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Closing Argument as Multimodal Oratory: Insights from the Chauvin Trial

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Abstract

The paper examines selected aspects of the defence closing argument in a highly publicised criminal trial to illustrate the orchestration of various semiotic resources in legal persuasion and to explain their role in the creation of meaning. The study demonstrates that closing arguments are multimodal performances whose persuasiveness results from the combination of modes (speech, image, video, gaze, gesture, posture, proxemics) which contextualise and strengthen one another, rather than language alone. Drawing on earlier research into multimodality, courtroom rhetoric and proximity in disciplinary genres, the analysis centres on the ways in which the defence counsel controls the rhetorical features of his narrative and constructs himself and the audience as people with similar understandings and goals. The study specifically demonstrates how the counsel constructs the proximity of commitment, the proximity of membership and the proximity of experience. It explores such facets of proximity as: organisation, argument structure, credibility, stance and engagement, and identifies key rhetorical strategies used to achieve the intended communicative effect. The analysis clearly shows that the persuasiveness of the counsel's performance depends on the synchronisation of a range of meaning-making resources, which, if used in isolation, would result in a much less engaging argument.

Keywords Closing argument · Gesture · Jury trial · Multimodality · Proximity · Rhetoric

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1 Introduction

Long gone are the days which saw the privileging of words over images in Western culture as "writing with pictures" has become a valid means of communication and a way of knowing the world [15]. It has even been posited that the visual phenomenon that the modern world has become conflates looking, seeing and knowing [18] and, further, that the visual turn has amplified the challenge of thinking critically about the possible meanings of visual representations which combine fact and fiction. At the same time, it can be observed that with society's growing reliance on digital media, the nature of mediated expression and communication is continuously taking new forms [15].

The advent of digital technologies has affected not only media and advertising, but also legal culture which too partakes in an inescapably visual culture, radically changing "how we think and feel and deliberate about truth and justice" [43: 1]. The audio-visual style of communication has been readily adopted by legal professionals, and it is difficult to imagine counsel who argue their case without any visualising tools, although traditionally the law has been perceived as an enterprise of words. The pervasiveness of visual rhetoric affects both the way in which we conceive of the world and our processing codes, which has special significance in court, where visual forms are used to mediate real-world events to audiences that may lack the ability to properly understand the connection between images and reality. Taking this into consideration, as well as the fact that visual displays are now ubiquitous, the complexities and ambiguities which pictorial representations generate in legal argument call for a closer inspection.

We also need to understand legal rhetoric in relation to multimodal conduct, the all-too-often ignored aspect of courtroom interaction which can, and should, inform studies into meaning-making processes and persuasive tactics in court. Grounded in work on embodied interaction, linguistic anthropology and gesture studies, such analysis offers insights into the way speech, gesture, gaze, posture and material objects are actively integrated and contextualise one another, reinforcing the speaker's narrative. It is also important to note that, like linguistic forms, gestures serve not as a communicative template or 'instructions of use' which become activated in interaction, but rather as situated practices which shape communicative processes.[1] Non-verbal presence, subsuming voice and gesture, does affect the impression the speaker makes and contributes to the perceived credibility and status of both the communicator and the message [34]. Likewise, the handling of material objects can mobilise participant alignment and foreground significant points in the narrative, contributing to the construction of states of knowledge.

[1] As observed by Streeck [45: 5], "Gesture […] is conceived as a family of human practices: not as a code or symbolic system or (part of) language, but as a constantly evolving set of largely improvised, heterogeneous, partly conventional, partly idiosyncratic, and partly culture-specific, partly universal practices of using the hands to produce situated understandings. Practise-based (or praxeological) approaches to language, gesture and social action […] locate meaning in the empirical, embodied practice of human actors within socioculturally constituted, social and material settings. Gestural understanding in this view is not the result of a shared grammar or lexicon, but of the coordinated embodied actions of people and their perspectives upon the material, real-world setting within which they interact.".

To demonstrate how various semiotic resources can be orchestrated during closing argument, i.e. "the chronological and psychological culmination of the jury trial" [28: 387], this study examines the rhetorical choices made by the defence counsel in the Chauvin trial and explains their role in a multimodal performance aiming to convince the jury that the defence attorney's theory of the case should win. In proposing to extend the linguistic interpretation of courtroom interaction to the whole range of semiotic modes, the analysis seeks to complement linguistically-oriented studies into legal rhetoric by offering a broader interpretation of trial lawyers' courtroom performance, applying the notion of *proximity* referring to the author's control of rhetorical features which display both authority as an expert and their personal position towards ideas presented in an unfolding discourse [17], as well as their appeals to commonalities shared with the audience [46].

2 Multimodality in (of) Communication

Multimodality, the key concept that underpins this study, comprises a variety of elements, or *modes*,[2] at different levels of discourse organisation. The basic assumption behind multimodal communication is that "meanings are made, distributed, received, interpreted and remade in interpretation through many representational and communicative modes – not just through language – whether as speech or as writing" [20: 14]. Being part of a multimodal ensemble, language is nestled among other modes which are selected and configured according to the requirements and conventions of a specific communicative setting, and in agreement with the norms and rules of individual communities and the motivations of discourse participants [20: 15]. Relevant to a multimodal analysis of representation and communication are not only the choices of modes but also their constellations and mutual relations. It is also important to note that, unlike earlier approaches, multimodality does not regard language as the prototypical model for all modes but offers new conceptual tools and frameworks with which to describe intersemiotic and intermodal relationships and their role in meaning-making.[3] Connected to this is the assumption that each mode is understood as realizing different communicative work [20: 15].

Multimodal research has attempted to describe inventories of semiotic resources (actions, materials and artefacts) and their organising principles as well as map their meaning potentials, on the one hand [e.g. 23, 24], and to investigate the relationships between modes in multimodal texts, with a special focus on the dynamics of interaction between image and language, on the other [e.g. 21, 29, 47]. Another area of research has been concerned with people's orchestration of various modes in specific social contexts [e.g. 5, 35, 38]. Some studies have also explored the impact of new technologies on design, text production and communicative practices in general [e.g. 12, 26] as well as looked at new forms of literacy, implications for

[2] For a discussion on *mode* and *semiotic resource*, see Jewitt [20: 21–23]. In this paper, both terms are used interchangeably.

[3] While multimodality "steps away from the notion that language always plays the central role in interaction", it does not deny that it often does [37: 3].

pedagogy and the production of knowledge [e.g. 3, 19, 27]. Whatever the foci of individual multimodal studies, they share the assumption that people communicate through parts which are equal to the whole, the whole being equal to the parts, i.e. that modes, or semiotic resources, do not work in isolation, but holistically and as such, should be interpreted in their entirety.

Although multimodal analysis has its limitations, it may be fruitfully put to work to explain the recruitment of various meaning-making resources in the evolving communicative practices including institutional interactions and legal-lay encounters such as, for instance, closing arguments in jury trials.

3 Closing Argument as Multimodal Oratory

With their "undeniably theatrical quality" [13: 199], closing arguments (or summations) are the pinnacle of legal oratory designed to inform and convince the audience. Aiming to construct a compelling story of the case, they "paint a picture" of evidence with the help of visual narratives which are combined with spoken arguments and the lawyer's non-verbal presence constructed through voice and gesture.[4] At the same time, they are "a quintessentially reflexive genre" [8: 170] which establishes connections with earlier stages of the trial and which abounds in "manifestations of shared beliefs about the institution of the Courts, the social practice, the participants, and the principles that underlie it" [8: 169]. This finds reflection in the choice of metalinguistic, metatextual, metadiscursive and metacommunicative strategies [8: 170] alongside other persuasive strategies as well as the non-linguistic aspects of the lawyer's performance, whose ultimate goal is to convince the audience (jurors) that their narrative should win.

Prior research into closing arguments has embraced such aspects as, for instance, trial lawyers' storytelling [1], use of metaphor [13], power relations [11], impression management and identity construction [16], moral legitimation [9], footing and voicing [41], use of metapragmatic signals [8] and the ideational content of competing arguments [42]. Extralinguistic aspects of legal persuasion, in turn, have been taken up by Matoesian [31, 32] and Matoesian and Gilbert [30], who have scrutinised *inter alia* the role of multimodal conduct in jury trials, as well as Feigenson and Spiesel [15] and Sherwin [43], who have examined the relation between visual displays, persuasion and legal argument, turning their attention to opening and closing arguments among other contexts.

