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## Costruction of the judicial defense speech: based on the material of court speeches by Y.S. Kiselev

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**Abstract.** The construction of a public speech is one of the most important components of creating a convincing oratorical performance. Despite the constant interest of researchers in the challenges of constructing a court speech, the arrangement of structural elements, the issue remains unresolved in practical aspect: modern court speakers need recommendations that would contribute to creating effective defense statements. The purpose of this research is to analyze the composition of successful court speeches of the famous Soviet lawyer Y.S. Kiselev, aimed at identifying the features of arrangement of the material, factors that condition this or that disposition, and on this basis to identify various options for the arrangement of content elements contributing to the creation of a convincing speech. Using the method of compositional analysis, as well as rhetorical analysis, descriptive and structural methods, we investigate thirteen effective judicial defense speeches by Y.S. Kiselev. Having analyzed the types of introductions used by him, we have established a high degree of viability of using hyped up or unexpected beginning, as well as conditionality of the choice of the type of introduction by the prosecutor, readiness of the audience to perceive the defense speech, and attitude of the audience to the circumstances of the case. The analysis of the main part of Kiselev's speeches allows to identify the micro themes presented in all his defense statements, as well as conditionality of a number of micro themes by the circumstances of the case, the arguments of the prosecution, and the chosen line of defense. The conclusion reveals structural elements in all the speeches of the well-known lawyer under study: a clearly expressed position of the defense in the case, a pathetic and educational moment, and an appeal to the court for leniency or acquittal of the defendant. In general, the construction of the defense speech is conditioned by the circumstances of the case, the position of the prosecution, the chosen line of defense, the specifics of the audience, as well as the moral qualities, erudition and communicative skills of the speaker.

**Key words:** types of introductions, micro themes of the main part of the defense speech

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## Композиция судебной защитительной речи: на материале судебных выступлений Я.С. Киселева

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**Аннотация.** Композиция публичной речи – один из важнейших компонентов создания убедительного ораторского выступления. Несмотря на постоянный интерес исследователей к проблемам построения судебного выступления, расположения в ней структурных элементов, вопрос остается нерешенным в практическом аспекте: современные судебные ораторы нуждаются в рекомендациях, которые способствовали бы созданию эффективных защитительных речей. Целью исследования является анализ композиции успешных судебных выступлений известного советского адвоката Я.С. Киселева, направленный на выявление особенностей расположения излагаемого материала, факторов, обуславливающих ту или иную диспозицию, и на этой основе выявление различных вариантов расстановки элементов содержания, способствующих созданию убедительного выступления. Используя метод композиционного анализа, а также риторического анализа, описательный и структурный методы, мы исследовали 13 эффективных судебных защитительных речей Я.С. Киселева. Проанализировав применяемые им типы вступлений, мы установили довольно высокую степень целесообразности использования в судебной защитительной речи искусственного или внезапного начала, а также обусловленность выбора типа выступления прозвучавшей речью обвинителя, готовностью аудитории к восприятию защитительной речи, отношением слушателей к обстоятельствам разбираемого дела. Разбор основной части выступлений Я.С. Киселева позволил выявить микротемы, представленные во всех его защитительных речах, а также обусловленность наличия/отсутствия ряда микротем обстоятельствами рассматриваемого дела, доводами обвинения, выбранной линией защиты. В заключении обнаружены структурные элементы, присутствующие во всех рассмотренных нами речах известного адвоката: четко выраженная позиция защиты по делу, патетический и воспитательный момент, обращение к суду с просьбой о снисхождении к подзащитному или его оправдании. В целом выявилась обусловленность композиции защитительной речи обстоятельствами разбираемого дела, позицией обвинения, выбранной линией защиты, особенностями аудитории, а также нравственными качествами, эрудицией и ораторским мастерством выступающего.

**Ключевые слова:** композиция судебного выступления, вступление, типы вступлений, главная часть, микротемы главной части защитительной речи, заключение

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## **Introduction**

One of the most important issues of particular interest to the speaker is the composition of speech, its structure. “Composition is the framework, the structure on which all speech rests” (Odintsov, 1976:16). The composition is a consistent arrangement of meaningful material in accordance with the logic of the presentation dictated by the speaker’s intention, situation and audience, that is, structured and arranged in an optimal (for the impact on the target audience) sequence. A structured speech helps the speaker to convey information to the audience logically and coherently, is convenient for perception, and therefore more persuasive.

