

LANGUAGE POWER IN COURTROOM: THE USE OF PERSUASIVE FEATURES IN OPENING STATEMENT

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Abstract

Language is a powerful tool for communication that many people can use for persuasion. In the courtroom, for example, lawyers use language to persuade the jury that their client is right and should win the case. Though many studies have discussed this issue, how language becomes powerful in the trial opening statement remains under researched. For this reason, this study addresses a textual analysis on the patterns of language used by a lawyer in the opening statement. Such analysis provides a solid understanding of how language can become persuasive in the courtroom. The data source of this study was taken from the text of the Opening Statement by O.J. Simpson's Defense Lawyer (Walraven, 1995). Although this text does not seem new regarding the publication date and some articles have discussed this, it is a seminal work, which can represent the construction of language power in the opening statement. To analyse the data collected from this text, the researcher adopted the model developed by Miles and Huberman (1994). This study firstly explores the overview of opening statement persuasive features. In addition, it presents the finding and discussion which reveal that language power in the courtroom can be reflected in some persuasive features such as metaphor, repetition, and rhetorical question as found in the text of Opening Statements by O.J. Simpson's Defense Lawyer.

Key words: language power; persuasive language; opening statement

Language can become a powerful tool for communication because of its power. With the power of language, people have performed various purposes, such as communicating their thoughts and ideas, sharing information, expressing their feelings, influencing others and building relationships. In legal settings language is used in statutory regulations, ordinances, and other legal documents. In addition, in terms of language in the courtroom, Supardi (2010) states that language is spoken by such people as judges, prosecutors, attorneys, lawyers, jurors, and witnesses. Commenting on these uses of language in legal discourse, he argues that an interdisciplinary study of language and law has become an interest for some linguists and linguistic researchers to perform studies on language used in legal settings.

In relation to these former studies, Supardi (2010) also highlights scholars who have devoted their attention to the language in legal settings. In terms of language in the courtroom, some recent studies have examined such various issues as gender, power, discrimination, dominance in the courtroom (Bogoch, 1999; Bradac, 1981; Conley, O'Barr, & Lind, 1978; Erickson, Lind, Johnson, & O'Barr, 1978; O'Barr, 1982). Moreover, some other researchers have analysed discourse strategies in the courtroom. In a criminal case, for example, there have been studies on the William Kennedy Smith rape trial (Matoesian, 2001), a rape

case on university campus (Ehrlich, 2001) and the Simpson murder trial (Cotterill, 2003). In a civil case, Stygall (1994) analysed a civil trial.

The former studies are generally the same as this latter study. Both the former and the latter discuss the language used in the courtroom. However, the latter is primarily concerned with the persuasive language used by a lawyer in the trial opening statement. Concerning the language of opening statement, the analysis of this study is focused on how the lawyer uses the language powerfully or persuasively in the text of Jack Walraven's Simpson Trial Transcript – JANUARY 25, 1995. Using this text, this study aims to identify some features of powerful or persuasive features found in the text. Specifically, it examines persuasive features found in the Opening Statements presented by Simpson's Defense Lawyer.

Overview of Opening Statement

In discussing opening statement, it is firstly necessary to understand what an opening statement means. Some scholars have defined 'opening statement' differently. According to Bergman and Berman-Barret (2003), the opening statement is the first opportunity to outline the evidence planned to be offered to the judge or jury. In other words, Johnson (2011) explains that the opening statement is the first opportunity to persuasively communicate with the jury without interruption. In a different

way, it is defined as each side's first opportunity to tell the jury its theme, what the case is all about from its point of view, and why the jurors should return a favourable verdict (Mauet, 2005). Though the opening statement is differently defined by those scholars, the essence of each definition is the same. On the one hand, it is the first chance for each side in any trial to present the case to the jury and to persuade them to shape their perspective of the entire trial. On the other hand, the opening statement is the first impression to be made by each side to determine whether the jury will judge upon it.