Appreciating what may be gleaned from an analysis of multimodal resources in closing arguments, Matoesian and Gilbert [30] demonstrate how trial attorneys exploit various means for speaker positioning and hearer engagement, and how they, through multimodal conduct, create objects of joint attention to project their

[4] Discussing successful oratory in *Institutio Oratoria*, Quintilian [40] notes that all delivery depends on two senses: the eye and the ear through which emotion reaches the soul.

unilateral interpretations of evidence in what becomes discursive co-construction. Their study illustrates e.g. the contextualising role of *material mediated gestures* (e.g. those involving photos and transcripts) which organise the epistemicity of the lawyer's narrative in conjunction with speech and gaze [30: 183]. It is through the synchronised interplay of gesture, gaze and material objects that attorneys encode their epistemic stance while taking up and shifting multiple alignments, as well as define and evaluate the evidence under the guise of objective neutrality, inviting jurors to consider, or "see for themselves", visual material and draw inferences therefrom. In this way, by juxtaposing "what they say" with "what you see", the lawyer underlines the privileged status of observable evidence over spoken argument [30: 190].

Among the gesture types which play a prominent role in impression management, and which are mobilised by counsel to guide jurors' interpretation of evidence, are *beats*. Beat gestures,[5] like batons, mark out segments of discourse or the rhythmic structure of the speech, visually highlighting the content that the speaker feels is important in order to create a focusing effect. Arguing that they can be more than non-imagistic "flicks of the hand" [33], Matoesian and Gilbert note that beats affect the audience's perception of communicative effectiveness and persuasiveness, and maintain, too, that they contribute to semantic meaning [30: 183]. In analysing the prosecutor's closing argument in a rape trial, the authors demonstrate that beats may both "accentuate rhythm and emphasis" and "capture imagistic content" [30: 222].[6] Along similar lines, they posit that it seems more fitting to think of gestures as multifunctional fusions, which build "oratorical crescendos" and strengthen the persuasiveness of closing arguments, rather than discrete monofunctional units [30: 227].

Voice and movement are however not the only means through which counsel invigorate interaction and stir jurors' imaginations, leading them to preferred interpretations. Legal concepts are frequently translated into sophisticated visual forms (e.g. drawings, photographs, diagrams, in-court demonstrations or computer animations) and combined with speech and gesture in any ways desired. By the same token, non-fictional visual material documenting disputed actions and events (e.g. crime scene photographs, CCTV or body-worn camera (BWC) footage) is skilfully woven into the spoken argument to support verbal claims. The use of visual displays in closing argument affects the interpretive processes involved in their assessment, which, on the one hand, have to do with the capacity of visuals to invoke intuitive beliefs and, on the other, rely on the audience's perceptual codes and processing habits nurtured by advertising, television, film and computer games [15: 15].

[5] While gestures defy straightforward categorisation and "cannot be pinned down into a typology in any fixed way" [22: 84], two classification schemes are worth mentioning here: McNeill's [33] distinction into *iconic*, *metaphoric*, *deictic* and *beat* gestures (which, however, should be thought of as dimensions rather than discreet categories) and Ekman and Friesen's [14] system comprising *emblems*, *illustrators*, *affect displays*, *regulators* and *adaptors.*

[6] That is, in the authors' words, convey *residual semanticity.*

Irrespective of the above, given that "[t]hings can be "said" in pictures that cannot, for a variety of reasons, be named with words" [15: 13], attorneys combine verbal messages with visual representations to both *say* and *show* their interpretation of the facts of the case, with a view to managing jurors' impressions of evidence.[7] However, when presented during closing arguments, visually narrated scenarios raise questions about the relation of image to reality and the truth about what actually happened.[8] Importantly, the meaning and the sense of selected fragments of moving images result not from the material itself, but its interpretation. Embodying the observational mode of visual documentation [36],[9] dashboard camera videotapes, CCTV footage or BWC videos document events without any commentary or re-enactment, that is as they happen, and they de-emphasize persuasion while giving viewers a sense of what it is like to be "on the scene" or the semblance of what they would have seen had they witnessed a given situation in person. It should not, however, be wrongly assumed that such material gives jurors access to "historical" or "factual truth". In reality, what is knowable about the case is merged with "narrative truth", that is the counsel's interpretation of the matters in dispute [15: 141, 272]. It is equally important to note that what non-fictional video material provides are pieces of admitted evidence which may create an incomplete or distorted version of reality. In fact, earlier research suggests that video material, even if authentic and unaltered, can be easily misinterpreted and its evidentiary value should not be overestimated. For instance, it has been shown that BWC footage may result in "deceptive intensity" (i.e. exaggeration of the amount and speed of movement, or the intensity of action), "illusory causation" (i.e. overattribution of causality to the agent that is most salient or is the focus of attention) or misguided perception of distance resulting from camera-perspective bias [44]. Bearing this in mind, the relation of video evidence to the truth should be approached with caution.

All things considered, the persuasiveness of narratives presented during closing arguments results not only from the spoken message and linguistic devices, but also from the lawyer's non-verbal presence, or multimodal conduct, and their recruitment of visual material expected to support verbal claims. The communicative work performed by various modes and their interplay will be illustrated in the remainder of the paper presenting examples from the defence counsel's closing argument delivered in a high-profile criminal trial.

[7] During closing argument, lawyers may both present the facts of the case and make inferences based on the plausible interpretation of evidence. In doing so, they may refer to common knowledge as well as fiction, e.g. anecdotes, novels, TV programmes, movies, or even Bible stories [15: 134].

[8] Although multimedia arguments and visual narratives are allowed during closing argument, they are not free from controversy. For a discussion of the controversial use of interactive multimedia in the Skakel summation and the misguided visual framing of the Vioxx case, see [15].

[9] In his oft-quoted classification of voices in documentary films, Nichols [36] distinguishes six modes: poetic, expository, participatory, observational, reflexive and performative.

4 Material and Method

4.1 The Case: Minnesota v. Chauvin (2021)

The material used in the analysis has been drawn from a highly publicised criminal case in which a white police officer was charged with the killing of the Afro-American male named George Floyd. The victim was pinned down to the ground by Derek Chauvin, a Minneapolis police officer, who knelt on Floyd's neck for 9 min. and 29 s. until the latter stopped breathing. The video of the arrest made by one of the bystanders was shared widely on social media and the event was commented on by politicians and the public at large. The case was tried in the District Court of Minnesota, which, as argued by some, prevented the defendant from having a fair and impartial trial before an unbiased jury.

The Chauvin trial was selected for the current study because of its social significance and its potential to add to the collective memory of George Floyd's murder [cf. 2].[10] The uniqueness of the trial resulted from several factors: (1) the fact that the events leading up to the death of the victim were documented second-by-second not only by CCTV and BWC footage but also an onlooker's amateur video, all of which offered various perspectives and were relied on extensively in court; (2) there were as many as four state prosecutors who summoned 38 witnesses, including forensic doctors and firearms experts; the defendant in turn was represented by one counsel only (Eric J. Nelson); (3) due to pandemic-related restrictions, the seating arrangement was not typical and the participants were placed behind plexi glass and had to wear face coverings when not speaking; the view of some participants was partly obstructed; (4) one of the witnesses was contacted via Zoom during the trial and made a statement remotely; jury questions were handled on Zoom as well; (5) the jurors were provided with a laptop to have access to the audio-visual material presented as evidence during their deliberations in the jury room (which is not a typical practice). As is equally important, (6) the trial was broadcast live and was followed by millions of Americans sitting in their homes during lockdown. Finally, with the growing social unrest prompted by the killing, Americans voiced their expectations as to the outcome of the trial, which could have affected how the participants – including the defence counsel, one of the principal "storytellers" – acted in court. Although the defence lost the case and Derek Chauvin was ultimately convicted, the defence counsel's oratorical performance merits attention. For one thing, it serves as a prime example of the almost theatrical orchestration of various semiotic resources aimed to persuade the audience – both the jurors in court and, possibly, the wider audience following the trial on television or online. For another, by turning his closing argument into a vivid performance, the counsel made his case

[10] As argued by Berman [2], criminal trials for prominent criminal acts produce collective memory and add to society's shared narrative of the offence in question. This effect is achieved thanks to some of the trials' features, including "the trial's unique narrative form, constituent storytellers, capacity to capture the gravity of the offense, and jury" [2: 481]. It may not be overlooked either that the trial's competitor, i.e. the mass media, forges collective memory of the offence by disseminating footage and commentary on the crime and by covering and broadcasting the trial [2: 504].

