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PERSUASIVE STRATEGIES AND CLOSING ARGUMENTS IN A TRIAL SETTING: A PILOT STUDY

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Abstract

Done through a rhetorical examination of the transcripts of closing arguments from high-profile, criminal jury trials, this was an exploratory study aimed at determining the correlation between persuasive strategy, opposing council, and verdict outcome. For the purposes of this study, persuasive strategy refers a pattern of speech organization used to maximize communication effectiveness.

The findings suggest that persuasive strategy is not a valid determinant of verdict outcome, and that there is no persuasive strategy more successful or persuasive than others. The findings also indicate that trial lawyers tend to use a combination of strategies rather than one single template.

Introduction

In an ethnographic study done in Philadelphia, Pennsylvania, Bettyruth Walter (1988) found that lawyers' most common answer to the question "'What is the main thing you are trying to do during summation?' was 'to persuade'" (p. 21). In *Modern Trial Advocacy*, Steven Lubet (1993) stresses the importance of the closing argument in a trial: "Final argument is the moment for pure advocacy" (p. 385).

While persuasion is the objective of the closing argument, different advocates approach the obstacle of persuasion in various ways, and, accordingly, there are many persuasive strategies available – both for general public speaking occasions and for trial law. Many courses in the fields of both Communication and Law present to their students prescribed strategies to use when composing persuasive speeches.

Acknowledging the significance of persuasion in the practice of trial law, some professors of law recommend to their students that they further pursue knowledge of and practice in persuasion outside of the curriculum of law classes. Thus, there are public speaking, rhetoric, and even acting classes across the country with a high enrollment of law students (G. Hench, personal communication, March 11, 2003). However, empirical studies in the area of legal communication leave something to be desired.

Simon (1970) investigated the correlation between reasonable doubt, believed probability that the accused had committed a criminal act, and verdict outcome. Sealy and Cornish (1973) found that jurors returned as many guilty verdicts when they found that it was "more likely than not" that a defendant was guilty as they did when they were "sure and certain" of his guilt (p. 209). Two studies, one by Eagly (1974) and the other by Calder, Inkso, and Yandell (1974) examined the effect of the number of arguments

presented in the summation, and concluded that too many arguments lead to juror confusion and disorientation.

Spangenberg (as cited in Rieke & Stutman, 1990) studied the way in which a closing argument designed to agree with and enhance the story already in the minds of jurors relates to the verdict outcome. Sheppard and Rieke (as cited in Rieke & Stutman, 1990) analyzed the transcript of closing arguments in a "typical civil case" to determine the type of argument used – what the law is, jurors' obligations to adhere to the law, etc. (p. 214). Rieke (as cited in Rieke & Stutman, 1990) examined the impact of varied closing arguments – both sides arguing, only one side arguing, or neither side arguing – on verdict outcome.

However, no study has been found to examine the structure or organizational pattern of the closing argument – neither as it relates to verdict outcome nor in any other fashion. Acknowledging this, Rieke and Stutman (1990) remark on the research gap in this area, stating that little research has been done to find what persuasive structure may be most effective. Therefore, this study is concerned with the use of such persuasive strategies by criminal trial lawyers during the closing argument. The research objectives follow:

1. To determine the extent to which trial lawyers utilize persuasive strategies as defined in this study when composing closing arguments for trial cases.
2. To determine which persuasive strategy is used most frequently by opposing counsel.
3. To examine the relationship between persuasive strategy used and verdict outcome.

Literature Review

Closing Argument

Each of the six parts of a jury trial – voir dire (jury questioning and selection), opening statements as presented by opposing counsel, evidence as introduced by witnesses, closing arguments as spoken by opposing counsel, the charge to the jury by the judge, and the verdict rendered by the jury following deliberation – are crucial to the trial as a whole (Walter, 1988). This is inherently evident in the reality of the trial process – if one of the stages were unnecessary or superfluous, it would have been eliminated.

Still, there is much debate as to the precise significance of individual parts, specifically the closing argument. Ball (1997) makes the argument that, because they think they have already made their decisions, jurors barely listen to closing arguments. Another assertion is that oral argument is not the deciding factor in every case, or even in a majority of cases (Fontham, Vitiello, & Miller, 2002). Smith (1982) furthers this contention claiming that, contrary to popular myth, lawsuits are not won as a result of summation, although on rare occasions they may be lost because of it.

Concurrently, however, some proponents praise the impact of the closing argument. "An advocate can be confronted with few more formidable tasks than to select his closing arguments" stated Robert H. Jackson, chief counsel for the United States at the Nuremburg Trial in 1946 (as quoted in Lief, Caldwell, & Bycel, 1998, p. 11). Busch (1950) claimed that one could not overestimate the value of the closing argument as an instrument of persuasion. Stryker (1954) purported that the summation is the high point in the art of advocacy. Tarter-Hilgendorf (1986) asserted that jurors believe the closing argument to be more important than the opening statement in a trial. Walter (1988)

contended that the significance of closing arguments is twofold – they are the chronological and psychological culmination of a jury trial and the advocate's final opportunity to communicate directly with the jury. Gibson (1991) also maintained that the closing argument is especially important by virtue of its location in the trial process.

Lief (1998) concluded the following: "The closing argument is the lawyer's final opportunity to give perspective, meaning, and context to the evidence introduced throughout a trial. It is the last chance for the lawyer to convince [the jury] why his version of the 'truth' is correct" (p. 11). A study that asked what factors most affect deliberation and verdict outcome found that "jurors ranked the closing statement second only to the questioning of witnesses" (Malton, Davis, Catchings, Derr, & Waldron as cited in Rieke & Stutman, 1990, p. 202).

However, after acknowledging that "efforts to measure [the closing argument's] impact are inconclusive" (Fontham *et al.*, 2002, p. 154), the conclusion one might make regarding its significance could easily follow suit to the following claim: "Lawsuits are not usually won or lost during any one phase of the trial" (Smith, 1982, p. 111). The closing argument is just as significant as is every other phase of a jury trial.

Persuasive Strategies

The study of the technique of persuasion has roots that go back as far in history as the days of Aristotle, the great orator and rhetorician. The implications of successful implementations of persuasion can be found in the examination of many fields of knowledge or inquiry. For the purpose of this study, an aggregation of persuasive skills

taught in the fields of Communication, Public Speaking, and those presented to students of Law is of interest.

In *The Speaker's Handbook* (Sprague & Stuart, 2000), commonly used in Communication courses focusing on public speaking, specific focus is on three areas of significance: research, reasoning, and persuasive strategies. As stated by the authors, a preliminary guideline for any persuasive speech follows: "Inquiry is a prerequisite to advocacy" (Sprague & Stuart, p. 263). Illustrating the significance of the crucial first step any hopeful persuader must take – thorough and accurate research of and familiarity with the problem or situation at hand, the quote above also implies an aspect of the persuasive process not considered by many.

Inquiry, or to inquire, means more than merely reading what is available on the topic and reporting that information to an audience. To inquire is to probe, to examine, to analyze (Agnes, 1996). To find what information is available, to think about it on the contrast of what you know about the situation, and either to make a logical conclusion about the information you have available or to conclude that more research is needed.

Many sources included in this literature review stress the significance of research in the process of persuasion. Not only do trial lawyers, or those providing persuasive guidelines to lawyers, encourage strict research practices prior to attempted persuasion, they also strongly focus on the relationship of clear, logical reasoning and successful advocacy. Reasoning is arguably the most crucial habit of one who's attempting to persuade. The practice of logical thinking is how most trials are won, and how most audiences are captivated and persuaded by the speaker, for "*reasoning links evidence to claim*" (Sprague & Stuart, 2000, p.172).

While all three of the aforementioned steps are crucial for success in trial law, only one is the current focus – persuasive strategies. After emphasizing the need to "base your persuasive efforts on sound analysis" (Sprague & Stuart, 2000, p. 265) and "identify each point in your preliminary speech outline where reasoning is needed to provide an essential link" (Sprague & Stuart, p. 170), *The Speaker's Handbook* outlines several methods of persuasive speech design including chronology pattern, cause-effect pattern, topical pattern, and Monroe's Motivated Sequence.

