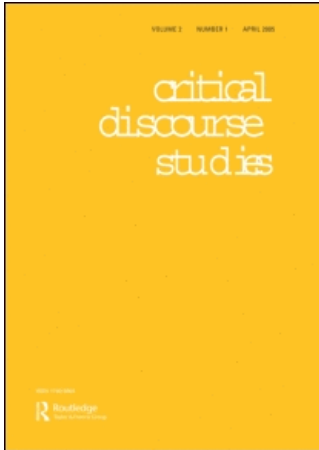


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Publisher: Routledge  
Informa Ltd Registered in England and Wales Registered Number: 1072954  
Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



## Critical Discourse Studies

Publication details, including instructions for authors and subscription information:  
<http://www.informaworld.com/smpp/title~content=t713695016>

### It's not what you say but how you say it: the role of personality and identity in trial success

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Online Publication Date: 01 August 2008

To cite this Article: Hobbs, Pamela (2008) 'It's not what you say but how you say it: the role of personality and identity in trial success', *Critical Discourse Studies*, 5:3, 231 — 248

To link to this article: DOI: 10.1080/17405900802131744  
URL: <http://dx.doi.org/10.1080/17405900802131744>

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## It's not what you say but how you say it: the role of personality and identity in trial success

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A major focus of the study of courtroom interaction in the fields of sociolinguistics and discourse analysis has been the discursive strategies that lawyers use during trials. While acknowledging the role of rhetorical skill in influencing hearers' perceptions, this paper seeks to demonstrate that language has its limits, and that the speaker's personality and identity are key factors in determining how a verbal presentation will be received. The opening statement given by John Allen Muhammad, the 'Beltway Sniper', acting as his own lawyer at his murder trial, incorporated many recommended strategies and was surprisingly well crafted, but was widely derided by media commentators. Through a comparison of Muhammad's opening statement with similar presentations delivered by celebrated attorneys, this paper will explore the relationships between language, personality, and identity in the construction of legal persuasion. Specifically, this paper will argue that Muhammad's identity as a criminal defendant, coupled with his inability to project his personality in a way that would command the attention of his hearers, set the stage for a negative reception of his remarks that their content could not overcome.

**Keywords:** critical; discourse analysis; legal discourse; trials

Lawyers are expected to be skilled at language, for it is primarily through language that they enact their professional roles; accordingly, a major focus of the study of courtroom interaction in the fields of sociolinguistics and discourse analysis has been the discursive strategies that lawyers use at trial (e.g., Atkinson & Drew, 1979; Drew, 1992; Matoesian, 1993, 1999, 2001, 1999, 2005; Cotterill, 1998, 2001; Hobbs, 2003a, 2003b, 2001; Hobbs, 2003a, 2005). This focus mirrors the interest in this subject within the legal profession itself: Lawyers' professional literature devotes considerable attention to the honing of rhetorical skills (e.g., Mauet, 1980; McElhaney, 2005; Rosenberg, 2005; Younger, 1976), and practice manuals provide detailed descriptions of techniques to be implemented and pitfalls to be avoided.

However, a lawyer's effectiveness is not simply a matter of choosing the right words, for a trial is a dramatic performance in which the lawyer is required to take center stage (Hobbs, 2003a, p. 76). In arguing for the admission or exclusion of evidence, questioning witnesses, and delivering opening statements and closing arguments, lawyers do not just speak, they *perform*, constructing displays of style and competence that command the attention of their audience and imbue their arguments with persuasive force.

This ability to command the courtroom – the lawyer's 'presence' – is not limited to courtroom legends, but is an identifying characteristic of all experienced trial lawyers. Moreover, its force is often greatest where it is the least apparent, as when a lawyer adopts a

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bumbling or a homespun style, and uses this display of awkwardness or lack of polish to stimulate the jury's interest, thus dominating through the pretence of simplicity. How important is this dominating presence to a lawyer's trial success? What is its relationship to the words that are used to construct and present the case? Such questions are difficult to answer, given the complex dynamics of the courtroom setting. However, one situation that is ripe for the investigation of this question is that with the *pro se* defendant (the defendant who represents him- or herself) for, in light of the media-fueled expectations of contemporary juries for ostentatious displays of forensic skill, it is unlikely that a person lacking legal training and without prior courtroom experience, however articulate, will be able to deliver a convincing performance.

This paper will examine such a case. While acknowledging the role of rhetorical skill in influencing hearers' perceptions, this paper seeks to demonstrate that language has its limits, and that the speaker's personality and identity are key factors in determining how a verbal presentation will be received. The data to be examined are taken from the opening statement given by John Allen Muhammad, the 'Beltway Sniper', acting as his own lawyer at his murder trial in Virginia Beach, Virginia, in October, 2003. Through a comparison of Muhammad's opening statement with similar presentations delivered by celebrated attorneys, this paper will explore the relationships between language, personality, and identity in the construction of legal persuasion. The unique contribution of this paper is that it demonstrates the extent to which evaluations of courtroom speech are dependent upon speaker roles: In a system that constructs legal knowledge as technical and arcane, no opening statement that is not presented by a lawyer can be heard to be 'lawyerlike' or competent. Thus the structuring of the system itself acts to shape the interpretation of speakers' words.

## Background

Beginning on October 2, 2002, five people were shot to death during a 16-hour period in a series of apparently random attacks in Montgomery County, Maryland, a middle-class suburb of Washington, DC (Getter, Kemper, & Peterson, 2002). Each was killed by a single bullet, believed to have been fired from some distance; the only clue was a witness report of a white truck leaving the scene of one of the shootings (Getter et al., 2002). The crimes were reported in nationwide headlines, and by October 5, authorities had tentatively linked the killer now referred to as 'the sniper' to two additional attacks; tests indicated that the weapon used in each of the shootings was a .223-caliber rifle (Getter & Peterson, 2002).

On October 7, as the federal government agreed to assemble a multi-agency task force to investigate the shootings, a 13-year-old boy was critically injured as he stood outside his school (Braun, Peterson, & Getter, 2002); a Tarot card found near a shell case some 150 yards from the scene bore the words, 'Dear Policeman, I am God' (Fiore & Peterson, 2002). However, few other clues came to light. Thus, despite massive mobilization of state and federal law enforcement personnel, including a dragnet to attempt to locate the white truck matching the witness's description, the shootings continued; on October 9, a man was shot to death at a gas station outside Manassas, Virginia (Fiore & Peterson, 2002; Getter & Peterson, 2002). Two more killings occurred during the following week; the second of these took place more than an hour south of the Washington, DC, area in which all of the other shootings had occurred, thus appearing to extend the killer's geographic range (Braun & Willman, 2002; Stack, Curtius, & Hendren, 2002).