come alive, producing a powerful counternarrative with the potential to affect the collective memory of the crime, the perpetrator and the trial itself.[11]

4.2 Multimodal Proximity

The material used in the study (two video recordings totalling app. 2 h. and 50 min., accessed on the YouTube channel of the Law & Crime Network, and their manual transcripts)[12] represents a concrete instance of the genre of closing argument (summation) and of a social practice located in the legal field, whose members have their own way of acting, speaking and seeing, and assert authority based on a certain world vision [cf. 4]. The analysis illuminates multimodal aspects of the defence lawyer's performance and his recruitment of a range of resources aiming to win the jurors' positive regard for his theory of the case. The investigation centres on selected combinations of linguistic and non-linguistic modes which were deployed for persuasive purposes, and which established links to the earlier stages of the trial, including the testimonies. Of interest to the current study are thus not only the linguistic features of the counsel's argument but also their interplay with visual narratives and the speaker's gaze, gesture and proxemics.[13]

The analysis is informed by multimodal approaches to discourse which understand communication and representation "to be more than about language" [20: 14] and to result from the interplay of parts which are equal to the whole. In addition, it builds on the concept of *proximity*, originally conceived by Hyland [17] with written discourse in mind, and subsequently adapted by Tereszkiewicz and Szczyrbak [46] to the needs of an analysis of multimodal genres. In Hyland's approach, presented in [17], proximity refers to the ways in which authors use rhetorical features to display authority and expertise (proximity of membership) and to express their positions on the ideas presented (proximity of commitment), thus constructing themselves and recipients as people with similar understandings and goals [17: 117]. Seen in this way, proximity subsumes five facets: organisation, argument structure, credibility, stance and engagement, and it consists in writers' management of the display of expertise and interactions with readers through rhetorical choices which allow them to negotiate a credible account of themselves and their work. Put differently, authors establish a suitable relationship with ideational material, in a manner consistent with the norms of the discipline, and connect with their audiences while adopting an

[11] The defence counsel's expressivity clearly contrasted with a much less expressive communicative style adopted by the prosecutor. Idiosyncratic speaking styles aside, the difference could also be attributed to the prosecutor's lesser need to impress the jury given that the evidence of the defendant's guilt was strong.

[12] Available at: https://www.youtube.com/watch?v=JmPu3i4NOok and https://www.youtube.com/watch?v=P7OTtyRxJEA. Last accessed 16 August 2022.

[13] It should be noted, however, that because of the unusual seating arrangement resulting from sanitary restrictions, it may have been the case that some of the jurors did not see all of the counsel's multimodal conduct. It must likewise be admitted that in the trial videos not all multimodal conduct is available for an analyst's inspection: the counsel is not shown at all times and the non-speaking participants' gestures and reactions are not captured at all. However, it is believed here that although cameras offer a limited viewpoint into the trial, the material documenting the proceedings may offer useful insights into the role of various semiotic resources in legal persuasion.

acceptable persona [17: 117]. In so doing, they "use language to negotiate social relationships by telling their readers what they see as important" [17: 116].

The tripartite model of proximity, in turn, includes one more dimension: the proximity of experience which refers to the ways in which speakers establish rapport with the audience by appealing to commonalities and drawing on the communal epistemic background [46]. This approach, utilised in a study of expert-lay interaction in medical popularisation videos [46], sets up an interpretive frame for the analysis presented in the remainder of this paper, which too focuses on an asymmetrical interactional setting. Unlike [46], however, the material scrutinised in the current study involves a legal professional (defence attorney) and a lay audience (jurors), the latter being the main addressee of the counsel's performance. It is hoped that the choice of this approach enables effective categorisation of key rhetorical strategies in closing argument, which, like popularisation videos, is characterized by professional and epistemic asymmetries.

The resources listed in Table 1 (speech, image, video, gesture and proxemics) will be discussed in relation to individual facets of proximity as well as illustrated with numerous examples in Sect. 5.

5 The Defence Closing Argument in the Chauvin Trial from a Multimodal Perspective

While it is neither possible nor purposeful to provide a frame-by-frame micro-analysis of every single element of the counsel's performance, this section focuses on a selection of linguistic and non-linguistic resources used to construct the five facets of proximity: organisation, argument structure, credibility, stance and engagement. Also, not all linguistic devices are accompanied by annotations of the co-occurring non-verbals or presented alongside visuals. Rather, the goal is to focus the reader's attention on selected instances which illustrate the effect that the interplay of modes can achieve and to make them see the relevance of studying the co-deployment of various modes. In agreement with this, the analysis seeks to demonstrate that failing to take into account gestures and visual displays leaves out some of the important semiotic means which are utilised to create meaning in closing arguments, while recognising at the same time the communicative work performed by linguistic resources. Insights from this kind of analysis can not only deepen our understanding of the meaning-making processes underlying courtroom genres, but also raise the rhetorical awareness of early-career attorneys and those with limited trial experience.

5.1 Organisation

The organisation of the argument is an important means of proximity construction, and it must take into account the addressee's knowledge, expectations and communicative purpose. In the data at hand it took the form of narrative

Table 1 Facets of proximity in the defence closing argument (*Minnesota v. Chauvin* trial)

Facets of proximity (realized through speech, image, video, gesture and proxemics)				
Organisation	Argument (appeals, focuses, framings)	Credibility	Stance (speaker commitment and affect)	Engagement
Segmentation into narrative themes	APPEAL of importance/relevance (of selected pieces of evidence)	Construction of the counsel's professional identity (*we lawyers*)	Self-reference	Hearer-oriented epistemic, evidential and deontic markers
Gestural structuring of the argument Visual structuring of the argument	FOCUS (*voice of law*) ▪focus on the participants and their actions Representation of the defendant, the victim and witnesses (labelling, evaluation, responsibility ascription [verb patterns]) Non-fictional images and videos (CCTV footage, BWC footage, videos from cell phone cameras, still images) ▪focus on the trial and the testimonies Representation and evaluation of the events of the trial (reflexive language) References to/ assessments of eye and expert witnesses' testimonies FRAMING Use of definitions, explanations and analogies to explain legal concepts Visuals prepared by the counsel to explain legal concepts (images, graphs, charts, symbols)	References to institutional guidelines and foundations for action	Affective markers (attitude verbs, adverbs, adjectives) Speaker-oriented epistemic, evidential and deontic markers	Questions (rhetorical questions, tag questions) Directives Thanks and apologies Appeals to commonalities/ shared experience Inclusion of personal information Informal register Paralinguistic features (tone, articulation, intonation, rhythm, stress, tempo, pauses) Visuals: images and videos aiming to arouse emotion

Table 1 continued

Facets of proximity (realized through speech, image, video, gesture and proxemics)

Organisation	Argument (appeals, focuses, framings)	Credibility	Stance (speaker commitment and affect)	Engagement
	References to laws, regulations, training manuals/legal citations			
		Self-presentation (clothing and demeanour)		
Gaze				
Body posture and orientation (standing, leaning against the lectern)				
Proxemics (standing, walking)				
Kinetic action: facial gestures, manual gestures, handling of material objects				

segmentation, gestural structuring and visual structuring. To guide the jurors' interpretation of his theory of the case, the counsel divided his argument into several distinct segments: 'opening' (presentation of relevant legal concepts: *presumption of innocence*, *proof beyond a reasonable doubt* followed by an explanation of jury instructions), 'reasonable force,' 'reasonable police officer,' 'perspective and perception,' 'intent,' 'cause of death' and 'closing' (reiteration of the ideas presented during the opening stage followed by conclusions). Each of the segments was constructed linguistically, vocally, gesturally and visually, and if any of these modes had been absent, the argument would have been much less persuasive.[14]

The counsel opened his speech by thanking the jurors for their work and apologising for being long-winded. In doing so, from the very start, he tried to establish a good rapport with the audience, to focus their attention on the issues at hand, and to prepare the ground for what would come next (1). When uttering the first sentence, he turned around, taking his time to stop and look at each of the addressees he mentioned: the court, the opposing counsel, the defendant and the

[14] In fact, this is what happened toward the end of the counsel's performance. Because of the rather extraordinary length of the argument, the judge interrupted it and ordered a lunch break. After the break, technical issues arose, preventing the counsel from displaying visual material on the screen. As a result, the last stage of the argument was delivered without any visual support and the counsel's ideas could be conveyed through words and gestures only. This part was far less engaging than the part during which still images and videos were shown.

jurors. In this way, he both expressed engagement and tried to connect with the audience.[15]

(1) May it please the Court, counsel, Mr Chauvin, members of the jury. We want to take this opportunity first to thank each and every one of you for your service, your diligence, and your attention to this matter. We all recognize the disruption that jury service places on your personal and professional lives, especially in the case of this magnitude and direction. And so on behalf of Mr Chauvin, I want to thank each and every one of you for your attention and service to this jury

I'm going to apologize if I get a little long-winded because I get one bite at the apple here. The state has an opportunity to rebut my statement after this. There's so very much we need to cover. There's so very much we need to talk about, and it is all important

In the subsequent parts of the speech, the counsel introduced new topics, as in (2) and (3), again, focusing the listeners' attention on the points he was about to raise (*I would like to address…; So let's talk about…; And again…*). The focusing achieved by the verbal message was additionally strengthened by interdigital gestures: with the counsel's right hand index finger touching the fingers of his left hand. His gaze and postural shifts were likewise coordinated with speech and gesture, and helped him to select recipients of his words and create a focus of joint attention.

