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“I Am Not a Computer”: A Multimodal Co-construction of Justice in a Real Jury Deliberation

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Abstract

This is the first multimodal analysis of a real—not mock or hypothetical—jury deliberation and consists of two parts. The first part investigates the interactive contours of laughter and how it integrates with co-speech gesture to provide an authoritative stance to the juror’s narrative. The second part examines the multimodal interplay among poetics, gesture, and stance in pursuit of justice during deliberation. Rather than consider justice as an abstract or theoretical concept I demonstrate how it circulates in and through embodied conduct.

Keywords: co-speech gesture; jury deliberation; stance and poetic organization

Introduction

The sixth and seventh Amendments of the U.S. Constitution give every citizen the right to a trial by a fair and impartial jury of their peers. As a symbol of American democracy, the jury consists of a group of ordinary citizens who deliberate to reach a verdict in each civil or criminal case. As an instrument of justice, the jury provides a safeguard against overzealous prosecutors and politically motivated prosecutions. According to Devine (2012, 113), the “most important factor in jury decision making tends to be the interaction among jurors.” But since that interaction typically occurs in private, empirical studies of actual decision making have been rare. Other than the work of Manzo (1993, 1994) and Maynard and Manzo (1993), no studies have analyzed actual jury interaction during the deliberation process.¹

¹The only audio-video recordings of an actual jury deliberation occurred in a Frontline: Inside the Jury Room Documentary. Manzo and Maynard and Manzo use this documentary for their data. I use the same documentary but other than Maynard and Manzo (1993, 183) example 10, I use different data segments.

This study builds on the work of Manzo and Maynard/Manzo, but instead of examining the practical reasoning and accountability of jurors during deliberation from an ethnomethodological perspective, a perspective that primarily examines verbal processes, I analyze the multimodal resources—the poetic integration of speech, gesture, facial expressions and material objects—jurors bring to bear on the construction and co-construction of deliberation en route to a legal verdict.

The paper is organized as follows. The next section provides an overview of contemporary jury research, while the third section offers a brief overview of multimodal conduct. The fourth gives ethnographic background to the case. The fifth section consists of the first data set and analyzes how the interactive contours of laughter integrate with gesture, gaze and body motion to provide an authoritative stance to the juror's narrative. The ensuing sections investigate the contributions of a different juror and how he frames a multimodal confrontation between formal legal rationality on the one hand and substantive rationality (or justice) on the other, a multimodal confrontation built on the emergent interplay between text-metrical structure (poetics) and epistemic/affective stance.

Contemporary jury research

As Manzo (1993, 2019) noted, contemporary jury research examines the relationship between input variables, such as case and juror characteristics, judicial instructions, jury size, and “post-hoc suppositions that attempt to reconstruct the deliberation process” (2019, 20) on the one hand, and output variables—the verdict—on the other, while simultaneously ignoring the interactive and interactional processes en route to a verdict.² As he mentions (2019, 20), “most methods of jury research entail no analysis of deliberation activity at all.” More explicitly, orthodox jury research employs mock juries, post-trial interviews/recollections, and archival analysis to show how juror, witness, and defendant characteristics play a role in reaching a verdict.

Moreover, jury researchers use such methods and variable outcome approaches with an eye toward reforming the deliberation process and evaluating those reforms. As the major scholars in the field put it: “Research should maximize the quality of jury decision making Diamond (2018, 312). According to Kovera (2017, 4), the major questions to address in jury research are: “Does the jury function as intended? Are juries fair and impartial? Do they follow the law? Do they properly evaluate the evidence?”

But the question remains: How does actual jury performance measure up to some ideal-typical standard of correctness, as if there were some Archimedean vantage point to evaluate this? Is it possible to specify some ideal-legalistic verdict to which juror's actual decision making should be compared and evaluated? This is not to say, nor is

Further, although I use part of what they label as example 10, I focus on the role of multimodal conduct, which they exclude in their analysis.

²Indeed, the literature on jury research is replete with reference to jury size and composition, influence, persuasion rating and models, surveys of hypothetical cases, juror diaries, story models, number of times a juror speaks or which juror is the most talkative, cumulative number of words spoken during deliberation, exogenous sociodemographic variables like age, gender and social class and so on. Such coding schemes erase a crucial feature of jury decision making: visible bodily action in the interactive co-construction of legal realities.

it meant to suggest, that jury research or reforms are unnecessary or unimportant but rather to stress that the interactional object to which reforms are applied might be a logical first step in any jury research/reform agenda. In fact, the most conspicuous omission in jury research and the problem with coding, interviews, post-hoc recollections etc. is this: they ignore the interactive features of multimodal conduct during deliberation. I address this absence in the current paper.