Finally, on October 25, the arrests of 41-year-old John Allen Muhammad and 17-year-old Lee Boyd Malvo were announced (Braun, Meyer, & Pasternak, 2002). The suspects were described as 'unlikely companions' (Fineman, Hong, & Verhovek, 2002). Muhammad was

a twice-divorced father of three children and a veteran of a 16-year military career during which he had trained as a sharpshooter (Fineman et al., 2002); Malvo was a Jamaican citizen who had entered the country illegally with his mother, and whom Muhammad had befriended; Muhammad referred to Malvo as his 'son' (Fineman et al., 2002). They were captured at a highway rest stop, where they were found sleeping in Muhammad's blue Chevrolet Caprice; also found in the car were a Bushmaster XM-15 rifle matching the caliber of the bullets recovered from the shootings, a rifle scope, and a tripod (Braun, Meyer, & Pasternak, 2002).

Charges were filed against the men in each of the counties in which the crimes occurred, and prosecutors were reported to be competing with one another to hold the first trial, in order to obtain a death-penalty verdict (Vartabedian & Fineman, 2002). The first case to come to trial charged Muhammad with capital murder in the shooting of the seventh victim to die (Braun, 2003a); the trial was set to be held in Virginia Beach, Virginia, and two well-known criminal attorneys were appointed to represent him (Braun, 2003a). However, moments before opening statements were scheduled to begin, Muhammad startled the judge, the prosecutors, and his own lawyers by asking to be allowed to represent himself (White, 2003). After a brief conference, the judge granted his request (White, 2003).

The trial commenced with the opening statement of Assistant Commonwealth's Attorney James A. Willett who, in a dramatic display calculated to announce Muhammad's guilt, began his presentation by assembling the Bushmaster rifle that he stated was used in the killings (White, 2003). Willett conceded that there were no eyewitnesses to any of the shootings; however, he argued that the circumstantial evidence was overwhelming and proved Muhammad's guilt (Braun, 2003a). Following Willett's opening, Muhammad presented his 22-minute opening statement (Lithwick, 2003). He continued to represent himself until the end of the following day; however, on October 22 he appeared in court with a throbbing toothache, and the judge convinced him to return control of his case to his court-appointed attorneys (Morello, 2003b). The trial lasted for five weeks, and the case was submitted to the jury on November 13 (Braun, 2003c). On November 17, after deliberating for less than seven hours, the jury found Muhammad guilty (Lamb & Braun, 2003a). On November 24, after deliberating for an additional five and a half hours, the jury recommended that he be sentenced to death (Lamb & Braun, 2003b).

### Data and methodology

The complete text of John Allen Muhammad's opening statement was posted on Cable News Network's website on October 20, 2003 (CNN, 2003); I accessed it after reading an article which appeared on the front page of the *Los Angeles Times* on the following day. The headline, 'Sniper Defendant Acts as Own Lawyer', was supplemented by a narrative subheading which stated, 'A rambling John Allen Muhammad tells jurors that evidence will show he wasn't linked to the deadly rampage in the Washington, D.C., area' (Braun, 2003a). The article began as follows:

Serial murder suspect John Allen Muhammad took over his own defense Monday, denying guilt during a rambling monologue that came after a prosecutor somberly traced the accused sniper's path through the suburbs of Washington, D.C., a year ago.

Muhammad's hands shook slightly as he faced the jury like a novice lecturer and insisted that Prince William County prosecutors had no proof of his involvement in the monthlong rampage that left 10 people dead in the capital region.

'Good evening,' he blurted out at the start of his opening statement. It was just past noon.

For nearly half an hour after a Virginia judge agreed to allow him to act as his own lawyer, Muhammad, 42, meandered shakily through a discourse on the uncertain nature of truth. He quoted Jesus, he referred to Allah, he even launched into a long tale about his daughter's

snack of forbidden chocolate cookies as he tried to show that authorities could not definitively link him to any of the sniper killings.

'They wasn't there,' he said. 'I was, and I know what happened.' Muhammad said that 'the evidence will show that I had nothing to do with these crimes, directly or indirectly.' (Braun, 2003a)<sup>1</sup>

These paragraphs convey the reporter's negative appraisal of the opening statement, yet to me, they appeared to describe techniques that were eminently recognizable on the basis of my 15 years of experience as a courtroom lawyer. Moreover, Muhammad's mistimed greeting of 'Good evening' was clear evidence that he had orally rehearsed his presentation the night before. My impression was confirmed after reading the text of the opening: Impressed by its often masterful rhetorical development, I wondered how Muhammad could have crafted something so artful. However, the media emphatically disagreed with this assessment. A *Washington Post* reporter opened her article with the question: 'Is it possible to speak for almost half an hour, and say almost nothing at all?' (Copeland, 2003). Others derided the opening as 'a rambling soliloquy' (White, 2003), 'about as legally compelling as a Lewis Carroll poem' (Lithwick, 2003), and grudgingly described Muhammad's presentation as 'meander[ing] aimlessly through stories that, in the end, appeared to make the point he intended' (Morello, 2003a). Jo Murray, a courtroom spectator, was quoted as stating, 'I kept saying to myself, you should sit down. He was rambling, and I was thinking over and over you are not doing yourself any good. This is a big mistake' (Greene, 2003). These evaluations were consistent with the prediction of prosecutor James Willett, who stated during his opening that Muhammad would not know how to try the case (White, 2003), thus priming the overhearing audience of jurors, the media, and courtroom spectators to view his performance as incompetent and ineffective.

This paper will explore, and attempt to reconcile, the discrepancy between my impression of Muhammad's opening statement and its reception by the media, using the methodology of critical discourse analysis as developed by van Dijk (1993), Fairclough (1989, 1995), and others. Critical discourse analysis assumes a dialectical relationship between discursive acts and the contexts in which they occur: situational, institutional, and social contexts shape and affect discourse, and discourse affects social and political reality (Wodak, De Cillia, Reisigl, & Liebhart, 1999, p. 8). Power, and especially institutionally-reproduced power, is central to critical discourse analysis (Blommaert, 2005, p. 25): Critical discourse analysts are interested in uncovering 'opaque as well as transparent structural relationships of dominance, discrimination, power and control as manifested in language' (Wodak, 1995, p. 204). Legal discourse, as the quintessential expression of officially recognized and legitimated symbolic power (Bourdieu, 2000, cited by Blackledge, 2006, p. 65), is thus a prime site for the methodology of critical discourse analysis.

