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## STANCETAKING STRATEGIES IN JUDICIAL DISCOURSE: EVIDENCE FROM US SUPREME COURT OPINIONS\*

**Keywords:** stance, epistemicity, evidentiality, judicial discourse, judicial opinions

### Abstract

Intended as a study of stancetaking patterns in judicial opinions, this article aims at contributing to stance-related investigations of specialist discourse. For this purpose, it builds on the work of stance researchers and interactional linguists as well as attempts to apply their concepts in an examination of written data. In particular, the analysis is informed by Du Bois's interactional concept of stance and the two related notions of *epistemicity* and *evidentiality*. It also follows Chilton's discourse space theory in what is proposed as a stance analysis framework intended to aid researchers in categorising individual stance acts. The study draws on data from a theme-focused corpus of US Supreme Court opinions dealing with capital punishment.

“[I]n the end’,” Thompson, *supra*, at 823, n. 8 (plurality opinion ((quoting Coker, *supra*, at 597 (plurality opinion))), it is the feelings and intuition of a majority of the Justices that count – “the perceptions of decency, or of penology, or of mercy, entertained ... by a majority of the small and unrepresentative segment of our society that sits on this Court”. Thompson, *supra*, at 873 (Scalia, J., dissenting).

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## 1. Introduction

Once interpreted as “personal feelings, attitudes, value judgments, or assessments” (Biber et al. 1999: 966), stance has been increasingly regarded as an interactional phenomenon, rather than a static concept (cf. Du Bois 2007; Keisanen 2007). It is also approached as a continuum and not a polar category, since we should not think of stance as “either present or absent in an utterance but as always being present, to some degree” (Rauniomaa 2008: 40). What follows then is that research into stancetaking strategies will entail both the identification of the stancetakers and the examination of the objects of the stancetaking. Naturally, such an examination need not be confined to one mode of language, as a variety of physical, attitudinal and moral positioning can be determined both in oral and written communication.

Accordingly, this article will be informed by the interactional concept of stance (Du Bois 2007), with a view to highlighting the linguistic resources deployed by US Supreme Court Justices in written opinions. Importantly, a distinction will be made between majority opinions and those drafted by individual justices (i.e. dissenting or concurring opinions).<sup>1</sup> Moreover, drawing on Chilton’s (2004, 2005) discourse space model as well as the notions of epistemicity and evidentiality, I will propose a stance analysis framework for the categorisation of individual stance markers, and, more broadly, the specification of stancetaking strategies pursued by authors of written texts. Finally, the questions addressed in the article will be related to the most common types of stance marking found in the judicial opinions analysed, the dominant functions associated with individual stance tokens and, finally, variation in the stancetaking patterns identified in majority opinions and those observed in dissenting or concurring opinions.

## 2. Linguistic marking of attitude: subjectivity and evaluation

It can be justifiably argued that a great deal of communication involves acts of physical, attitudinal and moral self- and other-positioning, that is acts of stance. In the words of Stubbs (1996: 202):

Whenever speakers or writers say anything, they encode their point of view towards it: whether they think it is a reasonable thing to say, or might be found to be obvious, questionable, tentative, provisional, controversial, contradictory, irrelevant, impolite or whatever. The expression of such speakers’ attitudes is pervasive in all uses of language. All utterances encode such points of view, and the description of the markers of such points of view and their meanings is a central topic for linguistics.

It is unsurprising then that the exploration of stancetaking resources appears to be a promising field of inquiry, with stance researchers adopting anthropological, axiological, cognitive, sociolinguistic or discourse-pragmatic perspectives. Needless to

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<sup>1</sup> The importance of the distinction will be explained later in the article.

add, the linguistic expression of attitude subsumes a wide range of related notions and, therefore, it has been studied under various labels, be it: appraisal (cf. Martin 2000), epistemic modality (cf. Palmer 1986, 2001; Coates 1987, 2003; Stubbs 1996; Nuyts 2001), evaluation (cf. Hunston, Thompson 2000; Martin, White 2005), evidentiality (cf. Chafe, Nichols 1986; Aikhenvald 2003, 2004; de Haan 2001, 2005; Wiemer 2006), hedging and boosting (cf. Hyland 1996, 1998), mitigation (cf. Fraser 1980; Czerwionka 2010) or, finally, the umbrella term of stance (cf. Biber, Finegan 1988; Biber et al. 1999; Du Bois 2007; Keisanen 2007; Rauniomaa 2008; Edwards 2009). Given the limited length of this contribution, in what follows, attention will be drawn only to three of the above-mentioned concepts, namely: stance, epistemic modality (or epistemicity) and evidentiality. It must be remembered, though, that since these concepts overlap and are closely interrelated, they cannot be unambiguously demarcated.

## 2.1. Interactional concept of stance

As correctly noted by Englebretson (2007: 1), *stance*, the central notion behind this study, “is by no means a monolithic concept”. As such, it is naturally open to heterogeneous re-interpretations and reconceptualisations, inviting multiple lines of inquiry. The perspective I adopt for the purpose of the current analysis rests upon the belief that stance is constructed collaboratively. I will argue then, in line with Du Bois’s interactional concept of stance, that judicial opinions are a site of interaction accommodating evaluative and subjective meanings.

Asserting that stancetaking is one of the most important things we do with words, Du Bois (2007: 139) holds that stance “can be approached as a linguistically articulated form of social action whose meaning is to be construed within the broader scope of language, interaction, and sociocultural value” and links it with dialogicality and intersubjectivity. Furthermore, he posits that dialogicality “makes its presence felt to the extent that a stancetaker’s words derive from, and further engage with, the words of those who have spoken before” (Du Bois 2007: 140). As a result, as claimed by Du Bois (2007: 140), speakers reproduce selected elements of the prior speaker’s utterance, thus building functional-interactional configurations. These, as he continues, cannot be properly interpreted without reference to the “larger and sequential context” (Du Bois 2007: 142). On the other hand, Keisanen (2007: 253), although taking a similar approach, defines stancetaking as “the study of how people display affect, evaluation, or epistemic certainty (or doubt) toward some state of affairs, negotiate their points of view and alignment with each other”. Similarly, White (2003: 259) regards stance as an inherently dialogic activity, with speakers and writers taking a stance “towards the various points-of-view or social positionings being referenced by the text” and thereby positioning themselves “with respect to the other social subjects who hold those positions”.

Central to Du Bois’s (2007: 163) conceptualisation of stance is *the stance triangle*, displaying the relationship between the stance subjects and the (shared) stance object, so accounting for the dual function of evaluation and positioning.

Therefore, stance is understood as “a public act by a social actor, achieved dialogically through overt communicative means, of simultaneously evaluating objects, positioning subjects (self and others), and aligning with other subjects, with respect to any salient dimension of the sociocultural field” (Du Bois 2007: 163). In other words, when taking a stance, the stancetaker (1) evaluates an object, (2) positions a subject (usually the self), and (3) aligns with other subjects (Du Bois 2007: 163), as illustrated in Figure 1.

Speaker	Stance Subject	Positions/Evaluates	Stance Object
JAMIE:	I	like	this song
SAM:	I	don't like	those

Figure 1. Stance diagram (adapted from Du Bois 2007: 153)

It is also important to note that in order to arrive at a successful interpretation of a particular stance act, the researcher must, as held by Du Bois (2007: 146), ask the following questions: *Who is the stancetaker?*, *What is the stance about?* and *What stance is the stancetaker responding to?*

Furthermore, by placing due emphasis on evaluation as the most common form of stancetaking, Du Bois (2007: 143) recognises affective and epistemic scales, along which speakers and writers position themselves. The scholar stresses that affective and epistemic positioning is indexed by a first-person pronoun in subject position, with the stance predicate, i.e. an adjective or a verb, specifying the stancetaker's affective or epistemic state, or both (Du Bois 2007: 143). A similar view is held by Ochs (1996: 420), who asserts that “linguistic structures that index epistemic and affective stances are the basic linguistic resources for constructing/realizing social acts and social identities”. In the same vein, Goodwin (2007: 53) argues that affective stance is co-constructed by interlocutors in shared activities which constitute everyday life. Thus, as he believes, stance contributes to the ongoing construction of social interaction.

