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## ARTICLE

# A PENTADIC ANALYSIS OF COMPETING NARRATIVES IN OPENING STATEMENTS

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### I. INTRODUCTION

Storytelling in law is strategic, tactical, and one of the most compelling devices an attorney can utilize.<sup>1</sup> During litigation, opposing parties offer two competing narratives to persuade a judge or jury: “Whereas a prosecutor might describe the accused as a vicious animal that stalks victims in the night, the defense might paint a picture of that same person as a physically or mentally victimized person who lacks control over his or her actions.”<sup>2</sup> A typical juror does not possess any information about the case and the factual issues at hand—including the “characters in the drama from the past that will be imperfectly recreated in the courtroom”—thus the importance of narratives and storytelling in litigation practice cannot be overstated.<sup>3</sup> Narratives assist the fact finder with understanding, interpreting, and inferring relationships between central issues in the case and the persons involved.<sup>4</sup> The jury must ultimately decide which of these competing narratives to

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1. See *infra* Part II(A)–(B).

2. JANICE SCHUETZ, COMMUNICATING THE LAW: LESSONS FROM LANDMARK LEGAL CASES 113 (2007).

3. Susan E. Brune, *The Opening Statement: Taking Control of the Narrative*, 40 LITIG. 38, 38 (2014).

4. Lauren Thorne, *Attorneys’ Uses of Storytelling During Opening Statements* (May 18, 2007) (unpublished thesis, Clemson University) (on file with author) (interviewing twenty litigation attorneys to analyze how communication theories and strategies are used to influence the fact finder during opening statements).

accept when rendering a final verdict. Dissecting and analyzing narratives is essential for legal practitioners and scholars alike to better understand the function of narratives and to ultimately become better storytellers.

A leading approach to rhetoric and narratives is the pentadic analysis.<sup>5</sup> Developed by literary theorist Kenneth Burke in the 1960s, pentadic analysis focuses on revealing the dominant terms featured in a narrative—what was done (the act); when or where it was done (the scene); who did it (the agent); how he or she did it (the agency); and why he or she did it (the purpose)—and the motivation for structuring a narrative around those particular terms.<sup>6</sup> A cross-comparative pentadic analysis of the narratives used in opening statements can help one understand the attorneys' competing rhetorical strategies, the motives behind a particular narrative choice, and the function of narratives in persuading the fact finder. By understanding the rhetoric used in competing narratives, litigation attorneys can similarly use pentadic analysis to construct effective and persuasive narratives in trial practice.

One way legal practitioners and scholars can better understand narratives and storytelling is by dissecting and analyzing already available trial narratives through pentadic analysis. No trial in recent history consumed as much media and public attention as the 2011 Florida criminal trial against Casey Anthony for the murder of her two-year-old daughter.<sup>7</sup> News agencies devoted significant coverage to analyzing the attorneys' every move throughout the case, including their various legal statements and arguments.<sup>8</sup> This article offers an in-depth analysis of the trial attorneys' opening statements in the Casey Anthony jury trial and how their competing narratives functioned against each other through a rhetorical lens.

The following sections introduce pentadic analysis as a rhetorical theory and apply it to the two competing opening statement narratives (prose-

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5. See generally KENNETH BURKE, A GRAMMAR OF MOTIVES (1945). Kenneth Burke is a leading literary theorist that proposed "dramatism" as a way to analyze language and thought as "modes of action" to explain a particular motive in word choice. *Id.* at xxii. "Dramatism" uses the pentadic terms to help explain motives or "why, with a whole world of terms to choose from, we select these rather than some others as basic. . ." *Id.* at xv. Burke states that "[m]en may violently disagree about the purposes behind a given act, or about the character of the person who did it, or how he did it, or in what kind of situation he acted; or they may even insist upon totally different words to name the act itself." *Id.* The pentadic analysis is explained further in Part II.

6. *Id.* at xv.

7. See Tom Geoghegan, *Casey Anthony: The Case That Gripped the US*, BBC NEWS (July 5, 2011), <http://www.bbc.com/news/magazine-13986356> (comparing the media coverage and public attention to the likes of O.J. Simpson, Michael Jackson, and the Menendez brothers).

8. See, e.g., Elizabeth Flock, *Casey Anthony Trial: Prosecution, Defense Give Very Different Theories on Death of Caylee Anthony*, WASH. POST (May 24, 2011), [https://www.washingtonpost.com/national/casey-anthony-trial-prosecution-defense-give-very-different-theories-on-death-of-caylee-anthony/2011/05/24/AF39hiAH\\_story.html?utm\\_term=.cca9b22622b3](https://www.washingtonpost.com/national/casey-anthony-trial-prosecution-defense-give-very-different-theories-on-death-of-caylee-anthony/2011/05/24/AF39hiAH_story.html?utm_term=.cca9b22622b3); David Lohr, *Casey Anthony Trial: Closing Arguments Bring High Drama*, HUFFINGTON POST (July 3, 2011, 7:09 PM), [http://www.huffingtonpost.com/2011/07/03/casey-anthony-closing-arguments\\_n\\_889555.html](http://www.huffingtonpost.com/2011/07/03/casey-anthony-closing-arguments_n_889555.html).

cution and defense) in the Casey Anthony trial. Various rhetorical themes will emerge throughout this analysis, illustrating the tactical nature of narratives in litigation practice. Part II provides a background of the current literature on narratives in opening statements, as well as a review of pentadic analysis in rhetorical theory. Part III introduces the Casey Anthony trial and analyzes the opening statement narratives through pentadic analysis. Comparing the two narratives will reveal that certain pentadic terms and descriptions are emphasized or minimized for various strategic reasons. Practical application of pentadic analysis to actual opening statement narratives, like those in the Casey Anthony trial, will assist legal practitioners and trial attorneys in future cases to strategically use pentadic terms and create persuasive opening statement narratives. They can also identify and anticipate pentadic terms that may be emphasized or minimized in competing narratives and develop persuasive counter-arguments.

## II. BACKGROUND

### A. *Narratives and Storytelling in Litigation Practice*

Research and literature on narrative analysis and law has focused on the analogy that trial narratives progress similarly to the stages of a drama.<sup>9</sup> Like a drama, a trial begins with a *prologue* (preface/introduction), followed immediately with the creation of *rising action* (exposition of characters, scene, relationships, and targeted audience).<sup>10</sup> Next, the advocate details *complications* (a result of oppositions between characters, actions, and events).<sup>11</sup> *Climax* (disputed actions of characters) results from the complications.<sup>12</sup> Finally, the advocate offers a *resolution* and an *epilogue* (the consequence) to conclude the drama.<sup>13</sup> These dramatic stages similarly evolve throughout a trial as attorneys present narrative events.

This line of research and literature does not focus on a single component of a court trial—like an opening statement or closing argument—but rather analyzes each component of the trial as essential constituents to a comprehensive narrative.<sup>14</sup> These trial components include opening state-

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9. See, e.g., Robert P. Burns, *Narrative and Drama in the American Trial* 13–14 (NW. U. Sch. L. Scholarly Commons, Working Paper No. 201, 2012) (“Because the trial is a performance, the jury may judge in a direct, ‘prepredicative’ way, whether a particular story or a particular argument ‘rings true.’”); APPLIED COMMUNICATION THEORY AND RESEARCH 245 (Dan O’Hair & Gary L. Kreps eds., 1990) (providing an overview of rhetorical and communication research on legal communication including courtroom drama and storytelling); SCHUETZ, *supra* note 2, at 21 (discussing stages in a trial drama).

10. SCHUETZ, *supra* note 2, at 21 (discussing stages in a trial drama). The rising action is typically explained and presented during the opening statement. *Id.*

11. *Id.*

12. *Id.* The climax parallels a closing argument as attorneys explain what legal consequences should result from the complications presented during the case in chief. *See id.*

13. *Id.* at 22.