Despite a huge number of works devoted to the study of court pleadings (Alekseev & Makarova, 1985; Vvedenskaya & Pavlova, 2008; Ivakina, 2004; Kyrkunova, 2010; Levenstim, 1894; Odintsov, 1976; Odintsov & Mikhailovskaya, 1981; Shuiskaya, 2015 et al.), issues of construction of accusatory and defensive speech are still in the focus of attention of many scientists. Indisputable is the mandatory inclusion into the court speech of three main elements of the composition – introduction, main part and conclusion. The study has developed the requirements for preamble and conclusion in a court speech. Micro themes, which must necessarily and in full be presented in the main part of the accusatory statement have been identified. A number of works also propose a list of micro themes that must necessarily be included in the main part of the defense speech (Botnev, 2010:251–255; Vladimirov, 1911; Enikeev, 2004; Potapova, 2007 et al.). However, all existing numerous developments and recommendations are theoretical in nature. Court speakers need practical recommendations for constructing persuasive defense speeches. We believe that the development of such recommendations is essential on the basis of the analysis of effective speeches of successful forensic orators. Defense counsels will be able to construct their speeches using practical examples, being aware of the effectiveness of a specific speech structure for a certain content.

For the analysis, we selected thirteen defense speeches by Ya.S. Kiselev, published in the Court Speeches collection (Kiselev, 1967). Our choice is not accidental. In the twentieth century, the Russian legal profession put forward many gifted court orators, who were characterized by “a mastery command of the word, skillful research of case materials, subtle psychological analysis” (Apraksin, 1981:5), who developed and perfected “the principles and style of the Russian court speech” (Apraksin, 1981:5). Unfortunately, the rich legacy of the twentieth century advocacy still remains unexplored. It is here that we can find many effective defense strategies that could become a role model for modern lawyers. According to his contemporaries, Y.S. Kiselev is “one of the best court orators” (Kukarsky, 1968:4); a major theorist of the twentieth-century judicial eloquence. “He is characterized by a deep knowledge of the materials of each case, an attentive attitude to each defendant. His speeches are distinguished by logic, subtle, skillful analysis of the circumstances of the case and evidence, deep psychological analysis and excellent language” (Ivakina, 2004:54).

The relevance of this research is due to the urgent need to develop practical recommendations for modern defense lawyer on the construction of effective court pleadings. The work is one of the few attempts to identify various options for the arrangement of effective speech content from the existing materials: “Contemporary rhetoric needs to undertake a corpus analysis of the texts of successful speeches, inductively deriving dispositional schemes that allow the audience to share their point of view” (Shuiskaya, 2017:307).

The purpose of the study is to analyze the compositional features of Kiselev’s judicial defense speeches. To achieve the goal, the following tasks are set: to identify and characterize the structure of an effective judicial defense speech; to describe the factors that determine the choice and arrangement of its structural elements; to highlight the most effective options for presenting the material in a court speech.

In accordance with the purpose and objectives, we use the following research methods: a descriptive method which implies the use of direct linguistic observation of Kiselev’s defense statements, description and comparison of rhetorical and logical means and techniques interesting from the point of view of creating a persuasive speech, generalization of observation results, compositional analysis, used to study the principles of material arrangement, allocation of semantic centers, analysis of micro themes arrangement, searching for compositional techniques characteristic of the speaker; structural method that helps to identify the relationships between the structural elements of speech; rhetorical analysis, which allows to consider various aspects of the construction of speeches on this material, to identify the techniques of speech impact employed by the speaker.