## 2.2. Epistemicity

Related to the concept of *stance*, understood as the umbrella term for various realisations of evaluation as well as self- and other-positioning, *epistemicity* or *epistemic modality* refers “to those interactional and linguistic means by which discourse participants display their certainty or doubt toward some state of affairs or a piece of information” (Keisanen 2007: 257). Likewise, Palmer (2001: 8), relying on the traditional notion of the language system and making modal auxiliaries the central part of modality, equates epistemic modality with the “speaker's attitude to the truth-value or factual status of the proposition”. To put it another way, epistemicity, involving knowledge and belief, expresses the various degrees of a speaker's (in)certitude regarding the truth of the proposition.

Not surprisingly, various approaches to epistemic phenomena emphasise different dimensions of the mediation of knowledge. For instance, Stubbs (1996: 202) uses

the term *modality* “to mean the ways in which language is used to encode meanings such as degrees of certainty and commitment, or alternatively vagueness and lack of commitment, personal beliefs versus generally accepted or taken for granted knowledge”. Somewhat differently, “assessments of potentiality” and their relation to the world of knowledge and reasoning are highlighted by Radden and Dirven (2007: 233). Biber et al. (1999: 972), in turn, hold that epistemic stance devices “can mark certainty (or doubt), actuality, precision, or limitation; or they can indicate the source of knowledge or the perspective from which the information is given”. Finally, Coates (1987: 130) highlights the interactional dimension and the polypragmatic nature of epistemic modals claiming that speakers use them, amongst other goals, to facilitate interaction by respecting the face-needs of the addressees and encouraging the flow of discussion. Yet, despite the multitude of modality studies adopting descriptive, cognitive, socio-pragmatic or rhetorical perspectives (cf. Brezina 2012), and regardless of the position taken, most linguists seem to agree that epistemic modality involves a subjective view of certainty and the degree of the speaker’s commitment towards the utterance, which can be encoded in a number of ways.

Indeed, as reported in the literature, there is a wealth of expressions which speakers use to mark epistemicity. On the one hand, advocates of the traditional view equate modality with modal auxiliaries, regarding them as “the most grammaticalized ways of expressing modality in English (...) in which modal meanings, epistemic and non-epistemic, interact in complex ways” (Simon-Vandenberg, Aijmer 2007: 2). On the other hand, as argued by Brezina (2012: 16), epistemic forms include varied lexical means which convey modal meanings. Amongst them, he lists, for instance, Lakoff’s (1973) hedges, Holmes’s (1988) modal expressions and Biber et al.’s (1999) epistemic markers, which are represented by various word classes, i.e. adverbs, adjectives, nouns and verbs.<sup>2</sup> An interesting account is also provided by Rauniomaa (2008: 41), who asserts that particles too can display stance and render epistemic readings. For instance, drawing on Heritage (1998), the scholar reports that particles like the English *oh* can attest to “a change in the state of the speaker’s knowledge” (Rauniomaa 2008: 41).

Thus, it appears that approaching modality as a broad concept, describing various expressions of the speaker’s (or writer’s) commitment to the truth-value of their utterances, rather than a narrowly defined notion restricted to the use of specific modal auxiliaries, may result in a redefinition of “this elusive and fundamental category of human language and thought” (Hoye 1997: 1). Accordingly, adopting such a broad view on modality, Brezina (2012: 106) argues that epistemicity operates at four main levels: pragmatics, non-verbal communication, cognition and discourse. By the same token, González et al. (2012), undertaking a multimodal analysis of epistemicity and evidentiality in spontaneous oral discourse, argue

<sup>2</sup> Brezina (2012: 25–29) enumerates selected epistemic markers with the respective labels favoured by analysts in individual studies. Amongst these terms the following can be found: *epistemic phrases* (Kärkkäinen 2010), *epistemic parentheticals* (Thompson, Mulac 1991), *pragmatic devices* (Stubbe, Holmes 1995) as well as *epistemic stance expressions*, *epistemic stance devices*, *epistemic markers* and *epistemic stance bundles* (Biber 2006), to name but a few.

that epistemic and evidential meanings can be conveyed prosodically, gesturally and by way of textual cues. Interestingly, the scholars conclude that multimodal marking, involving prosody and gestures, plays an important role in communicating epistemic stance.

Finally, it is worth noting that by analogy to the affective and epistemic scales referred to earlier, modality too can be conceptualised in terms of remoteness, as it can be constructed on a certainty/uncertainty scale. Yet, there is no consensus regarding the semantic organisation of all the epistemic markers, especially verbs, in a way that unambiguously differentiates them on the scale from absolute to low certainty.<sup>3</sup> While it is true that in the case of modal adverbs and adjectives, which convey the prototypical meanings of *possibility*, *probability* and *certainty*, the distinction seems more obvious, “the strength of epistemic verbs and the commitment conveyed largely varies with their syntactic environment” (Marcinkowski 2010: 51).<sup>4</sup> Even more intangible, it may be argued, is the semantic relation between *epistemicity* and *evidentiality*, the latter being the third of the notions which underpin this research.

### 2.3. Evidentiality

As posited by Dendale and Tasmowski (2001: 341), “indicating the source of information is conceptually different from indicating the speaker’s assessment of the reliability of information”; however, the distinction between *epistemicity* and *evidentiality* is not always apparent. For advocates of the broad view on evidentiality, the term refers to any expression of attitude towards knowledge (e.g. Chafe 1986; Palmer 1986, 2001; Rooryck 2001 a, b). Chafe (1986), for instance, distinguishes three parameters of evidentiality: the source of knowledge, the mode of knowledge, and the reliability of knowledge. Amongst the sources of knowledge, the researcher lists evidence, language and deduction, while the modes of knowledge include belief, induction, hearsay and deduction. With regard to the speaker’s belief, Chafe (1986: 266) holds that it may be based on evidence, but, in his view, it is never based on evidence alone. Similarly, Rooryck’s (2001a: 125) understanding of evidentiality entails both the source of information and the type of evidence. Thus, for Rooryck (2001a: 125), both evidentiality and epistemic modality “relativise or measure the information status of the sentence”.

Likewise, Palmer (1986: 70) claims that setting boundaries between the two notions “would be a futile exercise”. In fact, the scholar argues that evidentials

<sup>3</sup> Somewhat paradoxically, as observed by Aijmer (2007: 331), “modal adverbs of certainty can implicate uncertainty”. Therefore, adverbs like *no doubt* mean probability rather than certainty. A similar observation is made by Halliday (1994: 362), who stresses that “we only say we are certain when we are not”.

<sup>4</sup> An interesting proposal can be found in Bongelli and Zuczkowski (2008). The scholars build a strong case for their claim that all assertions can, in fact, be reduced to three basic statements: *I know*, *I don’t know* and *I believe*. In what they call the KUB (Known-Unknown-Believe) theory, the researchers hold that from an epistemic standpoint, the Known communicates Certainty, the Believed Uncertainty and the Unknown neither Certainty nor Uncertainty.

and judgements of necessity and possibility fall within the domain of epistemic modality. It should be mentioned, however, that while in the 1986 edition of his much-quoted work on mood and modality, the researcher holds that evidential modality is a sub-type of epistemic modality, in the 2001 edition, adopting an intermediate approach, he distinguishes between what he calls “event modality” and “propositional modality”. The latter, as he proposes, subsumes “evidentiality” and “epistemic modality” and the difference between the two is that “with epistemic modality speakers express their judgments about the factual status of the proposition, whereas with evidential modality they indicate the evidence they have for its factual status” (Palmer 2001: 8).

On the other hand, proponents of a restrictive definition of evidentiality (e.g. Fallér 2002; Aikhenvald 2004, 2006; de Haan 2005; Wiemer 2006) stress the fact that evidentials “proper” denote only fully-grammaticalised elements indicating the source of information, thus refusing to include lexical means in the category of evidentials. Following this train of thought, Wiemer (2006: 7) argues that “evidential meanings specify the source of knowledge expressed in assertions”, whereas epistemic modality “refers to the actual speaker’s subjective assessment of the veracity of his assertion(s), i.e. to the speaker’s evaluation of the uttered proposition(s) as being true, likely or not true”. He acknowledges, though, that the two concepts correlate to some extent and that they often co-exist in language units or constructions.