Fairclough (2001) distinguishes three stages of critical analysis: description, which involves identifying the linguistic features of the text; interpretation, which examines its relationship with the situational context; and explanation, which explores the relationship between the text and its broader social and institutional contexts (p. 22). In the following analysis and discussion, I will apply Fairclough's model to the data presented here. I will first examine the rhetorical features of Muhammad's opening statement in order to identify discursive strategies that are recognized as effective by lawyers' professional literature and practice manuals, and will then compare passages of the opening to presentations delivered by celebrated attorneys in order to examine their similarity and assess their persuasive force. Finally, through an analysis that applies Blommaert's (2005) concept of voice, I will explore the relationship between discourse and speaker identity which, I propose, is the crucial factor in explaining the negative reception of Muhammad's speech.

## Analysis

A key element of a lawyer's trial preparation is the development of a theory of the case – a clear and logical explanation of the evidence that shows why his or her client should prevail (Hobbs, 2005, p. 112; Mauet, 1980, pp. 8–9; McElhaney, 2005, p. 18). Once the lawyer has developed his or her theory of the case, the next step is to encapsulate it in a theme, a memorable phrase that is similar to a product slogan and is used for the same effect: to sell the lawyer's version of the case to the jury (Hobbs, 2005, p. 115; Hornstein, 1984, pp. 9–14; McElhaney, 1981, pp. 38–40; Tigar, 1999, p. 8). The theory of the case should be introduced at the beginning of the opening statement, preferably within its first few minutes (McElhaney, 1981, p. 38), and the theme and its connection to the theory should be made clear, so that the theme can be repeated again and again to convince the jury to 'buy into' the story of the case that the lawyer is constructing.

In this case, the theory of the case developed by Muhammad, who steadfastly denied any involvement in the killings, was that the charges against him were based on a misinterpretation of the circumstantial evidence and, as a result, there was no evidence to support the government's theory. He introduces this theory with a story about his family. Divorced at the time of the events that led to his trial, Muhammad was the father of three children and had lived with his family for a time in the Caribbean where, he tells the jury, he was prepared to punish his favorite daughter Talibah, whom he caught with cookies in her hands after he had told her to stay out of the cookie jar.

### *Excerpt 1: Talibah's cookies*

59 I heard him talk about his family. Anytime I deal with anything, I  
60 always reflect back on my children, whom I love very much; and I  
61 remember an incident when I was in the Caribbean; and my favorite  
62 daughter, Talibah—she loves chocolate. She loves chocolate cookies.  
63 As I was leaving, she said, “Daddy, can I have some chocolate  
64 cookies?” and I said, “Sure. I come back, we’ll go to the store, and  
65 we’ll get some chocolate cookies, but don’t go in the cookie jar and  
66 get no cookies until I come back.” She said, “I won’t, Daddy, I  
67 won’t.”  
68 So I leave. I come back about an hour later. I see my baby daugh-  
69 ter out in the yard with cookies in her hands and eating chocolate  
70 cookies. I am upset now because from what I see, she disobeyed.  
71 I got the evidence in her hand. I got her eating cookies. I even got  
72 her sister saying she saw her going in the cookie jar; so I’m very  
73 upset now because my baby daughter have lied to me. That’s what  
74 I am thinking, so I go up to her, and she starts hiding the cookies.  
75 That is more proof. She is being deceiving now, so I tell her I  
76 want to see her in the house. She come in the house; and whenever  
77 I have a dispute with my children, first thing I do is pick them up  
78 and I put them up at least eye level or above me to where I look up  
79 to them, and that way I can remind myself don’t be disrespectful to  
80 them, and I ask her. I say, “Didn’t I tell you don’t go in the cookie  
81 jar?” and she said, “Dad—” I said, “Don’t say nothing. Don’t say  
82 nothing. Didn’t I tell you don’t go in the cookie jar?” She say,  
83 “Yes, sir.”

Having dramatically framed a classic tale of a child who yields to temptation and is caught in the act by a wrathful parent, Muhammad reveals that the ‘proof’ of Talibah’s disobedience was misleading, as he learned from his son John, who came to his sister’s defense:

99 . . . and my son told me—he said,  
100 “Daddy, you don’t know what happened. You just guessing. You  
101 want to hear?”

102 I said, “So what you telling me? Don’t believe my lying eyes?”  
 103 He said, “Dad, I’m not saying you lie. I’m saying you don’t know  
 104 what happened. You wasn’t here.” He said, “I was here.” He said,  
 105 “Do you want to hear the truth?” I said, “Yes, tell me the truth.”  
 106 He said, “Well, what happened, Dad, right after you left, Talibah came  
 107 and asked me for some cookies; so I went to the store and I bought  
 108 her some cookies, chocolate cookies; and when she got full, I told  
 109 her to go put the rest of the cookies in the cookie jar.”  
 110 That was that time that her sister saw her actually going into the  
 111 cookie jar, but what her sister didn’t know, she wasn’t taking  
 112 cookies out of the jar; she was actually putting cookies in the jar;  
 113 and I didn’t know. I thought Salina—Talibah had disobeyed me,  
 114 but she really hadn’t disobeyed me. She actually got cookies from  
 115 the store and not out of the cookie jar. I asked her not to take  
 116 cookies out of the cookie jar, and she didn’t, but I was basing that  
 117 on what I saw. I was basing that on what I guessed at what  
 118 happened, but I didn’t know that’s what happened, so John told  
 119 me that.

Muhammad’s narrative, in which his description of the facts that convinced him that Talibah was lying is followed by his son’s account of what had actually taken place, reveals the partial and misleading nature of the ‘evidence’ upon which he had relied. Moreover, the narrative is designed to lead its hearers—the members of the jury—to reach the same erroneous conclusion that Muhammad himself reached when he saw his daughter with the cookies in her hands, in order to heighten the impact of the story’s message, which he encapsulates in the statement: ‘I asked her not to take cookies out of the cookie jar, and she didn’t, but I was basing that on what I saw. I was basing that on what I guessed at what had happened, but I didn’t know that’s what happened, so John told me that.’ He then draws an analogy between his story and the government’s case against him, saying:

130 And I say to these people. We know something happened. They  
 131 wasn’t there. I was. I know what happened, and I know what  
 132 didn’t happen. They are basing—what they have done to me and  
 133 what they are saying on a theory—and I just want to speak on  
 134 that for a minute. A theory. I was locked up based on a theory.  
 135 I was denied bail based on a theory. . . .

Muhammad’s use of analogy draws on one of the most highly-valued rhetorical techniques of experienced trial attorneys. In his book *Trial Notebook*, now in its fourth edition, McElhaney (2005) has this to say about analogy:

It is the most powerful form of argument we know . . . . Analogies work for two related reasons. First, good stories command the attention of the listeners. They want to find out what happened.

Second, analogies challenge the listeners to test their appropriateness to the point made. When someone tells a story to prove a point, it is almost impossible to resist testing it to see if it fits the situation.

What is the net effect? You are right. The audience, in testing the aptness of a comparison, reasons the problem through and reaches the conclusion on its own . . . .