14. See *supra* note 9 and accompanying text.

ments, closing arguments, voir dire, testimony, evidence presentation, objections, rebuttals, impeachments, cross-examinations, etc. Rhetorical analysis focuses on how these trial components complement or conflict with each other to construct narratives throughout the trial.<sup>15</sup> Current literature then analyzes this constructed narrative for consistency, believability, and the ultimate ability to persuade a fact finder.<sup>16</sup>

Integral in this line of research is studying how litigation attorneys can effectively expose weaknesses in an opposing counsel's narrative:

There are also deconstructive devices at play in the trial. Cross-examination serves to deconstruct or disrupt the meaningful narrative of direct examination. Cross may construct a competing narrative to the one the witness has told, may reveal facts omitted from an artful direct examination that are broadly "incoherent" with the meaning the direct examiner sought to convey (that change its meaning or challenge its plausibility).<sup>17</sup>

An attorney may also challenge an opposing counsel's story by redefining or constructing it anew as the trial unfolds. For example, an attorney may stress that certain witness testimony is unreliable, expose a direct lie, or point out inconsistencies, all in an effort to bolster one's own narrative while showing deficiencies in the other.<sup>18</sup> Evaluating and comparing the attorney's ability to engage in effective storytelling is also of particular concern.<sup>19</sup> Thus, rhetorical analysis traditionally focuses on the entire trial as a single narrative rather than examining the carefully crafted, predetermined rhetoric presented in a single trial component, like an opening statement. Although studying the components of an entire trial undeniably benefits the expansion of rhetorical knowledge and the law, the single most important rhetorical artifact in a court trial is a carefully crafted, predetermined narrative offered in an opening statement.<sup>20</sup>

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15. See, e.g., Burns, *supra* note 9, at 11.

16. *Id.* at 5 ("Empirical investigators have found that it is through these narratives that the jurors organize the vast amounts of information that come to the jury in the course of the trial.").

17. *Id.* at 11.

18. *Id.*

19. See SCHUETZ, *supra* note 2, at 20; Gerald Reading Powell, *Opening Statements: The Art of Storytelling*, 31 STETSON L. REV. 89, 90 (2001) (discussing how trial lawyers use the art of storytelling in opening statements to create lasting mental images).

20. See, e.g., Burns, *supra* note 9, at 5 (finding that it is through narratives in opening statements that jurors "organize the vast amounts of information that come to the jury in the course of the trial"); THOMAS A. MAUET, TRIAL TECHNIQUES 61 (7th ed. 2007); THOMAS A. MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION 85 (2005); PETER MURRAY, BASIC TRIAL ADVOCACY 97 (1995); GERRY SPENCE, WIN YOUR CASE 127-28 (2005) (stating the opening statement is the most critical element of the court trial); Shelly C. Spiecker & Debra L. Worthington, *The Influence of Opening Statement/Closing Argument Organizational Strategy on Juror Verdict and Damage Awards*, 27 L. & HUM. BEHAV. 437, 437 (2003) ("[M]ost agree, and research demonstrates the opening statement is important because it creates a schema or 'framework' through which jurors filter the subsequent presentation of evidence.").

### B. Narratives and Storytelling in Opening Statements

Jurors form strong initial impressions during opening statements that have profound impact on the trial's outcome; therefore, the opening statement merits further research and rhetorical analysis.<sup>21</sup> The opening statement "forms the framework from which the jurors will evaluate the evidence, the parties, and the lawyers for the rest of the trial. Because of this, opening statements have a powerful influence on the eventual verdict."<sup>22</sup> Indeed, by the end of the opening statement, 85 percent of all jurors have made up their minds and decided the case.<sup>23</sup>

The opening statement is generally considered the trial component that makes or breaks the outcome of a case—verdicts are often decided based on impressions made in the opening statement.<sup>24</sup> The purpose of an opening statement is to "preview the underlying story structure of the case and thereby establish a perceptual framework for jurors into which the rest of the trial fits."<sup>25</sup> An attorney is only mildly restricted in what rhetoric can be presented in an opening statement; mainly, information that the attorney presents must fit within the scope of introducing jurors to the nature of the case and the issues involved.<sup>26</sup> With minimal restraints during opening statements, litigation attorneys favor using narratives as a rhetorical strategy to capture the jurors' attention.<sup>27</sup> An attorney's responsibility is to "help clients formulate the most persuasive story from the evidentiary materials available."<sup>28</sup> By setting the scene during opening statements, the attorney allows the jury to visualize through the development of verbal pictures.<sup>29</sup> Opening statements help jurors "make sense of the evidence by envisioning the scene and actions of the defendants in relation to the scene."<sup>30</sup>

Further, the narratives are inherently emotional in nature and supplement appealing to logic: "[A]s trial lawyers like to say, part of the goal of an effective opening statement is to persuade the jury to *want* to rule for

21. Thorne, *supra* note 4, at 8 (citing MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION, *supra* note 20, at 90–93).

22. MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION *supra* note 20, at 85.

23. SPENCE, *supra* note 20, at 128.

24. MAUET, TRIAL TECHNIQUES, *supra* note 20, at 61.

25. SCHUETZ, *supra* note 2, at 110.

26. *Id.* at 42.

27. See Spiecker & Worthington, *supra* note 20, at 438 (citing numerous sources that have "sung the praises" of narratives and storytelling in opening statements); MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION, *supra* note 20, at 90; Burns, *supra* note 9, at 5 (opening statements tell a "God's eye" version of events).

28. David N. Rosen, *Rhetoric and Result in the Bobby Seale Trial*, in LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 110, 112 (Peter Brooks & Paul Gewirtz eds., 1996).

29. MAUET, TRIAL TECHNIQUES, *supra* note 20, at 76.

30. SCHUETZ, *supra* note 2, at 111; see also Powell, *supra* note 19 (discussing emotions, character traits, word choice, and delivery tactics in storytelling and calls for trial attorneys to recognize that they are effectively storytellers).

your client by an appeal to feelings as well as logic.”<sup>31</sup> One researcher interviewed twenty trial attorneys to learn how litigators use storytelling and narratives in opening statements.<sup>32</sup> The study focused on when attorneys use storytelling, what makes an effective story, what role storytelling plays in opening statements, and how often attorneys use storytelling.<sup>33</sup> The most frequently mentioned role of storytelling was gaining juror interest and providing jurors with something to remember, followed closely by explaining the background of the case.<sup>34</sup> An “effective” narrative is one that is highly relevant to the case, yet also interesting and memorable to the jurors.<sup>35</sup> The study also found that delivering an effective narrative in opening statements is particularly important because “[j]ury trials are re-creations of reality. It is the duty of lawyers to make their version of reality more convincing than the opponent’s version. . . .”<sup>36</sup> Effective storytelling in opening statements ultimately focuses on the person or people who make up the scene, as an appeal to emotions and feelings, and not just the particular legal issue in the case.<sup>37</sup> These findings demonstrate that attorneys’ roles are not just law-related, but also include the ability to create and deliver compelling stories.

Carefully structured narratives in opening statements contain key terms found in any story or drama: characters, plot, scene, outcomes of actions, etc.<sup>38</sup> Strategically depicting or framing these terms “persuade[s] to the extent that the stories connect the evidence and facts about the scene, the key characters, the plot, the action, and the point of the story to the indictments.”<sup>39</sup> While every narrative contains these terms, each is portrayed in varying degrees of detail, and attorneys will “choose to highlight some while downplaying others.”<sup>40</sup>

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31. Burns, *supra* note 9, at 6.

32. *See generally* Thorne, *supra* note 4.

33. *Id.* at 20.