Similarly, in her typological study of evidential systems, Aikhenvald (2004: 4) argues that “[a]ll evidentiality does is supply the information source”, adding that “this covers the way in which the information was acquired, without necessarily relating to the degree of the speaker’s certainty concerning the statement or whether it is true or not” (Aikhenvald 2004: 3). Elsewhere, Aikhenvald (2006: 320) holds that “[e]videntiality is a verbal grammatical category in its own right, and it does not bear any straightforward relationship to truth, the validity of a statement, or the speaker’s responsibility. Neither is evidentiality a subcategory of epistemic or any other modality.” At the same time, the researcher recognises the existence of lexical means which specify the source of knowledge; still, in her view, a true evidential has “the source of information” as its core meaning (Aikhenvald 2004: 3). By the same token, de Haan (2005: 379) maintains that “evidentiality *asserts* the evidence, while epistemic modality *evaluates* the evidence”. With this in mind, he analyses evidentiality as a deictic, rather than epistemic, category, which establishes the reference between an action or event and the speaker. In his view, by analogy to demonstratives marking relationships between speakers and objects, evidentiality (or *propositional deixis*) marks relationships between speakers and actions or events (de Haan 2005: 1).<sup>5</sup>

Notwithstanding the lack of a uniform terminological apparatus, as claimed by Simon-Vandenbergen and Aijmer (2007: 38), both epistemicity and evidentiality “mark various types of deviations from an ‘ideal knowledge status’” in the sense of

<sup>5</sup> Cf. Frawley’s (1992) concept of *modal deixis*.

DeLancey (2001). This being said, while not intending to reconcile contradictory positions on epistemic modality and evidentiality – which define the relation holding between the two concepts as that of *disjunction*, *inclusion* or *overlap* (Dendale, Tasmowski 2001: 341–2) – for the purpose of the current analysis I follow the view that the domains of epistemicity and evidentiality are not wholly distinct and that evidentiality falls within the scope of epistemicity. I also hold that the two construals can be positioned under the label of *stance* (Figure 2).

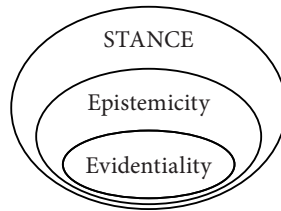


Figure 2. Relationship between stance, epistemicity and evidentiality

### 3. Referential domains and distancing

Also relevant to this study of stance are the interrelated notions of *referencing* and *distancing*. As might be expected, referential (nomination) strategies play an important role in the positioning of social actors; therefore, their significance for the speaker's (or writer's) visibility and self-disclosure merits some discussion. Given the above, in agreement with Chilton's (2004, 2005) discourse space theory (DST), I will argue that spatial, temporal and modal conceptualisations of judicial argumentation may enrich analyses of stancetaking patterns in judicial opinions. To elucidate the role of referential domains and distancing scales, as proposed by Chilton, I will first address the potential of temporal, spatial and modal deixis in grounding social actors (here: judicial discourse participants), actions and events.

Discourse space theory presupposes the existence of a discourse space which consists of three intersecting axes – that of *time*, *space* and *modality* – along which speakers can position themselves together with the actions and events in which they are involved. The point where the three axes intersect is the “anchoring point” or deictic centre (Self (*I/we*), *here/now*) from which entities, actions or events can be foregrounded or backgrounded, depending on how close or remote ideologically they are to the speaker (Figure 3).

Obviously, it is important to recognise that the distances are not calculable in absolute terms. In the words of Chilton (2004: 58), “[i]t is not that we can actually measure the “distances” from Self; rather, the idea is that people tend to place people and things along a scale of remoteness from the self, using background assumptions and indexical cues”. Nor do the axes refer to geographical distances. Instead, they enable speakers to distance themselves (ideologically, culturally or politically) from the Other, placed at the far end of the space axis. They also enable approximations



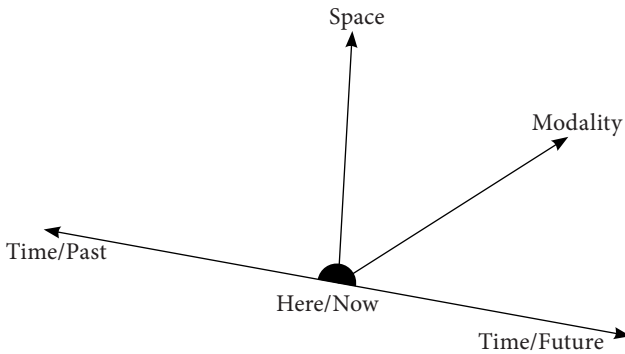


Figure 3. Time, Space and Modality model (Chilton 2004: 58)

of what the speaker considers to be *right* or *wrong*, *true* or *untrue*, with Self being “the origin of the epistemic *true* and the deontic *right*” (Chilton 2004: 59). As will be shown in the current analysis, a spatial conceptualisation of judicial discourse is a viable construct which enables the analyst to position the Court or its justices with regard to the legal problems considered as well as other members of the judicial community.

A closely related issue which I intend to raise here is that of pronominal self-reference and other-reference, and especially the use of first-person pronouns. Accordingly, I will argue that the identity of the Court and the ideology it represents (or the ideologies supported by its justices) are conceptually constructed through the use of inclusive versus exclusive pronouns. As aptly put by Dontcheva-Navratilova (2011: 111), the referential domains of pronouns “predetermine their potential functions in expressing the attitude of the speaker towards the intended referent”. In the context of political discourse, as she observes, the strategic use of referencing (including the use of personal pronouns) contributes to the existential coherence, equated with the projection of a coherent image of the speaker and the institution he represents (Dontcheva-Navratilova 2011: 107). This, as Dontcheva-Navratilova (2011: 107–108) continues, establishes speaker credibility and results in the discursal construction of an institutional identity.

As shown in Figure 4, since the referential domain of the first-person plural pronoun is not straightforward, an ambiguity may arise between the exclusive and inclusive use of *we* and, hence, the pronoun can render various interpretations. What is more, pronominal choice “enables speakers to indicate the position they are taking in relation to their own remarks” (Dontcheva-Navratilova 2011: 112). For instance, rather than signal solidarity and stress group identity through the use of the inclusive *we*, a dissenting justice may opt for the use of *I*, thus claiming epistemological responsibility. Conversely, in a majority opinion, the Court, acting as a collective body, may assert its authority and expertise as well as mark the anonymity of individual justices with the use of the plural pronoun *we* or the collective noun “the Court” (cf. Salmi-Tolonen 2005: 90).

<b>Exclusive <i>we</i></b>	
exclusive <sub>1</sub> of the hearer	group of people including the speaker
	speaker only (royal <i>we</i> or authorial <i>we</i> )
exclusive <sub>2</sub> of the hearer	third party only (hearer or other)
<b>Inclusive <i>we</i></b>	
speaker and hearer(s) – reference to context of situation	group of people including the speaker and hearer(s) (integrative or expressive use)
	inclusive authorial <i>we</i> for reader involvement
speaker and hearer(s) – reference to socio-cultural context	rhetorical <i>we</i> – collective senses of “the nation”, “the party”, “the organisation”
	indefinite group – generic <i>we</i>

Figure 4. Referential domains of the first-person plural pronoun *we* (Dontcheva-Navratilova 2011: 112)

#### 4. Data

The database for this study consists of a theme-focused corpus of opinions related to ten capital cases argued and decided by the Supreme Court of the United States in the period from 1990 to 2006. In total, ten majority opinions<sup>6</sup> and 23 concurring and dissenting opinions were analysed (comprising approximately 166,000 words).<sup>7</sup> The theme of capital punishment was selected, as it was believed that such a controversial and debatable issue was likely to give rise to differences of opinion and prompt a variety of stance expressions. It must also be added that the cases selected were not decided unanimously. In other words, the corpus included only those majority opinions which were accompanied by at least one dissenting opinion. The texts of the opinions were downloaded from two websites: 1) [www.oyez.org](http://www.oyez.org), the site of the Oyez Project<sup>8</sup> (date of access: 15 May 2012) and 2) [www.law.cornell.edu](http://www.law.cornell.edu), the site of the Legal Information Institute (date of access: 15 May 2012). The texts of the opinions were annotated manually.

<sup>6</sup> The “majority opinion” is also referred to as the “Opinion of the Court”. “Plurality opinions”, on the other hand, denote concurring opinions joined by more justices than the official Court opinion.

<sup>7</sup> To be more precise, some of the opinions in the corpus were opinions “concurring in part and dissenting in part” as well as opinions “concurring in judgment” (in which a justice agrees with the Court’s decision, but not with the reasoning used to reach the final decision).

<sup>8</sup> The Oyez Project is a multimedia archive devoted to the Supreme Court of the United States and its work.