Analogies . . . are a distinguishing mark of outstanding final arguments. They lead juries to draw their own conclusions, which they believe more fervently than if they had merely been told what conclusion to reach. (pp. 650–561)

As McElhaney points out, lawyers usually save their analogies for final arguments. However, because Muhammad clearly needs all the help that he can muster to make himself convincing to his audience, the decision to use an analogy in his opening statement was appropriate, even inspired. The story that he uses, in its tone and general outline, is strikingly similar to a story used by a Chicago lawyer, Eugene Pincham, later a judge:

I have one rule around my house:

“Stay out of my wallet!”

If you need money, come ask me for it. If it is worthwhile and I have the money, I’ll give it to you, but “Stay out of my wallet!”

There is one exception. That’s my wife, Alzata. After thirty years of marriage, to me, she has the right to go in my wallet. But for the children: “Stay out of my wallet!”

The other night when I went to bed, I put my wallet on my dresser like I always do. And when I got up the next morning, I checked my wallet to make sure I had enough money to park the car and have lunch.

When I checked my wallet, I only had one or two dollars, and I knew I had twenty in there the night before. So I asked my wife, “Alzata, did you take that twenty-dollar bill I had in my wallet?”

“No, honey, I haven’t been in your wallet.”

“All right,” I said, “call the family together.”

“Get everybody downstairs, because somebody took a twenty dollar bill out of my wallet, and I *know* there has been no burglary in the house.”

Well, Sandy was off for the weekend, and had not returned, so that left the two boys, Scooter and Jim.

Scooter—he’s eighteen—he’s the slick one. Jim—he’s twelve—he’s the naïve one. They came downstairs, and I said,

“All right, one of you two’s been in my wallet, and I want to know who.”

Scooter, he said, “I haven’t been in your wallet, Dad.”

And Jim, he said, “I haven’t been in your wallet, Daddy.”

I was mad. “Now one of you is lying, and I’m going to find out who. I am going to get to the bottom of this.”

“Tell you what I’m going to do. I am going to give me out some *immunity*.”

Then Jim, he’s the naïve one, he says, “Immunity? What’s immunity?”

And Scooter, the slick one, says, “Immunity is where you can’t be punished for what you did, but you got to talk about it.”

So Jim says, “I don’t need any of that, ‘cause I didn’t take any money.”

And Scooter says, “You going to give out immunity?”

I said, “That’s right.”

Scooter said, “Sign the order. I took the money from your wallet.”

“O.K.,” I said, “What did you do with the money?”

Scooter said, “I gave some of it to Jim!”

“Jim,” I said, “You are convicted. No more bowling for a month. No movie on Saturday night. No more television. You are going to your room and you are going to stay there. You are guilty.”

That night I heard something no parent ever likes to hear. I heard my boy in his room, crying.

Alzata asked me, “Gene, why did you do that to Jim?”

I told her, “Because he’s guilty. I gave Scooter immunity. He’s got no reason to lie.”

Alzata looked at me and said, “That’s no reason not to believe *Jim*. He’s your flesh and blood, too.” (Eugene Pincham, quoted in McElhaney, 2005, pp. 690–691)

In each story, the speaker relates an anecdote about his family, in which he is portrayed as a parental authority figure enforcing morality and justice upon his children, but is shown to be mistaken in his premise, thus revealing his actions to be unwarranted and unjust. Such stories are believed by lawyers to be extremely effective, and serve two related purposes. First, they humanize the lawyer – or in Muhammad’s case, the defendant – by showing him in the midst of his family, and by portraying him as a father who is both loving and involved, thus presenting him as a decent and credible human being (see McElhaney, 2005, pp. 682–683). Second, they dramatically illustrate that apparently clear circumstantial evidence can point to the wrong result. The ability to weave such stories is considered by lawyers and judges to be one of the hallmarks of superior trial skill.

**Excerpt 2: A theory is not evidence; it’s a guess**

157 Now, I’m not saying they don’t know what happened. Those

158 are not my words. They are saying they don’t know what happened.

159 They are saying that their entire case is based on a theory—and I  
 160 say a theory, one. They are saying theories. What’s a theory?  
 161 See, this is a new world. I mean this is a new world for me. I  
 162 mean I’m learning language that I didn’t even think exists; so I  
 163 looked up the word “theory”. It said many different things, but  
 164 it ends up with a guess. A guess, an opinion. It’s a guess.  
 165 Assumption is a guess.

In this section of his opening statement, Muhammad introduces his theme: ‘A theory is not evidence; it’s a guess.’ This theme encapsulates his argument that the government’s case is based on a faulty interpretation of the circumstantial evidence, portraying it as sheer speculation and thus incapable of meeting the applicable standard of ‘proof beyond a reasonable doubt’. The theme thus satisfies the criteria set forth by Hornstein (1984) in his handbook *Appellate Advocacy in a Nutshell*:

A well constructed theme suggests not only the desired result but the reasoning upon which that result is based. It crystallizes the issue in a way that suggests its appropriate resolution and the justification for that resolution. The ability to reduce a complicated case to one or two starkly simple notions is of great importance to the knowledgeable advocate. It provides an advantage worthy of cultivation. Finally, a good theme reflects the legal principle at the heart of the argument as well as the policy upon which that principle is based. Moreover, the policy justification ought to be framed in common sense terms that appeal immediately to the understanding of even the most primitive legal intellect. (p. 10)

Muhammad begins with a parallelism, a classic rhetorical technique that heightens the drama of his words: ‘Now, I’m not saying they don’t know what happened. Those aren’t my words. They are saying they don’t know what happened.’ By emphasizing that it is not his claim, but the government’s admission, that establishes the weakness of its case, he lays the groundwork for an argument that will arouse the jury’s sense of injustice by ‘paint[ing] a picture of the wrong with words’ (McElhaney, 2005, p. 31). He then presents the analysis of the government’s position that will become his theme: ‘They are saying that their entire case is based on a theory. . . . What’s a theory? . . . I looked up the word “theory”. It said many things, but it ends up with a guess. A guess, an opinion. It’s a guess. Assumption is a guess.’ His repetition of the words ‘theory’ and ‘guess’ allow him to ‘set up a paradigm and slot in new information’—that the latter is definitional of the former—‘where the frame for the new information stands ready, rather than being newly formulated’ (Tannen, 1987, p. 581). Having affixed this damning label to the government’s case, he uses it to construct a powerful appeal to justice and reason:

166 I’m locked up. I’m denied my constitutional rights based on a  
 167 guess. I mean what is it about a human life to where we have reduced  
 168 it to where we can take it based on a guess? A guess. You can lock  
 169 a man up and forget he’s there and go out and say every negative  
 170 thing in the world you can possibly say about him based on a guess;  
 171 and ironically about all this, once all this is over, by the grace of the  
 172 law that I am found guilty—not guilty—these men—you know  
 173 what they are going to do? They will say, “Next.” No “I’m  
 174 sorry.” No apologies. Just, “Next. Who’s the next victim?  
 175 Who else can we get?” And the beat goes on and it goes on and  
 176 goes on. A guess, people, is not enough to take a human being  
 177 life. A guess is not enough to lock an individual up and deny him  
 178 his constitutional right to bail so that he can defend himself.