The manner by which the persuasive strategies included were selected is significant to the outcome of the study. After an exhaustive review of relevant literature – public speaking instruction from the fields of communication and law – those included were the most frequently described. The author of this study left open the possibility that there might be a strategy used that was not most frequently described in the speech instruction literature with the unidentified category. Those methods, along with others, are discussed below.

Monroe's Motivated Sequence.

The Motivated Sequence, developed by Alan Monroe, is one of the most widely used formulas for persuasive speech (McCroskey, 1968; Ehninger, Monroe, & Gronbeck, 1978; Sprague & Stuart, 2000; Waicukauski, Sandler, & Epps, 2001). This psychologically based format echoes and anticipates the mental stages through which listeners progress as they hear a speech. In regards to this, Monroe (1978) claims the following: "By following the normal processes of human thinking it motivates an

audience to respond affirmatively to the speaker's purpose" (as quoted in Ehninger *et al.*, 1978, p. 143).

The first step of the formula is the *attention* step, as the speaker must first motivate the audience to listen to the speech (Ehninger *et al.*, 1978). Monroe suggests that merely gaining the audience's attention is not sufficient. The speaker must gain *favorable* attention and must direct that attention towards the major ideas or points of the speech. Several ways to accomplish this include rhetorical questioning, making a startling statement, beginning with a famous, relevant quotation, or sharing a humorous anecdote or illustration. The speaker must remember that this step must lead naturally and logically into the remainder of the speech.

The second step is the *need* step, where auditors must become aware of a compelling, personalized problem (Ehninger *et al.*, 1978). There are several elements that should be included. A statement or description of the need or problem should be clear and concise, enabling the listener to know exactly the problem to be addressed. The speaker should also include one or more detailed evidences to illustrate the need. This could include examples, statistical data, testimony, or any other form of support that shows the extent of the need.

Satisfaction is the third step of the Sequence (Ehninger *et al.*, 1978). In this phase, the course of action advocated must be shown to alleviate the problem. The recommended strategies to achieve this include the speaker stating the attitude, belief, or action intended to be adopted by the audience. This should be explained thoroughly to insure that the proposal is understood. The advocate should also show how the belief or action logically meets, or satisfies, the problem pointed out in the need step. Examples

showing that the proposal has worked effectively or that the belief has been proven correct before, such as in past cases, are very effective here.

Visualization is the fourth step (Ehninger *et al.*, 1978). The function of the *visualization* step is to intensify the audience's desire or perceived need to agree with the speaker – to motivate them to believe, feel, or act accordingly. Also, psychologically, it is important that the audience have a vivid picture of the benefits of agreeing with the speaker, or the evils of alternatives. The three variations of this step purported by Monroe follow: projecting a positive picture; projecting a negative picture; or projecting a negative then positive picture, allowing for a contrast of the alternatives.

Finally, *action* is the fifth step of the Motivated Sequence (Ehninger *et al.*, 1978). The speech should end with an overt call for the listeners to act in agreement with the speaker's pleas. Its purpose is to encourage listener determination to retain the belief being advocated and/or to urge the audience to take the definite action proposed. Typical strategies of achieving this include a blatant challenge or appeal, a summary of the speech, or a statement of inducement.

Chronology Pattern.

An approach used often in both persuasive and non-persuasive speeches is to order the main points of the speech chronologically – or based on a time sequence (McCroskey, 1968; Ehninger *et al.*, 1978; Lubet, 1993; Sprague & Stuart, 2000; Waicukauski *et al.*, 2001; Fontham *et al.*, 2002). In this method the advocate would address the significant issues at hand in the order in which the underlying events occurred. This strategy is particularly useful when it is important for the audience to

perceive time relationships between issues or materials in the message. While historical development is the most common application of this pattern, and perhaps the most logical for the closing argument, alternatives include a *past-present-future* arrangement or a *step-by-step* description.

Topical Pattern.

While *The Speaker's Handbook* (Sprague & Stuart, 2000) claims that this is the most frequently used speech pattern, the authors also admit that it is the most difficult in that "you cannot rely on a predetermined structure, but rather must understand the range and limitations of the subject itself in order to select an effective pattern" (p. 100). Arguing that "seemingly natural" methods of organization, such as chronology, do not present the evidence in its most persuasive form, Lubet (1993) advises the reader that topical organization "allows counsel to determine the best way to address the issues in the case" (p. 410). There are several different varieties of this pattern, including building the argument around issues, elements, and turning points (McCroskey, 1968; Levine, 1989; Lubet, 1993; Bailey, 1994; Sprague & Stuart, 2000; Fontham, 2002).

The *issues* format divides the case into a series of discrete and specific factual or legal issues. Building an argument around large issues, claims Lubet (1993), provides little help due to breadth, whereas the focus on narrow, concrete issues proves to be useful. While agreeing that the body of the closing argument should be structured in the issues format, F. Lee Bailey (1994) suggests a technique to further express the significance of this phase of the trial. Recognized especially for his work in high profile cases such as Dr. Sam Sheppard, Patty Hearst, the Boston Strangler, and the O.J.

Simpson trial, Bailey recommends beginning the closing argument by reminding the jury that this is his last opportunity to speak on behalf of his client, who is unable to speak for himself (p. 171).

Levine (1989) asserts a formula of persuasion similar to this approach. His version, dubbed marshaling the evidence, entails dealing with each issue separately, reviewing the evidence from witnesses and exhibits dealing with that particular issue, then proceeding to the next issue. He offers this structure in place of chronology, also claiming more effective persuasion as his motive.

Tanford (1993) conveys a slightly different approach to persuasion, also summarized by Gibson (1992). Tanford's method, consisting of six steps prescribed for a successful closing argument, provides the advocate with a precise formula to use when composing an argument around issues. His method follows:

- Introduction
- Brief summary of case
- Identify issues
- Order of issues (prioritize)
- Resolution of issues
- Conclusion (Tanford, p.392).

The *elements* approach is similar in nature. However, rather than a focus on specific issues of the case, the concentration revolves around elements and/or claims presented throughout the case. Not to be confused with the *issues* category, the elements umbrella covers those aspects of utmost significance to the case that are perhaps not submitted as evidence or are not issues from the actual incident leading to the case. This

method is most appropriately used when advocates need only to challenge a single element in order to win (Lubet, 1993).

Lubet's (1993) major focus in this area, however, is on the *turning points* organization. Modern cognitive theory, claims Lubet, "tells us that jurors are likely to regard the information in a case as a series of turning points or problems" (Lubet, p. 412). Not necessarily taking into consideration the accuracy of *every fact* presented in a case, jury members, and people in general, tend to focus on a limited number of *important issues*. Therefore, this formula tells the advocate to focus the closing argument on what will most likely be the pivotal issues for the members of the jury and explain them in a way that "comports with the jurors' life experience and sense of reality" (Lubet, p. 412).

Causal (Cause-Effect) Pattern.

This pattern is commonly used to show that events that occur in sequence are in fact causally related (McCroskey, 1968; Sprague & Stuart, 2000; Waicukauski *et al.*, 2001). This structure is best suited for a speech in which the goal is to achieve either understanding or agreement about the specific relationship between an occurrence and either its roots (cause) or its consequences (effects). The logic employed in this strategy can flow from cause-to-effect or from effect-to-cause, depending on the nature of the arguments at hand.

Reflective Thought Pattern.

This pseudo-informative pattern is similar to the problem-solution strategy described above and suggests to the audience that it is being informed, rather than

persuaded, by the speaker (McCroskey, 1968; Waicukauski *et al.*, 2001). That is, the speaker begins the speech not as an overt advocate, but assumes the posture of one who is merely informing the listener and objectively guiding the audience through a reflective thinking process.

Developed by philosopher John Dewey (as cited in McCroskey, 1968), this strategy has five steps: locating and defining the problem, describing and limiting the problem, suggesting possible solutions, evaluating the solutions, and adopting the preferred solution. The effectiveness, supporters of this method claim, lies in the fact that, although the speaker knows the conclusion he will make throughout the speech, the audience is led along the thought path of the argument to the final point. By the time the communicator reaches the conclusion to which he's been building, he has the audience prepared to accept the solution he wants them to accept (McCroskey, 1968; Waicukauski, 2001).

Other Persuasive Patterns.