## 5. Method

Grounding my research in stance-related theories – in particular, the interactional concept of stance, the notions of epistemicity and evidentiality, and, finally, the discourse space model – I will propose a framework for analysing stance patterns in written data. I will argue that the framework can serve as a convenient tool for identifying and categorising stancetaking strategies as well as individual stance markers deployed by US Supreme Court Justices. Note should be taken, however, of the fact that quantifying individual acts of judicial stancetaking is problematic, if not impossible, given that a one-to-one correspondence between particular markers and functions is not always obvious and that particular stance tokens tend to co-occur. Therefore, a qualitative analysis appears to be a more fruitful endeavour, resulting in the identification of certain *trends* or *regularities* in the discursive construction of stance, and not in the generation of absolute figures.

The analytical framework proposed takes into account markers indexing stance, through which the justices' presence and the negotiation of meaning are manifested. The categories include discursual features found to be relevant in stance-related scholarship, such as:

- |                       |                         |
|-----------------------|-------------------------|
| 1. Referencing        | 4. Imprecise language   |
| 2. Declaring position | 5. Significant absences |
| 3. Evidentials        |                         |

A detailed description of these analytical parameters can be seen in Table 2. Still, a proviso must be made in that even though the variables draw on a number of stance-related studies, the labels provided are tentative and subject to refinement. Moreover, they should not be regarded as clear-cut sets with neat boundaries, as some stance tokens may represent more than one set, even more so given the unclear status of the relationship between epistemic and evidential meanings discussed in the preceding sections of this article.

As can be seen in Figure 5, the model includes five general categories: 1) *Referencing*, 2) *Declaring position*, 3) *Evidentials*, 4) *Imprecise language* and 5) *Significant absences*. In the first of the categories, three sub-sets have been distinguished: *Self-presentation*, *Other-presentation* as well as *Temporal and spatial deixis*. The second category, in turn, includes: *Expressing agreement/disagreement* (subsuming *Concessive schemata*) and *Emotive and evaluative language* (subsuming *Comment clauses* and *Reader-oriented questions*). On the other hand, the third group of markers, i.e. *Evidentials*, encompasses *Sensory evidence/cognition verbs* (indexing direct and inferred evidentiality) alongside *Verba dicendi and reporting language* (marking reported evidentiality). The last two categories are *Imprecise language* and *Significant absences*.

Though I do not claim that the proposed list of categories of stancetaking devices is exhaustive, I believe that it provides sufficient guidance for a researcher trying to identify and describe the linguistic coding of attitude deployed by justices. Accordingly, the very same categories will be applied in the analysis presented in the remainder of this article.

CATEGORY	DESCRIPTION
<b>1. REFERENCING</b>	
<b>1.a Self-presentation</b>	Positioning of social actors (justices, the Court) in the deictic centre  Explicit reference to the author, use of 'person markers' (first-person pronouns, possessive and object pronouns)
<b>1.b Other-presentation</b>	Positioning of social actors (litigant parties, lower courts, other justices, the Court) outside the deictic centre
<b>1.c Temporal and spatial deixis</b>	Positioning of (legal) actions and events from the point of view of the deictic centre
<b>2. DECLARING POSITION</b>	
<b>2.a Expressing agreement/disagreement</b>  • <b>Concessive schemata</b>	Statement of the arguer's stand on the issues subject to court proceedings
	Expression of mitigated disagreement
<b>2.b Emotive and evaluative language</b>  • <b>Comment clauses (parentheticals)</b>  • <b>Reader-oriented questions (appealers)</b>	Expression of personal feelings, judgements and assessments
	Expression of insistence and emphasis
	Making evaluative comments
	Questions encouraging reader involvement
<b>3. EVIDENTIALS</b>	
<b>3.a Sensory evidence/cognition verbs (direct and inferred evidentiality)</b>	Marking the source of information
	Expression of the arguer's attitude towards the source of information
<b>3.b Verba dicendi and reporting language (reported evidentiality)</b>	Citation of other courts/justices/forensic experts or self-citation  Temporal or spatial reference to legal sources/precedents
<b>4. IMPRECISE LANGUAGE</b>	
	Use of hedges and quantifiers
<b>5. SIGNIFICANT ABSENCES</b>	
	Meaningful absence of certain linguistic features

INTERPERSONAL METAFUNCTION

Figure 5. Stance analysis framework

## 6. Discussion

Contrary to what might be expected, judicial language is not purely impersonal and objective, and justices do employ affective and evaluative language. Unsurprisingly, justices' visibility is often manifested by way of cognition verbs and first-person pronouns. What is more, self-disclosure is also realised by way of numerous markers signalling agreement or disagreement and interactive devices such as comment clauses or reader-oriented questions. In the words of Salmi-Tolonen (2005: 72), studying persuasive strategies in the Opinions of the Advocates General at the European Court of Justice, "the writer's presentation of self in a Judicial Opinion cannot be described as non-committal or non-judgmental. On the contrary the act of persuasion is rendered explicitly and in no way denying the intervention of the personal."

Adopting a similar viewpoint for the purpose of this study, I assume that stance is a situated, interactional process actively engaged in by the discourse participants and that US Supreme Court opinions are a site of interaction. I also believe that stancetaking is not tied to a closed set of specific markers, but that it may be signalled by a wide range of linguistic resources. In light of the above, the research questions addressed in this study are as follows:

1. *What strategies and devices do US Supreme Court Justices employ to express stance?*
2. *What are the dominant functions associated with these stance strategies and devices?*
3. *What differences, if any, can be found between the stancetaking patterns found in majority opinions, on the one hand, and those in dissenting and concurring opinions, on the other?*

Before I turn to the principal focus of this article, i.e. judicial stancetaking, I wish to state that the language of the internal citations of the opinions has been excluded from the study. It is also fair to say that the expressions analysed were used strategically only in the relevant rhetorical segments and not in the entire opinion text.

### 6.1. Referencing

The first of the analysed aspects of stancetaking is the use of referencing (including both self-presentation and other-presentation), whose strategic role should not be overlooked. While self-presentation involves the positioning of the Court and the justices at the deictic centre and enables explicit reference to the author (through "person markers" i.e. first-person pronouns, possessives and object pronouns), other-presentation is linked to the positioning of other discourse participants (e.g. litigant parties, lower courts or other justices) outside the deictic centre. Finally, temporal and spatial deixis enables the positioning of actions and events, or even earlier judicial opinions, from the point of view of the deictic centre (the Court or the justices).

Interestingly, in majority opinions, the Court (*this Court, we*),<sup>9</sup> acting as a collective judicial body, is placed at the deictic centre, thus claiming authority to decide

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<sup>9</sup> In all the examples presented the emphasis is mine.

what is right and wrong. The Court's own arguments are seen as "near", and therefore "legitimate", and belonging to the Court's system of values and beliefs, in line with Chilton's (2004: 60) claim that "that which is morally or legally "wrong" is distanced from Self". Therefore, the arguments of the dissenting justices, with which the Court does not identify, are located at the far end of the modality axis and ascribed the quality of being wrongful (Figure 6). In dissenting opinions, on the other hand, the dissenting justice is placed at the deictic centre, whereas the Court (*it*) is positioned at the far end of the modality axis. This time, it is the dissenter's view that is presented as "right" and legally justified (Figure 7).

It is worth highlighting in this context that the use of the authorial *we* and *our* in majority holdings invites readers to position themselves with the Court at the deictic centre. Remarkably, the same Court is typically referred to as *it* in dissenting opinions, where the voices of individual justices are more strongly pronounced thanks to the pronoun *I* (Figure 8). The same is observed in concurring opinions, in which concurring justices align or partly align with the Court's decision. Still, I found instances of the inclusive *we* attesting to the concurring or dissenting justices' alignment when the Court is at the deictic centre, even if afterwards they were to voice criticism of the Court's arguments (e.g. *In Furman, we overturned the sentences of two men...; we credited data showing that ...*). Thus, they seemed to claim partial responsibility for the decisions made earlier by the Court, of which they are part.