This passage is striking in its use of poetic structure, in which parallelism acts to foreground and intensify the images that are evoked (cf. Matoesian, 1999, p. 86; Norrick, 2000, p. 61; Tannen, 1987, p. 583), and in which the word ‘guess’ serves as a recurrent theme. The

passage begins: 'I'm locked up. I'm denied my constitutional rights based on a guess.' The words 'based on a guess' are then repeated in the question, 'I mean what is it about a human life to where we have reduced it to where we can take it based on a guess?' – which invites the jury's participation through their rejection of its propositional content. The stark portrait that Muhammad paints of the deprivation of his rights proceeds almost elegiacally, and is interwoven with his description of a government that is indifferent to injustice ('once all this is over . . . you know what they are going to do? They will say, "Next . . . Who else can we get?")', which culminates with the phrase, 'And the beat goes on and it goes on and goes on.' Borrowed from the title and refrain of a song popularized in the 1960s,<sup>2</sup> the phrase 'And the beat goes on' is widely used as an ironic commentary on problematic actions and events. Here it suggests that the government's sole concern is with processing criminal defendants and closing cases, irrespective of whether those accused are in fact the perpetrators of the crimes alleged. The passage ends by returning to, and thus re-emphasizing, his initial assertion: 'A guess, people, is not enough to take a human being [*sic*] life. A guess is not enough to lock an individual up and deny him his constitutional right to bail so that he can defend himself.'

This section of Muhammad's opening may be compared to an excerpt from the closing argument given by Gerry Spence, one of America's most renowned trial lawyers, in the famous case *Silkwood v. Kerr-McGee*. Karen Silkwood was an employee of Kerr-McGee who was contaminated with plutonium while working in the company's nuclear manufacturing plant, and who was killed in a mysterious one-car accident while she was on her way to meet with a reporter for *The New York Times* to discuss health and safety problems that she had uncovered at the plant. Following Silkwood's death, her father sued Kerr-McGee to recover for the contamination injuries to her person and property; Kerr-McGee denied responsibility and alleged that Silkwood had contaminated herself by surreptitiously removing plutonium samples from the plant in an effort to discredit the company. Spence's closing argument in the *Silkwood* case is widely believed to be one of the finest closing arguments ever delivered in an American courtroom (Lief, Caldwell, & Bycel, 1998, pp. 123–124), as may be seen in the following excerpt:

Morgan Moore says: "All I have is suspicions. I can't prove a thing." Their own witnesses, witness after witness, who was willing to point the finger without any evidence—how do you like that? How would you like that if it was your child who was dead, and whose lips are sealed by death, who can't come forward and tell her side?

Now, I think it is shameful to point the finger in accusation, and know, as Mr. McGee knew clear back in 1975: "It is not likely that the source of her contamination will ever be known." He knew that. The AEC had come in and never came to any such conclusion. They investigated it. Morgan Moore said, "All there are are suspicions." Everybody said they can't prove it. "I can't prove it, I can't prove it, I can't prove it." They couldn't prove it. Mr. Paul knew he couldn't prove it when he talked to you the first time, and still he has been willing to make the accusation. Why? Because it is the only defense they have, and they hope to drag you into mud springs.

Like Will Rogers used to say: "If you say it enough even if it ain't true, folks will get to believing it."

Well, I think it is reckless. I would like to see that kind of stuff stopped. I think a verdict in this case should stop it. It is necessary for people to be honorable, and to tell the truth, and if they can't be honorable and tell the truth, then to not make reckless accusations and destroy and desecrate the good name of a decent, honorable person. (Gerry Spence in *Silkwood v. Kerr-McGee*, quoted in Lief et al., 1998, p. 141)

In the passages presented here, Muhammad's elaboration of his theme is strikingly similar to that of Spence in both form and content, as illustrated by the comparison of the speakers' opening lines in Table 1.

McElhaney (2005) counsels lawyers to organize opening statements in a way that 'help[s] the facts make an impact on the judge and jury', noting that that impact 'is the first step to making the fact-finders care about what happened and want to do something about it' (p. 39).

Table 1. Thematic elaboration: comparison of Muhammad and Spence—Excerpt 2.

Muhammad	Spence
Now, I'm not saying they don't know what happened. Those are not my words. They are saying they don't know what happened.	Morgan Moore says: "All I have is suspicions. I can't prove a thing."
They are saying that their entire case is based on a theory . . . . What's a theory? . . . A guess, an opinion. It's a guess.	Their own witnesses, witness after witness, who was willing to point the finger without any evidence.
I'm locked up. I'm denied my constitutional rights based on a guess. I mean, what it is about a human life to where we have reduced it to where we can take it based on a guess?	—how do you like that? How would you like that if it was your child who was dead, and whose lips are sealed by death, who can't come forward and tell her side?

He recommends crafting an 'impact statement' to be delivered near the beginning of the opening statement, at the point when the jury has had the opportunity to become adjusted to the lawyer's voice and appearance (p. 40). McElhaneey describes the impact statement as follows: 'A powerful impact statement should be short, arresting, unsettling, and should usually point to something wrong that needs to be set straight' (p. 40). The foregoing passage from Muhammad's opening conforms to this definition.

*Excerpt 3: You need evidence that it actually happened*

231 . . . The evidence, if we monitor step by  
 232 step and be patient and listen to it carefully, it will show that  
 233 I had nothing to do with these crimes. I had nothing to do  
 234 with these crimes. They know this, and that's why they are  
 235 trying to impose everything at one time; and what we ask  
 236 you all to do is just pay attention. Please pay attention because  
 237 right now my life and my son's life is on the line, and we need  
 238 for people to understand that when you say something, it's  
 239 important—in this place it's important to prove it. You needs  
 240 facts. You need evidence that it actually happened. Not  
 241 evidence, I think it happened. Not evidence, I assume it  
 242 happened. Not evidence, I hope it happened. But evidence  
 243 that it happened, and that is what separates a guess from the  
 244 truth. The truth is a fact. A guess is a theory. A theory is  
 245 something that we can believe as much as we want to, but  
 246 it doesn't make it a fact.

Opening statements provide the opportunity to create a mental image that will stay in jurors' minds as they hear and consider the evidence (Wood, 2003, p. 108), thus influencing the way that they frame the contested events. Having charged the government with proceeding against him with no evidence to support its claim, and having called upon the jury to repudiate the proposition that the death penalty may be imposed on the basis of a 'guess', Muhammad vividly describes the strategies that reveal the gaps in the government's case.