What is multimodal conduct?

Multimodal conduct refers to the integration or synchronization of various communicative resources including ad hoc or idiosyncratic co-speech gestures, gaze, facial expression, material objects, and speech. Ad hoc gestures refer to hand movements that synchronize with speech in the production of meaning and utterance construction. According to McNeill gestures can be classified as iconic, metaphoric, deictic, and beat motions of the hand. Iconic gestures are imagistic signals that resemble their referent; metaphoric gestures present an abstract image in which a concrete source domain is mapped onto an abstract target; deictic gestures consist of pointing movements; and beats highlight significant points and orchestrate the rhythms of speech to increase the persuasiveness of the message. McNeill further claims that the above gestures are discretely organized. However, as we will see gestures may be more multifunctional than McNeill's classification system claims.

Two other multimodal resources are relevant for this study. First, gaze co-occurs with gesture and speech to create a focus of joint attention while facial expressions encode emotions. And second, material objects signal a state of heightened involvement or emphasis in some course of action.

My methodology draws on what Streeck (2009, 5) calls the micro-ethnography of gesture, speech, and other modal resources and how these function in the integrated production of "meaning constitution." Such naturalistic methodology demonstrates how social actors bring speech, gesture, gaze, material objects, and other modal resources to bear on a persuasive and poetic narrative during deliberation. As we will see in the ensuing analysis, looking at jury interaction multimodally provides a more comprehensive, dynamic, and robust picture of discourse, especially with all multimodal cylinders firing simultaneously in the integrated production of meaning, than looking solely at speech.

Background of the case

The case under consideration involves a convicted felon, Leroy Reed, who had been out of prison and "clean" for nine years. Looking for employment, Reed signed up for a mail order detective course and bought a gun he thought he needed to go along with the badge that came with the course. Inexplicably, Reed was hanging around the courthouse and when a Sheriff's deputy asked for identification, he presented a purchase slip from the sporting goods store where he bought the gun. After the deputy ran an ID check he found that Reed was a convicted felon and told him to go home and bring in the gun. When he did so, he was arrested and charged with "Felon in Possession," a serious felony carrying up to ten years in prison in the state of Wisconsin.

During the trial, Reed's public defender told the jury that Reed was indeed a felon and was in possession of a firearm but that he should be acquitted "anyway" because the charges should never have been filed in the first place (primarily because as the psychologist on the case indicated, Reed had below average intelligence and read at a "third grade level"). In response, the prosecuting attorney argued that Reed was a felon, possessed a firearm, and should therefore be found guilty, setting up a classic confrontation between, in Weber's terms, formal legal rationality and substantive legal rationality.³

At the outset of deliberation, several jurors "leaned" in the direction of conviction, several others toward acquittal, with the remaining jurors undecided. One of the female jurors stated that she would vote for acquittal because if "Reed were such a threat to society that Sheriff's deputy had no business telling him to go home and bring in that gun." One of the male jurors stressed that according to the judge and prosecuting attorney's instructions if someone is a felon and in possession of a firearm that person has violated the law and must be found guilty. The stage is thus set for determining what the defendant knew or did not know about the crime of felon in possession. We begin with John's narrative below.

Example 1

Global Detective course 33:49

- 01 I mean maybe correct me but my recollection is (0.9)
- 02 two things (.) uh that the Global Detective course (0.7)
 - (((right hand horizontal hits open palm left hand
and beats in that position))
 - (((moves upper torso forward))
 - (((left index finger straight up with
other fingers curled under thumb)))
- 03 Ha ha I'd like to find a deep pit to throw that in
 - (((open palms vertical moves outward/facing one another))
 - (((upper torso moves backwards))
 - (((smiles))
- 04 ((juror laughter)) (5.1)
 - (((John gazes to other jurors during laughter)))

³According to Weber's (1968) classic studies, formal legal rationality refers to decision making based on the application of universal and impersonal legal rules. For example, the only three points of evidence for jurors to consider in the current case is this: Leroy is a felon on parole; he had possession of a gun; and knew he was in possession of a gun. On the other hand, substantive rationality refers to decision making that invokes justice or principles outside the law and incorporates values, ethics and broader moral contexts when making decisions in the individual case. This study shows how the inherent tension between formal and substantive legal rationality plays out in the concrete details of multimodal conduct.

