mention: First-person plural pronouns

While also indexing the stancetaker like first-person singular pronouns, first-person plural pronouns may be used to attribute a particular stance to a social group the stancetaker wishes to affiliate with, hence a more involved stance. That is, first-person plural pronouns can be manipulated to manage discourse “in order to construct, redistribute, or change the social values of ingroupness and outgroupness” (Duszak 2002: 6), thereby opening up a number of referential and pragmatic options. Using this pronoun, the speaker can align herself into one group or community that may or may not exist in the real world (Zupnik 1994), thereby constructing a shared identity. As a result, the audience will not question the speaker’s argument and will accept that the speaker is genuinely speaking on their behalf.

First, referencing themselves and their team, lawyers use we to show their side’s commitment to the validity of a proposition. They may signal confidence in their statement and evidence, as in (4a). Alternatively, they may withdraw
total commitment (4b).

(4) a. We have records to prove it. We can show who went on the plane. We can show the cancelled tickets. We can show all these were booked through MJJ Productions. (Jackson Pros)
b. There are two different stories. I don’t know which one is right, but we think the youngest one got sick in school. (Malvo Def)

Second, representing members of the jury as sharing the same stance and common assumptions, lawyers use first-person plural pronouns to construct a single homogeneous unit. In this case, it is worth pointing out that the unit (e.g., “most of us think”, “we see”, and “we know”) was not mutually recognized before such use of pronouns to strategically presuppose that the jurors share the same opinions and knowledge. Thus, in contrast to the use of we in (4a, b), which specifically refer to the lawyer and his team, we here includes the jurors.

(5) a. We are not suggesting to you that Lee is crazy in the sense that most of us think about crazy people. As soon as the word “insane” comes up, we all think about “One Flew Over the Cuckoo’s Nest”, and we see them as zombiefied”...but this case is so bizarre...that you have to consider the evidence. (Malvo Def)
b. We know this not only from e-mails and records and documents, but we know it from Michael Jackson’s own personal videographer. The fact of the matter is... (Jackson Pros)

Third, first-person plural pronouns may be used generically to refer to no group in particular (replaceable by everyone). Thus, the lawyer puts forth a stance that a particular situation applies to everyone and belongs to everyone, thereby establishing generalities and creating a persuasive proposition. In (6a), the defense lawyer identifies the defendant’s dishonest acts with a common human trait. In (6b), the pronoun we is drawn upon to suggest an understandable relationship between Malvo’s and Muhammad’s lives. This strategy helps stimulate sympathy and understanding in the jury’s mind.

(6) a. Betty Wilson...will not at any time...indicate or have this jury to
believe that she is sainted; she has her faults. Don’t we all? She has admitted voluntarily that she has had affairs, and for that she is to be congratulated, but that is not what she is charged with in this case. (Wilson Def)

b. Our lives and I think all of our lives are very much like rivers. There’s a flow from one point to an ending point. Along the way, there are different ports and different obstacles, and like rivers, our lives have to pass over, and sometimes two rivers merge, and so sometimes two lives do, too. (Malvo Def)

5.3. Attitude markers

Realized in different forms (such as nominals, adjectives, or adverbs), attitude markers are important devices that enable lawyers to mediate the narratives and present the information as true, false, surprising, or non-factual. While any evaluative expression may be used to indicate a speaker’s stance, only lexical items that echo the “macro proposition” of the text (van Dijk 1980, Gosden 1993) and contribute to the theme of the text are regarded as attitude markers in this study. Take the following as an example: “Investigator Brad Miller saying, ‘Michael’s wonderful. He never did anything improper’. Now, that’s supposed to be part of this, I guess, false imprisonment thing” (Jackson Def). Here, “wonderful” and “improper” do not count as attitude markers because they are marked as coming from the investigator. In contrast, “false” exhibits the lawyer’s evaluation of the reported statement, thereby contributing to the lawyer’s view of whether the defendant is guilty or innocent.