He begins by stating, 'The evidence, if we monitor step by step and be patient and listen to it carefully, it will show that I had nothing to do with these crimes.' The denial is repeated for added emphasis, and is followed by a statement that both impugns the government's integrity and warns the jury against its tactics: 'They know this, and that's why they are trying to impose everything at one time; and what we ask you all to do is just pay attention.' He then repeats the words 'pay attention' to convert his request to a plea: 'Please pay attention

because right now my life and my son's [i.e., Malvo's] life is on the line, and we need for people to understand that when you say something, it's important—in this place it's important to prove it.' The burden of his argument is that, if the government is indifferent to injustice, the jury should not be, and should hold the government to the legal standard: evidence is required to support a conviction.

Having framed the argument, he uses repetition and poetic diction to create both emphasis and emotional impact as he drives his point home: 'You need evidence that it actually happened. Not evidence, I think it happened. Not evidence, I assume it happened. Not evidence, I hope it happened. But evidence that it happened, and that is what separates a guess from the truth.' He then recapitulates and expands upon his theme: 'The truth is a fact. A guess is a theory. A theory is something that we can believe as much as we want to, but it doesn't make it a fact.' A final stylistic display of emphasis serves to introduce a repetition of his initial denial, now strengthened and reinforced by rhetorical 'proof' (Goodrich, 1986, p. 181):

247       Regardless of how loud it may get, regardless of how much  
248 emphasis may be put on it, it doesn't change it. It's just a  
249 theory. It's an assumption. We're looking for facts. We  
250 are looking for evidence, and the evidence will show that I  
251 had nothing to do with these crimes, that I had nothing to  
252 do with these crimes directly or indirectly, that I know  
253 anything about these crimes, that I know any times of these  
254 crimes or anything pertaining to these crimes at all.

Tannen (1987) argues that the use of repetition acts to sweep listeners along, thus facilitating comprehension through the emotional experience of interpersonal involvement (p. 576). In the courtroom, repetition and poetic diction are used by lawyers to lend drama to their presentations, thus heightening the impact of their words. In this section of his opening statement, Muhammad uses these strategies to fortify his claim that the government has no evidence to link him to the crime that he stands accused of. This excerpt, which continues to develop the theme introduced in Excerpt 2, is also remarkably similar to Gerry Spence's closing argument in the *Silkwood* case, in terms of both its language and thematic content, as may be seen by comparing it to the following passage from Spence's closing:

Now, I heard Mr. Paul say this: "My heart reaches out praying for answers based on the evidence." "Praying for answers based on the evidence." I would think he would pray for answers based upon the evidence, because he hasn't got any. He doesn't have any more now that [*sic*] he ever did. All that you ever heard Mr. Paul say, as he stood up here and pointed his finger toward Karen Silkwood—and I want you to stop and remember, ladies and gentlemen, please, that this is a free country—and the one thing that makes this country different from all the other countries in the world is that when somebody makes the accusation against a citizen of this country, alive or dead, they have to make the proof. Mr. Paul doesn't have the right to come into a court and say: "I think this happened." And: "I think that happened." And: "Maybe this happened." And: "Isn't it probable that this happened." And: "I think the circumstances of this, and the circumstances of that." And to take a whole series of unrelated events and put them together and try to tell you somehow that I have the responsibility that the judge and the law doesn't place upon me, and to mislead you in that fashion. And I'm angry about that. I expect when a corporation of the size of this one comes into this courtroom that they should bring you honest, fair, documented evidence—that they shouldn't hide behind little people—and that they should bring you the facts that they know. (Gerry Spence in *Silkwood v. Kerr-McGee*, quoted in Lief et al., 1998, p. 145)

Once again, a comparison of the two presentations reveals how closely Muhammad's presentation tracks the words of an acknowledged master, as seen in Table 2.

Nevertheless, the media's descriptions of the opening were couched in the language of incompetence: The opening was widely characterized as 'rambling' (Braun, 2003a; CourtTV, 2003; Lithwick, 2003; White, 2003), and descriptions of Muhammad's speech were framed in

Table 2. Thematic elaboration: comparison of Muhammad and Spence—Excerpt 3.

Muhammad	Spence
I had nothing to do with these crimes. They know this, and that’s why they are trying to impose everything at one time.	[They] take a whole series of unrelated events and put them together and try to tell you somehow that I have the responsibility that the judge and the law doesn’t place upon me, and to mislead you in that fashion.
Please pay attention because right now my life and my son’s life is on the line, and we need for people to understand that when you say something, it’s important—in this place it’s important to prove it.	I want you to stop and remember, ladies and gentlemen, please, that this is a free country—and the one thing that makes this country different from all the other countries in the world is that when somebody makes the accusation against a citizen of this country, dead or alive, they have to make the proof.
You need evidence that it actually happened. Not evidence, I think it happened. Not evidence, I assume it happened. Not evidence, I hope it happened. But evidence that it happened, and that is what separates a guess from the truth.	Mr. Paul doesn’t have a right to come into a court and say: “I think this happened.” And: “Maybe this happened.” And: “Isn’t it probable that this happened?” And: “I think the circumstances of this, and the circumstances of that.”

negative terms: He ‘blurted’ (Braun, 2003a), ‘stammered’ (White, 2003), and ‘meandered aimlessly’ (Morello, 2003a); he ‘bounced from topic to topic’ (Morello, 2003a) and ‘seemed to speak in fragments of figures of speech’ (Copeland, 2003); he ‘seem[ed] to believe, if you can just get up and babble at the jurors, they’ll eventually believe you’ (Lithwick, 2003). Moreover, these negative evaluations frequently accompanied descriptions of the discursive strategies examined here, and at times actually identified them. Thus Copeland (2003) condescendingly states: ‘In telling a story about his children, Muhammad sounded as if he were talking to children, taking judge and jury on a lengthy route to a simple conclusion.’ She then reports Muhammad’s story of Talibah’s cookies in considerable detail, before continuing:

As the day went on and Muhammad questioned several of the prosecution’s witnesses, it became clear that this allegory would be a key part of his defense. “I say to these people, we know something happened. They wasn’t there. I was. I know what happened and what didn’t happen.” (Copeland, 2003)

Copeland recognized, and identified, Muhammad’s theme, while discounting the effectiveness of his performance. However, if Muhammad was using appropriate rhetorical tools, why did he fail so miserably, even in the eyes of those who were attentive to the specific details of his presentation? This is the question that this paper seeks to answer.