Levine (1989) also mentions a technique where the judge's charge to the jury, which typically follows the closing arguments, is the foundation for the argument, stating that a competent lawyer will know what the charge will be. That is, if the judge were to charge the jury with the decision of whether the defendant is guilty of breaking and entering, the defense counsel would claim in the closing argument that the prosecution had not proved beyond a reasonable doubt that the defendant is guilty. Levine claims there are several advantages of this method. First, if the argument is organized around the same questions the judge presents to the jury, the jury will more readily think of the

advocate's answers as answers to the judge's questions. A further advantage of this technique is the credibility projected onto the advocate by the jury for being on the same wavelength as the judge.

Fontham *et al.* (2002) assert that a combination of chronological order and the issues format – both described above – is a successful method. The authors further contend that, when addressing the issues, the advocate should use *one-step logic* – the distance between the general point and the supporting ground being a single logical step (Fontham *et al.*, p. 164).

As is illustrated by the above review of literature, there are many persuasive formulas available to the advocate. The aim of this study was not to determine whether the lawyer can name and describe the strategy being utilized nor to determine where or how the lawyer learned the formula. Of utmost concern here was the actual use of said strategies by practicing trial lawyers as evidenced by the transcripts of closing arguments and the operational effectiveness of the strategies employed. Thus the research questions follow:

1. To what extent do trial lawyers utilize the persuasive strategies as defined in this study when composing closing arguments for trial cases?
2. Is there a strategy used most frequently by prosecuting attorneys?
3. Is there a strategy used most frequently by defense attorneys?
4. Is there a relationship between persuasive strategy used and verdict outcome?

Key Concepts

Closing Argument

While the closing argument was not a variable concept in this study, its precise meaning is crucial. There are six segments of the trial process – voir dire or jury selection, opening statements presented by opposing counsel, evidence as introduced by witnesses, closing arguments presented by opposing counsel, the charge to the jury, and the verdict rendered by the jury. The closing argument is the culmination of a jury trial, therefore taking place after all the evidence has been presented, and thus is the advocate's final opportunity in a trial for communication, more specifically for persuasion, with the jury. In the typical two-party suit, the summation phase of the case is divided into three sections:

- The prosecution gives the first argument;
- The defendant gives the second argument;
- The prosecution then gives the final argument – typically a rebuttal of the defendant's closing argument (Busch, 1950).

For the purpose of this study, closing argument included the first two sections of the summation phase, as they are both composed and structured independently of other arguments. The third section, as indicated above, is typically a rebuttal to the defendant's argument and therefore not as likely to have a format as well developed or planned.

Persuasion

Conceptual definition. The concept of persuasion is also significant to this study, though not a variable. There are several ways of defining persuasion available. For

example, one could approach the matter from a general stance. To persuade is defined as follows: "to cause to do something, especially by reasoning, urging; to convince" (Agnes, 1996). However, communication scholars have taken a more socialistic approach to defining persuasion, defining it as "intentional influence that is more voluntary than coerced" (Griffin, 2000).

Public speaking experts also classify persuasion uniquely. Persuasion is defined by rhetoricians as a "speech designed to influence, convince, motivate, sell, or stimulate action" (Sprague & Stuart, 2000). As the main focus of this study is the significance of persuasion evidenced by speech formation, its definition will center on the role of speech structure. Therefore, for the purposes of this study, persuasion will be defined as the influence of speech design on the behavior or attitude change of the audience.

Persuasive Strategy

Conceptual definition. A persuasive strategy is a pattern of speech organization used to maximize communication effectiveness. For the purposes of this study, persuasive strategies – also referred to as persuasive formats, formulas, methods, patterns, or techniques – included those listed below.

1. Monroe's Motivated Sequence outlines the following five sequential steps: attention, need, satisfaction, visualization, and need.
2. Chronology Pattern arranges main points based on time sequence.
3. Issues Format divides argument into a series of specific, factual issues.
4. Elements Format revolves argument around specific claims and elements.

5. Turning Points Format focuses the argument on issues likely to be of most importance to the jury.
6. Causal Pattern illustrates the relationship between an occurrence and either its causes or effects.
7. Reflective Thought Pattern outlines the following five sequential steps: locating and defining the problem, describing and limiting the problem, suggesting possible solutions, evaluating the solutions, and adopting the preferred solution.
8. Combinations Patterns include the use of two or more of the above defined patterns.
9. Unidentified Patterns include any speech pattern not defined above.

Operational definition. This concept was measured by a content analysis of the sample texts. The samples were coded into the nine categories of persuasive strategies defined above. For example, take the following outline of the closing argument of Edward Prindeville, Plaintiff's Attorney for the Black Sox Trial.

I. Introduction
II. Review of events leading up to the World Series
    A. Before the world series, Eddie Cicotte told Bill Burns that if the White Sox won the pennant there was something he would let him in on
    B. Cicotte the told of the ten thousand dollars he had under his pillow
    C. The gamblers met on the morning of Game One of the World Series
    D. Joe Jackson then received five thousand dollars after the fourth game
III. Conclusion
    A. Defendants are guilty of conspiracy and conning the American people

Based on the sequential order of the evidence presented, this closing argument is an example of the chronology pattern of speech.

This concept was measured by the following item in the code sheet:

Persuasive Strategy Used: 1. Monroe's Motivated Sequence → _____

2. Chron
3. Issues
4
5. Turning Points Format → _____
6. Causal Pattern -
7. Reflective Though Pattern → _____
8. Combination -
9. Unidentified -

Opposing Counsel

Conceptual definition. The opposing counsel refers to the plaintiff's attorney and the defendant's attorneys. The plaintiff's attorney is the advocate representing the party that initiated the case, or the offensive advocate. The defendant's attorney is the advocate representing the party against whom the case was brought, or the defensive advocate.

Operational definition. Based on information from the trial-specific descriptions given with the identification of each case, this concept was measured by the following item in the code sheet:

Opposing counsel: 1. Plaintiff's Attorney ☐

☐ Defendant's Attorney →

Verdict Outcome

Conceptual definition. Verdict outcome is typically thought of as either guilty or not guilty, conviction or acquittal. For the purpose of this study, in order more accurately

to assess verdict outcome as it relates to opposing counsel, verdict outcome is defined as either being favorable or unfavorable. If the prosecution is aiming to convict the defendant and the verdict is guilty, the outcome would be considered favorable for the prosecutor and unfavorable for the defense attorney. Likewise, if the outcome in the same case is not guilty, it would be unfavorable for the prosecutor and favorable for the defense attorney.

Operational Definition. This concept was assessed based on the pre-determined results of each specific case – as the verdicts have already been decided. This information was found in the case descriptions accompanying each closing argument and was coded accordingly. Thus, this concept was measured by the following item in the code sheet:

Verdict Outcome: 1. Favorable → ☐

2. Unfavorable → ☐

Methods

Units of measurement

The data for this study was collected through a rhetorical analysis of the manuscripts of closing arguments of trial cases. As the manuscripts for most trial cases are not transcribed due to the monetary expense of doing so, the sample for this study includes only the manuscripts of high-profile cases, specifically those that have already been transcribed and made available to the public. Therefore, the units of analysis, the units of observation, and the coding units were individual closing arguments from high profile, criminal jury trials throughout American history.

Sample

Due to the rarity of compilations of such cases, the sample of texts to be analyzed was limited to the following two sources: *Ladies and Gentlemen of the Jury* (Lief, 1998) – a compilation of ten of the most famous, and eloquent, closing arguments for jury trials in American history, and *Famous Trials* webpage (Linder, 2003) – a compilation of 33 well known jury trials from American history. Evidence further legitimating this decision was discovered in an e-mail interview with the creator and maintainer of the *Famous Trials* webpage, where Professor Linder claimed that, aside from those included on his website, many trial transcripts "are simply not available in their entirety" (D. Linder, personal communication, March 17, 2003).

While there is some overlap between these two sources, each does have transcripts of closing arguments not included in the other. However, both closing arguments – that of the prosecution and the defense – are not available for several of the trial cases represented. Therefore, a total of nineteen cases was included in the sample,

allowing for 31 individual closing arguments to be examined. The list of those included follows.