In any trial the opening statement is presented after the jury has been selected. As it becomes the first opportunity and the first impression to be made for presenting the case to the jury, legal communication scholars believe the opening statement as the most important stage of the trial (Matlon, 1988, 1993; Rieke & Stutman, 1990). It is crucial because the opening statement provides the most significant opportunity for the lawyers of both sides that they will have to persuade the jury that their clients are right and should win the case. At this crucial stage, the opening statement is presented to let the jury understand what the case is all about in simple and understandable terms. Because the opening statement is very important at any trial, Connolly (1982) argues that lawsuits are won in the opening statement. As a result, it is important for the lawyers for both sides to present an effective opening statement so that they can win the case.

The opening statement becomes effective if it can persuade the jury and make them impressed from the first few minutes of its presentation. In these critical minutes, the opening statement has to give the jury a good first impression of the case and communicate the theme by compelling something interesting in the first few sentences. This first impression during the opening statement will capture the jury's attention to listen. By grabbing the jury's attention and demonstrating the strength of the case, the effective opening statement can help the jury understand what happened, why it happened, who was involved, and what can be done about it. In addition, in order to be effective, the opening statement should be outlined into well-structured elements. With the effective structure, the opening statement provides the jury with a means of discerning what information is important. It also offers the jury a way of getting back into the story if they lose their focus. For the effective structure of opening statement, like good stories, the opening statement can have such three sections proposed by Bradshaw (2009) and Mauet, (2005) as the beginning, the middle, and the end. In other words,

the opening statement may consist of introduction, body, and conclusion.

As well as the structure, in order to be effective the opening statement must meet several elements for its contents. Without the contents, the opening statement will not grab the jury's attention. In addition, without the contents the jury will lose their focus. It is therefore particularly important to pay careful attention to some elements such as story, theory of the case, theme of the case, the characters, the negatives, and the injuries (Bradshaw, 2009, Lubet, 2004, and Mauet, 2005).

Persuasive Features

As stated in the previous section, people use language for various purposes. They do not only use language to communicate their ideas but also to persuade or convince others. For persuasion, people use language to get the persons to act or think in a certain way. Concerning this purpose, the lawyers use language to persuade the jury in the trial opening statement. Through this opening statement the lawyers educate the jury to understand what happened, why it happened, who was involved, and what can be done about it. As a consequence, with their persuasive language the lawyers can assist the jury to understand that their clients are right and should win the case.

In order to be persuasive, it is therefore important for the lawyers to take the question of how to use the language into account. On the basis of this question, there are some important elements that can be considered as persuasive features. These features may constitute of non-linguistic and linguistic features. With the use of these two features of persuasion, the lawyers can certainly use the language persuasively in presenting their opening statements in the courtroom.

In terms of non-linguistic features, according to Laswell (1948), people should pay attention to such important elements for communication with others as stated in a sentence "*Who says what in which channel to whom with what effects?*" According to this sentence, these elements can be broken down into *who says?*, *says what?*, *in which channel?*, *to whom?*, and *with what effect?* In a different way, Waites (2003) describes that there are essentially four elements in communication such as the communicator, the message, how the message is communicated, and the audience.

Based on the important elements proposed by both Lasswell (1948) and Waites (2003), the researcher tries to illustrate a model of communication in the stage of opening statements in the courtroom as in the following figure.