**Discussion**

In *Faretta v. California* (1975), the United States Supreme Court held that a legally-competent criminal defendant has the constitutional right to represent himself—to speak on his own behalf:

The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants the accused personally the right to make his defense. It is the accused, not counsel, who must be “informed of the nature and cause of the accusation,” who must be “confronted with the witnesses against him,” and who must be accorded “compulsory process for obtaining witnesses in his favor.” Although not stated in the Amendment in so many words, the right to self-representation—to make one’s own defense personally—is thus necessarily implied by the structure of the Amendment. The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails. (pp. 819–820; fn omitted)

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The Court thus held that where the power of the state is brought to bear upon an individual in a criminal trial, the state must accord to him, upon request, direct access to the discourse of the law. Nevertheless, it widely believed that the criminal defendant who claims this right does so at his peril (e.g., Belli, 1982, pp. 264–265; Dershowitz, 2003; Lithwick, 2003). Moreover, the very existence of this belief tends to increase the possibility that a negative result will in fact occur.

Van Dijk (1993) argues that, although the management of *access* to various forms of discourse is an important factor in the maintenance of the power of individuals and groups, power in contemporary societies has a major cognitive dimension, because socially-shared attitudes and interpretations define our understandings of events (p. 257). Similarly, Fairclough (2001) argues that people internalize what is socially produced and made available to them, and use these internalized social ideologies to engage in their social practice, including their production, reception, and interpretation of discourse (p. 20). I argue that these internalized social ideologies explain Muhammad's failure to 'make sense' to his audience—to the jury who convicted him, and to the media who condemned his performance—despite his competent management of the discourse of opening statements. Accordingly, the situation may be evaluated by examining the roles of personality and identity in producing success at trial.

### *Personality*

Lawyers imbue their performances with personality in order to create interpersonal involvement that enhances the persuasive force of their words (cf. Tannen, 1987, p. 576). In his book, *The Trial Lawyer's Art*, Schragger (1999), a folklorist who conducted an extensive ethnographic study of lawyers' courtroom speech, described the role of personality as follows:

Every lawyer has characteristic ways of appearing before jurors, striving for drama, conceiving of plot, questioning witnesses, delivering a summation. These techniques follow codified craft practices—shared knowledge of the tried-and-true set forth in manuals and courses on trial advocacy and learned from on-the-job observation and instruction. But the approaches are *grounded* in the performance style the lawyer forms out of his or her personality, past experience, habits of thinking, and manner of being in the world. (p. 38; emphasis in original)

Schragger's description refers to *ethos*, the speaker's ability to display a personal character that will serve to enhance his credibility (Rosenberg, 2005, p. 2). The lawyer thus chooses from among his or her own personality traits to construct a professional 'persona' which becomes a character to be animated in the courtroom, in order to optimize self-presentation and achieve persuasive effect (Hobbs, 2003b, p. 276). However, the manner in which this occurs is not entirely self-evident.

An important difference between ordinary conversation and public speech is the performance aspect of the latter: the skillful management of speech, tone, gestures, facial expressions, and bodily movements that acts to command attention and to construct the speaker's presentation as an expert display. This ability to command attention is an indispensable courtroom skill (Hobbs, 2005, p. 112), yet for most it is one that is developed only over time. However, for a few individuals the ability to create a strong emotional impact appears to be essentially innate. These charismatic individuals display powerful persuasive ability which is not the product of formal training, but is derived from an ability to forge instantaneous emotional connections; the list includes such disparate personalities as Mohandas Gandhi, Adolph Hitler, Martin Luther King, Charles Manson, and Princess Diana. In addition, it may be possible to draw upon skills that have been developed in other fields – for example, in politics, in theater, or in sales – to achieve the projection of personality that is a necessary element of effective courtroom speech.

Accordingly, a number of lawyers who were asked to comment about Muhammad's decision to represent himself indicated their belief that his self-representation could potentially work in his favor, by 'humanizing' him to the jury (Higham, 2003; Shogren, 2003) and by allowing him to present his version of the case without exposing himself to the risks of cross-examination (Higham, 2003). One defense lawyer commented, 'It's possible he could have connected with the jury in a way he wouldn't have by sitting at the counsel table. We won't know until the trial's over' (see Shogren, 2003). Such comments, which acknowledge the important role of personality in creating a persuasive presentation, are relevant to evaluating the performance aspect of courtroom discourse – that is, whether a layperson could mobilize the skill or charisma necessary to 'carry off' an opening statement. The lawyers interviewed thus convey the assessment that if Muhammad could succeed in crafting his opening as a persuasive *performance*, it might be possible to sway the jury to find in his favor. Moreover, these opinions are not without support in the annals of famous trials: Activist-scholar Angela Davis delivered the opening statement in her 1972 trial on charges of kidnapping, murder, and conspiracy, which has been the subject of a number of books (e.g., Aptheker, 1975; Major, 1973; Timothy, 1974). In one of these, Mary Timothy, the foreperson of the jury that ultimately acquitted Davis of all charges, stated her impressions as follows:

Angela Y. Davis rose quietly from her chair and walked to the podium. She set her notes on the stand, looked up at us pleasantly. She waited a few seconds for the room to settle down and then began to "lecture." She was well prepared. She spoke easily and directly, referring to her notes on occasion, but giving the impression that they were merely available to remind her of items too important to chance forgetting. . . . As she made the opening statement for her defense, she stood tall and confident. This was her area of excellence. Ms. Davis, lecturer in philosophy, suddenly emerged and in that role she reviewed the thesis of Albert Harris [the prosecutor] as though she were in a classroom. She reviewed it with consummate skill and utter scorn. He did not get a passing grade from this teacher! One almost expected her, as she finished, to toss it back on his table and suggest he rewrite the whole paper, and "for God's sake, start with a more logical hypothesis, before giving it to me to read again!" (1974, pp. 95–96)

Timothy's comments demonstrate that Davis, a revolutionary activist who was an assistant professor of philosophy at the University of California, Los Angeles, prior to being terminated on the basis of her membership of the Communist Party (Major, 1973, pp. 31–41), made use of her politically- and academically-acquired speaking skills to project a personality that enhanced her credibility with the jury by enabling her to present herself as 'Ms. Davis, lecturer in philosophy' rather than as a criminal defendant charged with murder, kidnapping, and conspiracy. Nevertheless, it is highly unlikely that an inexperienced speaker could have achieved the same effect.