The first group of stance expressions stresses the inhumane, disturbing, and unusual nature of the crime. In (7a-c), negative stance expressions contribute to highlighting the guilt and magnitude of the defendant’s acts and the ensuing consequences. These may have the potential for manipulating or reinforcing the jurors’ existing attitudes about the negative nature of the crime. Other markers in this group include: awfully, badly, dangerous, frenzy, horrendous, horrible, lascivious, serious, terrible, unusual, and wrong.

(7) a. What followed was kind of a bizarre event in the sense that…” (Jackson Pros)
b. the *horrendous* acts of destruction that brings all of us into this courtroom… (Malvo Def)
c. And he has been murdered, *dreadfully, painfully* murdered. (Wilson Pros)

The second group of attitude markers presents certain pieces of information as worthy of attentive consideration. Included in this group are such items as *incredibly, extraordinarily, importantly, interestingly, particularly, specifically*, and *surprisingly*. The highlighted expressions in (8a-c) help to organize propositional information in ways that the jurors may easily recover the lawyers’ preferred interpretations of some key events.

(8) a. The amount of activity going on everywhere is *critical* to understanding how utterly absurd… (Jackson Def)
b. And, very *importantly*, that he may chronically misinterpret… (Wilson Def)
c. The *interesting* thing about the killing in Ashland … (Malvo Pros)

The last group of attitude markers quite explicitly signals lawyers’ (dis)agreement with an issue, as in (9a-c). Frequent expressions include: *absurd, agree, different, falsely*, and *ridiculous*. Such expressions may be viewed as an assertion of superior competence and authority, as they are intended to pull the jurors into agreement and reduce the possibility of dispute.

(9) a. Can you imagine a more *absurd* time for it to ever happen? (Jackson Def)
b. He has repeatedly and repeatedly and repeatedly *lied* and *contradicted* himself. (Wilson Def)
c. Muhammad’s real purpose may have been very, very different. Part of it was *true*. (Malvo Def)

**5.4. Hedges**

Hedges allow a speaker to qualify a statement with caution (Hyland 1996), possibility (rather than certainty) and partial commitment (rather than categorical
commitment). In my corpus, hedges serve argumentative purposes by suggesting an important point not explicitly stated, thereby giving rise to an implicature. For example, in (10a), the hypothetical statement (“could have been”) implies that the jurors should not believe the proposition at issue.

The majority of hedges, however, are used to produce timeless acceptable statements. The flexibility of a hedge allows the lawyers to respond to alternative points of view, thereby softening possible disagreement, and at the same time to mitigate the responsibility for truth so that they emerge as honest storytellers. This is in operation in (10b-13c) below. For example, the lawyers acknowledge the possibilities that the defendants’ purpose is different in reality (10b), and that the defendant is going to produce the statement in question (10c), but are also quick to eliminate such alternatives with “part of it was true” and “but that’s not what he said thus far”. Some hedges (as in 11a, b) may co-occur with pronouns, and thus there may be some overlapping of function.

(10) Modal auxiliaries
a. If you know anything about the Neverland Valley Ranch operates, and they could have been objectively determined to be not true. (Jackson Pros)
b. Mr. Muhammad’s original articulated purpose and the version that he gave to Lee and Mr. Muhammad’s real purpose may have been very, very different. Part of it was true. (Malvo Def)
c. That might be what he is going to say, but that’s not what he said thus far. (Wilson Def)

(11) Lexical verbs
a. Betty and Jack Wilson married in, I believe, July of 1978… (Wilson Def)
b. It had training wheels, I guess. (Malvo Def)
c. Nobody seems to have had a problem with them [Arvizio family]. That later changed. (Jackson Def)

(12) Adjectives/adverbs:
a. That was a studio apartment…where her family had lived from time to time, but generally not often. (Jackson Def)
b. Maybe there would have been one or two after that and maybe,
perhaps, one more because by that time John would have been reunited. (Malvo Def)
c. His medical records show that he is likely to fantasize and daydream extensively. (Wilson Def)

(13) Nouns/preposition + nouns
a. He’s running running and getting in shape and that sort of thing. (Malvo Def)
b. Everybody pretty much knew, kind of, what was going to be asked. (Jackson Def)
c. evidence that…suggests that, at least in part, about some important things that James White is telling the truth. (Wilson Pros)

5.5. Boosters

Boosters allow lawyers to express conviction in what they say and make a claim with confidence, thereby marking strong personal engagement with the topic (Hyland 1998; 2005). Because every point made in the opening statement is subject to the jurors’ interpretation and acceptance, boosters aid in persuasion as they undermine alternative viewpoints by strengthening the asserted position.