Black Sox Trial – A group of professional baseball players were prosecuted for conspiracy charges, accused of having "thrown the game", or intentionally losing. The transcript included from this case was that of Edward Prindeville, prosecution.

California v. Darrow – Clarence Darrow was accused of bribing member(s) of the jury in a former trial in which he served as defense attorney. The transcript included from this trial is that of Clarence Darrow, speaking in defense of himself.

California v. DeLorean – John DeLorean was accused of money laundering and drug trafficking. The transcript included from this case was that of John Re, defense attorney.

Charles Manson Trial – The afore-named defendant was accused of murder. The transcript from this case was that of prosecutor Vincent Bugliosi.

Chicago Seven Trial – A group of seven radical was accused of conspiring to start a riot at the 1968 Democratic National Convention in Chicago. The transcripts included that of both Thomas Foran, prosecution, and William Kunstler, defense.

John Hickley Trial – John Hinckley was prosecuted for attempted assassination of then President Ronald Reagan. Transcripts included from this case were from both Roger Adelman, government attorney, and Vincent Fuller, defense attorney.

Leopold and Loeb Trial – The two wealthy young men were accused of murder and plead guilty to that charge. The transcript included here was that from Clarence Darrow, defense attorney.

Lindbergh Trial – Bruno Hauptmann was accused of kidnapping the infant child of aviator Charles Lingbergh. Edward Reilly, plaintiff's attorney, and David Wilentz, defense attorney, were included.

Mississippi Burning – A group of men were accused of murder conspiracy, specifically of a lynching of three black men. The transcripts included from this case were that of both the prosecutor, John Doar, and the defense attorney, H.C. Watkins.

State of Mississippi v. De La Beckwith – Byron De La Beckwith was accused of murdering the head of the Mississippi chapter of the NAACP, Medgar Evers. The transcript included from this trial was that of Bobby DeLaughter, prosecutor.

My Lai Court Martial – This trial was concerned with tragedies occurring in the Vietnam War. William Calley was prosecuted for the massacre of Vietnamese civilians and for covering up that massacre. The transcripts included from this case are that of prosecutor Aubrey Daniel and defense attorney George Latimer.

Nurembergh Trial – A group of men were accused of war crimes and crimes against humanity. The transcript included from this case was that of prosecutor Robert Jackson.

OJ Simpson Trial – The afore-named defendant was accused of murdering two people. The transcripts included from this case were that of Marcia Clark and Christopher Darden, prosecutors, and Johnnie Cochran, defense attorney.

Sacco and Vanzetti Trial – The two men were accused of the murder of two other men. The transcripts included from that trial were that of Frederick Katzmann, prosecutor, and Frederick Moore and Jeremiah McAnarney, defense attorneys.

Silkwood Estate v. Kerr-McGee – Karen Silkwood, an employee of Kerr-McGee, was exposed to plutonium from the Kerr-McGee factory where she worked, and high levels of the contaminant were also found inside her apartment. Her estate filed charges against the company for punitive damages resulting from their negligence of maintaining a safe work environment. The transcript included from this case is that of the plaintiff's attorney, Gerry Spence.

The Sweet Trials – Henry and Ossian Sweet were accused of the murder of a man who was one of a mob that had been surrounding and purportedly vandalizing the Sweet's home. The two defendant's were tried separately. The transcripts included from the trial of Henry Sweet are that of Robert Toms and Lester Moll, prosecutors, and Thomas Chawke and Clarence Darrow, defense attorneys. The transcript included from the trial of Ossian Sweet is that of Clarence Darrow, defense attorney.

Triangle Shirtwaist Fire Trial – When a fire destroyed the Triangle Shirtwaist factory, killing a woman employee who was unable to escape, its owners were accused of negligence resulting in the charge of manslaughter. The transcripts included from this trial include that of prosecutor Charles Bostwick and defense attorney Max Steuer.

Code Sheet

The units of analysis were coded into categories based on three variables of the study – opposing counsel, persuasive strategies, and verdict outcome. The first variable coded was opposing counsel – plaintiff's attorney or defendant's attorney. The second variable coded was the persuasive strategy used. This phase of coding used the following categories:

1. Monroe's Motivated Sequence;

2. Chronology Pattern;
3. Issues Format;
4. Elements Format;
5. Turning Points Format;
6. Cause-Effect Pattern;
7. Reflective Thought Pattern;
8. Combination of Patterns; and
9. Unidentified Pattern.

Finally, the dependent variable of verdict outcome was coded according to the independent variable of opposing counsel, determining whether the unit was coded as favorable or unfavorable. The coding sheet is attached as Appendix A.

The researcher was the primary coder for this study. To ensure for code sheet reliability, a secondary coder analyzed six randomly selected transcripts of the 31 sample texts. After an item by item comparison of both sets of code sheets for each of the six cases, a percentage of intercoder agreement was calculated and reported. An acceptable percentage of agreement is 70%. If that level of acceptability would not have reached, the code sheet would be refined and tested accordingly. Coding instructions, attached as Appendix B, were clarified to the secondary coder to further assure for intercoder reliability.

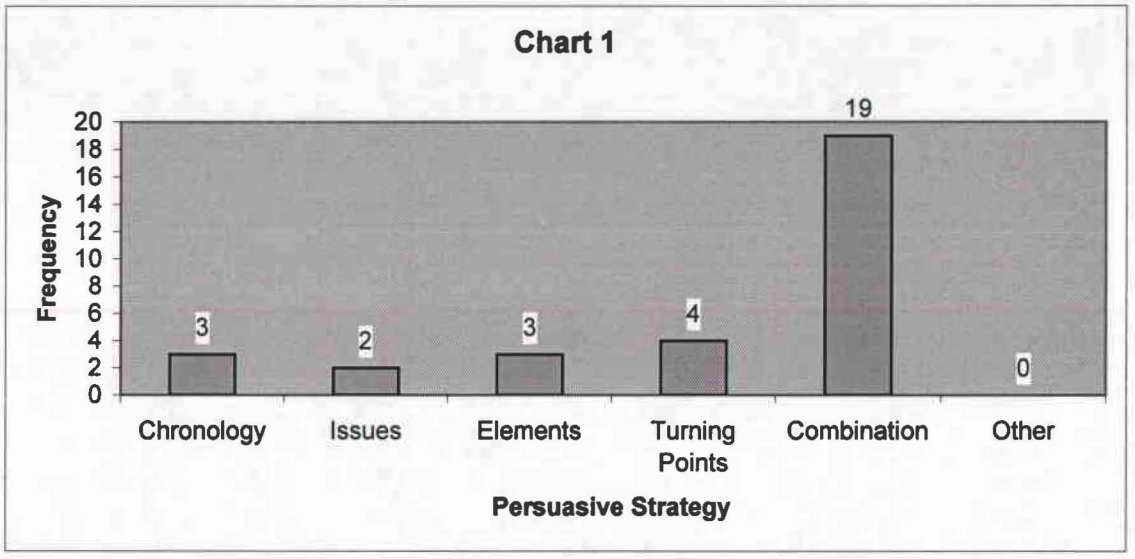
Data Analysis

In efforts to ensure the integrity of this study, a test to determine intercoder reliability was done. After randomly selecting twenty percent of the sample, a secondary coder coded those six transcripts. The data from the secondary coder was then compared, item-by-item, with the primary coder's code sheets from the same six transcripts. Of the six transcripts, there were ten possible correlations. On both sets of code sheets, eight of the possible ten items matched. Thus, the percentage of agreement is 80%, strengthening the validity of the definitions and code sheet. The secondary coder's code sheets are attached as Appendix D.

Using a frequency analysis, *Research Question 1* was analyzed as illustrated by Table 1. *Research Question 1: To what extent do trial lawyers utilize persuasive strategies as defined in this study when composing closing arguments for trial cases?*

Table 1:

Persuasive Strategy	Value	Frequency	Percent	Valid Percent	Cumulative Percent
Monroe's Motivated Sequence	1	0	0	0	0
Chronology	2	3	9.6	9.6	9.6
Issues	3	2	6.6	6.6	16.2
Elements	4	3	9.6	9.6	25.8
Turning Points	5	4	12.9	12.9	38.7
Causal	6	0	0	0	38.7
Reflective Thought	7	0	0	0	38.7
Combination	8	19	61.3	61.3	100.0
Unidentified	9	0	0	0	100.0
	Total	31	100.0	100.0	



As the results in the above table are skewed, with no items coded into several of the categories, the following table, Table 1.A, depicts a collapsed, more representative version.