### **Literature review on the construction of judicial statement**

The issues of constructing public, including court, speech have been developed since antiquity. It is believed that compositional basics of judicial speech were laid by Lysiy (Ivakina, 2004:44). Speech composition was developed in most ancient manuals on rhetoric. The structure of public (and judicial) speech is presented in one of the most relevant even today writings by Aristotle, *Rhetoric* (Aristotle, 2000:135–148). Cicero also made a huge contribution to the development of judicial eloquence. He attached great importance to the arrangement of the material and “developed a composition of court speech that ensured the easiest possible mastering of the material” (Daletsky, 2003:376). The structure of judicial speech developed by him is presented in his theoretical works (Cicero, 1994) and in court speeches (Cicero, 1962:293–330). Marcus Fabius Quintilianus’ extensive work, *Twelve Books of Rhetorical Instructions* (Quintilian, 1834), provides a scheme of speech prepared specifically for courtroom pleading. This scheme is described by Yu.V. Rozhdestvensky in his *Theory of Rhetoric* (Rozhdestvensky, 1997:564).

The Russian judicial eloquence developed in the second half of the XIX century, when, after the judicial reform of 1864 and establishment of the jury trial, a long line of brilliant court orators appeared in Russia (A.F. Koni, V.D. Spasovich, K.K. Arsenyev, P.A. Alexandrov, F.N. Plevako and some others). Talented Russian lawyers developed the composition of the judicial speech in practice. They published a number of theoretical studies where they analyzed the court statements of their outstanding contemporaries and

gave recommendations on the construction of persuasive speeches. These include, for example, the work by A.A. Levenstim “Speech of the State Prosecutor in the Criminal Court” (Levenstim, 1894), K.K. Arsenyev “The Russian Judicial Eloquence” (Arsenyev, 1888) and K.L. Lutsky “Judicial Eloquence” (Lutsky, 1992).

It should be noted that until the XX<sup>th</sup> century orators used ready-made composition schemes, which were developed for each genre in the manuals on rhetoric. However, since the beginning of the XX<sup>th</sup> century, recommendations for speakers not to follow a strictly prescribed scheme, but to rely on intuition and inspiration became predominant. P.S. Porokhovshchikov mentions this in a very authoritative study *The Art of Speech in Court*: “Do not look for a plan, it will find itself while you are thinking about the case. This will be the fruit of unconscious <...> work; therefore, there will be a natural plan; once it is found, try to rearrange its parts. You will probably create a more interesting scheme of presentation” (Sergeich (Porokhovshchikov), 2000:149–150).

L.E. Vladimirov in his book *Advocatus Miles* (manual for criminal defense) encourages speakers to improvise: “The defense counsel must improvise his speech on the basis of judicial investigation, the speeches of the prosecutor and the civil plaintiff. ...Improvisation concerns... the order of presentation, expressions, the order of parts and those materials that have come during the court session” (Vladimirov, 1911:186).

The composition of an oratorical speech is still in the center of close attention of contemporary researchers of public speeches. A significant contribution to the development of issues of judicial eloquence was made by N.S. Alekseev, L.A. Vvedenskaya, A.A. Volkov, N.N. Ivakina, Z.V. Makarova, V.V. Melnik, N.G. Mikhailovskaya, A.K. Mikhalskaya, V.V. Odintsov, L.G. Pavlova, O.V. Petrov, etc. (Alekseev & Makarova, 1985; Vvedenskaya & Pavlova, 2008; Volkov, 2005; Ivakina, 2004; Melnik, 2000; Mikhalskaya, 1996; Odintsov & Mikhailovskaya, 1981; Petrov, 2007).

At the end of the XX<sup>th</sup> century, a number of researchers paid attention to the connection between the image of the speaker and the structure of the speech he/she chooses. S.F. Ivanova (Ivanova, 1990) raised the issue of correspondence of the speech scheme used to speaker’s personality type. A.K. Mikhalskaya developed a classification of speakers in accordance with their chosen speech composition (Mikhalskaya, 1996: 44). A.A. Volkov writes about the role of the rhetorician’s personality in speech construction: “At the level of arrangement <...>, the personality manifests itself in the organization of the meaning of the utterance, in the vision of an effective word as a whole in relation to parts, where the idea acquires qualitative certainty as a speech process deployed in a sequence of parts” (Volkov, 2003:23–24). Yu.V. Shuiskaya (Shuiskaya, 2015) also points to a strong connection between the composition of the speech and the image of a particular speaker.