With respect to specific realisations of other-presentation, it can be noted, for instance, that the Court clearly distances itself from the dissenting justices or other courts, whose decisions it reviews (Figure 9). Therefore, in majority opinions we observe devices which index remoteness, amongst them the demonstrative *that*, like in *that court's view* or explicit reference to the dissenting justices, like in *The Apprendi dissenters called...* or *Justice Souter argues (hereinafter the dissent) that...* As can be seen, individual justices' names are provided to make it clear to the reader that the arguments in question are their own and not those of the Court acting as a collective body. As to dissenting and concurring opinions, here, conversely, individual justices distance themselves from the Court or some of the justices composing the majority, referring to them as: *A plurality of this Court stated...; The joint opinion in Jurek concluded...; Eight members of the Court agree...* or simply *the Court*, which is referred to as *it*, unlike *we* as used in majority opinions.

Undeniably, temporal and spatial deixis plays an important role in the positioning of the stance subject, i.e. the Court or the justices, with respect to the stance object, e.g. lower court decisions or the Court's earlier opinions. As illustrated by Figure 10, in both types of opinion, the case pending before the Court is placed at the deictic centre (*At issue in this case; The same is true here; In the present case*). Temporal deixis, in turn, can be seen in expressions like: *Our recent decisions; Two terms ago, in Maynard v. Cartwright* or *Today's majority indicates*.

The relationship between the stance subject and the stance object can also be visualised with the help of Du Bois's stance diagram. Thus, Figures 11 and 12 show the positioning of the Court and Justice Rehnquist, as well as an evaluation of the stance object (i.e. discretion in imposing the death penalty and the credibility of opinion polls,

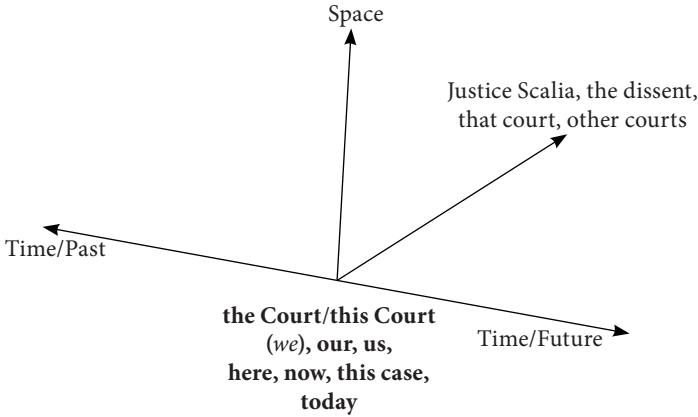


Figure 6. Self- and other-presentation in majority opinions

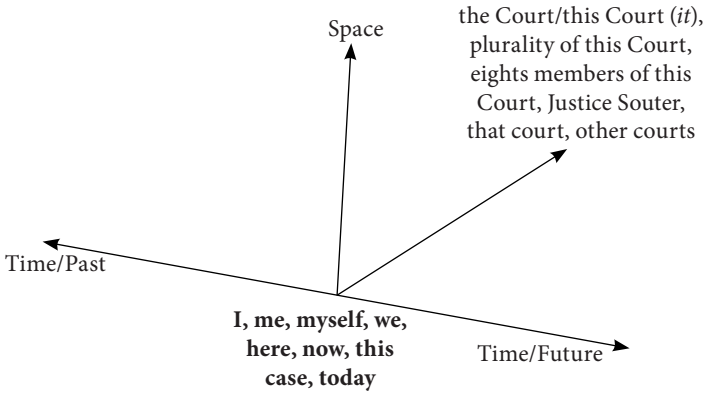


Figure 7. Self- and other-presentation in dissenting opinions

Majority opinion	Dissenting or concurring opinion
as <b>we</b> observed in <i>Poland v. Arizona</i> ... [2.WA_MO]	<b>I</b> write separately to say that, and explain why, <b>I</b> will no longer seek to apply... [2.WA_CO1]
The Constitution does not require <b>us</b> to look behind... [2.WA_MO]	followed by Justice Stewart, Justice Powell and <b>myself</b> ... [2.WA_DO3]
<b>our</b> standards of decency do not permit ... [7.RS_MO]	The question ... confronts <b>me</b> with a difficult choice. [6.RA_CO1]
materially indistinguishable from a decision of <b>this Court</b> ... [4.PJ_MO]	In <i>Furman</i> , <b>we</b> overturned the sentences of two men... [2.WA_CO1]
As <b>the Court</b> explained in <i>Atkins</i> ... [7.RS_MO]	<b>we</b> credited data showing that... [5.AV_DO1]

Figure 8. Self-presentation

Majority opinion	Dissenting or concurring opinion
Relying on <b>its</b> prior decisions, <b>the court</b> rejected... [2.WA_MO]	<b>A plurality of this Court</b> stated in <i>Lockett v. Ohio</i> ... [2.WA_DO2]
In <b>that court's</b> view, the nonstatutory aggravating factors challenged... [3.JUS_MO]	<b>The joint opinion</b> in <i>Jurek</i> concluded that the statute permits... [4.PJ_CDO]
The <i>Apprendi</i> <b>dissenters</b> called the Court's distinction... [6.RA_MO]	<b>Eight members of the Court</b> agree that <i>Lockett</i> remains good law... [2.WA_DO2]
<b>Justice Souter</b> argues (hereinafter <b>the dissent</b> ) that the advent of DNA testing... [10.KM_MO]	In reaching <b>its</b> conclusion today, <b>the Court</b> does not take notice of the fact... [5.AV_DO1]

Figure 9. Other-presentation

Majority opinion	Dissenting or concurring opinion
At issue in <b>this case</b> is the validity of the death sentence... [2.WA_MO]	<b>Today's</b> majority indicates, however, that... [2.WA_DO2]
The same is true <b>here</b> . [9.BS_MO]	In <b>the present case</b> , however, the adequacy... [1.LJ_DO1]
Our <b>recent decisions</b> in <i>Blystone v. Pennsylvania</i> ... [2.WA_MO]	<b>Two terms ago</b> , in <i>Maynard v. Cartwright</i> ... [2.WA_DO2]

Figure 10. Temporal and spatial deixis

Opinion writer	Stance Subject	Positions/Evaluates	Stance Object
THE COURT:	Rather, this Court	has held	that the States enjoy “a constitutionally permissible range of discretion in imposing the death penalty”. [10.KM_MO]

Figure 11. Relationship between the stance subject and the stance object (majority opinion) (adapted from Du Bois 2007: 153)

Opinion writer	Stance Subject	Positions/Evaluates	Stance Object
JUSTICE REHNQUIST:	I	would take issue	with the blind-faith credence it accords the opinion polls brought to our attention. [5.AV_DO1]

Figure 12. Relationship between the stance subject and the stance object (dissenting opinion) (adapted from Du Bois 2007: 153)



respectively). The diagram is useful in representing the identity of the stancetaker since, as Du Bois (2007: 153) puts it, “in analyzing the various discrete components of the utterance, we label the words which overtly express or index the stance subject and the stance object”. He also adds that “we label the verb or other stance predicate according to the kind of stance action it performs” (Du Bois 2007: 153). Obviously, the respective stance acts should be analysed in a broader judicial context; that of the justifiability of capital punishment in various legal and factual circumstances.

Thus, the dual function of evaluation and positioning marks a smooth transition to the category comprising markers through which the Court declares its position, i.e. agrees, disagrees, carries emotion or marks evaluation.

## 6.2. Declaring position

Somewhat surprisingly, the linguistic resources which convey personal feelings and assessments in judicial discourse, especially in the context of supreme court decision-making, seem to have been largely overlooked by scholars. Yet, these mechanisms warrant detailed investigations, since, in the words of Finegan (2010: 68), “[h]owever calm, cool, and collected the logic behind supreme court opinions, the justices’ words have teeth – and can bite”.<sup>10</sup> The justices’ attitude is palpable also thanks to a group of markers which I call *Declaring position*.<sup>11</sup> With these, as I see it, the Court takes a stand on the legal problems subject to its deliberations.

We will now look at examples illustrating various ways in which the Court and the justices express agreement (Figure 13). Clearly, apart from the obvious choice of *we agree / I agree*, a wide range of expressions was deployed to signal alignment, such as, for instance: *We **acknowledged** that the erroneous instruction...; I am therefore **willing to adhere** to the precedent... or I have no quarrel with the proposition...*<sup>12</sup>

Even more varied was the deployment of expressions marking disalignment (Figure 14). In fact, the use of verbs signalling unmitigated disagreement – such as *disagree*, *reject* or *dissent* – was not a solitary practice. Other instances were as follows: *We **answer “no”** to the first two questions...; I do not **subscribe** to this judgment... or I simply **do not share** the Court’s confusion...* Predictably, occurrences of outright disagreement were far more frequent in the case of dissenting opinions, with dissenting justices making no attempt to hide their strong disapproval of the arguments put forward by the majority. Naturally, all the verbs analysed were preceded

<sup>10</sup> Interestingly, Black et al. (2011) argue that research into emotive language in the context of judicial or political decision-making can bring tangible, measurable outcomes, such as, for instance, the prediction of justice votes which, as they maintain, are consistent with the emotions expressed by the justices in oral arguments.