34. *Id.* at 22.

35. *Id.* at 23.

36. *Id.* at 4 (citing MAUET, TRIALS: STRATEGY, SKILLS, AND THE NEW POWER OF PERSUASION, *supra* note 20, at 1).

37. MAUET, TRIAL TECHNIQUES, *supra* note 20, at 64.

38. *See generally* Thorne, *supra* note 4.

39. SCHUETZ, *supra* note 2, at 130.

40. Elizabeth A. Dickinson, *The Montana Meth Project: Applying Burke’s Dramatistic Pentad to a Persuasive Anti-Drug Media Campaign*, 23 COMM. TCHR. 126, 127 (2009). This undergraduate lesson plan proposes applying Burke’s pentadic terms to a media campaign, another type of storytelling narrative. *See id.* This lesson helps students understand the motives behind certain word or narrative choice by comparing what pentadic terms are emphasized or minimized. *Id.* at 127–28. Similarly, the pentadic analysis can be applied to other narratives, such as opening statements, to better understanding how rhetorical strategies are created, what motives are behind these strategies, and how narratives persuade the fact finder.

### C. Pentadic Analysis

The late Kenneth Burke, a leading literary theorist in rhetoric, lends a pentadic analysis that guides this research.<sup>41</sup> His approach, proposed in the 1960s, requires analyzing a narrative for five specific terms, known as the pentad: (1) what was done (act); (2) when or where it was done (scene); (3) who did it (agent); (4) how he or she did it (agency); and (5) why did he or she do it (purpose).<sup>42</sup> The analysis requires a two-step process.

The first step is to identify and label each of the five pentadic terms “from the perspective of the rhetor” (in this instance the attorney presenting the narrative to the fact finder).<sup>43</sup> The term “act” includes what took place in a motivated and purposeful action.<sup>44</sup> In a criminal trial, the act will typically align with the resulting crime that occurred, such as the homicide or death of a person.<sup>45</sup> The term “scene” includes the background of the act, the situation in which it occurred, and any potential social influence that may impact the act.<sup>46</sup> This involves both the physical location and the contextual situation to describe the scene (occasion, event, time, place, historical period, etc.).<sup>47</sup> The term “agent,” as described by the rhetor, identifies who performed the act, both in general and specific terms.<sup>48</sup> The agent(s) can include the defendant or the victim to a crime, depending on prosecution and defense strategies, and can in some situations include important witnesses, entities, or organizations. The term “agency” includes the instruments the agent used to perform the act.<sup>49</sup> In a criminal trial narrative, this will likely include how a person committed the resulting crime.<sup>50</sup> Finally,

41. See generally BURKE, *supra* note 5 and accompanying text. Burke describes the pentadic analysis more as “dramatism,” because the analysis focuses on motives behind the choice of language or thought, which he considers to be “modes of action.” *Id.* at xxii.

42. *Id.* at xv.

43. See SONJA K. FOSS, RHETORICAL CRITICISM: EXPLORATION AND PRACTICE 357–58 (4th ed. 2009). When analyzing a narrative, some descriptions or labels may appear to be one type of term, when in reality the intent is to function as another type of term. Identifying the term descriptions and labels should not be confused. See *id.* at 358.

44. *Id.* at 358 (citing BURKE, *supra* note 5, at 227–74 (providing an in-depth discussion of the act)).

45. This is not to be confused with how a criminal defendant committed the crime, which more aligns with the agency (the instruments) the person used to perform the act. Indeed, most criminal statutes require that the defendant did or failed to do a certain act that, under the circumstances in which it was committed, is a crime. See, e.g., FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES § 7.2 (2015), [http://www.floridasupremecourt.org/jury\\_instructions/chapters/chapter7/p2c7s7.2.rtf](http://www.floridasupremecourt.org/jury_instructions/chapters/chapter7/p2c7s7.2.rtf) [hereinafter Standard Jury Instruction 7.2] (describing first-degree murder under Florida Statute as requiring a death be “caused by the criminal act” of the defendant, and the act defined as a “series of related actions arising from and performed pursuant to a single design or purpose”). This is the agency in which the defendant, who is likely an agent, committed the act. See also Murder, FLA. STAT. § 782.04(1)(a)(1) (2017).

46. FOSS, *supra* note 43, at 358 (citing BURKE, *supra* note 5, at xvi, 12, 77, 84, 85, 90).

47. *Id.*

48. *Id.* (citing BURKE, *supra* note 5, at 20, 171–226).

49. *Id.* (citing BURKE, *supra* note 5, at 275–320).

50. See *infra* text accompanying note 52.

the term “purpose” identifies why the agent performed the act—the reason or outcome he or she strived for—which may be obvious and recognizable, covert and hidden, layered and distracting, selfish, etc.<sup>51</sup> In the legal arena, the purpose closely aligns with the actor’s *mens rea*, intent, or premeditation.<sup>52</sup> However, the purpose is not necessarily synonymous with motive; purpose is simply what the agent intends to accomplish by performing the act.<sup>53</sup>

The second step requires pairing the pentadic terms to create ratios (i.e., Act-Scene; Act-Agent; Act-Purpose, etc., yielding twenty possible pairs in total) to determine if the description of the first term in the ratio influences the description of the second term:

The scene-act ratio, for example, grounds an act in its scene. So, for example, a person might portray his or her actions as the only possible option, given the setting. Or scene might serve as a justification for future action. Similarly, the scene-agent ratio might portray the agent as a product of his or her environment.<sup>54</sup>

Some ratios will reveal a significant relationship, while others will demonstrate little connection between the two terms.<sup>55</sup> This analysis should identify a pattern that emphasizes a controlling pentadic term, which is “the most important term among the five and the term through which everything else happens.”<sup>56</sup> This emphasis will limit the interpretation of other terms; in emphasizing one term, a rhetor ends up “recreating the other[ ] [terms] in its image.”<sup>57</sup> Uncovering the emphasized terms reveals where the rhetor directs or deflects attention, and why.<sup>58</sup> Thus, conducting a pentadic analysis and discovering the dominant term “provides insight into what dimension of the situation the rhetor privileges or sees as most important.”<sup>59</sup>

Literary theorist Kenneth Burke proposes that his analysis will lead to a grander revelation, in that the controlling term reveals a larger philosophical worldview of the rhetor.<sup>60</sup> If analysis shows that the act is emphasized in a particular narrative, the rhetor’s associated worldview is “realism,” or

51. FOSS, *supra* note 43, at 358 (citing BURKE, *supra* note 5, at 275–320).

52. *See, e.g.*, Standard Jury Instruction 7.2, *supra* note 45 (“‘Killing with premeditation’ is killing after consciously deciding to do so. The decision must be present in the mind at the time of the killing. The law does not fix the exact period of time that must pass between the formation of the premeditated intent to kill and the killing. The period of time must be long enough to allow reflection by the defendant. The premeditated intent to kill must be formed before the killing.”).

53. *See* FOSS, *supra* note 43, at 358.

54. BURKE, *supra* note 5, at 67; *see also* Dickinson, *supra* note 40, at 127 (similarly proposing to apply the pentadic analysis through ratios or comparing how the emphasis of certain terms influence others).

55. *See* FOSS, *supra* note 43, at 361.

56. *Id.* at 360; *see also* BURKE, *supra* note 5, at 67.

57. BURKE, *supra* note 5, at 136.

58. FOSS, *supra* note 43, at 363.

59. *Id.* at 360.