It is also important to note some studies of recent decades. In our opinion, noteworthy are the works by L.A. Potapova (2007); Yu.V. Shuiskaya (Shuiskaya, 2015; Shuiskaya, 2017), as well as scientific articles by L.G. Kyrkunova (2010); V.K. Botnev (2010) and others. We will also name a number of foreign authors of the XX<sup>th</sup> and XXI<sup>st</sup> centuries who have contributed to the study of peculiarities of oratory, including composition: T.A. Van Dijk, J. M. Lauer, B.S. Oberg, etc. (Beebe, 2003; Briggs, 1990; Horowitz, 1999; Lauer, 2004; Lausberg, 1998; Monroe & Lull, 1931; Oberg, 1998; Renkema, 2004; Turner, 2005; Van Dijk, 2009; Van Dijk, 2011; Weaver & Ness, 1963).

### **The introductory part of the defense statement**

A defense speech comes in the criminal proceedings after an accusatory one, therefore its composition, content, oratory techniques used by the defense counsel, and argumentation are determined not only by the circumstances of the case and the chosen line of defense, but also by the content of the prosecution statement.

We can identify three types of introduction: intrinsic, or figurative and unexpected. If accusatory speech is often distinguished by an intrinsic introduction, defensive speech resorts to hyped up or unexpected way of introducing a statement. The type of introduction that the defense counsel chooses is dictated by the particular situation in a courtroom. If the accusatory speech turned out to be exceedingly difficult in terms of argumentation and large in volume, the attentive and interested listeners are likely to be tired and unable to perceive the nuances in the speech of the defense counsel. It can also be difficult for the audience to switch to the perception of the next speech in case the accusatory speech delivered by a talented orator had a powerful impact on the minds and feelings of the audience. Then, the opening phrases delivered by the defense counsel should be able to switch their attention pushing aside the prosecutor's strong speech and forgetting about fatigue. In such cases, hyped up or unexpected introduction is prudent.

A textbook example of a successful figurative introduction is the beginning of Kiselev's speech in the Kovalev case: the defense counsel began his statement by recounting a medieval legend of the bell whose ringing incited a traveler "to hear the tune he wanted to hear" (Kiselev, 1967:7–8). Such a start could not fail to attract the attention of listeners (Why is the speaker suddenly talking about the bell? The Kovalev's case is being investigated, what does the bell have to do with it?). The rhetorical goal has been achieved, then the lawyer can speak about the merits of the case. The transition to the essence of the defense is framed as an explanation of why the speaker began his speech that way: the image of the bell from the legend helped him to show dissimilarity in the vision, difference in the prosecutor's and the defense lawyer's understanding of "the same facts, the same persons" (Kiselev, 1967:7–8).

A hyped up introduction can be an argument about the law, court, justice, as, for example, in the Sergachev case (Kiselev, 1967:197–198). Why these arguments are all about becomes clear at the end: "The court today has to answer the question: what kind of person is Viktor Sergachev, what is his true essence?" (Kiselev, 1967:197–198). And the listeners understand that the defense in this case is built on the description of the defendant's personality, and a fair verdict in the case can be rendered only when a "true and complete assessment" of the person who found himself in the dock is given.

In Kiselev's speeches we also find successful examples of unexpected introductions. Thus, the speech in Pulikov case begins with the expression of emotions aroused by the applause in the courtroom after the prosecutor's words that demanded "an extremely severe punishment" for the defendant (Kiselev, 1967:144–145). The defense lawyer claims that he has no right to "ignore the applause" which testifies to the hasty conclusions and excessive vehemence of the audience. He understands the feelings toward the defendant, but he also understands the danger inherent in the excessive emotionality of the audience "for Pulikov's fate and for the cause of justice!" (Kiselev, 1967:144–145). The speaker seeks to convey the idea to the court audience that a fair sentence can only be imposed on the basis of a comprehensive examination of the case.

The beginning of the speech in the Bugrov case is also unexpected. The defense counsel begins his statement by expressing his opinion concerning the behavior of the teenage defendants in court. Grief, bewilderment and indignation of all those present in the courtroom is caused by the behavior of the defendants, who do not repent of what they have done, but feel like heroes worthy of admiration: “It would have been natural to expect that teenage defendants would feel both shame and embarrassment. But instead, they began to pose and show off, portraying themselves, albeit clumsily, but diligently, the fearless “knights of fortune” (Kiselev, 1967:89). Here the speaker expresses his attitude to the situation and at the same time, the opinion of the majority of those present in the courtroom, thus uniting himself with the audience, demonstrating the commonality of views.