Through a variety of boosters, examples (14)-(17) are construed as established knowledge, accredited facts or interpretations. Interestingly, some of these expressions, such as “fact”, “proof” and “knowledge” in (17), have become common legal terms so that it may be hard for the jurors to notice them.

(14) Modal auxiliaries
a. You can imagine just about the excitement that must have been with the family, coming from an environment like that to the ranch… (Jackson Pros)
b. Well, the evidence is going to be, ladies and gentlemen, that… (Wilson Pros)

(15) Lexical verbs
a. You are going to find, as Mr. Horan said, they’re males. (Malvo Def)
b. You see, the private world of Michael Jackson reveals that instead of cookies… (Jackson Pros)
c. The proof in this case, coming from the mouth of James White, will show that in each of these statements he lied… (Wilson Pros)

(16) Adjectives/adverbs
a. The family added some things that were pretty preposterous… (Jackson Pros)
b. The picture will be so clear that the degree of indoctrinization so great that it would cry out to you… (Malvo Def)
c. And they were, apparently, preparing to go on a trip… (Wilson Pros)

(17) Nouns/preposition + nouns
a. You will be impressed with the fact that it is almost casual. He talks about killing other human beings almost casually. (Malvo Pros)
b. the proof in this case, coming from the mouth of James White… (Wilson Def)
c. It’s about how he [Jackson] exploited the knowledge of the fact that the child had no father in his life. (Jackson Pros)

6. Conclusion

As my analysis shows, the opening statement can be characterized in terms of the use of stance markers. The study finds that the lawyers appear in the text with a considerable degree of visibility, and the discourse of the opening statement in effect embodies social negotiation of the lawyer’s view of factual events leading to the trial, displaying different degrees of certainty, involvement, and attitudes.

Based on the perspective that language is a system of choices (Halliday 1994, 2013), these linguistic resources are among many other choices the lawyers could have chosen (for example, increasing the degree of impersonality of their messages). Thus the relatively high frequencies of these linguistic resources suggest that such overt self-indexes and attitudinal displays are motivated. Stance devices, I argue, are persuasive “weapons” in the courtroom (Forabosco 2011: 353). This study provides evidence that personal references are not doing only reference work, but self-reference pronouns are loaded with evaluative
significance, although of course they vary in evaluative functions. In addition, the use of boosters, hedges and attitude markers allows the lawyers to avoid directly commenting on the evidence or making obvious negative judgments about witnesses and defendants.

On a broader level, the frequent use of evaluative markers not only constitutes an important element of the lawyer’s argumentative moves but also points to his conceptualization of this monologic genre as having an underlying dialogic structure (Bahktin 1981), independent of the overt communicative structure (i.e. monologue). The opening statement is an instance of fictive interaction (Pascual 2006a), as it involves “interactants who do not always correspond to the addressee and addressee in the actual situation of communication, or even to referents in the current discourse space” (Pascual 2006b: 248). As this study has shown, lawyers take an active role in reaching out to the audience in the courtroom and, through stance markers, turn the jurors into co-constructors of the discourse. When directly referencing themselves, the lawyers presuppose the existence of real-time conversation partners. At the same time, they have to adjust the strength of their claims to negotiate the intended level of claim and the level of audience acceptance.

It is hoped that this research offers a means of explicating and demystifying how lawyers communicate their stances in the initial phase of trials. The findings of this research may have practical implications for training jurors and the public at large to be aware of, and less easily swayed by, persuasive interactive techniques. An interesting question to be pursued in future research is to look more closely at cases where lawyers may mark their stances in other ways, such as via prosody or bodily gestures. We also need to examine opening statements in other legal cultures as well in order to present a more complete picture of the kinds of engagement that are acceptable as well as expected cross-culturally, as the linguistic resources lawyers select are always relative to a particular audience and the socio-cultural contexts in which they are used (Chang 2004).

References

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