60. BURKE, *supra* note 5, at 3–20.

the doctrine that universal principles and properties exist independent of a person's senses, observations, or beliefs.<sup>61</sup> Conversely, if the scene emerges as the controlling term, the rhetor's philosophical worldview is "materialism," the belief that facts and reality are explainable "in terms of matter and motion of physical laws."<sup>62</sup> The philosophical worldview "idealism"—the thought that reality is mentally constructed and human ideas (beliefs and values) shape society—aligns when agent is identified as the controlling term.<sup>63</sup> When agency emerges as the controlling term, the corresponding philosophical worldview is "pragmatism," a concern with the interaction between organism and the environment (how to achieve a goal and what are the consequences of that action).<sup>64</sup> Finally, if purpose is the dominant term, the philosophical worldview is "mysticism," a spiritual belief in truth where individualism disappears and a person is unified with a universal purpose, and reality can be obtained through subjective experience.<sup>65</sup> Despite these philosophical worldviews, an important distinction should be made for the legal arena because attorneys are often tasked to create narratives on behalf of clients that are not representative of the attorneys' own personal views.<sup>66</sup> Attorneys "often develop the terms of a pentad to construct a worldview as they advocate for a client, but that worldview and the motive it reveals are not representative of their personal perspective on the situation."<sup>67</sup>

#### D. Purpose and Rationale

Our research establishes which terms are emphasized and minimized in two competing narratives, the motives behind a particular narrative choice, and the function of narratives in persuading the fact finder. To accomplish this task, we chose to parse the opening statements offered in the Casey Anthony trial to identify the terms that drive each attorney's narrative as each creates a worldview that he or she believes will resonate with jurors.<sup>68</sup> This American criminal trial rich in media, public attention, and emotion is an obvious choice to study, and "[o]f all of law's narrative are-

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61. See Foss, *supra* note 43, at 363; *Realism*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, (last updated Oct. 2, 2014), <https://plato.stanford.edu/entries/realism/>.

62. Foss, *supra* note 43, at 363; see also Adam Frank, *Mind, Matter and Materialism*, NPR (Mar. 26, 2017), <http://www.npr.org/sections/13.7/2017/03/26/521478684/mind-matter-and-materialism> (describing materialism as the mind and consciousness being reduced to the behavior of physical matter).

63. See Foss, *supra* note 43, at 363.

64. *Id.*

65. See *id.*; see also Jerome Gellman, *Mysticism*, STAN. ENCYCLOPEDIA OF PHIL., <https://plato.stanford.edu/entries/mysticism/> (last updated Jul. 31, 2018).

66. Similarly, terms may not be weighted equally in a court of law, given other circumstances at play including the burden of proof, the applicable law in the case, and the issues in dispute between the parties.

67. Foss, *supra* note 43, at 364.

68. See *id.* at 356 (rhetorical analysis can "show how a speaker's choice of primary term allows him or her to identify with particular audiences who tend to interpret reality from the centerpoint of one term.").

nas, the criminal [trial] most fully engages the public's narrative desires."<sup>69</sup> The following questions guide the analysis:<sup>70</sup>

Question 1: Which narrative pentadic terms are emphasized or favored in the prosecution's opening statement narrative—the *act* (action/plot), *scene* (where the action took place), *agent* (character), *agency* (instruments used in the act), or *purpose* (why the act in question was performed)? Which terms are emphasized in the defense's opening statement narrative?

Question 2: Which terms are de-emphasized or minimized in the prosecution's opening statement narrative? Which terms are de-emphasized or minimized in the defense's opening statement narrative?

Question 3: How do the two narratives function rhetorically to compete against each other, and ultimately contribute to persuading the fact finder?

This study ultimately expands on current literature by not only calling on those in the legal arena to recognize attorneys' roles as effective storytellers, but also by demonstrating the intricacies of creating an opening statement narrative as it stands to function against a competing narrative. We offer practical implications following the analysis.

### III. ANALYSIS

Analyzing the audio and written transcripts of the opening statements in the Casey Anthony trial offers a significant insight into the attorneys' motives and how their narrative choices functioned to persuade the fact finder. The following section first provides a contextual background into the case and evidence against Casey Anthony. The analysis then identifies and labels the five pentadic terms as told in each opening statement narrative. Next, the analysis pairs these terms, creating ratios to determine which terms control. Finally, several conclusions are drawn that discuss the importance of storytelling in litigation practice, specifically how rhetorical strategies can be used to create persuasive opening statement narratives.

#### A. State of Florida v. Casey Marie Anthony

This section provides a brief factual background and overview of the case against Casey Anthony. Two-year-old Caylee Anthony was last seen

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69. LAW'S STORIES: NARRATIVE AND RHETORIC IN THE LAW 2-3 (Peter Brooks & Paul Gewirtz eds., 1996).

70. These research questions were developed by the authors based on this particular study. Future studies applying Burke's pentadic analysis in the legal arena may require other types or varied research questions.

alive on June 16, 2008.<sup>71</sup> Casey, the twenty-five-year-old mother of Caylee, moved out of the home of her parents, Cindy and George Anthony, around the time Caylee went missing.<sup>72</sup> On June 18, Casey borrowed a shovel from George's neighbor and returned it an hour later.<sup>73</sup> For the next few weeks, surveillance videos caught Casey running errands at several department stores, a bank, and a movie rental store—all without Caylee.<sup>74</sup> When, after not having seen her granddaughter for several weeks, Cindy inquired about Caylee's whereabouts, Casey replied that she was with her nanny.<sup>75</sup>

On June 30, Casey's car was towed after being found abandoned.<sup>76</sup> Her father George picked up the car from a tow yard on July 15, where it was observed to have a strong odor.<sup>77</sup> Later that day, Casey told her mother and her brother, Lee Anthony, that the nanny had kidnapped Caylee and she had not seen her daughter in a month.<sup>78</sup> Cindy called 911 and law enforcement immediately responded.<sup>79</sup> Casey took investigators to a vacant apartment where she claimed the nanny lived;<sup>80</sup> investigators never found a nanny, and a woman matching the alleged nanny's name denied ever meeting Caylee.<sup>81</sup> Investigators then took Casey to Universal Studios where she claimed to work, but she eventually admitted to lying about her employment.<sup>82</sup>

On October 14, Casey was indicted on charges of first-degree murder, aggravated manslaughter, aggravated child abuse, and lying to police.<sup>83</sup> On December 11, Caylee's skeletal remains were found less than a mile from the home of Casey's parents, with duct tape covering her face.<sup>84</sup> On May 24, 2011, Casey's jury trial began in Orlando, Florida.<sup>85</sup>

71. *Timeline in the Casey Anthony Case*, SAN DIEGO UNION-TRIB. (July 3, 2011, 7:09 PM), <http://www.sandiegouniontribune.com/sdut-timeline-in-the-casey-anthony-case-2011jul17-story.html> [hereinafter *Timeline*].

72. *See id.*; Ashley Hayes, *Casey Anthony Trial Ends Early as Judge Says She's Ill*, CNN (June 9, 2011, 11:44 PM), <http://www.cnn.com/2011/CRIME/06/09/florida.casey.anthony.trial/index.html>.

73. *Timeline*, *supra* note 71.

74. *Id.*

75. *See Hayes*, *supra* note 72.

76. *Casey Anthony Trial: Timeline of Key Events in the Murder Trial of the Florida Mother*, ABC NEWS (July 6, 2011), <http://abcnews.go.com/US/casey-anthony-trial-timeline-key-events/story?id=13990853> [hereinafter *ABC NEWS*].

77. *Timeline*, *supra* note 71.

78. *Id.*

79. ABC NEWS, *supra* note 76.

80. *Timeline*, *supra* note 71; ABC NEWS, *supra* note 76.

81. *See Hayes*, *supra* note 72.

82. *Timeline*, *supra* note 71.

83. *Id.*; *see also* Murder, FLA. STAT. § 782.04(1)(a)(1) (2017) (“[U]nlawful killing of a human being . . . [w]hen perpetrated from a premeditated design to effect the death of the person killed . . .”).