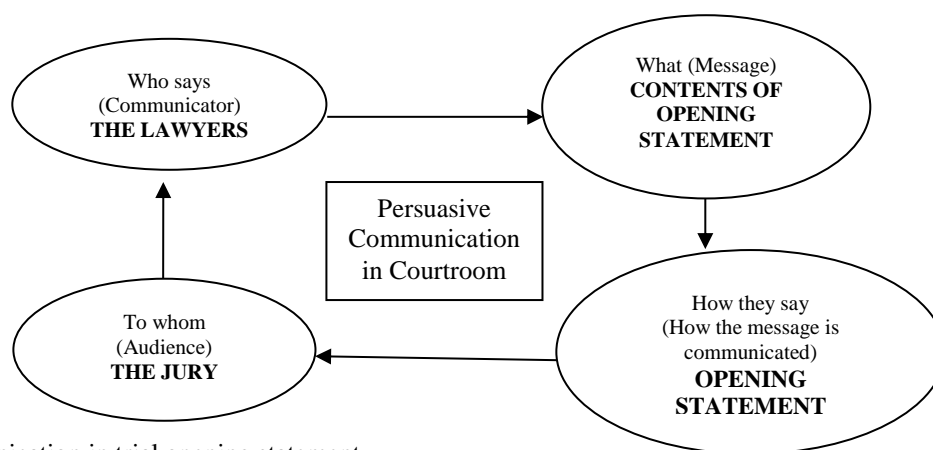


Figure 1. Communication in trial opening statement

Different from Lasswell and Waites, in order to be persuasive, Breuer, Napthine, and O’Shea (2008) explains that there are four main factors that the writer or speaker has to take into account,

namely audience, purpose, form, and language. In the form of chart, they describe the factors as mentioned in the figure below.

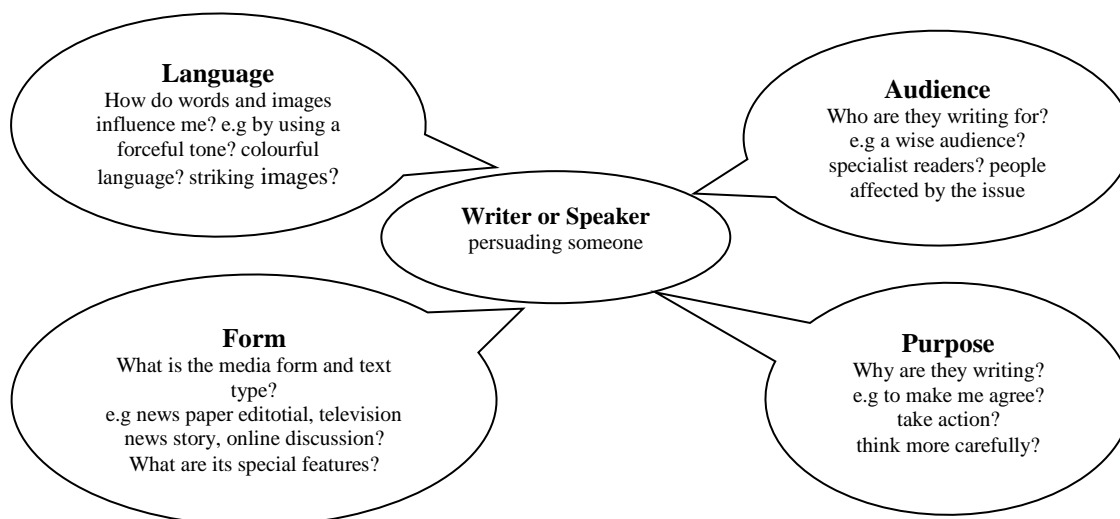


Figure 2. Four main factors in communication by Breuer, Napthine, and O’Shea (2008)

This figure certainly leads to an understanding that it is also important for the lawyers to pay a better attention to the four main factors mentioned in the figure 2 above. In the courtroom (in the stage of opening statements), they have to recognise their audience (the jury), purpose (persuading the jury), media form (structure of opening statement), and language (persuasive language). These factors are very important for the lawyers because these factors are related to each other. The existence of jury, the

purpose to persuade the jury, and the structure of opening statement determine the language (the persuasive language) that the lawyers have to use for presenting their opening statements. Consequently these four main elements, i.e., the audience, the purpose, the media form, and the language can bring the lawyers to be persuasive in their opening statements. These four main elements can be illustrated in the following figure.