### *Identity*

Even when a speaker is charismatic, social ideologies come into play. Muhammad presented a very admirable facsimile of an opening statement; however, Fairclough (1995) notes that genre is more than the mere staging of a text, and also involves the related considerations of field, voice, style, and mode (p. 14, citing Halliday, 1978). One of these – voice – is particularly relevant to the situation examined here. According to Blommaert (2005), the concept of voice stands for the way in which people manage to make themselves understood (p. 4). In order to do so, they must draw upon the discursive strategies that are available to them, and must use them in contexts that are socially specified as to conditions of use (p. 5). If they do not, their communications don't make sense, and they fail to make themselves understood (p. 5). As Blommaert explains:

An analysis of *voice* is an analysis of power effects—(not) being understood in terms of the set of sociocultural rules and norms specified—as well as of conditions for power—what it takes to make oneself understood. (p. 5)

The concept of voice points to the importance of identity in trial success. As persuasive argument is a central aspect of the lawyer role, one component of a lawyer's persuasive ability is his or her identity as a lawyer. However, a defendant who elects to represent himself cannot assume this identity: He is not a lawyer, and the fact that legal representation, particularly in serious cases, is the American societal norm, means that the mere decision to represent oneself 'doesn't make sense'. Thus legal commentator Dahlia Lithwick (2003), in an article published the day after Muhammad assumed his own defense, derided the notion that self-representation protects the autonomy of criminal defendants, characterizing it instead as 'court-assisted suicide':

Muhammad is now on his own—free to misunderstand the nuances of criminal procedure; free to be baffled by the rules of evidence; free to miss possible issues for appeal and free to fail to introduce mitigating evidence.

Muhammad is free, in short, to assist the state in killing him—ironic in a country that prohibits suicide.

The legal standard for permitting self-presentation is stunningly low: Basically, if you can read an *Archie* comic and blow your own nose, the courts will allow you to mount your own defense. The casualties—the notion of a fair trial, the truth-seeking function of the courts, and often the very life of the accused—are less important than the autonomy of the defendant. Is this really a bargain we are willing to accept? And how do we square it with the value we place on human life?

Lithwick's arguments echo those advanced by the dissenting justices in *Faretta* itself. Noting that there is 'nothing desirable or useful in permitting every accused person, even the most uneducated and inexperienced, to insist upon conducting his own defense to criminal charges', Chief Burger stated in his dissent. 'The system of criminal justice should not be available as an instrument of self-destruction' (pp. 836, 840). Similarly, Justice Blackmun, recalling that the Court's decisions holding that indigent criminal defendants have a right to court-appointed counsel were 'based on the premise that representation by counsel is essential to ensure a fair trial' (p. 851), concluded his dissent with this statement:

If there is any truth to the old proverb that "one who is his own lawyer has a fool for a client," the Court by its opinion today now bestows a constitutional right on one to make a fool of himself. (p. 852)

Such opinions are not unique to the judiciary and legal commentators: rather, accepted social ideologies that construct legal knowledge as technical and arcane, and thus unavailable to a lay-person, predict the disparaging reception of Muhammad's opening statement that was accorded it by the media, and its rejection by the jury who convicted him. Fairclough (2001) notes that, while the formal properties of texts are cues in the process of interpretation, the interpretation of these cues is mediated by the assumptions, values, beliefs, and internalized representations of the world that readers or listeners bring with them to the text (p. 20). Accordingly, it would appear that the expectation that Muhammad, with no legal training and only a high school education, would be incompetent to conduct his own defense resulted in the negative interpretation of his opening statement.

However, there is an additional, and more basic, explanation for Muhammad's failure to 'make sense' to his audience, which lies in his status and identity as a criminal defendant. The classification of a person as a criminal is a labeling of that person, on the ground of socially-deviant behavior, as a cultural 'other'. Thus because the purpose of a criminal trial is to determine whether there is sufficient evidence to classify the defendant as a criminal, the defendant is not properly a courtroom *actor* (a role reserved for the judge, the lawyers, and the jury), but is the *subject* of the action, or the *acted upon* (cf. Fairclough, 1995, pp. 38–39). It is for this reason that the defendant's own descriptions and characterizations of the evidence, and even of his or her own conduct, are inherently suspect: As the interpretive work of defining and assigning legal categories is reserved for legal actors, a role category from which the defendant is excluded (cf. Mumby & Stohl, 1991, p. 318), a defendant cannot reproduce the legal voice.<sup>3</sup>

## Conclusion

In a criminal trial, the power of the state is brought to bear upon an individual through the use of language. The criminal trial and, more generally, the law itself, is thus a prime site for the study of the use of discourse as an instrument of power. However, due to its highly specialized and technical nature, legal language has traditionally been viewed as inaccessible to those who lack legal education and training (see Philips, 1982, p. 179). According to this view, a layperson is incompetent to engage the intricacies of legal discourse, and requires the assistance of an expert – that is, a lawyer. Thus, when the United States Supreme Court held that the Sixth Amendment guarantees to criminal defendants the right to represent themselves, its ruling seemed to ignore widespread opinion which had attained the status of common sense (cf. Fairclough, 1995, p. 28): This instrument of power is reserved for competent legal actors, a category from which laypersons are presumptively excluded.

However, while it is undoubtedly true that many (and perhaps most) criminal defendants will be unable to mount an adequate defense if not assisted by counsel, ‘common knowledge’ that this is the case becomes a resource for the (re)interpretation of the defendant’s speech (see Fairclough, 2001, p. 20), even in cases where its content is legally adequate and rhetorically sound. Thus internalized social ideologies shape listeners’ understandings by informing their interpretations of the formal properties of a text (p. 20). This can be seen in the newspaper articles reporting on Muhammad’s opening statement, in which a number of journalists accompanied their negative evaluations of his performance with descriptions revealing his use of recognized effective strategies (e.g., Braun, 2003a; Copeland, 2003; White, 2003). At least some of these journalists may be presumed to be experienced courtroom spectators, yet they invariably allowed these internalized ideologies to control their interpretations of Muhammad’s speech. In the end, Muhammad’s attempt to claim the discourse of power failed, because he reproduced the *form* of the opening statement but failed to reproduce the legal *voice*, thus illustrating the complex relationship between speech, interaction, and context that characterizes human communication and that the field of critical discourse analysis seeks to explore.

## Acknowledgements

I would like to thank Greg Matoesian for his helpful comments on an earlier draft of this paper.

## Notes on contributor

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## Notes

1. The statement, ‘I was [there], and I know what happened,’ while interpreted by the media as an unintentional admission of guilt, apparently referred to the fact the Muhammad was questioned by police in the parking lot of a store adjacent to the scene of the shooting, but was allowed to leave after he told the officer that his car was one of those which had been re-directed into the lot by police (see Braun, 2003b).
2. ‘The Beat Goes On’, written by Sonny Bono.
3. Interestingly, Mary Timothy’s favorable evaluation of Angela Davis’ opening argument does not refute this conclusion. Timothy’s description reveals that the basis of her assessment of Davis’ performance was Davis’ academic credentials: ‘Ms. Davis, lecturer in philosophy, suddenly emerged and in that role she reviewed the thesis of Albert Harris [the prosecutor] as though she were in a classroom’ (1974, pp. 95–96).

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