84. Hayes, *supra* note 72.

85. *Timeline*, *supra* note 71.

Both the prosecution and defense generally agreed upon the above factual summation, however, their opening statements presented staggeringly different narratives. Applying a cross-comparative pentadic analysis of the opening statement narratives will identify the controlling pentadic terms and descriptions surrounding Caylee's disappearance.

### B. Prosecution Analysis and Discussion

The prosecution's opening statement described the following pentadic terms surrounding Caylee's death.<sup>86</sup> Each emphasized term will be analyzed further in turn.

TABLE 1 PROSECUTION'S OPENING STATEMENT

<b>Act</b>	<ul style="list-style-type: none"> <li>• The death of Caylee Anthony</li> </ul>
<b>Scenes</b>	<ul style="list-style-type: none"> <li>• Orlando, Florida</li> <li>• Cindy and George Anthony's residence on Hopespring Drive</li> <li>• The wooded area near Hopespring Drive where Caylee Anthony's remains were found</li> <li>• Universal Studies in Orlando, Florida, where Casey Anthony falsely claimed she was employed</li> <li>• Tampa, Florida, where Casey Anthony falsely claimed she attended a work conference</li> <li>• The apartment of Tony Lazzaro, Casey Anthony's boyfriend, in Orlando, Florida, where Casey Anthony stayed while claiming she was in Tampa</li> </ul>
<b>Agencies</b>	<ul style="list-style-type: none"> <li>• Car: Casey Anthony's Pontiac Sunfire was towed and later smelled of a decomposing human body</li> <li>• Chloroform:<sup>87</sup> A high concentration was found in Casey Anthony's car and searches of "chloroform" were found on the home computer</li> <li>• Shovel: Casey borrowed a shovel from the neighbor</li> <li>• Duct Tape: The same brand was found on Caylee Anthony's remains and on gas cans in George Anthony's garage</li> </ul>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>• Freedom from the responsibilities of being a parent</li> </ul>
<b>Agents</b>	<ul style="list-style-type: none"> <li>• Casey Anthony: Pregnant at age nineteen and prone to lying (i.e., fake employment history and fake nanny)</li> <li>• Caylee Anthony: Casey Anthony's two-year-old daughter, a little girl that enjoyed swimming; last seen alive on June 16, 2008</li> </ul>

86. The authors reviewed and analyzed the prosecution opening statements on YouTube. See Croakerqueen123, *Casey Anthony Trial - Prosecution Opening Statements - Part 1*, YouTube (Sept. 8, 2013), <https://www.youtube.com/watch?v=c5iH5RZJOE4> [hereinafter *Prosecution Part One*]; Casey Anthony Trial - *Prosecution Opening Statements Part Two*, YouTube (Sept. 8, 2013), <https://www.youtube.com/watch?v=kixtzFhZyOU> [hereinafter *Prosecution Part Two*]. A transcript of the opening statement is on file with the authors.

87. Chloroform is a toxic liquid historically used for anesthesia, but today the substance is only used in industry to mix and produce other chemicals. See *Public Health Statement for Chloroform*, Agency for Toxic Substances and Disease Registry (Sept. 1997), <https://www.atsdr.cdc.gov/PHS/PHS.asp?id=51&tid=16>.

- George Anthony: Father of Casey Anthony and grandfather of Caylee Anthony; referred to by Caylee Anthony as “JoJo”; former police detective and held security jobs
- Cindy Anthony: Mother of Casey Anthony and grandmother of Caylee Anthony; nurse who worked her way to manager position; portrayed as worried and persistent
- Lee Anthony: Older brother of Casey Anthony
- Tony Lazzaro: Casey Anthony’s boyfriend
- Zenaïda or “Zani”: Caylee Anthony’s “nanny,” who allegedly cared for Caylee in days and weeks before she was reported missing

The act—Caylee Anthony’s death—received minimal attention, likely because the parties primarily disputed the actual act (murder vs. accident). Instead, the prosecutor focused on introducing depictions of Casey Anthony, identifying the agencies, and proposing the purpose or intent of the act.<sup>88</sup> Thus, the prosecutor strategically closed the inferential gap between the suggested act (Caylee’s murder) and the primary agent (her mother Casey) through rhetorical choices that most strongly favored agent as the emphasized term. Agency and purpose also emerged as dominant terms. Each emphasized term will be discussed according to its prominence in the narrative.

### 1. Agent

Narratives that emphasize agent are structured around an idealist worldview, or the philosophy that reality is based on individual experiences, beliefs, and values, and that individuals can shape society through obstinate manipulation of their surroundings.<sup>89</sup> Thus, by emphasizing agent, the prosecuting attorney is able to imply that such a heinous act could have only been carried out by a compulsive, lying, and disturbed agent. The prosecution’s narrative first depicted Casey Anthony as a morally corrupt, dishonest individual:

[T]hey [Casey Anthony and authorities] get to the security gate at Universal Studios. And she’s denied access. They’re suggesting she doesn’t work here. They ask her for identification. She tells them, “I forgot it, and I don’t have it.” [. . .] And you will hear testimony that Casey Anthony walks with purpose through that security gate, and heads towards an administration building, walks in and, true to what we’ve seen—or what you will see—during this case, she’s at the end of the hall. And she puts her hands in her back pocket, and smiles.

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88. In the legal arena, much of these details would embody circumstantial evidence.

89. BURKE, *supra* note 5, at 19 (discussing how emphasizing agent allows the rhetor the ability to manipulate the act or scene appropriately to “create a state of unity between himself and the world”); FOSS, *supra* note 43, at 356 (“A rhetor who perceives that one person is the cause of a particular problem, for example, will use rhetoric that names that perception.”).

“Alright, I don’t work here.”<sup>90</sup>

The prosecutor continued to remind jurors that her place of employment was not the only lie Casey told; she also lied about hiring a nanny to care for her daughter Caylee: “You will learn during the testimony and evidence in this case, there is no [nanny]. Like Casey Anthony’s job, Casey Anthony’s babysitter was a figment of her imagination.”<sup>91</sup> Additionally, Casey lied about her daughter’s whereabouts, claiming the nanny kidnapped Caylee: “She can’t get out of the corner that she has painted herself into, when her back is up against the wall and when the stakes increase, what does Casey Anthony do? What does she do? Casey Anthony comes up with a new, a bigger, and a better lie.”<sup>92</sup> Clearly the prosecutor’s goal was to depict Casey as a serial liar. This narrative functions rhetorically to position Casey as a corrupt and disturbed individual capable of committing a strong and disturbing criminal act and easily able to manipulate her surroundings and reality through falsehoods.

Next, the prosecutor described the emotional scene at which Caylee’s remains were found, while simultaneously alluding to the act:

Caylee Marie Anthony had been wrapped in a Winnie the Pooh blanket, stuffed into multiple garbage bags, shoved into a laundry bag, and thrown into a littered swamp like she was just another piece of trash. . . . [D]uct tape covered the nose and mouth area of that tiny human skull. A cotton and polyester backing of that duct tape was disintegrating in the harsh environment in which she lay. You will learn that three pieces of overlapping duct tape covered the nose and mouth of Caylee Anthony. And you will learn that the duct tape was placed on her prior to decomposition as it held the mandible, or the jaw, to the head. You will learn that the duct tape was stuck in the hair, indicating that Caylee’s killer never intended that it be removed.<sup>93</sup>

This heavy rhetoric (i.e., “thrown into a littered swamp like she was just another piece of trash”) insinuates that such an act could only be carried out by a morally corrupt individual. Describing such a strong act can only be made possible by first describing Casey as the strong agent.