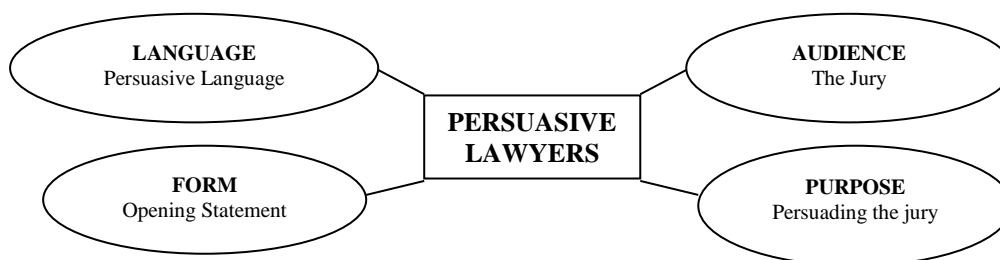


Figure 3. Four main factors of being persuasive lawyers

The figure above can certainly give an understanding that the purpose is the most important of the four elements. This element (*persuading the jury*) determines why the lawyers have to use the *persuasive language*. At any trial, the lawyers use this kind of language style for presenting their opening statements to persuade the jury by grabbing their attention to listen to them and finally to decide their clients to be not guilty and to win the case. From this point of view, the persuasive language, in the trial opening statement, is the language which has power (is powerful) to capture the jury's attention to change their mind that they can finally decide whether the plaintiff or defendant is guilty or innocent.

Paying attention to the purpose of using language in the opening statements, the language becomes persuasive or powerful if the opening statements can present several key elements so that they can be effectively delivered in the courtroom. In discussing these elements, scholars have different points of views. According to Bradshaw (2009), Lubet (2004), and Mauet (2005), there are six main elements of the opening statements: story, theory of the case, theme of the case, the characters, the negatives, and the injuries. Different from these scholars, Marriot and Sullivan (2011) outlines that there are seven tips for delivering a winning opening statement such as recognize its importance, argue without being argumentative, tell your story, focus on your key facts, account for the bad facts, use demonstrative and visual aids, and communicate with conviction. Though those scholars discuss the key elements of opening statements differently, they have the same purpose of how the opening statements can become effective, persuasive and powerful.

Moreover, the opening statement can be persuasive with the use of such persuasive devices as metaphor, repetition, and rhetorical questions. These linguistic features of persuasion are discussed in the following subsections.

Metaphor

Metaphor is one of the types of figure of speech. In discussing metaphor, Lakoff and Johnson (1980:5) affirm that the essence of metaphor is understanding and experiencing one type of thing in terms of another. In the words of Semino (2008), it is defined as the phenomenon whereby we talk and, potentially, think about something in terms of something else. In addition, the understanding of metaphor by the two scholars leads to another understanding of metaphor as a way of comparing two different things with the use imagination and symbols to have the big picture and get the deeper understanding of complicated issues.

Regarding the use of metaphor in the courtroom, Bullis (2014) argues that metaphors have passed from literature into litigation. Now Public

Relation (PR) professionals use them. So do politicians and generals. Lawyers use them as well, not because they sound pretty, but because they work. They use them because metaphors are the stealth bombers of persuasion.

Repetition

Repetition is another type of the figure of speech. In this study it refers to the term called as *anaphora*. According to Letteri (2002), it is the repetition of a word or phrase at the beginning of consecutive clauses or sentences. In this definition, he then gives an example of anaphora as in the following sentences.

By smoking, cigarette smokers risk their own health; by smoking indoors, they risk the health of those around them, and by smoking in public, they risk the health of the nation as a whole.

The common use of repetition is to emphasize the points by repeating the same words, phrases, sentence patterns or ideas. Repetition can certainly be an effective technique when people are trying to persuade others. It helps them reinforce their points.

In term of repetition in the courtroom, Murphy (2011) argues that repetition – by way of using trilogies – helps persuade a jury. Differently, Mauet (2005) states that a good theme is memorable, when you find the right themes for your case, you will want to repeat them periodically, perhaps three to five times during your opening statement.

Rhetorical Question

Rhetorical question is the form of a question which belongs to a type of the figure of speech. Because this question is as old as the language itself (Abioye, 2009), this form of communicative technique of presenting a statement in the form of a question in which no overt answer is expected has been used since the times of Aristotle (Areni, 2003). In communication people commonly use this question as a technique of persuading others. When they are using this question, they usually do not expect the answers from the audiences because they consider themselves and the audiences know the answers.

In terms of using rhetorical question, it is frequently found in both written and spoken language. Regarding its use as a way of persuasion, rhetorical question can help the user inform or even change an opinion by presenting issues to the audience. For this use, it is intended to grab the audience's attention and make them think about something.