In five of the thirteen speeches we analyzed, Ya.S. Kiselev used a hyped up or unexpected beginning. Therefore, it is possible to assume that the degree of expediency of using such types of introductions is quite high.

Uncontrived or intrinsic introductions are no less interesting in Kiselev’s speeches. They vary greatly in content, which is dictated by the goal and tasks set up by the defense lawyer in a particular trial. In one case, Ya.S. Kiselev begins his opening address by drawing attention to the peculiarities of the case (in the Kudryavtseva case) (Kiselev, 1967:31–45); in another case he starts with an appeal to the prosecutor’s speech, analyzing certain provisions of the indictment, pointing out inaccuracy, contradictory or erroneous statements of the prosecutor (the Lansky case) (Kiselev, 1967:61–76); still another address commences with an appeal to the indictment, analysis of its main points (the Ivolgin case) (Kiselev, 1967:165–183); in one of the cases he resorts to contradictions in assessing the defendant’s personality and behavior discovered during the trial (the Danilova case) (Kiselev, 1967:77–88). At the beginning of each speech, the defense lawyer either openly expresses the idea of the public significance of a fair judicial decision, the responsibility of judges dealing with issues of human destiny or leads the listeners to this idea.

### **The main part of the defense statement**

There are clear recommendations regarding the compositional components of the main part of the accusatory speech. As it is known, the following micro themes should be fully presented in the judicial accusatory speech: a statement of the actual facts and circumstances of the crime (the statement of case or the pleaded case); analysis and evaluation of the gathered evidence; characteristics of the defendant’s and victim’s personality; substantiation of crime qualification; consideration on the measure of punishment; consideration of issues related to compensation for the material damage caused by the crime; analysis of the causes and conditions that contributed to the commission of the crime. The order in which these issues are presented in a particular accusatory speech depends both on the specifics of the case and on the individual preferences of the speaker.

Which micro themes and to what extent the defense speech will be covered are determined, first of all, by the prosecution’s position and, accordingly, by the content of the accusatory speech. If the defense lawyer does not agree with how this or that micro theme was presented in the accusatory speech, then, this micro theme or part of it (the

one that raises objections to the defense) will be voiced in the defense statement in a different (correct from the defense position) perspective. The micro themes of the defense speech are also determined by the chosen line of defense. If, for example, the defense is based on characteristics of defendant, identification of mitigating circumstances that the defense counsel traces in his biography, then those characteristics will be presented in full. If mitigating circumstances are found in the behavior of the defendant at the time of committing criminal acts, either immediately after the commission of the crime, or just before the crime, the defense counsel will pay special attention to the background of the case, etc.

Theorists and practitioners of judicial eloquence have also suggested recommendations on the structure of the defense speech. As a rule, the following list of micro themes is offered: “analysis of the factual circumstances of the case; analysis of the personal features of the defendant; analysis of the motives for committing the act by the defendant” (Enikeev, 2005).

A clear structure of the main part is visible in each Kiselev’s speech. As an example, let us refer to his speech in the case of grand larceny (the Gerkin case) (Kiselev, 1967:124–143).

The main part begins with the analysis of the accusatory speech. The defense counsel prefaces his objections to the prosecution by presenting all the arguments made in the accusatory speech. “I will try to present them in the most concentrated <...> form” (Kiselev, 1967:125), the counsel explains his actions. Further, he analyzes each of the prosecution’s arguments and refutes them using formal logic, investigation materials and the indictment, testimony of other defendants, and procedural violations discovered by the defense. Successively refuting the provisions of the prosecution, the defense lawyer gradually convinces the audience that Gerkin’s guilt has not been proven. However, the counsel does not stop there, he then proves Gerkin’s innocence. Once again, he is debating with the prosecutor, examines the same arguments from different sides but viewed in a different light, from a different angle. They either become the argument of the defense, or their inconsistency is revealed.