- 05 I know it gets pathetic
 [((lateral head shake))
 [((gaze to right))
 [((smiles))
- 06 After its comic (.)
 [((gaze down and smiles))
- 07 Um okay I think the Global Detective course
- 08 It gave it- its warnings (.)
 [((open left palm facing outwards/fingers spread))
 ((left to right motion x2 in that position))
- 09 But I think one of the things they said wa::z (0.9)
 [((index finger up on left hand)) [((right index finger crosses left index
 finger x 2))
- 10 You got to get your- you know got to get your (.) your
 [((left index finger outward/other fingers curled under))
 [((both index fingers pointing outward))
- 11 requirements for being a detective
 [((both open palms face down/or prone with fingers spread))
- 12 And I think the Global Detective course said
 [((left index finger hits closed palm of right hand))
- 13 One of the requirements is a gun
 [((left index finger beat and closed palm of right hand))

The example above addresses why Leroy decided to get a gun. Did he merely intend to (1) abide by the requirements of the Global Detective Course or did he (2) purchase the gun with malicious intent? Did he know it was illegal for a felon to possess a firearm (or did he even know he was a felon)? Or did his limited cognitive ability—his tunnel vision—only permit him to focus narrowly on the course requirements?

John begins his narrative with the discourse marker *I mean* that functions as “clarification, explanation, elaboration and reformulation” of some position (Beeching 2016, 190). The marker is followed by the adverb *maybe* to convey the degree of certainty of the proposition and an offer to *correct me* about the Global Detective Course. His utterance consists of quite more than just speech however. What is even more noticeable is the intricate gesture that co-occurs with the Global Detective Course. His speech is accompanied by a “jabbing” motion—figuratively representing a sharp critical remark or insult—in which the right closed palm horizontal hits the open palm of the left hand (with the fingers facing upward) and then a beat gesture in identical position, a metaphoric gesture that appears to be sticking a knife into the Global Detective Course.



Figure 1. Line 02 *Global Detective* course.

In this instance, the jab gesture represents a preliminary insult that foreshadows the humorous side assessment in line 03: *Ha ha I'd like to find a deep pit to throw that into*. In so doing, he moves from merely naming the Global Detective Course to evaluating it (see Figure 1).

Just as important, John employs an open palms facing one another gesture to help frame his insult, a container metaphor in which the object or container reflects the metaphorical concept that ideas or categories are containers. As Calbris (2011, 119) puts it: the gesture points to “an empty space between two parallel boundaries ... that defines an entity either contained within the boundaries or containing something, which the palms could be holding.” In this case, the metaphoric entity symbolizes a big pit (line 03) (see Figure 2).

Relatedly, he initiates the humorous side evaluation with two short laughter particles accompanied by a smile and backwards body movement, an evaluation that stimulates a 5.1 second spate of laughter from fellow jurors in line 04 (during which he gazes at the laughing jurors). Although a narrative, John's contribution is a thoroughly interactive co-construction, that is, an interaction between him and other jurors via the invitation to laugh. In fact, his laughter particles not only invite other jurors



Figure 2. Line 03 *Ha ha*.

to laugh along with his assessment but to show affiliation with it. In stark contrast to orthodox jury research, this demonstrates in vivid detail how jury decision making does not exist in an interactive vacuum but represents a thoroughly multimodal co-construction.⁴

Consider the laughter sequence in more detail, specifically as an indication of the interactive nature of deliberation. First, John neither talks over nor laughs with his audience, thus maintaining the integrity of audience affiliation as if letting the laughter soak in while enjoying the outcome of his invitation. Second, he maintains a composed stance during audience laughter by standing apart from those laughing—a strict division of labor in the comedic sequence. Third, his lack of co-laughter does more than merely maintain the integrity of juror laughter; it also calibrates his side assessment as an insult. That is, it warrants the humor of the insult. The audience re-calibrates the insult with their laughter, as he allows them to laugh—affiliating with other jurors, as they affiliate with his evaluation in a dynamic multimodal gestalt.