METHOD

Design

As previously stated, this study aims to describe the language used in legal discourse, but in particular it focuses its description on the language reflecting the

language power by the lawyer called “opening statement” in the courtroom. In doing such description, this current study then concentrates its investigation on two folds. Firstly, it investigates how the language used by the lawyer (Johnnie Cochran) is constructed in his opening statement. Secondly, it examines the linguistic forms representing the persuasive features used by Johnnie Cochran in his opening statement.

In the framework of investigation of the two problems, the research reported in this study was designed qualitatively. In other words, this study constitutes a qualitative study because the data are linguistic forms constituting words, phrases or sentences rather than numbers. These forms of the data certainly represent one of the characteristics of the qualitative research described by Bogdan and Biklen (1992).

Data collection

Data are very important in doing research. It is

difficult to do analysing without any collected data. On the basis of the two foci mentioned previously, the data of this research are in the form of how the language used by the lawyer (Johnnie Cochran) is constructed in his opening statement and words, phrases or sentences representing the persuasive features used by Johnnie Cochran in his opening statement. These qualitative data were then collected with the use of a technique called document study, in which document is defined as any written or recorded material (Lincoln & Guba, 1985). They were taken from the text of Jack Walraven’s Simpson Trial Transcript – JANUARY 25, 1995

Procedure of data analysis

After the data were collected, the next step is data analysis. In doing this step, the researcher adopted the model developed by Miles and Huberman (1994) which consists of the following phases: data collection, data reduction, data display, conclusion drawing and verification. This model is illustrated below:

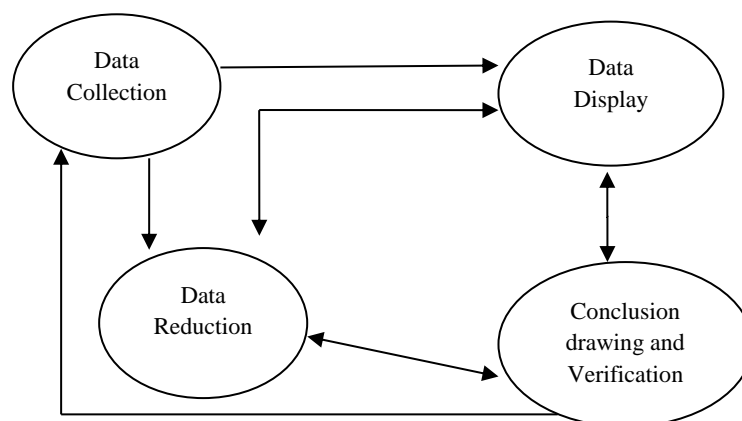


Figure 4 Mile and Huberman’s (1994) model of data analysis components

Data reduction

This procedure is one of the forms of analysis proposed by Mile and Huberman. It is not separated from the whole process of analysis because it is a part of the analysis. In realizing this procedure, the researcher selected the authentic text of Jack Walraven's Simpson Trial Transcripts - JANUARY 25, 1995. This selection focused on the language power used by the lawyer in the opening statement, Simpson defense lawyer (Johnnie Cochran). This selected text was then simplified and transformed into data display by investigating which data representing the construction of language power used by Johnnie Cochran and which linguistic forms in which Johnnie Cochran makes use of language in powerful manners.

Data display

Data display is another procedure of doing analysis. In this procedure, the researcher organized or assembled the data collected from the text of Jack Walraven's Simpson Trial Transcripts - JANUARY 25, 1995. In doing such procedure, the data representing the construction of language power found in the text and how Johnnie Cochran made use of language in powerful manner were then presented into display constituting non- linguistic features of persuasion and linguistic features of persuasion (persuasive devices. For example, in term of non-linguistic features (the beginning of opening statement) and linguistic feature (the use of metaphor), Johnnie Cochran organised his language as in the display presented in the figure below.

Good morning, Judge Ito, my colleagues on the right here, the prosecutors, to my colleagues on the defense side, to the Brown family, the Simpson family, to the Goldman families. Ladies and Gentlemen, good morning to you.