Table 1.A:

Persuasive Strategy	Value	Frequency	Percent	Valid Percent	Cumulative Percent
Chronology	2	3	9.6	9.6	9.6
Issues	3	2	6.6	6.6	16.2
Elements	4	3	9.6	9.6	25.8
Turning Points	5	4	12.9	12.9	38.7
Combination	8	19	61.3	61.3	100.0
Total		31	100.0	100.0	

To more clearly account for the types of strategies used in conjunction with one another, the following table, Table 1.B, illustrates the combinations used.

Table 1.B:

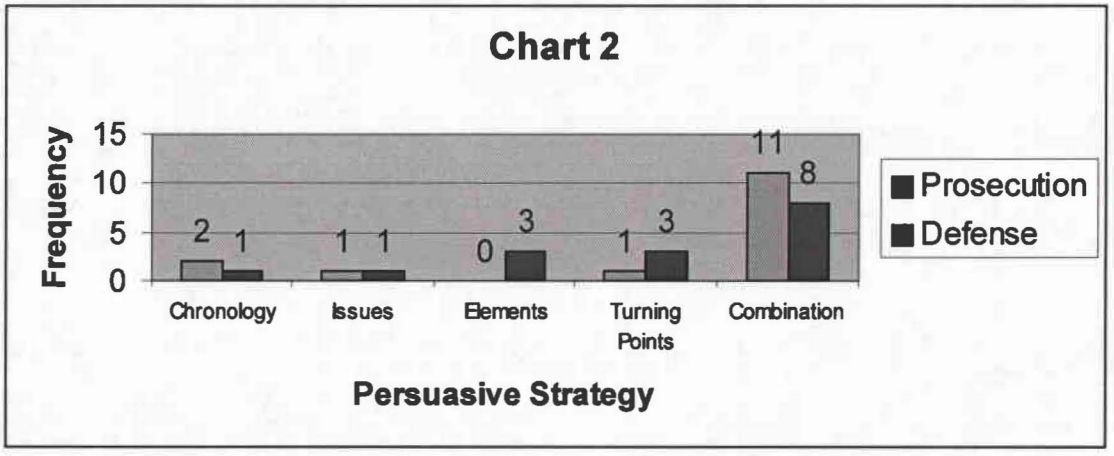
Persuasive Strategy	Value	Frequency	Percent	Valid Percent	Cumulative Percent
Combination	8				
Chronology, Elements		4	21.1	12.9	21.1
Chronology, Issues		7	36.8	22.5	57.9
Chronology, Turning Points		2	10.5	6.5	68.4
Chronology, Issues, Turning Points		2	10.5	6.5	78.9
Chronology, Elements, Issues		2	10.5	6.5	89.4
Causal, Elements		1	5.3	3.2	94.7
Elements, Reflective Thought		1	5.3	3.2	100.0
	Total	19	100.0	61.3	

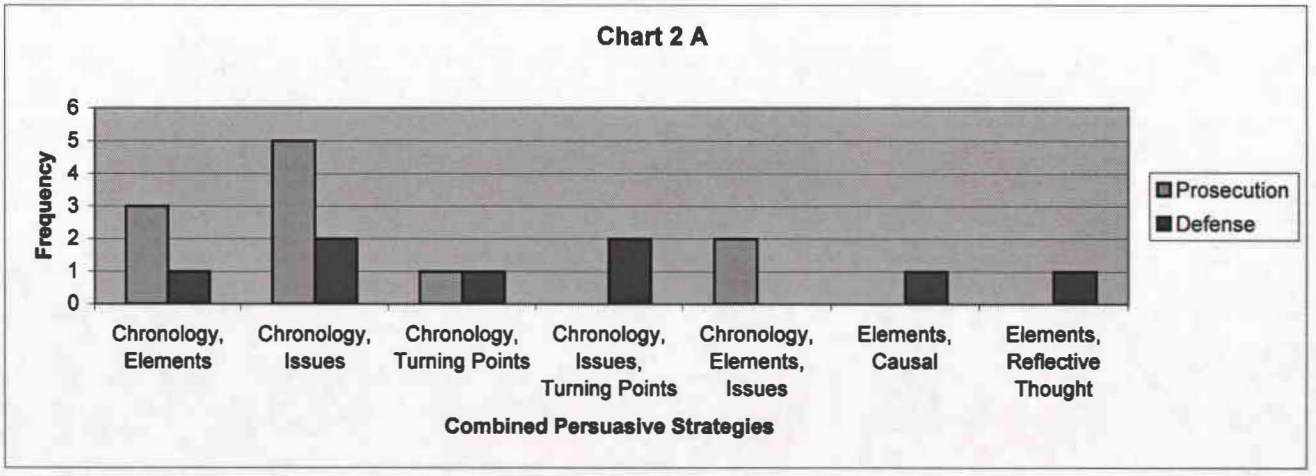
Relying on cross-tabulation, *Research Questions 2* and *3* were analyzed and the data presented in a format represented by Table 2. *Research Question 2: Is there a strategy used most frequently by plaintiff's attorneys? Research Question 3: Is there a strategy used most frequently by defendant's attorneys?*

Table 2:

Persuasive Strategy	Prosecution	Defense	Total
1. Motivated Sequence	0	0	0
2. Chronology	2	1	3
3. Issues	1	1	2
4. Elements	0	3	3
5. Turning Points	1	3	4
6. Causal	0	0	0
7. Reflective Thought	0	0	0
8. Combination	11	8	19
9. Unidentified	0	0	0
Total	16	15	31

Chart 2, below, illustrates the frequency of persuasive strategies used by opposing council. In Chart 2 A, also below, the Combined category is expanded, depicting the frequency of specific combination approaches by opposing council.



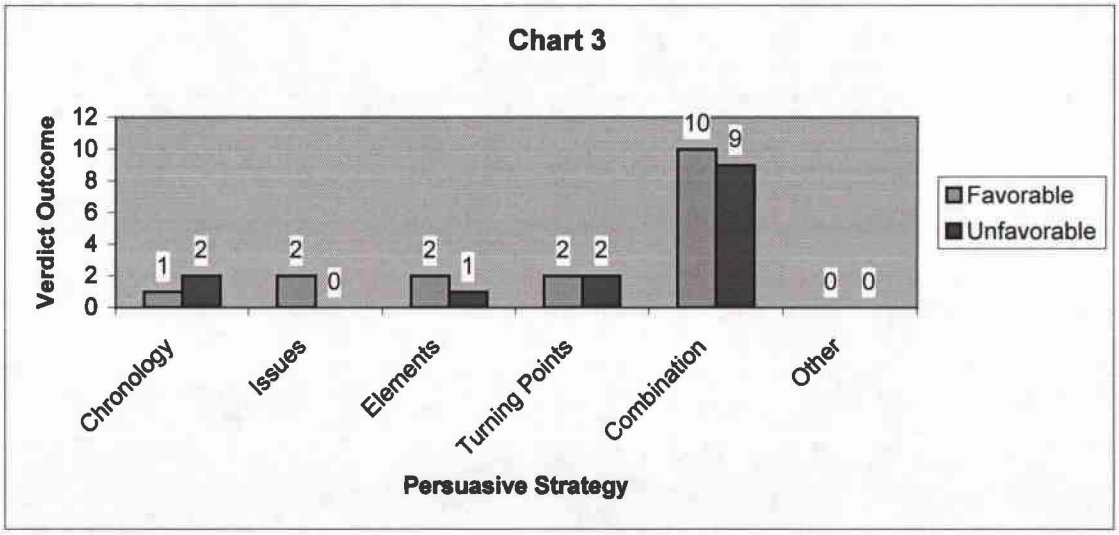


Research Question 4 was also analyzed by cross-tabulation, as demonstrated by table 3.

Research Question 4: Is there a relationship between persuasive strategy used and verdict outcome?