For instance, if he had resumed talking, aborting their laughter, it would have marked their response as inappropriate (that he was not making a joke, see Matoesian 2005). He needs to let them laugh for the total exchange between speaker and audience to be understood as an insult. That is to say, their parts all re-calibrate his initial

⁴Put more prosaically, this indicates how laughter tends to be “infectious” (Glenn 2003: 30).

speech as an insult. It is not unique in speech exchange systems but it is unique in that it requires three parts: initial speech, laughter response and lengthy pause to allow for laughter.

In lines 05–06, he delivers two explicit acknowledgement tokens to fellow jurors, treating recipient laughter as affiliative with his evaluative stance: *I know it gets pathetic and comic*. John also adds embodied conduct over both lines, a lateral head shake, gaze and smile that co-occurs with the former, a second facial expression of smiling over the latter—both to accentuate his comedic evaluation.

The humorous side evaluation and recipient laughter derail utterance progressivity until completion (line 04) When co-participant laughter subsides after 5.1 seconds, John resumes utterance progressivity in the clear; that is, he withholds utterance progressivity until recipient laughter subsides.

However, the laughter does not stop on its own. In line 07, John's discourse marker *Um okay* terminates the laughter and initiates a shift in topic direction, a shift that allows him to resume narrative progressivity after the side segment (see Schiffrin 1987).

After the discourse markers in line 07 he resumes utterance progressivity with the first person and epistemic stance verb (*I think*). On *warning* in line 08, John employs a gesture with the left open palm facing outward and fingers spread to convey a stop metaphor (see Kendon 2004). This, in turn, is followed by a contrast between the warning and *but* in line 09 that co-occurs with the right index finger crossing the left index finger two times to further accentuate the warning component (signaling a “naughty child” or you're in trouble if you don't get your requirements: *you got to get your requirements for being a detective* in lines 10–11, one of which is the gun purchase issue).

In more detail, line 09 consists of a finger stroking gesture (“shame on you” etc.), in which the tip of the right index finger crosses over the stationary left index finger (see Figure 3 below). Morris (1994: 94–5) refers to this gesture as a “forefinger rub,” in which the speaker holds one index finger straight or stationary then stroking it away from the body with the other index finger. One finger rubbed up and down on the other stationary index finger metaphorically encodes friction (or an insult).

Lines 09–11 consist of a quotative that includes a directive from the Global Detective Course: the necessity of getting *your requirements for being a detective* (lines 09–10). The direct quote lends evidential weight to the argument. The embedded directive adds instructional authority to intent. Together, both show that the defendant merely followed an essential condition for passing the course (rather than having malicious intent). Finally, John's co-speech gesture (in line 11) contains both open palms prone with the fingers spread, a gesture that symbolizes something being “denied, negated, interrupted or stopped” (Kendon 2004, 248). By using this gesture, John indicates that to pass the course and become a detective the student must fulfill course requirements.

In sum, the analysis thus far demonstrates the interactive and multimodal nature of juror deliberation, interaction typically neglected in jury research (invitation to laugh, response to laughter, and shutting down the side sequence). We have seen how gestures and other forms of embodied conduct are not mere tangential features of deliberation but constitute the evidential infrastructure of jury interaction.



Figure 3. Line 09 *one of the things*.

Formal versus substantive legal rationality

In the previous section, I analyzed the interactive dimensions of jury decision making and how multimodal conduct figures prominently in the organization of deliberation. In the remaining sections, I demonstrate how, following Jakobson (1960) and Silverstein (1985), the poetic function inheres not only in speech but also in the multimodal confrontation between formal and substantive legal rationality, more specifically how it functions to mark stance in the polyrhythmic integration of speech, gesture and material conduct.

In the examples below, Lester responds to Karl's claim that Leroy is a felon, that he knew he was a felon, and that he purchased a gun. In response to Karl's narrative, Lester builds a dichotomy between doing justice versus following the letter of the law, and he does through the integration of speech and embodied conduct.

Example 2 Karl, 13:27

- 01 I feel that the city has found him guilty beyond a reasonable doubt on the three points
- 02 The sympathetic point of view would be what his intent was or what he did not
- 03 intend to do but that's not for use to reason over.