As the court indicated yesterday, I would have liked to have had this opportunity about 3:30 to address you, and it is my opportunity and it is my honor and privilege on behalf of the defense and our defense team, as it were, to stand before you now and address you in what is called opening statement. Now, the opening statement is not opening argument, but it is just that, opening statement. If you have had occasion to go to a **movie**, you know that there is something called the previews of coming attractions, and that it supposed to be -- it is supposed to be a guide, a roadmap, if you will, what we expect the evidence to show. As an officer of this court and in the course of my remarks this morning and maybe this afternoon, I would expect to tell you, as honestly and as forthrightly as I can, what I expect the evidence to be. As the court has so appropriately indicated, what I say is not evidence. **It's just to aid you and guide you.**

Figure 5 The beginning and metaphor in O.J. Simpson trial opening statement

Verification

Verification is the last procedure of the data analysis. In this activity, the researcher drew conclusion on the meaning of the data displayed. For example, the data presented in Figure 5 above were interpreted with the question of what they meant. This procedure was intended to keep the openness and to avoid the uncertainty. In detail, they were presented in findings and discussion section.

FINDINGS AND DISCUSSION

Features of Persuasive Language in O.J. Simpson Defense Opening Statement

In this section, the examination and analysis focused on how the lawyer for O.J. Simpson (Johnnie Cochran) presents his opening statement persuasively in the O.J. Simpson Murder Trial.

To persuade the jury, Johnnie Cochran firstly used the non-linguistic features for his persuasive features in the organisation of his opening statement which contains three sections proposed by Bradshaw (2009) and Mauet (2005): the beginning, the middle, and the end. As well as these three sections, Jonnie Cochran's opening statement in the O.J. Simpson Trial Murder has also fulfilled the four elements of persuasive features proposed by Breuer, Naphthine, and O'Shea (2008): audience, purpose, form and language. In the Opening Statement of O.J. Simpson Murder Trial, these persuasive features can be described that the audience is the jury; the purpose is persuading the jury; the form is the opening statement itself; and the language is the use of persuasive devices (features).

Apart from the non-linguistic features above, Johnnie Cochran also used linguistic features known as persuasive devices (figures of speech). These devices include metaphors, repetitions and rhetorical questions.

Regarding the non-linguistic feature of persuasion (the beginning of opening statement) and the linguistic features of persuasion (the use of metaphor), these two persuasive features were presented in in Figure 5 above.

This figure shows that in the beginning of his opening statement Johnnie Cochran did not want to lose his jury's attention to listen to him. In other words he wanted to grab the jury's attention. To do this, he used the word *movie* as *metaphor* to refer to his opening statement. At this moment, with the use of this word he attempted to inform the jury by making an implicit comparison that he designated his opening statement as "a *movie*" which has "*the previews of coming attractions.*" With the use of this metaphor, it means that he also attempted to convince the jury that his opening statement is supposed to be a "*guide*" and a "*roadmap*" for the jury to make decision through his statements mentioned below.

... and that is supposed to be – it is supposed to be a guide, a roadmap, if you will, what we expect the evidence to show.

With these statements Johnnie Cochran also attempted to convince the jury that in his opening statement there would be evidence for the basis of making decision.

As well as metaphor, Figure 5 above also showed that Johnnie Cochran used repetition

(anaphora) to persuade the jury. In emphasizing the idea of a “guide” or “roadmap”, he repeated his expressions of “*this is supposed to be*” twice and the word *guide* either as noun or as verb with its synonym four times.

With the use of persuasive devices above, those statements certainly also indicated that Johnnie Cochran wanted to lead the jury to understand that what he addressed in his opening statement was a guide for the jury to understand

what really happened, why it happened, who was involved, and what can be done about it. To further convince this, he then repeated his statement by saying, “... *what I say is not evidence; it is just to aid you and guide you*”.