(2)[16] Before I begin my review of the evidence in this case, I would like to address two very crucial points of law, and they were touched on by the state, the presumption of innocence *[2a]*, and what proof beyond a reasonable doubt *[2b]* means

2a

2b

Verbally, connectivity was frequently established with the markers *so* and *(but) again*, as in (3), each of them performing a discourse 'sign-posting' function.

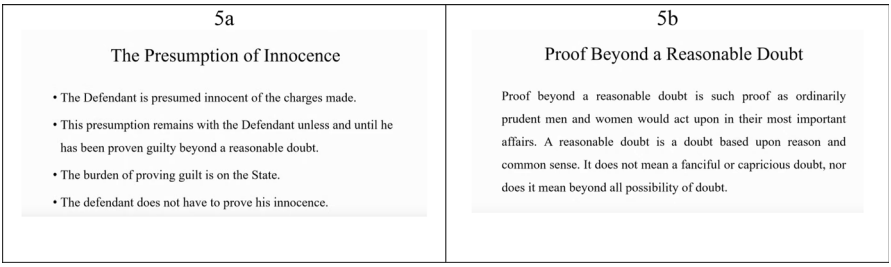
[15] Eye contact can perform various communicative functions, including the regulation of interaction and turn-taking, signalling, monitoring of communication by receiving signals from others, expression of engagement as well as the establishment of rapport or connection [10: 179–180].

[16] All trial images courtesy of the Law & Crime Network.

(3) So let's talk about the cause of death. And again, I'm sorry to be long-winded but I have to address the cause of death because the state neglected to read perhaps one of the most important sentences from the instruction and why you must read the instruction carefully

Discourse segmentation, like focusing, was achieved not only thanks to linguistic strategies, but also gesturally and visually. To see the structuring role of gestures, consider the following two examples which correspond to different stages of the speech: in (4a), we find the 'home position' marking narrative transition points, or topic shifts, and in (4b), we can see the very end of the argument: the counsel keeps his head down, closes his file, and the positioning of his body suggests that he is no longer going to be engaged in the interaction. He simultaneously utters the words: "The state has failed to prove its case beyond a reasonable doubt and therefore Mr Chauvin should be found not guilty of all counts", bringing his argument to a close.

In a similar vein, the style of some of the visuals indicated the type of content. Slides with plain black text on a white background showed the counsel's explanations of relevant legal concepts, such as, e.g. the presumption of innocence or proof beyond a reasonable doubt ((5a) and (5b)). Other visuals subsumed different types of material whose aesthetic quality also signalled the type of information (e.g. BWC footage, Minneapolis Police Department policies) which was to direct the hearers' attention to the points raised by the counsel.



Worthy of mention are also adaptors [14] which reflect the speaker's inner states and are typically related to arousal or anxiety. Although such gestures were rather infrequent in the data, several instances of self-adaptors (self-touching behaviours) were identified at these points of the narrative which might be seen as problematic, as

in (6a), and at the moment when the counsel realised he could no longer display his visuals due to a technical issue (6b). Adaptors indicated that for a brief moment the counsel did not have full control and needed to ease some anxiety before moving on with his argument.

5.2 Argument Structure

The next facet of proximity, argument, was realised by various types of appeals, focuses and framings, thanks to which the defence attorney foregrounded selected elements as well as tailored his narrative to the assumed knowledge base of the jurors. Of special relevance was the *appeal of importance*: the counsel guided the jurors' interpretation of the facts of the case and highlighted these pieces of evidence which supported his argument. Importance was marked lexically, e.g. with the use of adverbial, adjectival and nominal markers (e.g. *precisely, exactly, specifically, absolutely, critical, most interesting, relevant, significance, importance,* as in (7) and (8), or emphatic structures (e.g. *There's so very much we need to cover. There's so very much we need to talk about* in (1) above).

(7) As this crowd grew more and more upset, or deeper into crisis, a very critical thing happens, at a very precise moment. I cannot, in my opinion, understate the importance of this moment. The critical moment in this case

(8) Some facts and circumstances that are important for you to decide in terms of his intent is within the context of aiding and abetting other people

Focusing strategies and lexical markers of importance and deonticity co-occurred with manual gestures directing the hearers' attention to the discourse objects the counsel wished to highlight: by way of 'precision' gestures (with the fingers of one hand brought together), as in (9a) and (9b), or by bringing together his hands in the frontal space, suggesting the focus on the here-and-now of the interaction, simultaneously moving them up and down for additional emphasis, as in (10a) and (10b). The counsel's involvement was too visible in the co-occurring facial displays. At such moments speech and gesture worked in concert, contextualizing and strengthening each other.

9a	9b
	
that asphyxiation is the **singular** cause of death	here the standard is not what **should** the officer have done
10a	10b
	
again this death **needs to be looked at**, Mr Floyd's death **needs to be looked at** as dr Baker describes	wear cameras for a very **specific** reason, to record their action

Emphasis was also conveyed lexically through negation, as illustrated by (11) and (12).

(11) There is absolutely no evidence that Officer Chauvin intentionally, purposefully applied unlawful force

(12) Not a single use of force expert that testified, not a single police officer who testified said that anything up until this point was unlawful or unreasonable. It was reasonable for these officers to put Mr Floyd into the squad car. It was reasonable. The efforts that they took to overcome his resistance were reasonable

As is plain from the above examples ((11) and (12)), and those that follow ((13), (14) and (15)), to make his speech more persuasive, the counsel employed strategies which introduced rhythmicity: parallel syntactic structures and repetitions, including the rule of three and alliteration, which were additionally reinforced by gestures (not shown here).

(13) And so, we get into the 9 min. and 29 s. at this point. The State has really focused on the 9 min. and 29 s. 9 min. 29 s. 9 min. 29 s.

(14) Reasonable police officers are building and basing their decisions based on all of these factors coming in at multiple times, including the bystanders. Call them a crowd. Call them onlookers. Call them bystanders

(15) It keeps people contained, controlled and confined until they no longer are resistant

The multidimensionality of rhythmicity can be seen in the following examples, where vividness and dynamicity are created not only thanks to the words suggesting movement (*The heart beats, the lungs breathe, the blood circulates*), but also the speaker's vocal modulation and the co-occurring gestures: beats ((16a) and (16b)) and illustrators ((16c) and (16d)). As used in this context, the beats are a good example of what Matoesian and Gilbert [30] refer to as "residual semanticity". It can be seen that in the instance presented here, the beats not only add rhythm and emphasis, but also reflect the meaning of regular movement: the heart "beating" and the lungs "breathing", i.e. moving up and down, with the back of the counsel's right hand rhythmically hitting his left palm several times.

(16)

This is the way the human body works *[16a]*. The heart beats, the lungs breathe, the blood circulates, the brain thinks *[16b]*. The brain controls all of our movement *[16c]*, right? All of this *[16d]*

16a

16b

16c

16d

Similarly, when looking at (17) below, we can sense rhythmical beating, with the counsel leaning forward, rounding his lips, and the back of his right hand hitting his left palm every time he carefully articulated each of the words: *because human behaviour is unpredictable*. Here, too, speech and gesture are "co-expressive semiotic partners" [30: 2] which reinforce each other and focus the hearers' attention on the main points.

(17)

Why? Because human behaviour is unpredictable

17a

17b

Some of the arguments advanced by the counsel were based on his negative evaluation or outright dismissal of the state's arguments. One such example is provided in (18).