Table 3:

		Persuasive Strategy									
		1	2	3	4	5	6	7	8	9	Total
Verdict Outcome	Favorable	0	1	2	2	2	0	0	10	0	17
	Unfavorable	0	2	0	1	2	0	0	9	0	14
	Total	0	3	2	3	4	0	0	19	0	31



To more clearly analyze the types of strategies used in conjunction with one another and their success, the following table, Table 3.A, illustrates the combinations used.

Table 3.A:

		Combined Persuasive Strategies							
Verdict Outcome		Chronology, Elements	Chronology, Issues	Chronology, Turning Points	Chronology, Elements, Issues	Chronology, Issues, Turning Points	Causal, Elements	Elements, Reflective Thought	Total
	Favorable	1	3	1	1	2	0	1	9
	Unfavorable	3	4	1	1	0	1	0	10
	Total	4	7	2	2	2	0	1	19

Chart 3 A, below, illustrates the verdict outcome as it correlates with specific Combined Persuasive Strategies. The Strategies are identified numerically, correlating with the following numbers:

1 – Chronology, Elements;

2 – Chronology, Issues;

3 – Chronology, Turning Points;

4 – Chronology, Issues, Turning Points;

5 – Chronology, Elements, Issues;

6 – Elements, Causal; and

7 – Elements, Reflective Thought.

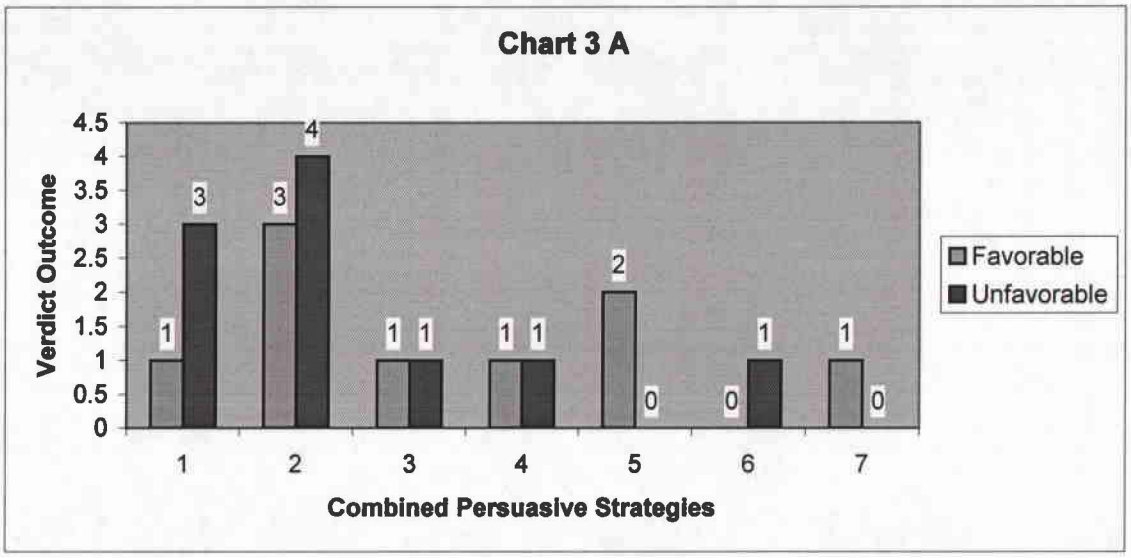


Chart 3 A
Verdict Outcome
4.5
4
3.5
3
2.5
2
1.5
1
0.5
0
1
3
3
4
1
1
1
1
2
0
0
1
1
0
1
2
3
4
5
6
7
Combined Persuasive Strategies
Favorable
Unfavorable

Discussion

Based on the findings, as depicted in the tables and charts above, the author of this study concludes the following.

Regarding *Research Question 1,* every transcript included in the sample for this study utilized an identifiable persuasive strategy as defined in this study. Thus, the findings indicate that the extent to which trial lawyers utilize persuasive strategies, whether intentional or not, is 100 percent of the time. However, as will be discussed below, that does not necessarily indicate intent – that trial lawyers have studied or considered the persuasive strategies available and selected the one best suited for a particular argument.

Regarding *Research Questions 2* and *3*, four of the persuasive strategies defined in this study were not used at all. Those include Monroe's Motivated Sequence, Cause-Effect Pattern, Reflective Thought Pattern, and any unidentified pattern. The approach used most frequently by both prosecuting and defending attorneys entails a combination of persuasive strategies defined in this study. Overall, the combination of Chronology and Issues was most frequently used, although not overwhelmingly so.

The Chronology and Issues combination was most used by prosecuting attorneys, with five of the transcripts having been coded accordingly. The second most used strategy by prosecutors was Chronology, coded twice. Defending attorneys utilized the combination of Chronology and Issues in two of the cases, while elements and turning points were each used by the defense three times. No strategy, however, was used frequently enough for the findings to be considered significant. By this, the author means

that there is not a strategy used frequently enough, with a favorable outcome, to indicate that it has stronger persuasive benefits than the other strategies.

Regarding *Research Question 4*, seventeen of the 31 transcripts had favorable outcomes. Of the nineteen transcripts that were coded in the combination category, ten had favorable outcomes and nine unfavorable. The remaining strategies had very comparable favorable-unfavorable ratios, as well. This author thereby concludes that none of the strategies should be considered determinant of verdict outcome.

This author would have predicted a stronger correlation between verdict outcome and persuasive strategy used. Based on these findings, however, there is no way to predict verdict outcome based on persuasive strategy used. While trial lawyers certainly incorporate the use of said persuasive strategies when composing their closing arguments, the strength of their plea apparently lies in the strength of their argument, not in the manner or structure in which the argument is presented.

This author is willing to entertain the notion that the arguments were composed based on simple logic. Chronology or Causal patterns are used commonly by the lay person in the lay argument – spelling out for her audience the crux of her contention. These seemingly innate intuitive processes don't have to be learned in a specialty school – they come in conjunction with the reasoning that separates man from other animals.

It is also possible that the intended audience affected the lawyers' choices of combinations. This means to say that lawyers know who composes the jury – the lay person. Lawyers whittle through a long list of possibilities before the jury members are selected. They know to whom they are talking. It is logical to think that attorneys intentionally use lay, everyday strategies or argument structures for their lay audiences.

The everyday person might be more convinced by a familiar type of argument, one he can understand and to which he can relate, such as one following the chronology or issues pattern.

It is significant to note, however, that the most frequently used approach to speech structure entailed a combination of strategies. One might conclude that merely a simple template is not sufficient in the summation of a criminal trial – as the majority of the lawyers employed some combination. That lends to the notion of the contribution of new templates to the speech communication world. A further analysis of the findings might indicate that a combination of chronology and issues approaches might be best suited for murder cases.

As this study was exploratory in nature, these findings lend to a clearer path future researchers should take and provide a better lens through which to approach a study of this nature. A seemingly simple approach to speech structure is used by a number of trial lawyers in criminal cases. A combination of such strategies is used even more frequently. One is able to determine the structure of the argument by analyzing the transcript. The correlation sought to be understood through future research should not be that between persuasive strategy and verdict outcome, but perhaps between the combination of persuasive strategies used and the type of case.

Limitations

This study has a glaring, yet presently unavoidable, limitation. As the sample is a restricted compilation of transcripts from notorious American trial cases, rather than a randomly selected sample of any sort, it is naïve and illogical to conceive of generalizing the findings to the typical, low profile, *everyday* American trial case. Perhaps, however, as the closing arguments included in the sample are from well-known advocates, it might be assumed that as a student of legal advocacy, the everyday lawyer has studied the work of the advocates included in this sample and conceivably has integrated the strategies included in this sample into his own.

Future research could compensate for this in several ways. Ideally, an arrangement would be made with a specific court system – county, state, or federal – allowing for the legal audiotape recording of the closing arguments in that court system for a specified time. The culturally curious researcher might even make an arrangement with the court system in two different regions and compare accordingly. It is also possible that trial lawyers retain transcripts of closing arguments from prior cases. The well-connected researcher might find lawyers who are willing to impart the transcripts for scholarly purposes.

Mindful of the significance of every aspect of a trial case, and aware of such realities described above in the introduction, the author of this study is fully aware that there are many factors other than the structure of the closing argument influencing the verdict outcome of the case. An all-encompassing study would incorporate the analysis of multiple variables from each of the six parts of the trial mentioned above.