Later, Cindy Anthony entered the narrative as another agent, but was contrastingly described as a worried, persistent, and doting grandmother:

At this point Cindy Anthony is not going to be denied access to her granddaughter, who has now been gone for a month. Casey Anthony tries the same old [nanny] story, with Cindy, but Cindy Anthony will not be denied access to her granddaughter. And since Casey Anthony is stonewalling, telling her mother she

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90. *Prosecution Part Two*, *supra* note 86, at 21:41–23:01.

91. *Prosecution Part One*, *supra* note 86, at 16:59–17:22.

92. *Prosecution Part Two*, *supra* note 86, at 3:16–3:52.

93. *Id.* at 44:40–47:52.

doesn't want to upset Caylee, she doesn't want to disrupt this routine that they're in, Caylee's going to be upset, Cindy has had enough. And decides that the only way I am going to get access to my granddaughter is to get the police involved.<sup>94</sup>

Cindy is also portrayed as calling 911 in a frenzied panic after Casey told her that Caylee had been kidnapped.<sup>95</sup> Recounting Cindy's behavior serves as a point of reference for the jury to compare how Casey should have acted if a nanny really did kidnap her daughter. Unlike Casey, Cindy embodied all of the characteristics that a distressed relative should possess upon realization that a loved one is missing and/or kidnapped. Contrasting agent behaviors, in this case Casey with her mother Cindy, rhetorically serves to advance the attorney's description of Casey as the controlling agent. Emphasizing agent as a controlling term in the pentad invites the jury to bridge Casey as the agent to the criminal act.

## 2. Agency

There are three elements for first-degree murder that the State of Florida must prove beyond a reasonable doubt to sustain a criminal conviction.<sup>96</sup> While the State had direct evidence (a deceased body) to satisfy the first element that the victim be deceased, the other two elements—death be caused by a criminal act and premeditation—were largely supported by circumstantial evidence.<sup>97</sup> This limited supporting evidence affected the prosecution's strategy during opening statements so that agency (duct tape, chloroform, and Casey Anthony's car) became a controlling term. Pairing agency with act and with agent yielded strong ratios and correlations. Emphasizing agency conveys a pragmatic worldview, one concerned with explaining how an act occurred and the consequences that follow.<sup>98</sup>

The prosecution's narrative detailed the primary agency as the duct tape found covering Caylee's face. Evidence indicated that this duct tape matched duct tape found on gas cans from inside George Anthony's garage, which Casey had previously taken around the time of Caylee's death:

You will learn that the brand and style of the duct tape are distinctive, and not widely available. You will learn that the Orange

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94. *Prosecution Part One*, *supra* note 86, at 1:02:26–1:03:36.

95. *Prosecution Part Two*, *supra* note 86, at 6:37–6:51.

96. Standard Jury Instruction 7.2, *supra* note 45.

97. *Id.*; see also Murder, FLA. STAT. § 782.04(1)(a)(1) (2017). Circumstantial evidence is defined as evidence “based on inference and not on personal knowledge or observation” and “[a]ll evidence that is not given by eyewitness testimony.” *Evidence*, BLACK'S LAW DICTIONARY (10th ed. 2014). Florida uses a “circumstantial evidence standard,” stating that “[w]here the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence.” *Jaramillo v. State*, 417 So. 2d 257, 257 (Fla. 1982) (quoting *McArthur v. State*, 351 So. 2d 972, 976 n.12 (Fla. 1977)).

98. Foss, *supra* note 43, at 363.

County Sheriff's Office executed a search warrant of the Anthony residence late in the evening of December 11th of 2008, and discovered that the gas cans that Casey Anthony took from her dad on June 23rd of 2008 had a piece of duct tape identical in appearance to the tape covering Caylee's nose and mouth. You will learn that a chemist from the Federal Bureau of Investigation determined that the tape was manufactured at the same time, using the same methods. You will learn that the duct tape identical in appearance to that on Caylee Anthony's face was used at the end of July on a missing child poster of Caylee Anthony. . . . [T]he only evidence indicating the cause of death of Caylee Marie Anthony are the three pieces of duct tape covering her nose and mouth.<sup>99</sup>

During this section of the narrative, the prosecution also portrayed Casey as financially unstable, as was evident by her need to steal her father's gas to fill her car's gas tank.<sup>100</sup> The prosecution rhetorically used Casey as an agent to connect the duct tape from George Anthony's garage to the duct tape found covering Caylee's remains. The duct tape was easily accessible to Casey, and she had previously removed items from her father's garage. With this information, the prosecution could request the jury make a reasonable inference that Casey chose this agency to commit the act; the prosecuting attorney was able to create this inference by pairing agency (duct tape) with the act (Caylee's murder and remains covered in duct tape).

Casey's car also became a clear choice for agency emphasis and another way to connect Casey to the act. When George Anthony reclaimed Casey's car from the repossessed vehicle lot "he notice[d] himself that there [was] an overpowering smell, [an] indescribable smell associated with that car."<sup>101</sup> The prosecuting attorney used scientific evidence to describe the smell, claiming that the State's expert will testify that "when he opened this can that was collected by the Orange County Sheriff's Office, that can contained samples of the spare tire covering the trunk, of Casey Anthony's car, he immediately recognized the unmistakable odor of human decomposition."<sup>102</sup> According to the prosecuting attorney, "[t]hese findings led to the inescapable conclusion that, in fact, a dead body had been in the trunk of Casey Anthony's car."<sup>103</sup> This narrative again illustrates an act grounded in the agencies that were available to Casey around the time of Caylee's disappearance.

Finally, internet searches for "chloroform" on the home computer also connected Casey, as agent, to the act:

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99. *Prosecution Part Two*, *supra* note 86, at 47:59–50:13.

100. *Id.* at 48:17–48:26.

101. *Prosecution Part One*, *supra* note 86, at 1:06:38–1:06:48.

102. *Prosecution Part Two*, *supra* note 86, at 35:19–35:40.

103. *Id.* at 33:30–33:40.

[T]he computer analysts were asked to perform a keyword search of the hard drive of that desktop computer for the word chloroform. And you will hear in this case testimony from Sandra Osborne, who is a forensic computer examiner, that her analysis of the computer revealed searches on March 17th and March 21st of 2008. What you will hear is that internet searches were conducted by a user in the Anthony home using Google. You will hear that on Monday, March 17th of 2008 between 1:43 and 1:55 in the afternoon, Google searches were done on that computer for the words chloroform, alcohol, acetone, and peroxide. You will hear that on Friday March 21st of 2008, between the hours of 2:16 and 2:28 pm, Google searches were conducted for, quote, how to make chloroform, quote, how to make chloroform with different spelling, quote, self-defense, quote, household weapons, quote, neck breaking, quote, shovel. In addition to those Google searches, there were Wikipedia searches conducted on March 17th of 2008, between the hours of 1:53 and 1:58 pm, for the words inhalation, chloroform, alcohol, acetone, peroxide, hydrogen peroxide, and death.<sup>104</sup>

The prosecution advanced a theory that Casey performed these internet searches and posited that chloroform served as the agency in committing the act:

Instrumental analysis found the highest concentration of chloroform that [the expert] has ever seen. And while he will tell you that small amounts of chloroform have been found in human decomposition under specific circumstances, his analysis of the evidence in this case show a concentration of chloroform thousands of times greater than he had seen produced by human decomposition alone. The amount that he detected simply cannot be accounted for by human decomposition alone.<sup>105</sup>

Emphasizing these agencies in the opening statement narrative allowed the prosecution to introduce its theory for how the act occurred: through a pragmatic application of the circumstantial evidence and agencies to the act. The prosecution then connected Casey as the agent to the act by focusing on Casey's access to, and opportunities to use, the agencies (duct tape, chloroform, and Casey's car) used to commit the act.