(18)

It's not the proper analysis because the 9 min. and 29 s. ignores the previous 16 min. and 59 s. It completely disregards it. It says, "In that moment, at that point, nothing else that happened before should be taken into consideration by a reasonable police officer." It tries to reframe the issue of what a reasonable police officer would do

Related to verbal rejection, like that shown in (18) above, were various types of 'away' gestures, which strengthened the verbal message. For instance, in (19), using a 'sweeping away' gesture, the counsel suggests that the state wants the jurors to ignore the medical issues which – as he implies – could have contributed to Mr Floyd's death. In (20), in turn, we see the counsel's use of the 'holding away' gesture in his attempt to create the impression that Mr Chauvin's actions were not causative in Mr Floyd's death. He rejects the state's argument that asphyxiation was the

singular cause of the victim's death, while disconnecting it both verbally and gesturally from the defendant's actions. Some of these gestures went beyond the speaker's body frame (suggesting issues of greater significance) and required postural shifts, e.g. when the counsel moved one of his hands (palm down) behind himself while referring to the testimony provided by one of the eyewitnesses, thereby marking it as spatially and temporally distinct, respectively, from the frontal space and the here-and-now interaction. The above observations tie in with earlier research on 'away' gestures which suggests that negative assessment, refusing and rejecting are verbo-kinesic constructions composed of a particular recurrent gesture and its repeated combination with syntax, semantics and pragmatics [6].[17]

(19)

They just want you **to ignore** *[19a, 19b]* significant medical issues

19a

19b

[17] Bressem and Müller [5: 3] distinguish four members of the "away gesture family": the 'sweeping away' gesture (used for rejecting and negating), the 'holding away' gesture (used for refusing and rejecting), the 'throwing away' gesture (linked to negative assessment) and the 'brushing away' gesture (linked to negative assessment).

(20)

It's because actions that happened before Mr Floyd was arrested, that **have nothing to do** *[20a]* with Officer Chauvin's activities, **are not** *[20b]* the natural consequences of the defendant's actions

20a

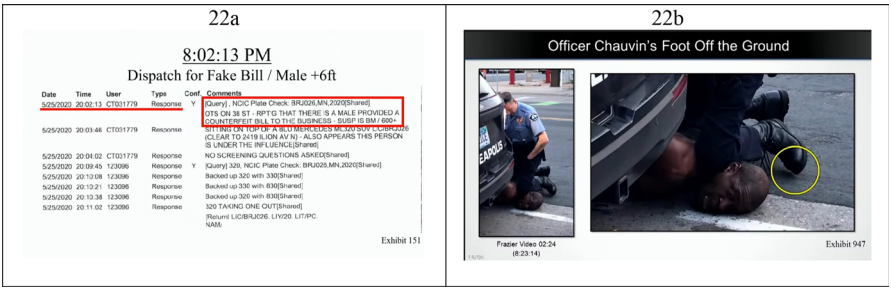
20b

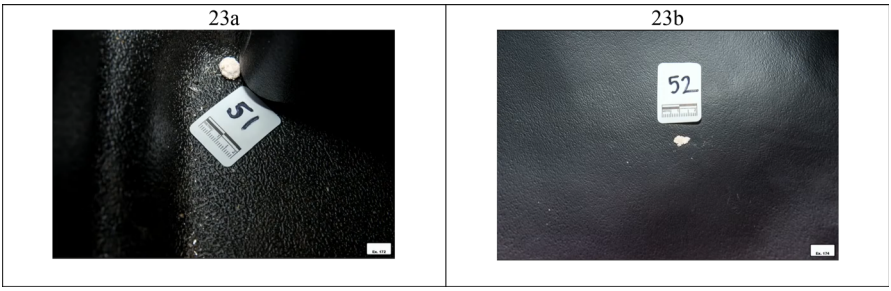
The appeal of importance was too realised by relativising the degree of epistemic certainty and sowing doubt in the jurors' minds as to the possible consequences of the (in)actions of the emergency medical services called to the scene where the disputed events took place. In (21), for instance, by invoking a hypothetical scenario suggesting alternative causal links, the counsel tries to refocus the jurors' attention by implying that if the paramedics had acted without any delay, they could have saved the victim's life.

(21)

What if you, what would have happened if EMS had started resuscitative efforts right away? What would have happened if rather than driving to 36 and Park they went to the hospital? They would have been there in that time. I am not suggesting to you, I am not suggesting to you that the ambulance, that the paramedics did anything wrong, but it raises the prospect of that continued delay in resuscitation. What if the EMS had administered Narcan? We heard that it would not have hurt him and it could have helped him. I'm not blaming the paramedics

The relative importance of some pieces of legal information, and of the evidence, was often signalled visually. By marking focal points on slides in red (22a), circling selected elements in the videos (22b), zooming in on these parts of the presented material which were being discussed ((23a) and (23b)), or even varying the duration of individual displays, the counsel indicated the weight which he ascribed to each of the items. For instance, in (23a) and (23b), the pills found in George Floyd's car are greatly enlarged to create the impression that drugs played a significant role and contributed to the defendant's death (the state's expert witnesses rejected this scenario).





As to the *focus* of the argument – reflective of the counsel's choice to foreground selected elements of his narrative – it was achieved through the projection of the *voice of law*. On the one hand, the counsel focused on the participants (defendant, victim, witnesses) and their agency (through evaluative descriptions of their actions aided by the presentation of non-fictional video material), and on the other, referred to the earlier stages of the trial and the testimonies, guiding the jurors' interpretations and assessing the value of individual pieces of evidence.

More specifically, the representation of the key participants as well as of their actions or omissions to act, encompassed labelling and verb patterns. For instance, the defendant (referred to as *the defendant, Mr Chauvin* or *Officer Chauvin*) was portrayed as a reasonable police officer fulfilling his duties, whereas the victim (referred to as *George Floyd*, *Mr Floyd*, *the suspect* or *the deceased*) was depicted as an addict with a history of substance abuse. When evaluating Mr Chauvin's actions, the counsel skilfully switched perspectives: from *he* to *I* to generic *you* (24–26), thus making his narrative more direct and bringing the possible motivations behind the defendant's actions closer to the audience. The force of the narrative was additionally heightened thanks to the use of the historic present, which was supposed to let the hearers reconstruct the officer's decision-making and to imagine the events as if they were still unfolding.

(24) So a reasonable police officer is going emergent to a scene. He gets canceled from the scene. He's now being told that other officers need assistance and step it up, get there fast

(25)

What are these potential signs of aggression that I may be confronted with? Somebody standing tall, somebody red in their face, raised voice, heavy breathing, tense muscles, pacing, right?

(26)

How do you respond to those? You're confident in your actions. You stay calm. You maintain space. You speak slowly and softly and you avoid staring and eye contact

On the other hand, when talking about Mr Floyd, the counsel stressed his dependence on controlled substances and built his narrative around this theme, recalling the victim's earlier encounter with the police and constructing him as a habitual user of drugs (27).

(27)

The history of Mr Floyd's use of controlled substances, it is significant. It's not a character problem. Millions of Americans suffer from the opioid crisis, right? I mean, it is a true crisis that this country is facing, but it is significant to understand the history, not just as much as the long-term history, but his long-term history provides us with insight on how his body physically reacts to methamphetamine or opioid use, I should say, opioid use within the context of a law enforcement encounter. We know from the testimony of Courtney Ross that Mr Floyd struggled. We know he had been using controlled substances habitually for some time. We know that on May 6th of 2019 during an encounter with the police, Mr Floyd ingested some controlled substances, said they were percosets

What the counsel also considered in his argument, and what was of paramount importance, were not only the events which took place *before* the trial, but also those occurring *during* the trial [cf. 7]. When assessing the evidentiary value of selected pieces of evidence, he, again, attempted to affect the impression the jurors might have of both the witnesses and their testimonies. The counsel's descriptions of eyewitnesses focused on details from their private lives ((28) and (29)), making them seem like people the jurors might know, whereas those of expert witnesses specified their titles and areas of expertise, constructing them as professionals ((30) and (31)).

(28)

Darnella Frazier, she's a 17-year-old high school student who upon seeing the restraint of George Floyd, her response was to pull out the cellphone and start recording and then subsequently upload it to Facebook, right?