Example 3	Lester	23:00-23:40	<i>I am not a computer</i>
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- 01 From what I've heard I don't think
 02 we're giving this man a lot of sympathy (.)
 03 I do not think that we're =
 04 = expressing sympathy at all (.). And one other comment. I am not a computer
 05 and I will not accept everything that I'm told (.). for
 06 just because I'm told that it is true
 07 I can't do that as a thinking, breathing human being (.)
 08 And so um other things come into play here for me (.)
 09 I'll tell you just to tell me that he's been convicted
 10 on these three counts that's obvious
 11 We're not arguing that
 12 We all know that (0.5)
 13 Why there's more to it than just that
 14 There has to be there has to be more of a purpose
 15 for us than just to say, "yes he is" (.)
 16 Bring in the computer

Example 4 Lester 29:40-30:27 *I don't care what the law says*

- 01 I think we have more capabilities than to say
02 one two three
(((B B B)))
(((B = right hand index finger beats on table)))
(((gazes at beats)))
03 These are met on a very simple level
(((right hand open palm prone with 4 fingers on table)))
04 cut and dried (.) guilty
(((Closed right hand vertical slice toward the table in front of him)))
(((repeat slice gesture + stroke hold)))

- 05 I don't think that we as jurors that is necessarily
 [((Beats over "I," "don't" and "think"))
 [((open palms facing one another))
- 06 our role (0.4)
- 07 We are here to do more than that
 [((open palms facing one another))
- 08 I'm trying to decide in my own mind (.) has justice been done here
- 09 I don't care what the law says
- 10 Has justice been done (.) and in my mind I'm still trying to decide that
- 11 And that's my basic point
- 12 That's what we're here to do
- 13 It's not just to say
- 14 The law says this
- 15 The judge says that
- 16 But I don't think that's what he means (.) and you can say
- 17 I'm speculating but I think there's a purpose for us
- 18 beyond just saying that he (.) met the criteria or not

Seen through the lens of formal legal rationality, jurors are little more than mechanical creatures who simply check off the criteria for guilt (as in example 4, line 18). With this point in mind, Karl endorses the prosecution's logic (example 2) that (1) a felon in possession is against the law; (2) Leroy Reed is a felon and in possession; and (3) therefore he is guilty. In response, Lester argues he is *not a computer* and the role of the juror involves more than merely following the letter of the law; jurors must also consider justice or substantive legal rationality, a legal issue relevant in this particular case. Put another way, doing justice requires more than merely agreeing with the prosecution and following the letter of law in a perfunctory sense.⁵ Thus for Lester doing justice involves principles outside the law and incorporates values, ethics and broader moral context when making decisions in the individual case. In this regard, substantive legal rationality functions quite differently than matter of fact procedures based on a logical analysis of legal rules (or formal rationality).

And he mobilizes poetic oratory to create a nimbly improvised performance consisting of fleeting passages of insistent repetition. In his classic "Linguistics and Poetics," Roman Jakobson (1960) defined the *poetic function* of language (and differentiated it from the referential, emotive, metalinguistic, conative, and phatic functions) as a "focus

⁵Lester appears to be saying that while he and fellow jurors have been listening to a formal rationality machine—to a prosecutorial computer— (example 3, lines 04 and 16) there is no need to act like one.

on the message for its own sake,” language as an emotionally evocative aesthetic pattern that calls attention to itself.⁶ Years later his student, Michael Silverstein (1985), added that the poetic function (such as parallelism, repetition and other aesthetic features) applies to any form of rhythmic recurrence or cardinal arrangement of equi-valued signs and signals specific interpretive strategies in both narrative and co-present interaction. It creates a sense of heightened drama and persuasive involvement that engages the audience and tells listeners how to evaluate the recurrent elements. Such metrically patterned and emotionally driven rhythms highlight or enliven speech and contribute to a sense of cohesion in a message or that can, through a subliminal sense of “fit” created by that patterning, make what is being spoken seem more or less natural or logical.

Yet there is no *a priori* reason to limit the poetic function to language or speech (see Lempert 2018; Matoesian and Gilbert 2018, 2023; Gilbert and Matoesian 2021). As I demonstrate in the ensuing analysis, the rhythmic interplay of speech and gesture, such as the integration of metricalized gestures (like beats) with talk, creates a dense weave of poetic organization that evokes powerful emotions, emotions that enhance the effectiveness of oratory and persuade other members of the jury. Here, we will revisit, refit, and revise familiar Weberian themes by considering their sociocultural significance for jury deliberation: how the notion of justice circulates in the concrete details of multimodal or cross-modal poetics.