### 3. *Purpose*

In addition to agent and agency, purpose also emerged as a recurring and emphasized term in the prosecution's narrative. By focusing on purpose, the storyteller creates a philosophical worldview of mysticism, suggesting that an agent "carries out the kind of 'purpose' for which it is

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104. *Id.* at 38:48–40:54.

105. *Id.* at 36:35–37:14.

designed; and it serves a use in furthering the survival of the organism.”<sup>106</sup> Ultimately, an agent engages in a particular act as a necessary means to attain a certain goal.<sup>107</sup> The prosecution first introduced Casey’s purpose late in the opening statement, asking the jury to infer that she committed the act because her young daughter interfered with her desired lifestyle.<sup>108</sup> The prosecution’s emphasis on purpose focused on the benefits of a new and different life: “No one else benefited from the death of Caylee Marie Anthony. Caylee’s death allowed Casey Anthony to live the good life. At least for those 31 days.”<sup>109</sup> To support this claim, the prosecuting attorney emphasized various pieces of evidence suggesting this purpose: during the days of Caylee’s disappearance, surveillance video found Casey eating at restaurants, running various errands, and partying at clubs with her boyfriend.<sup>110</sup> In a criminal trial, the prosecutor’s emphasis on purpose in an opening statement helps introduce the *mens rea*, intent, and premeditation behind the defendant’s criminal act. This is especially important in an emotionally charged case where a mother is accused of murdering her child; in such a case, the jury undoubtedly must answer if defendant intended to commit such an act, and for what purpose or reason.

Applying a pentadic analysis to the prosecution’s opening statement narrative revealed several observations. First, the agent terms are clearly the controlling and emphasized terms in the pentad. Second, agency and purpose similarly emerge as dominant terms to accompany the agent. In a homicide case, the act (the death of another person) would seem obvious and appealing for a prosecutor to emphasize in an opening statement, but the jury is ultimately responsible for determining how the act occurred (murder vs. accident). Instead, the prosecution focused on the various tools available—evidence, facts, and natural inferences—for the jury to eventually conclude that the act was a murder. Third, by structuring the narrative around these terms, the prosecution presented a description of reality that, if accepted by jurors, would lead to the conclusion that (1) Casey, as an agent, was fully capable of carrying out a horrendous act; (2) Casey had access to the agencies used to commit the act; and (3) as a purpose, Casey intended to commit the act and had a vested interest in, and would benefit from, her daughter’s death. If accepted, these conclusions would invite the jury to render a guilty verdict.

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106. BURKE, *supra* note 5, at 279.

107. FOSS, *supra* note 43, at 356, 363.

108. *See Prosecution Part Two, supra* note 86, at 51:42–51:57.

109. *Id.*

110. *See Prosecution Part One, supra* note 86, at 43:36–48:55.

C. *Defense Analysis and Discussion*

The defense’s opening statement described the following pentadic terms surrounding the death of Caylee Anthony.<sup>111</sup>

TABLE 2 DEFENSE’S OPENING STATEMENT

<b>Acts</b>	<ul style="list-style-type: none"> <li>• The drowning of Caylee Anthony</li> <li>• The cover-up of Caylee Anthony’s drowning</li> </ul>
<b>Scenes</b>	<ul style="list-style-type: none"> <li>• Orlando, Florida</li> <li>• Cindy and George Anthony’s residence on Hopespring Drive</li> <li>• The wooded area near Hopespring Drive where Caylee Anthony’s remains were found</li> <li>• Casey Anthony’s abusive upbringing</li> </ul>
<b>Agencies</b>	<ul style="list-style-type: none"> <li>• Car: Casey Anthony’s Pontiac Sunfire was towed; when it was found it smelled of garbage</li> <li>• Duct Tape: The same brand was found on Caylee Anthony’s remains and on gas cans in George Anthony’s garage</li> </ul>
<b>Purpose</b>	<ul style="list-style-type: none"> <li>• Casey Anthony was afraid of the consequences</li> </ul>
<b>Agents</b>	<ul style="list-style-type: none"> <li>• Casey Anthony: Loving mother, survivor of childhood sexual abuse, and disturbed individual</li> <li>• Caylee Anthony: Two-year-old girl that enjoyed swimming</li> <li>• George Anthony: Casey Anthony’s father; sexually abused Casey Anthony; had an affair and lied about his employment in order to provide money to mistress; helped Casey Anthony cover up Caylee Anthony’s death</li> <li>• Crystal Holloway: George Anthony’s mistress</li> <li>• Cindy Anthony: Mother of Casey Anthony and grandmother of Caylee Anthony; worked as a nurse</li> <li>• Roy Cronk: Florida resident and utility worker who found Caylee Anthony’s remains; was considered to be unreliable</li> </ul>

The defense presented alternative descriptions for act, agent, and agencies to contradict the prosecution’s narrative descriptions. The defense also emphasized scene—Casey’s abusive upbringing—as the primary controlling term in the narrative to rationalize her erratic behavior leading up to and following Caylee’s death. Finally, the defense introduced and emphasized new agents to minimize Casey’s role in Caylee’s death.

1. *Alternative Descriptions for Act, Agent, and Agencies*

The defense first changed the prosecution’s description of the act from a “murder” to an “accidental drowning”: “No one ever told you what happened. . . . Today, you will be the first people to know exactly what happened to Caylee Marie Anthony. . . . She was never missing. Caylee

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111. The authors reviewed and analyzed the defense opening statements on YouTube. See Croakerqueen123, *Casey Anthony Trial - Defense Opening Statements*, YouTube (Sept. 8, 2013), <https://www.youtube.com/watch?v=kmt6bR1fwuI> [hereinafter *Defense*]. A transcript of the opening statement is on file with the authors.

Anthony died on June 16, 2008, when she drowned in her family swimming pool.”<sup>112</sup> The defense’s portrayal of Casey as an agent also differed immensely from the prosecution’s narrative. Rather than being described as a partyer whose lifestyle could not coexist with the responsibilities of motherhood, the defense portrayed Casey as “an excellent mother” who “adored her child.”<sup>113</sup>

The defense narrative also offered competing descriptions for two of the three key prosecution agencies. While the prosecution emphasized the car smelling of a decomposed body, the defense’s narrative described the agency as garbage to account for the smell: “She threw the garbage in the trunk of her car and like many of us forget sandwiches and leftovers and doggie bags, she forgot to throw out the trash. This is the same day she actually runs out of gas. That’s where the smell comes from.”<sup>114</sup> Additionally, whereas the prosecution’s narrative about the duct tape linked Casey to her child’s remains, the defense’s narrative identified George Anthony as having similar access to the duct tape. Ironically, George used duct tape to post missing person fliers around the city while Casey was in pretrial custody: “[They] told you that the only one who had access to this duct tape was Casey Anthony. Well that’s not true. That’s not true at all.”<sup>115</sup> Redefining the agents and agencies functioned rhetorically to distance Casey as an agent from both proposed acts—the murder and accidental drowning.

## 2. *Scene*

To further rationalize Casey’s erratic behavior leading up to and following Caylee’s death, the defense emphasized an allegedly abusive upbringing as a primary scene—this quickly emerged as the single most controlling term in the defense narrative. Absent from the prosecution’s narrative, the defense opened the flood gates to this emotionally charged claim, stating, “[I]t all began when Casey was eight years old and her father came into her room and began to touch her inappropriately. And it escalated, and it escalated. . . . You’ll be able to know, and see, what makes Casey Anthony behave the way she does.”<sup>116</sup> This scene put Casey’s behavior and actions into context: “On June 16, 2008, after Caylee died, Casey did what she’s been doing all her life, or for most of it, hiding her pain. Going into that dark corner and pretending that she does not live in the situation she’s living in.”<sup>117</sup> By emphasizing scene, the defense focused on a worldview of materialism to explain Casey’s behavior as a response to her surroundings; the matter and material interactions around her shaped her

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112. *Id.* at 1:20–7:44.