(29)

Donald Williams, he's a 33-year-old professional mixed martial artists who arrived at 8:22 and 39. He had spent the day fishing with his son, stopping for a drink when he became aware of the incident

(30)

It was Seth Stoughton, the law professor who said at the point, Mr Floyd came out of the car, putting him on the ground was unreasonable

(31)

He called dr Thomas, a pathologist, to testify how she interpreted what dr Baker meant, how she concluded that dr Baker simply said that the cardiopulmonary arrest is the basic way everybody dies

The greatest attention was obviously devoted to the testimonies themselves, which formed the core of the argument. The counsel's speech was replete with negative assessments of the state's reasoning and interpretation of the evidence, which, as shown in (32–34), were oftentimes emotionally loaded and tried to belittle the weight of unfavourable evidence.

(32)

I submit to you that the testimonies of dr Tobin, dr Isenschmid, Thomas and Rich, it flies in the absolute face of reason and common sense. It's astounding, especially when you consider the actual findings of dr Baker, right?

(33)

You cannot take a single frame and draw conclusions, you have to look at the totality. And remember, he said he spent 150 h analyzing this tape. His entire testimony is filled with theory, speculation, assumption. Do not let yourselves be misled by a single still frame image. Put the evidence in its proper context. We have to talk about the toxicology. Again, I'm not suggesting that this was an overdose death, right? It's a multifactorial process as dr Baker said

(34)

For the medical experts to minimize the timing and the amount of illicit drugs that were found in Mr Floyd's bloodstream is just simply incredible to me. It is incredible to me

Far less emotional and more matter-of-fact were the counsel's accounts of the testimonies which supported his line of argument, in which he used neutral reporting verbs such as, e.g. *talk, describe* or *testify* ((35) and (36)).

(35)

He talked about how you need to cut off the blood supply for a neck restraint to both sides of the neck. He talked about how someone whose heart rate is beating faster, they go unconscious quicker, less than 10 s. He described the human factors of force. That is how does the use of force affect the officer himself, his cognition, his abilities, his mental and physical state

(36)

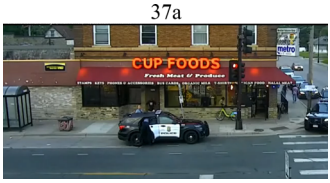
He specifically testified, dr Baker specifically testified that if he put it on the death certificate it played a role in the death. If something is insignificant to death, you don't put it on the death certificate. So dr Baker's conclusions that Mr Floyd's arteriosclerotic and hypertensive disease played a role in the death of Mr Floyd. Dr Baker concluded that Mr Floyd's fentanyl intoxication played a role

What is more, to make his arguments more vivid and appealing, the counsel referred to selected portions of the video evidence and offered his preferred interpretations. A case in point was his characterisation of the struggle between Mr Floyd and the police officers. To illustrate the "intensity of the struggle", he, on the one hand, vividly described Mr Floyd's actions ("the intensity of the struggle you can see at points when Mr Floyd's legs kick back, it actually almost knocks Officer Lane over, right, it knocks off the body-worn camera and the badge of Officer Chauvin in this struggle."). On the other hand, he displayed material captured by CCTV showing the squad car with Mr Floyd inside, which – as one witness testified – was rocking back and forth because the struggle between the police officers and the suspect was so intense (37).

(37)

And this is what caught the attention of the 911 dispatcher Jenna Scurry. She said she observed the struggle and the vehicle rocking back and forth, back and forth. Watch the vehicle *[37a, 37b]*

37a



37b

At a different point, he referred to the white object on Mr Floyd's tongue captured on video, trying to convince the jurors that what they were looking at was a pill. On the other hand, the state used the same footage to suggest that the object could have been chewing gum or a piece of the banana the defendant was seen buying in the store. This example clearly shows that interpretations of visuals can be highly subjective and that they can be used to support the arguments the speaker wishes to advance.

Finally, *framing*, i.e. the way information is tailored to the assumed knowledge base of the audience with the hope that it will recognise it as something familiar [17], was realised by way of definitions, explanations, analogies and exemplifications, as well as conveyed visually and gesturally. Below are several examples of the verbal strategies aiming to facilitate comprehension of legal concepts by a lay audience. In (38), the counsel quotes the legal definition of "proof beyond a reasonable doubt"; in (39), he elucidates the concept of "intentionality"; in (40), he uses an analogy with baking chocolate chip cookies to explain how criminal law works; and in (41), he uses a concrete example to explain what the term "second degree murder while committing a felony" refers to. Relying on such strategies, the counsel acknowledges that the jurors are not versed in the law and facilitates their understanding of the legal reality which they are required to comprehend as triers of fact.

(38)
definition

Proof beyond a reasonable doubt. Here's the definition that the judge just read you, "Proof beyond a reasonable doubt is such proof as ordinary prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt that is based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt."

(39)
explanation

Intentionally or intentional means that the defendant either has the purpose to do the thing or cause the result specified or believes that the act, if successful, will cause the result. In addition, the defendant must have knowledge of those facts that are necessary to make his conduct criminal and that are set forth after the word intentionally intentional. It's the same, you'll see a very similar instruction twice. Intent

(40)
analogy

Whenever I meet with a client, I try to explain what the elements are, and this is the analogy that I use. I say that the criminal case is kind of like baking chocolate chip cookies, you have to have the necessary ingredients. You've got to have flour and sugar and butter and chocolate chips, and whatever else goes into those chocolate chip cookies. If you have all of the ingredients, you can make chocolate chip cookies, but if you're missing any one single ingredient, you can't make chocolate chip cookies. It's a simple kind of analogy. But the criminal law works the same way. We call the ingredients, the elements. The state has the burden of proving each and every element beyond a reasonable doubt. Not just some global proposition that they've proved their case beyond a reasonable doubt. They have to prove each of these elements beyond a reasonable doubt. And if you determine that they have done so, you convict. But if they are missing any one single element, any one single element, it is a not guilty verdict

(41)
exemplification

Count one is second degree murder while committing a felony. It's also called the felony murder rule in Minnesota. Kind of the textbook example is I run into a liquor store, I pull a gun, I'm intending to rob the liquor store, my gun goes off, I shoot and kill the teller. I didn't intend to go in and murder that person, but the death of that teller occurred while I was committing a felony. That's the felony murder rule

As to visual framing, the style of the slides informing of legal concepts, laws or relevant scientific research was minimalist and rather uniform (42). These visuals supported the counsel's narrative by highlighting the concepts and theories that he was alluding to in his argument (cf. (5a) and (5b) in the section 'Organisation'). These means, too, were intended to foreground these concepts and theories which supported the counsel's case.

42a

Positional, Compression, and Restraint Asphyxia: A Brief Review

Mark Kroll, PhD, FAIMBE
Feb 2017

Published research has found no evidence of compression asphyxia in hogtied individuals with a static mass up to 102 kg (225 lbs) on the back

Positional asphyxia, as the term is used in court today, is an interesting hypothesis unsupported by any experimental data.

42b

5-302 USE OF FORCE DEFINITIONS (10/16/02) (10/01/10)

Active Aggression: Behavior initiated by a subject that may or may not be in response to police efforts to bring the person into custody or control. A subject engages in active aggression when presenting behaviors that constitute an assault or the circumstances reasonably indicate that an assault or injury to any person is likely to occur at any moment. (10/01/10) (04/16/12)

Active Resistance: A response to police efforts to bring a person into custody or control for detainment or arrest. A subject engages in active resistance when engaging in physical actions *(or verbal behavior reflecting an intention)* to make it more difficult for officers to achieve actual physical control. (10/01/10) (04/16/12)

Exhibit 216

Another type of framing was that of metacommentary on the non-fictional video material that was being presented. Two examples are provided below ((43) and (44)) to illustrate how the counsel offers his own interpretation of the actions shown in the videos ("narrative truth"), i.e. how he labels them to guide the viewers' interpretations (*Officer Chauvin made a decision not to…*; *A reasonable police officer will…*).

(43)

Officer Chauvin made a decision not to use higher levels of force when he would have been authorised to do that including punches, kicks, elbows, right?

(44)

A reasonable police officer will hear the frustration growing, right? A reasonable police officer will hear the increase in the volume of the voices. A reasonable police officer will hear the name calling, right?