<sup>11</sup> I use the term after Salmi-Tolonen (2005).

<sup>12</sup> In her study of the Opinions of the Advocates General at the European Court of Justice, Salmi-Tolonen (2005: 79) analysed a similar group of expressions. Amongst these items, *I agree / I do not agree* and *I accept / I do not accept* were the most common. Interestingly, she found no instances of *I disagree* in her corpus.

Majority opinion	Dissenting or concurring opinion
<b>we agree</b> with the Fifth Circuit... [3.JUS_MO]	<b>I am</b> therefore <b>willing to adhere</b> to the precedent... [2.WA_CO1]
<b>We acknowledged</b> that the erroneous instruction... [9.BS_MO]	<b>I join the opinion</b> of the Court... [6.RA_CO1]
<b>We expressed approval</b> of a definition that... [2.WA_MO]	<b>I have no quarrel with the proposition</b> that... [2.WA_DO2]

Figure 13. Expressing agreement

Majority opinion	Dissenting or concurring opinion
<b>We answer “no”</b> to the first two questions... [3.JUS_MO]	<b>I cannot join</b> the Court’s opinion... [6.RA_CO2]
<b>We disagree.</b> [7.RS_MO]	<b>I do not subscribe</b> to this judgment... [7.RS_DO1]
<b>We rejected</b> the argument that a State violated due process... [2.WA_MO]	<b>I therefore dissent</b> from the Court’s affirmance of... [2.WA_DO2]
	<b>I simply do not share</b> the Court’s confusion... [4.PJ_CDO]

Figure 14. Expressing unmitigated disagreement

Majority opinion	Dissenting or concurring opinion
(Y) The distinctions Walton attempts to draw between the Florida and Arizona statutory schemes <b>are not persuasive.</b>	(X’) <b>While I join</b> Justice Blackmun’s dissenting opinions in today’s decisions,
(X’) <b>It is true</b> that in Florida the jury recommends a sentence,	(Y) <b>I also adhere to my view</b> that the death penalty is in all circumstances a cruel and unusual punishment. [2.WA_DO1]
(-Y’) <b>but it does not</b> make specific factual findings with regard to the existence of mitigating or aggravating circumstances and its recommendation is not binding on the trial judge. [2.WA_MO]	

Figure 15. Expressing mitigated disagreement (Concession)

by first-person pronouns *we* or *I*, whereby, respectively, the Court's or the justices' responsibility for the message and commitment to the argument were more visible than would be the case if the passive voice was used instead.

With respect to disagreement, a particularly preferred mitigational mechanism was the use of Concessive schemata, that is sequences of acknowledgments (X') and counterclaims (Y).<sup>13</sup> Yet, although Concession could be identified in both types of opinion, like in previous examples, here too, thanks to the use of the first-person pronoun *I*, the dissenting justice was more visible in the dissenting opinion than was the Court in the majority opinion (Figure 15).

It should also be mentioned that expressions of doubt or scepticism were abundant, as illustrated by Examples 1, 2, 3 and 4. Strikingly, unlike disagreement markers, these devices were found mainly in majority opinions:

- (1) **I also doubt** whether many of the legislators who voted to change the laws in those four States would have done so... [7.RS\_DO2]
- (2) **We expressly reserved opinion** on whether "it violates the Constitution to require defendants to bear the risk of nonpersuasion as to the existence of mitigating circumstances in capital cases". [2.WA\_MO]
- (3) **We therefore have considerable doubt** that the admission of the Peebles report, even if erroneous, had a "substantial and injurious effect" on the verdict. [4.PJ\_MO]
- (4) **We are skeptical** that, by the time their penalty phase deliberations began, the jurors would have remembered the explanations given during *voir dire*, much less taken them as a binding statement of the law. [4.PJ\_MO]

Probably the most interesting was the group of markers classified as *Emotive and evaluative language*, manifested chiefly by adjective and verb choice. Falling within this subcategory were also modal verbs and modal adverbs of certainty, used to express varying degrees of certitude as well as insistence and emphasis.<sup>14</sup> For reasons of space, the discussion of emotionally-charged language found in the data will be confined to selected expressions, illustrated by Figure 16. As can be seen, especially prominent were epistemic uses of modal verbs and adverbs, which, more often than not, tended to appear in clusters. Another common feature was the deployment of predicate adjectives, some of which were preceded by modifying adverbs (e.g. *morally absurd*; *legally unnecessary*; *embarrassingly feeble*).

Interestingly, a substantial portion of the emotive and evaluative language was attributable to Justice Scalia, "the most notorious exemplar of an ascerbic opinion writer" (Finegan 2010: 68) or "the Court's premier conservative, intellectual gladiator, and chief wordsmith" (Ring 2004: ix). Known for his scathing language as well as humorous remarks, Scalia leaves no doubt about what stand he takes, as illustrated by Examples 5 and 6:

<sup>13</sup> For a description of the interactional model of Concession see Barth-Weingarten (2003).

<sup>14</sup> It might be noted here, after Finegan (2010: 70), that adverbial expression of stance and emphatics in legal language has not received much scholarly attention.

Majority opinion	Dissenting or concurring opinion
Petitioner's claim is <b>far weaker</b> than those we evaluated in <i>Bryan, Victor, and Estelle</i> ... [3.JUS_MO]	To distinguish between weighing and non-weighing States... is <b>unrealistic, impractical, and legally unnecessary</b> [9.BS_DO2]
<b>Indeed</b> , we have never extended <i>Estelle's</i> Fifth Amendment holding beyond... [4.PJ_MO]	A law that requires execution ... is <b>morally absurd</b> ... [10.KM_DO2]
The trial judge, <b>of course, should have advised</b> the jury that... [8.BP_MO]	The first assumption is <b>wrong</b> , as I explained at length in... [5.AV_DO2]
This is <b>certainly</b> such a case. [3.JUS_MO]	The Court attempts to bolster its <b>embarrassingly feeble</b> evidence... [5.AV_DO2]
The trial court <b>surely could have drafted</b> an instruction to this effect. [4.PJ_MO]	The "preponderance" rule ... <b>would almost surely produce</b> more death sentences... [10.KM_CO1]
The jury <b>should have had</b> no difficulty understanding that factor ... [3.JUS_MO1]	is <b>perhaps the most indefensible</b> part of its opinion [7.RS_DO2]

Figure 16. Emotive and evaluative language

Majority opinion	Dissenting or concurring opinion
The prosecutor's <b>mistaken</b> approach... [8.BP_MO]	flatly <b>misdescribes</b> ... [7.RS_DO2]
It would be <b>misguided</b> to equate ... [7.R.S_MO]	repeated <b>misstatements</b> ... [8.BP_DO1]
moved for a <b>mistrial</b> ... [8.BP_MO]	<b>misleading</b> to the jury... [8.BP_DO1]
The text of the factor (k) instruction, he maintained, was <b>misleading</b> ... [8.BP_MO]	<b>mischaracterization</b> of reversible error... [10.KM_CO1]
	something of a <b>misnomer</b> ... [9.BS_DO2]
	a <b>mistaken</b> modern execution... [10.KM_CO1]
	a <b>misuse</b> of our discretion... [10.KM_DO1]

Figure 17. Use of the prefix *mis-*

- (5) It is no proper part of the business of this Court, or of its Justices, to secondguess that judgment, much less to impugn it before the world, and less still to frustrate it by imposing judicially invented obstacles to its execution. [10.KM\_CO1]
- (6) But the Prize for the Court's Most Feeble Effort to fabricate "national consensus" must go to its appeal (deservedly relegated to a footnote) to the views of assorted professional and religious organizations, members of the so-called "world community", and respondents to opinion polls. [5.AV\_DO2]

Remarkably, a closer examination of the emotive and evaluative lexis also revealed the dissenting and concurring justices' heavy reliance on words which start with the negative prefix *mis-*, words carrying pejorative connotations, as exemplified by Figure 17. Quite understandably, in the case of majority opinions, their frequency was much lower.