Thus, throughout the entire speech, Ya.S. Kiselev polemizes with the prosecutor, one by one breaks down the arguments of the procedural opponent, examines all the arguments in the case files, and gives them his assessment. The counsel does not miss a single, even the smallest remark of the prosecution. Thus, “Comrade prosecutor resorted to an argument that was somewhat unexpected: Gerkin, he assured, made a repulsive impression, he showed disrespect for the court, he behaved inappropriately, he smiled playfully” (Kiselev, 1967:141). The counsel also comments on this argument of the prosecutor, and the audience understands that such a strange premise only emphasizes that the prosecution failed to find the necessary amount of evidence to prove Gerkin’s guilt.

Only two micro themes are presented in the main part of this speech: analysis and evaluation of the accusatory speech and analysis and evaluation of the evidence collected in the case. There is no characterization of the defendant’s personality here. Only at the very end of the main part, commenting on the last argument of the prosecution, a very strange premise, the counsel gives some details of Gerkin’s biography. In this case, the characterization of the defendant’s personality was not needed to create a convincing defense statement. It is known that Gerkin’s defense was effective enough: Gerkin was



in the dock on charges that he, together with the chief accountant of the plant, was the organizer of the theft but the court found Gerkin guilty of embezzlement of the amount significantly less than indicated in the indictment (Kiselev, 1967:124).

However, the circumstances of the case may be such that the psychological profile of the defendant and some other participants in the offence will play a key role in constructing defense. In this regard, Kiselev's speech in the Kovalev case is very indicative (Kiselev, 1967:7–30).

The main part of this speech also begins with the analysis and evaluation of the prosecutor's speech. The assessment of the accusatory speech lies in the fact that Ya.S. Kiselev notes with regret the skillful attempts of the prosecution to pass off an assumption as a fact, to distort the facts, to turn a psychologically complex case into a simple one, to give an unreliable characteristic of the defendant, "describing him in the darkest colors" (Kiselev, 1967:9). Further, the provisions of the prosecution are analyzed and refuted. In fact, much attention is paid to refuting the prosecutor's claim that Kovalev drove his first wife, Vera Chernova, to suicide. Here, the counsel points out the contradictions in the words of the prosecutor based on careful examination of all the letters of Vera Chernova available in the case while the prosecutor chose only some letters and some excerpts from those letters consistent with the position of the prosecution. Ya.S. Kiselev convincingly proves Kovalev's innocence in Chernova's death.

After that, the defense lawyer proceeds to substantiate his position in this case, i.e., to prove Kovalev's innocence in the death of Nina Kovaleva, explaining that to do so it is necessary to analyze the characters traits of the three participants in the drama – Kovalev, his wife Nina Kovaleva and her sister Evgenia Barmina.

The lawyer gives psychological characteristics of these persons, psychological analysis of their relationships and their behavior. He carefully analyzes the events that happened a long time ago, but which, in fact, became the starting point of the tragedy that happened. The analysis of the relationships of the actors of the drama, their actions in various life situations is closely intertwined with the statement of the actual circumstances of the case. But even in the presentation of the case, the main thing is still to consider the behavior of the participants in the tragedy. At the same time, Ya.S. Kiselev is constantly returning to the accusatory speech, constantly polemizes with the prosecutor and argues his position.

Thus, the main part of the speech in the Kovalev case includes the following micro themes: analysis and assessment of the accusatory speech; analysis and assessment of the evidence collected in the case; description of the defendant's personality, as well as characteristics of other participants in the offence; and statement of the factual circumstances of the case.

The description of the personality of the defendant and other participants is given in full when considering cases of murder, suicide, when it is important to understand the characteristics of each participant in the crime, their behavior and relationships, when "love and hate, revenge and forgiveness, envy and generosity are entwined in the most intricate knot" (Kiselev, 1967:9), when the court must investigate a difficult life situation not well understood by the participants themselves.

In cases related to economic activity (embezzlement at work, budget overruns, a bribe-taking by an official, etc.), the defendant is usually characterized very briefly, casually; the refutation of the prosecution's position comes to the fore. One may argue

that in his speech in the Ivolgin case (bribe-taking by an official), Kiselev attaches particular importance to the personal characteristic of Ivolgin and Gorsky (Kiselev, 1967:165–183).