Exhibit 16

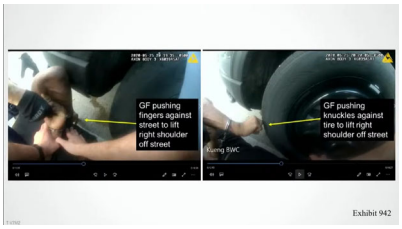
Similarly, labelling pieces of evidence to make them seem more concrete (consider "I'm going to call it the[18] 'finger and knuckle' testimony and the 'toe lifting' testimony" in (45)) was useful for providing a coherent narrative and for creating argumentative chains in which selected pieces of reality could be presented in a consistent manner. As could be expected, the counsel's interpretation of the said

[18] At this point the counsel made an air quote.

piece of evidence differed from that offered by the state, although both parties examined the same video material.

(45)

I want to illustrate two brief things that dr Tobin testified about and I want to illustrate how I think that these demonstrate a bias, because you still have to consider an expert witness in the context of bias. I'm going to call it the "finger and knuckle" testimony and the "toe lifting" testimony**.** You may remember this slide, right? That this slide shows George Floyd pushing his fingers against the street to lift his shoulder off the street, that he was pushing his knuckles against the tire



5.3 Credibility

While argument was the most vital dimension of proximity construction and took up a substantial part of the counsel's performance, credibility-building strategies were also occasionally employed. To claim alliance with the legal field and to portray himself as an honest and truthful professional, the counsel described his actions as part of the institutional activity with its norms of interaction (46). In addition, when uttering the words: "and lawyers and I'm gonna do it too; That's our job as lawyers," he put his right hand on his chest, showing his identification with the legal profession and indicating honesty. He also referred to the legal foundations for the jurors' actions, noting that, as per jury instructions, they should consider the evidence in an unbiased way (47).

(46)

I want to take this opportunity also to talk to you about the importance of reading the entire instruction, because I've seen, you know, and lawyers, and I'm gonna do it too, right? We pick and choose those things that help us make our case and help us argue our case. That's our job as lawyers is to point out words and phrases within the instructions that make the difference in the case, and to take that evidence and present it to you in such a way that it supports our proposition. That's what we do. That's why you are instructed that if your memories of the evidence is different, that if you're … The judge's law is what applies

(47)

Ultimately at the end of the case, when we're done with these arguments, the court will instruct you on how to deal with these biases and the perception issues. The court's final instructions will guide you to try to recognize your biases, recognize them, what we bring to the table and analyze the evidence from the perspective of the evidence itself

Credibility was also built through self-presentation: the counsel's formal clothing and professional demeanour, and the confidence he projected verbally and gesturally.

5.4 Stance and Engagement

More relevant to the communicative purpose of the closing argument than establishing credibility, stance and engagement played a major role in the construction of the defence attorney's narrative. Taking a broad perspective, we would most probably conclude that a great deal of the attorney's performance was attitudinal, i.e. that he, more or less explicitly, conveyed his own assessments, judgments and evaluations – be it of discourse subjects (trial participants) or discourse objects (arguments presented in court).[19] It could likewise be posited that stance and engagement overlapped, if not fused into one category, since taking a stance involved acts of engagement and, similarly, engaging with the addressees and inviting their inferences resulted in the co-construction of intersubjective stance.

Given the multitude of stance-taking resources identified in the material under study, only a limited selection of devices can be shown here. The examples that follow (48–52) illustrate the counsel's use of devices in the case of which speaker-orientedness and speaker attitude were highly visible. These subsume self-reference, affective markers (attitude verbs, emotionally loaded adjectives and adverbs), as well as speaker-oriented epistemic, evidential and deontic markers. Other stance-taking resources, reflective of the counsel's attitude and evaluation, can be seen in the examples presented in the other portions of this paper.[20]

(48)

I've thought about this a lot during the course of this trial, because this situation here in the courtroom is incredibly unique, right? It's not the normal setup for a jury trial

(49)

It is preposterous that, it is a preposterous notion that this did not come into play here

(50)

It doesn't mean beyond all possibility of doubt, because I suppose space aliens may have been inhabiting his body, but that's obviously fanciful and capricious

(51)

As you analyze the evidence in this case, you would simply have to find that any defense that has been advanced is unreasonable. I mean, that's what this standard is all about

[19] Importantly, closing argument does not constitute evidence, so counsel may express their own interpretations and offer assessments which they are not allowed to make during direct examination or cross-examination.

[20] Because of the high relevance of importance marking to the construction of argument, importance markers are discussed in the section 'Argument Structure', although they mark stance as well.

(52)

I understand that superhuman strength is not a real phenomenon, right? I know there are no Supermen or Spidermen, right? But officers are specifically trained that someone under the influence of certain types of controlled substances exhibit this behavior

On the other hand, the high importance of engagement – i.e. the speaker's recognition of the presence of hearers, including them as discourse participants and guiding them to the preferred interpretations – was reflected in a substantial accumulation of intersubjective markers which were highly visible in the counsel's discourse constructing the proximity of experience. Beginning his speech with relational discourse, the counsel thanked and apologised to connect with the audience from the very start. As the argument progressed, he relied on intersubjective markers of stance numerous times, inviting inferences and making the audience responsible ("see for yourselves") for the interpretation of the evidence.

Specifically, when guiding the jurors' assessments and interpretations, the counsel frequently relied on hearer-oriented markers: directives related to cognitive acts (*you have to look…; pay careful attention…; you can also take into consideration…*), as in (53–55), and *you*-oriented evidential markers (*you can look…; this is exhibit…*; *you hear the testimony…*), as in (56–58).

(53)

All of this information has to be taken. You have to look at it from the totality of the circumstance, okay? You have to look at it from the reasonable police officer standing. You have to take into account that officers are human beings, capable of making mistakes in highly stressful situations

(54)

Pay careful attention again to the instructions. Words have meaning

(55)

You can also take into consideration the reactions of Shawanda Hill and Maurice Hall

(56)

If I'm this way, it's on my right foot. You watch this video and you can see the dynamic shifting, and you can see the placement of the toes, right?

(57)

You can look at them. This is exhibit 151. This is the computer aided dispatch report. You heard the testimony of Jena Scurry, the 911 dispatcher. This is information that they are passing out to the officers

(58)

So you heard during the testimony of dr Fowler, that one of the things that he considered is the possibility that carbon monoxide was present and could have contributed to an environment that created an oxygen deprivation. You heard that testimony

In a similar vein, intersubjective stance was constructed through confirmation-seeking question tags (…, *right?*), as in (59) and (60), and rhetorical questions, as in (61) and (62).

(59)

A reasonable police officer will hear the frustration growing, right? A reasonable police officer will hear the increase in the volume of the voices. A reasonable police officer will hear the name calling, right?

(60)

Mr Floyd's heart was enlarged, right? Dr Baker, dr Thomas, dr Rich, dr Fowler all agreed

(61)

What would a reasonable police officer have done?

(62)

Do people do things intentionally and purposefully when they know they're being watched?

Elsewhere, the counsel drew the audience into his discourse by using hortatives (*let's start with, let's look at*), as in (63) and (64), and inclusive *we* (referring to the counsel himself and the audience in court), as in (65) and (66).

(63)

Let's start with the concept of reasonable force

(64)

And again, balancing all of the evidence against each other, right? Let's look at three different angles of the struggle. This is Officer Kueng's body camera

(65)

So reasonable police officers discuss the scene. The first clip they're talking about the two other people that are over at the car, right? What's going on here? What are we dealing with? Is this person under the influence of a controlled substance? These are the actions of a reasonable police officer

(66)

But remember, we don't look at this incident from the perspective of a bystander. We do not look at this incident from the perspective of the people who were upset by it. We look at it from the perspective of a reasonable police officer

Appeals to commonalities and shared experience were likewise very frequent. Some of the references focused on human experience in general – as in (67), where the counsel claims solidarity with the audience (*things that you and I don't think about*), or (68), where he explains that in the everyday experience of many people the prone position (which proved fatal for George Floyd) is not dangerous at all (*People sleep in the prone position. People suntan in the prone position. People get massaged in the prone position.*).

(67)

Officers are entitled to kind of take into consideration things that you and I don't think about, their tactical advantages, their tactical disadvantages

(68)

We've heard a lot about the prone position. Consider just the basic prone position. People sleep in the prone position. People suntan in the prone position. People get massages in the prone position. The prone position in and of itself is not an inherently dangerous act. It is not an inherently dangerous act. A prone position during restraint is not an inherently dangerous act. It is routinely trained and used by the Minneapolis Police Department

In (69), on the other hand, the counsel included personal information to construct a shared identity with the jurors who attended the same high school as he did. Thus, he tried to project himself and the jurors as people with similar backgrounds and understandings, and to persuade them to affiliate with his point of view.