With these theoretical points in mind consider multimodal poetics in concrete detail, beginning with Example 3. In this example, Lester dismisses Karl’s point about the *sympathetic point of view* and he does so with a polyrhythmic structure consisting of repetition in both speech and gesture. First, he repeats *think* and *sympathy* two times, repetition co-occurring with a litany of beats using the right open palm prone (lines 01–04), gestures that signal something being negated (Kendon 2004, 248). This is followed by *I am not a computer* (line 04), a form of polyrhythmic variation that echoes Weber’s iron cage of bureaucracy or machine-like metaphor.

Additionally, in lines 01–04 he mobilizes repetition in the negative auxiliary and perception verb (*I don’t think, sympathy, I do not think*), a form of variation in which co-speech beats occur with each of the verbal repetitions to not only orchestrate the rhythms of speech but foreground significant information.

In line 07, he develops the metaphor with repetition of the present progressives – *thinking, breathing human being* – to create a heightened sense of substantive rationality (or more precisely the relationship between the nature of human nature and justice) using a poetic interplay consisting of rhyme and contrast in line 09: *I’ll tell/ you tell me*.

In lines 10–13, Lester expands his position by arguing that the three counts against the defendant are *obvious*, with repetition of the distal demonstratives; *We’re not arguing that; We all know that; There’s more to it than just that*. In lines 14–15, he produces a hypothetical quote attributed to *us*, a quotative that includes other jurors in the first person plural that appeals to fellow juror’s sense of justice and morality. Lester reaches

⁶For example, Jakobson (1960) uses the political slogan *I like Ike* as an example. As he notes in explicit detail, the slogan consists of three monosyllables and diphthongs, with each diphthong followed by a consonant to build a vibrant flourish of sound, rhyme, and alliteration.

a crescendo in line 16 and repeats the cog in the machine identity (*bring in the computer*) to mobilize a tightly arranged climax in the narrative episode. For a second time, he uses the computer metaphor to make an invidious comparison between formal and substantive legal rationality and, even more important, mark the contrast between humans and computers—a comparison that implores fellow jurors not to act like a machine.

In example 4, Lester expands the distinction between law and justice along several dimensions. First, (in line 02) he counts off the cardinal numbers (*one, two, three*) followed by the *cut and dried* idiom (in line 04) (an idiom that means without debate or argument, routine, settled in advance etc.) to highlight the simplicity of charges against the defendant. Once again, it is not just speech that conveys meaning. Each cardinal number co-occurs with right-hand index finger beats on the table to provide a poetic flourish and resonance, a type of polyrhythmic staccato fragmentation in both speech and gesture (see Figure 4).⁷ By hitting the table, Lester injects material objects into the multimodal environment (along with speech and gesture) to signal a state of heightened involvement in some course of action. In a much more active rather than static sense, material objects represent interactional and symbolic resources in the constitution of meaning.

Second, while counting off the numbers, Lester gazes at his index finger movement, an integration of speech, gesture, gaze and material object that turns the beats into an interactionally significant object. As Müller (2008, 236) puts it: “Directing the gaze at something ... indicates speaker’s focal attention which might be characterized as principles of ‘What I am looking at is what I am talking about’ and ‘therefore this is what you should also look at.’ Put differently, gaze direction functions as a pointing gesture ...”

Finally, the idiom co-occurs with two closed right hand slices directed toward (but not hitting) the table (line 04), an immaculately executed rhythm that generates an emotionally charged—emphatic—stance (see Figure 5).⁸ Morris (1977, 38–9; 1994, 103) mentions how the slice is metaphoric of “slicing through verbal confusion to make a strong clear point” (or “to cut through a problem”). The open palm vertical slice occurs with high elevation on the upstroke and accelerated motion on the downstroke to produce a “big” gesture for the crescendo. Metaphorically, the gesture slices through moral arguments to reach the three counts against Leroy. In this integration of disparate semiotic resources, Lester demonstrates how formal legal rationality inheres

⁷In his footing shift to hypothetical reported speech, Lester’s first line frames the poetic pair (*one, two, three, cut*), followed by the quotative *say* (that distances the speaker from the poetic structure) and co-occurs with the beat downstrokes that mirror the sequential unfolding of cardinal numbers via movement in equi-length intervals away from the body (that is, the beat downstrokes do not land on the same spot on the table). The multimodal footing shift foregrounds the absurdity of the prosecution’s position on formal legal rationality and builds a contrast with substantive rationality.