Also, as the aim of the study is to analyze only the persuasive strategies as defined in this study, it is recognized that there might be extraneous factors involved in the closing argument process that have significant persuasive impact. For example, paralanguage or nonverbal communications such as vocal tone, gesturing or body language, and overall deliverance of the oral argument might be of significance. Various types of emotionalism might be integral to the summation, as well (Matlon, 1988). Thus, factors such as dramatic presentation, use of visual aids, or even emotional appeals themselves, might impact verdict outcome.

Appendix A

Code Sheet

Advocate Name _____

Trial Name _____

Opposing Council:

1. Plaintiff's Attorney ☐
2. Defendant's Attorney ☐

Persuasive Strategy:

1. Monroe's Motivated Sequence ☐
2. Chronology Pattern ☐
3. Issues Format ☐
4. Elements Format ☐
5. Turning Points Format ☐
6. Cause-Effect Pattern ☐
7. Reflective Thought Pattern ☐
8. Combination of Pattern ☐

9. Unidentified Pattern ☐

Verdict Outcome

Favorable ☐

Unfavorable ☐

Appendix B

Coding Instructions

This is a procedural explanation, mimicking the structure of the code sheet.

List the advocate's name and the name of the trial, as found in the description of each case, in the spaces provided.

For *Opposing Council*, select the box indicating whether the advocate is the Prosecuting or Defending Attorney, as found in the description of each case.

Analyze the content of the closing argument, as found in the body of each sample text, to determine the persuasive strategy used and categorize appropriately. The *Persuasive Strategy* categories follow:

1. Monroe's Motivated Sequence outlines the following five sequential steps: attention, need, satisfaction, visualization, and need.
2. Chronology Pattern arranges main points based on time sequence.
3. Issues Format divides argument into a series of specific, factual issues.
4. Elements Format revolves argument around specific claims and elements.
5. Turning Points Format focuses the argument on issues likely to be of most importance to the jury.
6. Causal Pattern illustrates the relationship between an occurrence and either its causes or effects.
7. Reflective Thought Pattern outlines the following five sequential steps: locating and defining the problem, describing and limiting the problem, suggesting possible solutions, evaluating the solutions, and adopting the preferred solution.
8. Combination Patterns include the use of two or more of the patterns defined above.
9. Unidentified Patterns include any speech pattern not identified above.

If a combination of the first seven strategies is found, thereby causing the coder to categorize an item as Persuasive Strategy 8, indicate the specific strategies used in conjunction with one another in the space provided.

In order to assess more accurately *Verdict Outcome* as it relates to opposing council, verdict outcome is defined as either being favorable or unfavorable. If the prosecution is aiming to convict the defendant and the verdict is guilty, the outcome would be considered favorable for the prosecutor and unfavorable for the defense attorney. Likewise, if the outcome in the same case is not guilty, it would be unfavorable for the prosecutor and favorable for the defense attorney. Refer to the case description at the beginning of the text for the verdict outcome of guilty or not guilty and code as described above.
Attached is a more detailed description of each category.

Monroe's Motivated Sequence.

The Motivated Sequence, developed by Alan Monroe, is one of the most widely used formulas for persuasive speech (McCroskey, 1968; Ehninger, Monroe, & Gronbeck, 1978; Sprague & Stuart, 2000; Waicukauski, Sandler, & Epps, 2001). This psychologically based format echoes and anticipates the mental stages through which listeners progress as they hear a speech. In regards to this, Monroe (1978) claims the following: "By following the normal processes of human thinking it motivates an audience to respond affirmatively to the speaker's purpose" (as quoted in Ehninger *et al.*, 1978, p. 143).

The first step of the formula is the *attention* step, as the speaker must first motivate the audience to listen to the speech (Ehninger *et al.*, 1978). Monroe suggests that merely gaining the audience's attention is not sufficient. The speaker must gain *favorable* attention and must direct that attention towards the major ideas or points of the speech. Several ways to accomplish this include rhetorical questioning, making a startling statement, beginning with a famous, relevant quotation, or sharing a humorous anecdote or illustration. The speaker must remember that this step must lead naturally and logically into the remainder of the speech.

The second step is the *need* step, where auditors must become aware of a compelling, personalized problem (Ehninger *et al.*, 1978). There are several elements that should be included. A statement or description of the need or problem should be clear and concise, enabling the listener to know exactly the problem to be addressed. The speaker should also include one or more detailed evidences to illustrate the need. This

could include examples, statistical data, testimony, or any other form of support that shows the extent of the need.

Satisfaction is the third step of the Sequence (Ehninger *et al.*, 1978). In this phase, the course of action advocated must be shown to alleviate the problem. The recommended strategies to achieve this include the speaker stating the attitude, belief, or action intended to be adopted by the audience. This should be explained thoroughly to insure that the proposal is understood. The advocate should also show how the belief or action logically meets, or satisfies, the problem pointed out in the need step. Examples showing that the proposal has worked effectively or that the belief has been proven correct before, such as in past cases, are very effective here.

Visualization is the fourth step (Ehninger *et al.*, 1978). The function of the *visualization* step is to intensify the audience's desire or perceived need to agree with the speaker – to motivate them to believe, feel, or act accordingly. Also, psychologically, it is important that the audience have a vivid picture of the benefits of agreeing with the speaker, or the evils of alternatives. The three variations of this step purported by Monroe follow: projecting a positive picture; projecting a negative picture; or projecting a negative then positive picture, allowing for a contrast of the alternatives.

Finally, *action* is the fifth step of the Motivated Sequence (Ehninger *et al.*, 1978). The speech should end with an overt call for the listeners to act in agreement with the speaker's pleas. Its purpose is to encourage listener determination to retain the belief being advocated and/or to urge the audience to take the definite action proposed. Typical strategies of achieving this include a blatant challenge or appeal, a summary of the speech, or a statement of inducement.

Chronology Pattern.

An approach used often in both persuasive and non-persuasive speeches is to order the main points of the speech chronologically – or based on a time sequence (McCroskey, 1968; Ehninger *et al.*, 1978; Lubet, 1993; Sprague & Stuart, 2000; Waicukauski *et al.*, 2001; Fontham *et al.*, 2002). In this method the advocate would address the significant issues at hand in the order in which the underlying events occurred. This strategy is particularly useful when it is important for the audience to perceive time relationships between issues or materials in the message. While historical development is the most common application of this pattern, and perhaps the most logical for the closing argument, alternatives include a *past-present-future* arrangement or a *step-by-step* description.

Topical Pattern.

While *The Speaker's Handbook* (Sprague & Stuart, 2000) claims that this is the most frequently used speech pattern, the authors also admit that it is the most difficult in that "you cannot rely on a predetermined structure, but rather must understand the range and limitations of the subject itself in order to select an effective pattern" (p. 100). Arguing that "seemingly natural" methods of organization, such as chronology, do not present the evidence in its most persuasive form, Lubet (1993) advises the reader that topical organization "allows counsel to determine the best way to address the issues in the case" (p. 410). There are several different varieties of this pattern, including building the argument around issues, elements, and turning points (McCroskey, 1968; Levine, 1989; Lubet, 1993; Bailey, 1994; Sprague & Stuart, 2000; Fontham, 2002).

The *issues* format divides the case into a series of discrete and specific factual or legal issues. Building an argument around large issues, claims Lubet (1993), provides little help due to breadth, whereas the focus on narrow, concrete issues proves to be useful. While agreeing that the body of the closing argument should be structured in the issues format, F. Lee Bailey (1994) suggests a technique to further express the significance of this phase of the trial. Recognized especially for his work in high profile cases such as Dr. Sam Sheppard, Patty Hearst, the Boston Strangler, and the O.J. Simpson trial, Bailey recommends beginning the closing argument by reminding the jury that this is his last opportunity to speak on behalf of his client, who is unable to speak for himself (p. 171).

Levine (1989) asserts a formula of persuasion similar to this approach. His version, dubbed marshaling the evidence, entails dealing with each issue separately, reviewing the evidence from witnesses and exhibits dealing with that particular issue, then proceeding to the next issue. He offers this structure in place of chronology, also claiming more effective persuasion as his motive.