Before starting his middle section, Johnnie Cochran attempted to inform the jury of what really happened in the case of O.J. Simpson by repeating the word “*justice*” as displayed in the figure below:

I hope you remember something else the judge said to you last night. You heard the prosecutor's opening statement yesterday. The same admonition applied to them. Those were not facts. But you kept an open mind because you promised to do that throughout. We started this process of trial back on September 26, 1994. That was the first day we all met, when you came down to the jury room up on the 11th floor. And here we are now several months later in this search for **justice**. You hear a lot about this talk about **justice**, I guess Dr. Martin Luther King said it best when he said that **injustice** anywhere is a threat to **justice** everywhere, and so we are now embarked upon this search for **justice**, this search for truth, this search for the facts.

Figure 6 Repetition in O.J. Simpson trial opening statement

Figure 6 above indicates that Johnnie Cochran repeated the word *justice* five times (including in his reference to Martin Luther King's statement). This repetition seems to indicate that Johnnie Cochran attempted to emphasize to the jury that their coming to the courtroom was “to search for justice”. In addition, by quoting the statement of Martin Luther King, Johnnie Cochran attempted to lead the jury to understand that *injustice* had happened to his client.

In the courtroom, not only metaphor and repetition can be found in the opening statement, but the lawyer can use rhetorical question. Using this type of persuasive feature (persuasive device), in the middle of his opening statement Johnnie Cochran tried to describe that there is *injustice* toward his client, O.J. Simpson. For this description, Johnnie Cochran told the jury as in the statements displayed in the figure below:

And all of us, you will see today, have an obligation to tell you the whole truth of these facts. In the course of my statement today, let me tear with you some of the things they didn't tell you yesterday. And we'll have to wonder **why they didn't do that**. The evidence in this case we believe will show that O.J. Simpson is an innocent man, wrongfully accused.

Figure 7 The middle and rhetorical question in O.J. Simpson trial opening statement

Table 7 shows that in the middle of his opening statement Johnnie Cochran used the rhetorical question, “*why they didn't do that*”. He used this question because he argued that the prosecutor team did not tell the jury the whole truth of the facts at the O.J. Simpson Murder Trial. As a consequence, with this persuasive device Johnnie Cochran certainly attempted to convince the jury that there were things

(the whole truth of the facts) that the prosecutor team did not tell the jury. In other words, it means that Johnnie Cochran refuted the prosecutor team.

In addition, through the statements above Johnnie Cochran also attempted to persuade the jury to believe that O.J. Simpson, was an innocent man, and he had been wrongfully accused by the prosecution. In relation to this accusation by the

prosecution, Johnnie Cochran told the jury that the primary theme of the case was the prosecution's "rush to judgment" as mentioned in the statements below.

*"And it seems to me that this case, the prosecution's case, based upon what we heard and the evidence will show, this case is about a **rush to judgment**, an*

obsession to win at any cost and by any means necessary".

Finally, at the end section of his opening statement Johnnie Cochran told the jury as his statements displayed in the following figure.

You will know that the evidence will show that O.J. Simpson, that man pictured over there, on June 12th did not kill his wife, did not kill Ron Goldman, and he is entitled to an acquittal

Figure 8 The end of O.J. Simpson trial opening statement

Figure 8 shows that with his statements Johnnie Cochran repeated his previous statements to convince the jury that his client (O. J. Simpson) was an innocent man who did not kill his wife and Ron Goldman. Finally he expected O.J. Simpson to be entitled to an acquittal.

CONCLUSION

Since language is a powerful tool for communication, people can use it for various purposes. One of them is for persuasion. In the courtroom, for example, through the opening statement the lawyers use language to persuade the jury that their client is right and should win the case. For this fact, the lawyers have to pay a better attention to how they can use their language persuasively or powerfully.

In the stage of the courtroom, in order to be persuasive in the trial opening statement, it is important for the lawyers to take some elements or factors considered here as persuasive features (non-linguistic and linguistic features) into their account. In terms of non-linguistic features, on the one hand, the lawyers have to organise their opening statements into three sections consisting of the beginning (introduction), the middle (body), and the end (conclusion). On the other hand, together with these three sections, their opening statements must contain theory of the case, theme of the case, character, and damages that are delivered in persuasive language with the use of such persuasive devices as metaphor, repetition, and rhetorical question.

As the result of this research, these elements of persuasive features in the opening statement are found in the Opening Statement of O.J. Simpson Murder Trial.

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