⁸The second of which includes a post-stroke hold for emphasis, a hold that follows a short untimed pause, foregrounding the forthcoming deduction from the premises (e.g. *guilty*), and adding a climactic touch to the ending. According to Kendon (2004), the gesture phrase consists of several phases: preparation, obligatory stroke, or meaning-bearing moment of the gesture that accompanies its lexical affiliate, post-stroke hold (often for emphasis), and retraction back to the home position.



Figure 4. Line 02 *one two three* (beats x3).

in the polyrhythmic details of multimodal conduct, details ignored when considering just speech.

With these points in mind, consider the mutual cooperation among stance, multimodal conduct, and poetic structure in more detail.

1. The cardinal numbers (*one, two, three*) alone do not mark stance. But when co-occurring with the three beat gestures (line 02), idiom, and poetic syllogism both affective and epistemic stance emerge simultaneously and retroactively. Epistemic stance refers to the degree of certainty of the proposition; affective stance encodes the speaker's emotional intensity regarding the proposition. Together, both epistemic and affective stance deliver an emphatic punch that grounds the authority of knowledge to influence how listeners interpret the message.
2. Lester's gestures retrospectively recalibrate the cardinal numbers to convey stance; each number corresponds to one of the three counts against the defendant. Once again, the sequence of cardinal numbers (*one, two, three*) does not evoke stance on its own; only the poetic interplay of beats in line 02 and slice gestures in line 04 retroactively recalibrate meaning to bestow both epistemic and affective stance with a delicate touch and refined clarity on the counts: Leroy is a felon; he is in possession of a gun; and he knows he is in possession of a gun. In this instance, the poetic integration of multimodal resources—speech,



Figure 5. Line 04 *cut and dried guilty*.

gesture, gaze, and materiality—plays a crucial role in the intensification of stance marking.⁹ Lexico-grammatical resources work in concert with embodied resources—a multimodal gestalt—to infuse the speaker’s stance with socio-legal imagery (formal legal rationality). As mentioned previously, the *cut and dried* idiom refers to something carried out in a perfunctory, routine, or cursory manner. In the process, it corresponds metaphorically, in both speech and gesture, to formal legal rationality with its orientation to the mechanical or ritualistic task of merely checking off items in a bureaucratic inventory list.

3. Stance emerges not only multimodally and retroactively but through polyrhythmic text-metrical structure and, in the process, creates a simultaneous fusion of both affect (in gesture) and epistemic authority (in speech), in which stance works its way through the unfolding polyrhythmic structure: a multimodal division of labor in stance marking. The three co-speech beats function as counts against Leroy and the idiom represents the sociocultural conclusion (the deduction from the counts/conditions or in more technical terms “the logical consequent”). Poetic structure contributes to stance marking retroactively, by linking the idiom to the cardinal numbers and co-speech gestures. It weaves

⁹In a similar (though not identical) vein, Lempert (2008, 571) refers to this process as a “poetics of stance”—a poetics that “charts the movement from propositional to interactional stance” via poetic organization, although he reserves the concept of “interactional stance” to refer to two or more speakers, whereas I use it to refer to the interaction between the premises (one, two, three) and consequent (cut and dried guilty).

these disparate multimodal elements into a united gestalt via deducing consequences from the syllogism.¹⁰ As this occurs, the gestalt configuration of beats, speech, idiom, and poetic structure conveys metaphoric imagery in the form legal rationality. Thus, stance participates in a poetic multimodal gestalt, from which it derives its sense and significance.

4. In sum, the integration of poetics, gesture, and stance produces a multimodal gestalt to convey sociocultural imagery: that is, formal legal rationality. Poetic structure participates in stance marking by retroactively linking the idiom/slice to the beats/cardinal numbers via the deductive syllogism. Each beat corresponds to one of the cardinal numbers to foreground the counts against Leroy while the slice represents the crescendo. And stance marks speaker certainty and affect simultaneously, the former occurring in speech, the latter in visual behavior.