Tanford (1993) conveys a slightly different approach to persuasion, also summarized by Gibson (1992). Tanford's method, consisting of six steps prescribed for a successful closing argument, provides the advocate with a precise formula to use when composing an argument around issues. His method follows:

- Introduction
- Brief summary of case
- Identify issues
- Order of issues (prioritize)

- Resolution of issues
- Conclusion (Tanford, p.392).

The *elements* approach is similar in nature. However, rather than a focus on specific issues of the case, the concentration revolves around elements and/or claims presented throughout the case. Not to be confused with the *issues* category, the elements umbrella covers those aspects of utmost significance to the case that are perhaps not submitted as evidence or are not issues from the actual incident leading to the case. This method is most appropriately used when advocates need only to challenge a single element in order to win (Lubet, 1993).

Lubet's (1993) major focus in this area, however, is on the *turning points* organization. Modern cognitive theory, claims Lubet, "tells us that jurors are likely to regard the information in a case as a series of turning points or problems" (Lubet, p. 412). Not necessarily taking into consideration the accuracy of *every fact* presented in a case, jury members, and people in general, tend to focus on a limited number of *important issues*. Therefore, this formula tells the advocate to focus the closing argument on what will most likely be the pivotal issues for the members of the jury and explain them in a way that "comports with the jurors' life experience and sense of reality" (Lubet, p. 412).

Causal (Cause-Effect) Pattern.

This pattern is commonly used to show that events that occur in sequence are in fact causally related (McCroskey, 1968; Sprague & Stuart, 2000; Waicukauski *et al.*, 2001). This structure is best suited for a speech in which the goal is to achieve either understanding or agreement about the specific relationship between an occurrence and

either its roots (cause) or its consequences (effects). The logic employed in this strategy can flow from cause-to-effect or from effect-to-cause, depending on the nature of the arguments at hand.

Reflective Thought Pattern.

This pseudo-informative pattern is similar to the problem-solution strategy described above and suggests to the audience that it is being informed, rather than persuaded, by the speaker (McCroskey, 1968; Waicukauski *et al.*, 2001). That is, the speaker begins the speech not as an overt advocate, but assumes the posture of one who is merely informing the listener and objectively guiding the audience through a reflective thinking process.

Developed by philosopher John Dewey (as cited in McCroskey, 1968), this strategy has five steps: locating and defining the problem, describing and limiting the problem, suggesting possible solutions, evaluating the solutions, and adopting the preferred solution. The effectiveness, supporters of this method claim, lies in the fact that, although the speaker knows the conclusion he will make throughout the speech, the audience is led along the thought path of the argument to the final point. By the time the communicator reaches the conclusion to which he's been building, he has the audience prepared to accept the solution he wants them to accept (McCroskey, 1968; Waicukauski, 2001).

Appendix C

Primary Coder list

1. Black Sox Trial – Edward Prindeville, Plaintiff's Attorney, Chronology Pattern, Unfavorable Outcome.
2. California v. Clarence Darrow – Clarence Darrow, Defense Attorney, Elements Pattern, Favorable Outcome.
3. California v. John DeLorean – John Re, Defense Attorney, Combination of Chronology and Elements Patterns, Favorable Outcome.
4. Charles Manson Trial – Vincent Bugliosi, Plaintiff's Attorney, Combination of Chronology and Issues Patterns, Favorable Outcome.
5. Chicago Seven Trial – Thomas Foran, Plaintiff's Attorney, Combination of Chronology and Elements Patterns, Favorable Outcome.
6. Chicago Seven Trial – William Kunstler, Defense Attorney, Chronology, Unfavorable Outcome.
7. Hinckley Trial – Roger Adelman, Plaintiff's Attorney, Combination of Chronology and Turning Points Patterns, Unfavorable Outcome.
8. Hinckley Trial – Vincent Fuller, Defense Attorney, Combination of Chronology and Turning Points Patterns, Favorable Outcome.
9. Leopold and Loeb Trial – Clarence Darrow, Defense Attorney, Turning Points Pattern, Unfavorable Outcome.
10. Lindbergh Trial – Edward Reilly, Defense Attorney, Combination of Chronology and Elements, Unfavorable Outcome.
11. Lindbergh Trial – David Wilentz, Plaintiff's Attorney, Combination of Chronology, Elements, and Issues, Favorable Outcome.
12. Mississippi Burning Trial – John Doar, Plaintiff's Attorney, Chronology Pattern, Favorable Outcome.
13. Mississippi Burning Trial – HC Watkins, Defense Attorney, Elements Pattern, Unfavorable Outcome.
14. Mississippi v. DeLaBeckwith Trial – Bobby DeLaughter, Plaintiff's Attorney, Combination of Chronology and Issues Patterns, Favorable Outcome.
15. Nuremberg Trial – Robert Jackson, Plaintiff's Attorney, Issues Pattern, Favorable Outcome.
16. My Lai Court Martial – Aubrey Daniel, Plaintiff's Attorney, Combination of Chronology and Issues, Favorable Outcome.
17. My Lai Court Martial – George Latimer, Defense Attorney, Combination of Elements and Cause-Effect Patterns, Unfavorable Outcome.
18. OJ Simpson Trial – Marcia Clark, Plaintiff's Attorney, Combination of Chronology and Issues Patterns, Unfavorable Outcome.
19. OJ Simpson Trial – Johnnie Cochran, Defense Attorney, Combination of Elements and Reflective Thought Patterns, Favorable Outcome.
20. OJ Simpson Trial – Christopher Darden, Plaintiff's Attorney, Combination of Chronology and Elements, Unfavorable Outcome.

21. Sacco and Vanzetti Trial – Frederick Katzmann, Plaintiff's Attorney, Combination of Chronology and Issues Patterns, Favorable Outcome.
22. Sacco and Vanzetti Trial – Jeremiah McAnarney, Defense Attorney, Combination of Chronology and Issues Patterns, Unfavorable Outcome.
23. Sacco and Vanzetti Trial – Frederick Moore, Defense Attorney, Combination of Chronology and Issues Patterns, Unfavorable Outcome.
24. Silkwood v. Kerr-McGee Trial – Gerry Spence, Plaintiff's Attorney, Turning Points Pattern, Favorable Outcome.
25. Sweet (Henry) Trials – Thomas Chawke, Defense Attorney, Turning Points Pattern, Favorable Outcome.
26. Sweet (Henry) Trials – Clarence Darrow, Defense Attorney, Combination of Chronology, Issues, and Turning Points Patterns, Favorable Outcome.
27. Sweet (Henry) Trials – Lester Moll, Plaintiff's Attorney, Combination of Chronology and Elements Patterns, Unfavorable Outcome.
28. Sweet (Henry) Trials – Robert Toms, Plaintiff's Attorney, Combination of Chronology, Elements, and Issues Patterns, Unfavorable Outcome.
29. Sweet (Ossian) Trials – Clarence Darrow, Defense Attorney, Combination of Chronology, Issues, and Turning Points Patterns, Favorable Outcome.
30. Triangle Shirtwaist Fire Trial – Charles Bostwick, Prosecuting Attorney, Combination of Chronology and Issues, Unfavorable Outcome.
31. Triangle Shirtwaist Fire Trial – Max Steuer, Defense Attorney, Issues Pattern, Favorable Outcome.

Appendix D

Secondary Coder list

1. Black Sox Trial – Edward Prindeville, Plaintiff's Attorney, Combination of Chronology and Cause-Effect Patterns, Unfavorable Outcome.
2. Hinckley Trial – Vincent Fuller, Defense Attorney, Combination of Chronology and Issues Patterns, Favorable Outcome.
3. My Lai Court Martial – George Latimer, Defense Attorney, Combination of Elements and Cause-Effect Patterns, Unfavorable Outcome.
4. OJ Simpson Trial – Johnnie Cochran, Defense Attorney, Combination of Elements and Reflective Thought Patterns, Favorable Outcome.
5. Sweet (Henry) Trials – Thomas Chawke, Defense Attorney, Turning Points Pattern, Favorable Outcome.
6. Triangle Shirtwaist Fire Trial – Max Steuer, Defense Attorney, Issues Pattern, Favorable Outcome.

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