In addition, two discourse structures were found to be significant in the case of dissenting and concurring opinions, namely: comment clauses and reader-oriented questions. The first of the two, comment clauses, could be easily identified as they were separated from the main clause by way of commas or parentheses. Thanks to them, the arguer's self-disclosure and "the intervention of the personal", as worded by Salmi-Tolonen (2005: 72), were even more tangible. Some of the asides were short inserts like those presented in Examples 7, 8 and 9:

- (7) I would demur (**say so what**) to that position. [3.JUS\_DOI]
- (8) But today's decisions reflect, **if anything**, the opposing concern that States ought to be able to execute prisoners with as little interference as possible from our established Eighth Amendment doctrine. [2.WA\_DOI]
- (9) The dispositive provision, **as I read the Act**, is §3594, which first states that the court shall sentence the defendant to death or life imprisonment without possibility of release if the jury so recommends, and then continues... [3.JUS\_DOI]

Others, on the other hand, were quite lengthy statements or questions, as presented in Examples 10 and 11:

- (10) Since the individualized determination is a unitary one (**does this defendant deserve death for this crime?**) once one says each sentencer must be able to answer "no" for whatever reason it deems morally sufficient (**and indeed, for whatever reason any one of 12 jurors deems morally sufficient**), it becomes impossible to claim that the Constitution requires consistency and rationality among sentencing determinations to be preserved by strictly limiting the reasons for which each sentencer can say "yes". [2.WA\_COI]
- (11) If and when the Court redefines Furman to permit the latter, and to require an assessment (**I cannot imagine on what basis**) that a sufficiently narrow level of the "pyramid" of murder has been reached, I shall be prepared to reconsider my evaluation of *Woodson* and *Lockett*. [2.WA\_COI]

Likewise, reader-oriented questions or appealers, inviting reflection on the part of the reader, were typical of dissenting and concurring opinions. A sample of such questions has been provided in Examples 12 and 13:

- (12) By what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation? [7.RS\_DO2]
- (13) Who says so? Is there an established correlation between mental acuity and the ability to conform one's conduct to the law in such a rudimentary matter as murder? Are the mentally retarded really more disposed (and hence

more likely) to commit willfully cruel and serious crime than others?  
[5.AV\_DO2]

Without doubt, it cannot but be observed that comment clauses and reader-oriented questions sometimes co-occurred, similarly to modal verbs and adverbs as discussed earlier.

### 6.3. Evidentials

As attested by the data, the justices conveyed their assessments pertaining to the source and status of knowledge, having at their disposal a wide range of evidential devices which in the case of English, as Aikhenvald (2004: 9) puts it, are “scattered” all over the grammar. Unfortunately, however important in the construction of judicial argument, evidential strategies cannot receive extensive coverage in this analysis, which would otherwise reach monstrous proportions. Suffice it to say that amongst the preferred evidential resources were cognition verbs with first-person pronouns alongside *verba dicendi* and reporting language, the latter being critical in citing precedents or other expert sources.

Of the features studied under the heading of *Evidentiality*, direct and inferred evidentiality markers were the most visible in both types of opinion (Figure 18). In the case of majority decisions the relevant examples included: *we see no reason to differentiate capital crimes...*; *we think it clear...*; *we know it to be...* or *we presume that Arizona trial judges...* In the case of dissenting voices, on the other hand, both the dissenting justice’s perspective was offered, as in: *As I comprehend petitioner’s core objections...*; *In my view, it is time for us to...*; *I also believe that the Constitution forbids...* and that of the Court acting as a collective authority, as in: *we must look to...*; *what we saw 15 years ago...* or *We can reasonably assume...* They all, as seems obvious, indicate a high degree of author commitment to the arguments advanced in the opinion. From the rhetorical point of view, as claimed by Salmi-Tolonen (2005: 95), “a strong explicit commitment from the writer’s part increases the persuasive force by emphasizing the reliability of professional expertise”. In the same way, deductive and assumptive evidentiality markers in the company of first-person pronouns stress the institutional authority of the Court or the legal expertise of the justices, thus legitimising the deduction processes involved in reaching the final decision.<sup>15</sup>

Another observation regards the verbs *seem* and *appear*, which are associated with assumptive evidential meanings. As expected, their presence in judicial decision-making was also attested by the data, as demonstrated by Examples 14, 15 and 16. Yet, we may only speculate whether the verbs should be interpreted semantically as hedges meant to “soften” the arguments or, on the contrary,

<sup>15</sup> Similar conclusions are reached by Harwood (2005: 1212) with regard to academic writing. In his view, when scholars use personal pronouns with cognition verbs (e.g. *think* or *believe*), they take responsibility for the claims being made as well as stress their conviction and authority.

Majority opinion	Dissenting or concurring opinion
<b>we see</b> no reason to differentiate capital crimes... [6.RA_MO]	<b>In my view</b> , it is time for us to reexamine our efforts... [2.WA_CO1]
<b>we think</b> it clear that such error was harmless. [3.JUS_MO]	As <b>I comprehend</b> petitioner's core objections... [3.JUS_DO1]
As <b>we understand</b> it, this difficulty underlies... [7.RS_MO]	<b>I also believe</b> that the Constitution forbids... [2.WA_DO2]
<b>we presume</b> that Arizona trial judges are applying the narrower definition. [2.WA_MO]	But in every case of an executed defendant of which <b>I am aware</b> ... [10.KM_CO1]
<b>we must assume</b> the nonstatutory aggravating factors were erroneous. [3.JUS_MO]	<b>we must</b> look to to whether such punishment is consistent with contemporary standards of decency. [7.RS_DO1]
...because <b>we know</b> it to be our own. [7.RS_MO]	what <b>we saw</b> 15 years ago... [7.RS_DO2]
In these circumstances, <b>we do not think</b> that the decision... [3.JUS_MO]	<b>We can</b> reasonably assume that... [10.KM_DO2]

Figure 18. Cognition verbs

approached pragmatically as a means of displaying the arguer's strong opinions based on reasoning:<sup>16</sup>

- (14) This, **it seems to me**, is strange and unusual reasoning indeed. [2.WA\_DO2]
- (15) In the present case **there appears to be** no dispute regarding the primary facts underlying the Arizona Supreme Court's finding of the (F)(6) circumstance. [1.LJ\_DO1]
- (16) Indeed, **it appears that** the Arizona Supreme Court has applied the statute in just this fashion. [2.WA\_DO2]

Against this background, the present study also set out to identify *verba dicendi*, which are related to reported speech and third-party sources of knowledge. To this end, I found that the verbs *say* and *note* were high-frequency items, as illustrated by Figure 19 (e.g. **We noted that...**; **we have said that...**; **I cannot say that...**; **we say that...**). Without doubt, the active voice was preferred, rather than impersonal constructions, which, as can be argued, underlines the agency and responsibility of the Court and the justices.<sup>17</sup> Its use may also be seen as reflecting the power relations and stressing the judicial authority and legal expertise of the arguing parties.

<sup>16</sup> Cf. Salmi-Tolonen's (2005: 81–83) discussion on *It seems* and *It appears to me*.

<sup>17</sup> For properties of prototypical agents (*causing* events or changes in other participants) and patients (*causally affected* by other participants) see Chilton (2004: 53).

Obviously, the Court and its justices legitimise their judicial reasoning not only by appealing to a shared system of values and beliefs, but also by citing relevant statutory texts and judicial precedents, which is especially valid in common law systems. To see the linguistic manifestation of this practice, consider Examples 17 and 18:

- (17) **According to the Court of Appeals**, § 3593(b)(2)(C), which provides that a new jury shall be impaneled for a new sentencing hearing if the guilt phase jury is discharged for “good cause”, requires the District Court to impanel a second jury and hold a second sentencing hearing in the event of jury deadlock. **The House Report suggests** that Congress understood and approved that construction. [3.JUS\_MO]
- (18) I cannot continue to say, in case after case, what degree of “narrowing” is sufficient to achieve the constitutional objective **enunciated in *Furman*** when I know that that objective is in any case impossible of achievement **because of *Woodson-Lockett***. And I cannot continue to say, in case after case, what sort of restraints upon sentencer discretion are unconstitutional **under *Woodson-Lockett*** when I know that the Constitution positively favors constraints **under *Furman***. ***Stare decisis* cannot command** the impossible. Since I cannot possibly be guided by what seem to me incompatible principles, I must reject the one that is plainly in error. [2.WA\_CO1]

Occasionally, the Court also refers to common sense, as shown in Example 19:

- (19) **Common sense suggests**, however, and this Court has explicitly held, that the problem before us is *not* a problem of the admissibility of certain evidence. It is a problem of the emphasis given to that evidence by the State or the trial court. [9.BS\_DO2]

#### 6.4. Imprecise language

The next category of markers selected for the study included hedges<sup>18</sup> and quantifiers. Even though no quantitative analysis of the individual stance markers was conducted, I venture to say that the significance of imprecise language in coding stance was much less than that of markers signalling emotion or evaluation. Apparently, precise language was favoured over tentative expressions; still, I found instances attesting to the Court’s use of such devices, as demonstrated by Figure 20. I assume that the apparent low frequency of hedges could be linked to the fact that their overuse is perceived as powerless language, which, naturally, is not desirable in judicial decision-making. Yet, the above assumption would have to be corroborated by the results of quantitative analyses of judicial discourse.