113. *Id.* at 10:45–11:36.

114. *Id.* at 1:12:10–1:12:28.

115. *Id.* at 33:53–34:06.

116. *Id.* at 11:53–12:46.

117. *Defense, supra* note 111, at 9:47–10:09.

perspective.<sup>118</sup> The defense attorney proposed that Casey acted a certain way (covering up the drowning), because it was the only way she knew how to behave given her abusive upbringing:

We are what we are because of who brought us into this world and how we were raised. Casey was raised to lie. This child, at eight years old, learned to lie immediately. She could be thirteen years old, have her father's penis in her mouth, and then go to school and play with other kids as if nothing ever happened. Nothing's wrong. That will help you understand why no one knew why her child was dead. That's the most important thing that you must keep in the back of your mind, that sex abuse does things to us. It changes you.<sup>119</sup>

Describing the scene this way was an attempt to justify and rationalize Casey's actions as an agent. For example, the defense stated, "[For] two years she pretended she had a job and pretended she had a nanny. Is that normal? . . . There was a reason behind this. Something's not right here."<sup>120</sup> Essentially, the defense portrayed Casey as a victim of her surroundings and upbringing, acting almost mechanically in the only way she knew how. By structuring its narrative almost entirely around the scene, the defense presented a narrative reality which, if accepted by jurors, would raise the reasonable possibility that 1) Caylee's death was a tragic accident; and 2) Casey attempted to cover up the accident in conformity with her upbringing.

### 3. Agent

The defense's narrative introduced and emphasized George Anthony as an agent in an effort to minimize Casey's role as the primary agent. While admitting Casey's neglect in allowing her child to drown under her watch, the defense posited that George influenced her decision to conceal Caylee's drowning. The defense presented a claim that, together, Casey and her father discovered Caylee in the swimming pool and that George immediately exclaimed, "[l]ook what you've done! Your mother will never forgive you and you will go to jail for child neglect for the rest of your frickin' life!"<sup>121</sup> The defense stated, "[Casey] immediately grabbed Caylee and began to cry. . . . She cried and cried and asked for her father's help."<sup>122</sup> Thus, the defense's overall narrative theme was portraying a tragic event that simply "snowballed out of control."<sup>123</sup> To focus the jury's attention away from Casey and towards George as the agent, the defense also introduced his

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118. See Foss, *supra* note 43, at 363.

119. *Defense*, *supra* note 111, at 19:13–20:00.

120. *Id.* at 13:21–13:48.

121. *Id.* at 22:03–22:12.

122. *Id.* at 22:51–22:19.

123. *Id.* at 22:53–22:54.

mistress.<sup>124</sup> Money, lies, and affairs involving George and his mistress quickly took over the defense narrative.<sup>125</sup> The defense even went as far to introduce George's past suicide attempt after his affair became known to family, all in an effort to minimize Casey's role as an agent.<sup>126</sup>

Furthermore, Roy Cronk, the Florida utility worker who found Caylee's remains, was also introduced as an agent. Introducing and emphasizing his role in the narrative exposed deficiencies and errors in the law enforcement investigation. As a rhetorical strategy, the defense crafted an opening statement narrative where Roy Cronk ultimately took the fall for various investigative errors: "Mr. Cronk is a morally bankrupt individual who actually took Caylee's body and hid her. And anything that you derive from the scene off the Suburban Drive is completely unreliable because of the actions of Mr. Cronk."<sup>127</sup> By describing Roy Cronk as dishonest about both the timeframe and the location where he found Caylee's remains, the defense was able to claim that Roy Cronk

[h]ad control of Caylee's remains for obviously several months. Where he found her, we do not know. Nor will we ever know. And the reason for that is because police never investigated him. This was their three-legged pony and they were going to ride him to the finish line no matter what.<sup>128</sup>

This rhetorical strategy—using an agent to expose a faulty investigation—largely sought to undermine the prosecution's narrative, which focused heavily on scientific and forensic evidence involving various agencies (chloroform, car smell, etc.).

In stark contrast with the prosecution's narrative, the defense structured its narrative in a way that minimized Casey's role as an agent while simultaneously providing alternative descriptions for multiple terms and introducing new agents. Introducing a powerful scene of past childhood abuse and coping as the primary, dominant term helped put many facts and pieces of evidence presented by the prosecution into context. Conducting a cross-comparative analysis of two competing trial narratives leads to several conclusions and recommendations for trial attorneys when developing persuasive narratives.

#### *D. Conclusions and Recommendations*

This article offers a unique look into competing narratives in opening statements and how they function rhetorically against each other. Term descriptions differ immensely in competing narratives. The prosecution may offer one set of term descriptions, but the defense may present an alterna-

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124. *See id.* at 35:26–35:40.

125. *See Defense, supra* note 111, at 1:21:52–1:22:05.

126. *See id.* at. 37:46–37:48.

127. *Id.* at 40:42–41:00.

128. *Id.* at 50:25–50:55.

tive description of the same term. The act, primary agent, and agencies in this case were all described according to each side's philosophical worldview, placing certain terms and term descriptions in context with other controlling terms. For example, the defense placed Casey Anthony as an agent within the context of her abusive upbringing as a scene. Additionally, several terms and descriptions were either omitted from or added to competing narratives. The defense's narrative introduced several additional agents, created an overwhelming and emotionally charged scene, and deliberately omitted one of the prosecution's primary agent descriptions.

Neither narrative provides a comprehensive or accurate retelling of events. To believe that each side presents a complete narrative differing merely in perspective is a misconception; instead, storytellers carefully select which terms to include and describe these terms in ways to rhetorically advance a narrative. Thus, the jury is forced to side with the narrative that represents the most compelling depiction of reality, not the narrative that accurately represents reality.

Finally, terms that are emphasized and minimized in one narrative are transposed in the other narrative. The prosecution's narrative favored agent as the controlling term, and in turn gave context to other term descriptions. In contrast, the defense's narrative minimized agent and instead structured the narrative around scene, which in turn influenced how the jury understood other term descriptions. This same scene was completely omitted by the prosecution. Knowing and understanding how pentadic terms influence one other within a narrative, especially in competing narratives, is essential for trial attorneys to perfect the art of storytelling.

Trial attorneys must understand the foundations of how narratives are created and can compete against each other; doing so will certainly lead to effective storytelling. Understanding the available rhetorical choices and associated worldviews that emerge from emphasizing particular terms is integral to perfecting a litigation and narrative strategy. Pentadic term use and description undeniably influences the interpretation of other terms and can serve as inverse descriptions in competing narratives. Thus, trial attorneys and litigators should understand and use pentadic analysis when developing persuasive narratives. At a minimum, understanding pentadic analysis includes the following objectives:

1. Strategically select, emphasize, and minimize pentadic terms and descriptions to create a persuasive and effective narrative.
2. Identify which pentadic terms a competing narrative will likely emphasize and prepare counter-arguments accordingly.
3. Pair pentadic terms and descriptions to create ratios within a narrative and look for potential areas of deficiency to provide a consistent, compelling narrative, i.e. scene-agent; agent-agency.

#### IV. CONCLUSION

This article offers a cross-comparative pentadic analysis of narratives in opening statements to better explain how narratives in litigation practice function to compete against one another. Though the single-case design (the analysis of the Casey Anthony trial alone) serves as a limitation, this article establishes a foundation by which future analyses can explore differing rhetorical strategies in trial practice—specifically, how one can create effective and persuasive narratives through storytelling. Trial attorneys and litigators can similarly adopt and use Burke’s pentad and the implications derived from this study as part of their overall litigation strategy.