(69)

Three people in this trial went to the same high school. Me, Darnella Frazier and Chief Arradondo. We all went to the same high school, obviously at different times. My experience, Chief Arradondo's experience, Darnella Frazier's experience all based on, we had the same perspective, sat in the same classrooms, saw the same chalkboards or wipe boards, the same perspective. But our perception of our experiences there is going to be much different

Pertinent to the discussion of engagement are likewise the many instances of illustrators with which the counsel invigorated his narrative and tried to stir the jurors' imaginations. He frequently employed such gestures to illustrate movement and physical acts, as in (70), to illustrate extent or quantity, as in (71), to depict legal concepts, as in (72), to show cognitive acts or reasoning processes, as in (73), or to indicate spatial and temporal relations. Were it not for these gestures and their coordination with gaze, facial expressions, postural shifts and the verbal message, the counsel's performance would have been much less vivid and less engaging.

(70)

Mr Maurice Hall **reaches into** his bag *[70a]*, **he's looking through** the windows *[70b]*, and then he **throws** something *[70c]*

70a

70b

70c

(71)

And the way we lawyers sometimes illustrate what these three standards mean is through the **scales of justice**. **The scales of justice equally balanced**

(72)

And considering **all of the totality** of the circumstances and facts known to the officer

72a

72b

(73)

and he's gonna **compare** those words *[73a]* to the actions of the individual *[73b]*

73a

73b

Finally, it might also be mentioned that the communicative distance between the counsel and the audience was lessened thanks to the informal register (*I mean, that's what this standard is all about; a whole bunch of; all of this stuff that we've talked about; I'm gonna do it too*) and that his expressivity was strengthened at 'emotional' moments which were created by the use of words (*it's tragic, it's tragic*) and the manner in which they were delivered (slowly, in a low soft voice). Emotion was also displayed visually. For instance, the counsel tried to arouse emotion by showing an image captioned: *How much does it take to kill?* (74) intended to demonstrate that even a small amount of fentanyl could have contributed to Mr Floyd's death (unlike what the state's expert witnesses testified to). Needless to say, such displays did not

constitute evidence, but could have affected the jurors' perception of the facts of the case.

6 Discussion and Conclusions

As the above examples demonstrate, closing arguments are much more than about language, and in order to persuade the audience, counsel need to skilfully synchronise and rhythmically integrate various modes of meaning-making, exploiting the rhetorical means available to them in what becomes multidimensional oratory. In relying on gaze and postural shifts, facial and manual gestures, handling of objects, vocal modulation, use of space and use of video material, trial lawyers position themselves towards the ideational content they share with the audience (proximity of commitment), claim solidarity with the legal profession (proximity of membership), as well as situate themselves in relation to lay jurors and their knowledge base (proximity of experience).

In the Chauvin trial analysed in the current study, the defence counsel relied on a range of modes which were not used in isolation, but in a complementary way, making his performance both a *discursive* (linear-sequential) and *presentational* (holistic) text [25]. He thus appealed to the audience by way of the synchronised orchestration of various resources, which, if separated from the whole, would have made his oratorical performance less engaging, less powerful, or simply incomplete. Based on the analysis of the defence closing argument, several observations can be made:

(1) Closing arguments are poly-semiotic events which resemble "playing" a certain code, or an invisible musical score, in which every behaviour (activity, inactivity, words, silence) has a message value and influences other interlocutors [cf. 39: 11–12]. In line with the orchestral metaphor, every recipient hears the whole of the play, but may choose to focus on individual sounds, or even ignore some of them, still being the co-creator of the overall meaning of the play [39]. Seen in this way, closing arguments are constructed through parts which are equal to the whole, the whole being equal to the parts. At the same time, they are discursively co-constructed by the speaker and the

audience, the latter being encouraged to "see for themselves" and assess the information presented by the counsel.

(2) As regards the coordination of various meaning-making resources and the interplay of modes, it was found that – in line with what Quintilian noted about successful oratory – the defence counsel did indeed try to appeal to the audience through the eye and the ear, i.e. by combining speech and paralinguistic elements (e.g. tone, tempo, stress, loudness, pausing), on the one hand, with gestures (e.g. beats, illustrators, facial gestures), gaze shifts, postural shifts, proxemics (e.g. moving from side to side, turning around, jumping), handling of objects (e.g. using the remote control like a baton for beating out rhythm) and visual displays (still images and videos), on the other. It is through the synchronised orchestration of these modes that the counsel positioned himself towards the ideas communicated to the audience, highlighted these elements of his discourse that he deemed especially important, invigorated his narrative by making it more vivid, dynamic and visually appealing, and engaged the hearers, making them responsible for the joint construction of meaning.

(3) The three-partite model of proximity comprising the proximities of commitment, membership and experience – like Aristotle's persuasive appeals, i.e. *logos*, *ethos* and *pathos* – proved to be a useful analytical tool allowing for an identification of key rhetorical strategies (Table 2). As the analysis revealed, all the five facets of proximity (organisation, argument structure, credibility, stance and engagement) were constructed multimodally, with speech, gesture and visual material proving to be inseparable. It was found that the counsel:

   (a) positioned himself towards the ideational content by e.g. neatly organising the narrative into coherent segments; using lexical markers of importance, evaluation and affect; framing visual material in a manner supporting his theory of the case (constructing "narrative truth"); managing the degree of epistemic certainty and invoking alternative scenarios (e.g. by using hypotheticals); discursively constructing the participants (defendant, victim) and the witnesses (medical experts, eye witnesses) in a manner supporting his case; marking relevance visually; using beat gestures to highlight relevant points of the argument (proximity of commitment/logos);

   (b) claimed solidarity with the legal profession by e.g. signalling verbally that his conduct was in line with institutional rules and informing about the reasons for his conduct to build credibility ("and lawyers, and I'm gonna do it too, right? We pick and choose some things that help us make our case"); referring to legal foundations when discussing visual material; showing professional demeanour; wearing formal clothing (proximity of membership/ethos);

   (c) aligned himself with the lay jurors and their knowledge base by e.g. adjusting the manner in which legal concepts were explained to them (definition, explanation, analogy, exemplification); inviting inferences about visual material through intersubjective markers (e.g. confirmation-

Table 2. Three types of proximity in the defence closing argument

PROXIMITY OF COMMITMENT	PROXIMITY OF MEMBERSHIP	PROXIMITY OF EXPERIENCE
ORGANISATION, ARGUMENT, CREDIBILITY, STANCE, ENGAGEMENT realised through speech, image, video, gesture and proxemics		
↑ KNOWLEDGE PRESENTATION ↓	↑ COUNSEL'S SELF-PRESENTATION ↓	↑ AUDIENCE ENGAGEMENT ↓
LOGOS Message Reason, logic, rationality	ETHOS Speaker Authority, credibility, reliability	PATHOS Audience Emotion, imagination, sympathy

seeking questions, shared epistemic and evidential markers); referring to lay jurors' everyday experience and human experience in general ("This is the way the human body works"; "People sleep in the prone position"); drawing on shared experience ("Three people in this trial went to the same high school. Me, Darnella Frazier and Chief Arradondo. We all went to the same high school"); evoking emotion (visually, gesturally and verbally); supporting narratives with illustrative gestures and creating a sense of rhythmicity and dynamism; using informal language to diminish the communicative distance between himself and the audience (proximity of experience/pathos).

As it turned out, the proximities of commitment and experience were of higher relevance than the proximity of membership. The reason for this could be that the counsel's professional status was not being challenged and therefore did not have to be demonstrated so often.

As a final point, although the defence counsel in the Chauvin trial delivered his closing argument centuries after Aristotle wrote *Rhetoric* and Quintilian penned *Institutio Oratoria*, the data provide ample evidence that the three pillars of argumentation remain a potent tool in the hands of trial lawyers, and, further, that the latter invigorate their oratory "to reach the soul" through the eye and the ear, as noted by Quintilian, crafting multimodal performances and engaging in visual rhetoric in ways suited to the processing codes and expectations of present-day recipients.

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Source materials Defence closing argument in the Minnesota v. Chauvin trial [part 1], https://www.youtube.com/watch?v=JmPu3i4NOok. Last accessed 16 August 2022. Defence closing argument in the Minnesota v. Chauvin trial [part 2], https://www.youtube.com/watch?v=P7OTtyRxJEA. Last accessed 16 August 2022.

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