<sup>18</sup> For the purpose of the current analysis, hedges are interpreted narrowly in agreement with Lakoff (1973).



Majority opinion	Dissenting or concurring opinion
<b>we noted</b> that <i>Enmund</i> , does not affect the state’s definition... [2.WA_MO]	<b>I cannot say</b> that the California Supreme Court decision fails... [8.BP_CO2]
... <b>the Court</b> finally <b>asserted</b> . [6.RA_MO]	<b>the Court</b> in <i>Zant</i> <b>did not say</b> that the jury’s consideration... [9.BS_DO2]
<b>The Court claimed</b> that “the jury makes all of the findings.. [6.RA_MO]	<b>we say</b> that “the State cannot channel the sentencer’s discretion...” [2.WA_CO1]
<b>we have said</b> that the Eighth Amendment requires that a sentence of death not be imposed arbitrarily... [3.JUS_MO]	In <i>Walton</i> , <b>to tell the truth</b> , the Sixth Amendment claim was was not put with the clarity it obtained in <i>Almendarez-Torres</i> and <i>Apprendi</i> . [6.RA_CO1]

Figure 19. *Verba dicendi*

Majority opinion	Dissenting or concurring opinion
<b>Much</b> has changed since then. [5.AV_MO]	the Court is <b>quite</b> willing to believe that every foreign nation... [7.RS_DO2]
there is <b>little</b> need to pursue legislation barring the execution of the mentally retarded... [5.AV_MO]	including the <b>somewhat</b> misleading terminology in which the question is phrased. [9.BS_DO2]
we expressed <b>some</b> hesitation, because the legislative judgment was... [7.RS_DO2]	I am not sure that a murderer is <b>somehow</b> less blameworthy if... [5.AV_DO2]
the “equipoise” issue was, <b>in large measure</b> , the basis of... [10.KM_MO]	“Pretty risk” is <b>pretty</b> flabby language (even flabbier than “less likely”)... [5.AV_DO2]

Figure 20. Imprecise language

### 6.5. Significant absences

Finally, basing my argument upon observations as well as studies on the discourse of silence,<sup>19</sup> I propose a claim that the absence of certain linguistic features in judicial opinions can be as meaningful as the presence of the very same features. Also, I believe that it can be asserted that “silence” in written data can serve as a declaration of the author’s viewpoint as well as index their autonomy and resistance. Naturally, a question arises here as to how such “silence” or “absence” should be identified in written discourse, as in some cases the omission of meaningful content is not overt and can be detected only by way of comparison with similar data.

In the corpus analysed, the first striking “silence” was the absence, in majority opinions, of parenthetical comments introduced by the first-person plural

<sup>19</sup> See, for instance, Kurzon (1998).

pronoun *we*, unlike their counterparts containing the pronoun *I* in dissenting and concurring opinions. The second “silence”, in turn, was instantiated by the absence, in majority holdings, of reader-oriented questions. By contrast, their presence in dissenting or concurring opinions can be perceived as an interactive discourse feature encouraging dialogue with the reader,<sup>20</sup> which is not necessarily the aim of the Court when taking its stance as a collective authority in majority holdings. Finally, the third “silence” which I identified in some dissenting opinions was the absence of the qualifying adverb *respectfully* in the concluding line, in which dissenting justices give, in a way, their last word (Examples 20 and 21). Of course, it may be argued that the absence is purely accidental or that it is a matter of legal writing conventions, rather than a conscious choice; however, an interpretation according to which the omission of this adverb is meaningful appears equally plausible. In line with such reasoning, the addition of *respectfully* might be seen as an additional signal of respect for the Court’s authority, despite the dissenting justice’s principal disagreement with the Court’s ruling. Finally, in some dissenting opinions the last line was missing altogether (Example 22), which could also be interpreted as an act of stancetaking. Although these findings are not generalisable, they indicate that it might be worth investigating what role, if any, such “absences” play across written legal genres:

- (20) I **respectfully** dissent. [5.AV\_DO2, Justice Scalia]
- (21) I dissent. [2.WA\_DO2, Justice Blackmun]
- (22) ..... [3.JUS\_DO1, Justice Ginsburg]

## 7. Conclusions

As the discussion above indicates, the repertoire of linguistic resources which US Supreme Court Justices use to convey stance is quite varied, with the justices employing a wide range of linguistic markers and their combinations to express personal feelings and subjective assessments. It is also clear from the study that stancetaking is an inherent argumentative and rhetorical strategy pursued by the justices and that it constitutes an interpersonal dimension of judicial discourse. Therefore, we can justifiably highlight links between emotion, evaluation and judicial decision-making, since, as has been demonstrated, US Supreme Court Justices commit themselves to the facts and arguments presented in the opinions. What is more, they discursively construct their own attitudes and emotions in addition to the propositional meaning conveyed.

With respect to the variation in stance marking identified in the opinion types analysed, a greater frequency and variety of unmitigated disagreement markers

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<sup>20</sup> Referring to written judicial opinions, Salmi-Tolonen (2005: 88) observes that “interaction and dialogue between the parties are an ongoing communicative process during which legal reasoning and justification of the issues on the part of all parties is required”.

was found in the case of dissenting and concurring opinions than in the case of majority holdings, which was also the case with emotive and evaluative language. Additionally, the prefix *mis-* emerged as one of the high-frequency markers used to convey negative assessments, especially in the opinions drafted by individual justices. Hedges, on the other hand, appeared to be of lesser importance than the other stance devices scrutinised. Also, as regards the presence of parenthetical comments and reader-oriented questions, it was noted that they too were common interactive features of dissenting opinions, unlike majority holdings. It must be acknowledged, of course, that these observations may not be equally valid with respect to other types of judicial writing. To be generalisable, the conclusions would have to be attested by quantitative corpus-based studies, thus providing a more thorough picture of the linguistic coding of stance in judicial decision-making.

Irrespective of the above, I hope to have demonstrated that stance markers found in US Supreme Court opinions serve to: introduce the arguer's perspective in the construction of an institutional identity; project a coherent image of the Court and its justices from the point of view of a shared system of values and beliefs and, finally, assert the Court's and the justices' authority, values and ideology. Furthermore, even though I am aware of the limitations arising from the relatively small size of the corpus and the fact that the analysis focused on a restricted number of features, the findings, as I believe, make several contributions. Firstly, they highlight areas which might be of interest to stance scholars analysing specialist discourse as well as suggest directions which future legal discourse analysts might pursue in quantitative corpus-based studies of written legal genres. Secondly, they shift the focus from "static" accounts of stance and stance-related phenomena in written discourse to interactive, discourse-oriented approaches to written data. Thirdly, they add to the growing body of evidence that emotive and evaluative language is present in institutional discourse, undermining the claim that the latter comprises purely impartial and matter-of-fact communication. Finally, despite the fact that no quantification of the data was provided, the results obtained tentatively map out stancetaking strategies and devices which may be relevant in future corpus-based analyses of judicial decision-making at various levels in the legal system.

In conclusion, adopting a more general perspective, I would like to reiterate, after Du Bois (2007: 146), that stance "is more than the context-free connotations of words or sentences" and that "the missing ingredients can only be found by contextualizing the utterance, defined as the situated realization of language in use".

## Symbols used

MO – majority opinion

CO – concurring opinion

DO – dissenting opinion

CDO – opinion concurring in part and dissenting in part

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