Several final observations: In lines 05–07 Lester invokes the first-person plural *we* and possessive determiner (or possessive adjective) *our* to once again include other jurors in the decision-making process while imploring them to follow his lead. Put another way, he speaks on behalf of fellow jurors and instructs them about their role in the rational versus substantive dichotomy: *has justice been done here* (line 08) and *that's what we're here to do* (line 12). To develop that issue, he uses the open palms facing one another gesture (line 07) as if containing a particular item: justice. Notice also that he employs the stance verb *I don't think* (line 05) while in lines 08–09 he moves to a much more explicit position: *has justice been done* (lines 08 and repeated in line 10) and the embedded *I don't care what the law says*. That is, he addresses the issue of doing justice versus following the letter of the law in some routine or perfunctory fashion and makes an invidious comparison between them.

In lines 10–12 Lester repeats the distal demonstrative several times to further accentuate his *basic point* (line 11). Next, he mobilizes a rhyming or flip flop repetition of the proximal/distal demonstratives (*the law says this*, and *the judge says that* in lines 13–15) followed by two formally marked contrasts (in lines 16 and 17).¹¹ Here, poetic structure is encoded in and through the contrastive demonstratives alternating in a diffuse rhythmic interplay, an interplay that signals how the law and judge appear indecisive or irresolute about the jury's role in deliberation—a final poetic flourish in a dynamically improvised performance.

Conclusion

In their seminal work on jury deliberation, Maynard and Manzo (1993, 191–92) mention that future research must consider the “practices, of perception, talk, and action ... Our study has scratched the surface of such a grammar ... Further phenomenal elucidation of “justice” would involve understanding its role in discursive practice

¹⁰Put another way, poetic structure overlays or laminates the hypo-deductive syllogism (or vice versa) and the metaphoric imagery conveyed in and through it.

¹¹The modal discourse particle *just* in line 13 also contributes to stance marking of attitude by possessing an emphatic or intensifying function.

as a feature of practical activity.” In this study, I have gone beyond just “scratching” the surface of deliberation and demonstrated how the notion of justice circulates in the concrete details of multimodal conduct. Indeed, the study of multimodal conduct imparts crucial information unavailable in just speech. Rather than focus on static personal socio-demographic variables and/or social structural attributes (a perspective that ignores the interactive processes of multimodal conduct), this study—the first study of multimodal conduct during jury deliberation—has revealed how the integration of multimodal practices brings additional communicative resources to bear on the dynamic performance of justice during jury deliberation.

And this study has revealed quite more than that. Going far beyond jury deliberation, I have demonstrated the cross-modal cooperation among co-speech gestures, poetics, and stance. First, as mentioned in the multimodal overview, in McNeill’s classification system gestures are empirically discrete not multifunctional. Iconic and metaphoric gestures are imagistic or semantic while deictic gestures point and beat gestures possess a rhythmic foregrounding function. As it turns out, however, the listing beats over the cardinal numbers (*one, two, three* in example 4 lines 02–04) and the *cut and dried guilty* slice are not discretely organized but polyrhythmic and multifunctional, consisting of metaphoric imagery (or residual semanticity) and rhythmic foregrounding simultaneously (at least on this occasion). Each of the co-speech beats over the numbers correspond to evidential counts against Leroy while the slice gestures in line 04 represent the deductive crescendo that links the idiom to the cardinal number beats and conveys sociolegal imagery in the process. In this instance (not a general claim) beats simultaneously consist of rhythmic foregrounding on the one hand and imagistic content on the other.

Second, stance consists of not only speech/language but gesture, gaze, and material object and evokes metaphoric imagery in addition to epistemic and affective functions. Indeed, speech and co-speech beats convey both affective and epistemic stance simultaneously (especially when the beats hit the material object, the high elevation on the upstroke and increased acceleration on the beat downstroke in line 04) to signal a heightened state of emotional intensity on the one hand and epistemic stance (the degree of certainty of the proposition) on the other.

And, last, stance works its way retroactively through the unfolding poetic structure to link the idiom to the three counts against Leroy, once again conveying a sense of formal legal rationality in the process. That is, poetic structure functions as the laminated evidential platform that drives the hypo-deductive syllogism to link the idiom to the cardinal numbers, revealing how poetic structure participates in stance marking.

In sum, the interaction among gesture, stance, and text metrical poetics conveys formal legal rationality. I have shown how a fully charged and comprehensive understanding of jury deliberation must incorporate a dynamic view of justice, as it circulates in the midst of discursive practice of persuasive oratory—in particular, how it flows in and through the poetic integration of embodied resources. Rather than consider justice as an abstract concept I have shown how it circulates in and through embodied conduct.

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