The specifics of this case are such that Ivolgin was accused of taking a bribe by one person, Gorsky witnessed. In fact, there are two opposing witnesses: in support of his testimony, Gorsky brings certain evidence against Ivolgin, while Ivolgin denies his guilt. The defense counsel breaks down Gorsky's evidence, proves Ivolgin's innocence and at the same time proves the commission of the crime by Gorsky. And to top off the argument, he suggests considering the biography of Ivolgin and Gorsky, comparing their characters and thus puts an end to the question of Ivolgin's guilt/innocence. This is confirmed by the counsel's words, concluding the characteristics: "Here they are next to each other: Ivolgin and Gorsky. And even if there was no evidence to refute Gorsky's testimony, it would still be impossible to put the fate, life and good name of Oleg Sergeyevich Ivolgin in dependence on what the "master of coordination" would say (Kiselev, 1967:183).

It should be noted that the dominant role of a single micro theme is clearly visible in each of Kiselev's speech. The line of defense passes through this main micro theme, and all the others are subordinated to it, woven into it. Thus, in the speech in the Gerkin case, the main micro theme is the analysis and evaluation of the accusatory speech but in the speech in the Kovalev case – the characteristics of the actors of the drama.

In each case, the choice of the main micro theme is conditioned by the circumstances of the case, the positions of the prosecution and the defense. For example, in the speech in the Kudryavtseva case, the micro theme "statement of the factual circumstances" appears to be dominant. This is conditioned by the goal of the defense – to prove that the murder was committed by Kudryavtseva in a state of sudden strong mental agitation (Kiselev, 1967: 44).

The lawyer explores the development of relations between Irina Kudryavtseva and Vladimir Kudryavtsev from the moment of their acquaintance until the tragedy. Kiselev convincingly shows how gradually over several years of their relationship resentments accumulated, which "finally became so painful that a grain was enough for Kudryavtseva not to endure" (Kiselev, 1967:44). The speaker rightly points out that, taken in isolation from the past, Kudryavtsev's remark "Please remember, you are not alone here", could not have caused an explosion (Kiselev, 1967:44). Stating all the factual circumstances of the case, analyzing them, Kiselev leads the audience to understanding why Kudryavtsev's simple remark led to the tragedy, caused an irresistible desire for revenge. And under the influence of overwhelming feelings, the defendant committed a crime.

Based on the analysis of the thirteen defense speeches of Ya.S. Kiselev, we can say that the mandatory micro theme of the main part of the defense statement in criminal cases is the analysis and evaluation of the accusatory speech, often together with the analysis of the indictment. It is with this micro theme that the main part of the defense counsel's speech should begin. This is indisputable since the defense counsel and the prosecutor are in a state of controversy in the trial. Speaking after the prosecutor, the defense counsel should respond, express his/her objections, refute the charges. If the defense lawyer ignores the accusatory speech, it will turn out that he/she agrees with the arguments of the prosecution. Then, what kind of defense can we talk about? The analysis and evaluation of the accusatory speech is an essential element of the defense. We are

not communicating anything new by saying that the defense counsel must necessarily refute the arguments of the prosecution (rhetorical manuals define this micro theme as an obligatory structural element of defense statement since antiquity). However, we consider it necessary to emphasize the micro theme place, its scope and relation to other issues of the main part.

Another mandatory micro theme of the main part of the defense speech is the analysis and evaluation of evidence gathered in the case. The evidence available in the case file is analyzed and evaluated both during rebuttal of prosecution arguments and during the argumentation of the defense position.

Other micro themes involve description of the defendant's personality (other participants in the crime), statement of actual circumstances of the case, and substantiating of crime qualification. They may be actualized or not actualized in the defense speech, depending on the circumstances of the case, the content of the accusatory speech (on the arguments of the prosecution), and the line of defense chosen by the lawyer.

### **The final part of the defense statement**

The conclusion of Kiselev's speeches is usually short in length. Necessarily, in the final part, the position of the defense in the case is clearly formulated once again. At the end of each speech, the speaker appeals to the court with a request for leniency, credence to the defendant and, accordingly, a milder punishment, or acquittal. Often there is a so-called pathetic moment: the speaker usually brings an argument in order to evoke sympathy, compassion for the defendant or for his family, or respect and trust in the defendant, as, for example, in the speech in the Danilova case: "The happy Danilovs family has become unhappy. <...> But, broken by grief, all members have the right to look people straight in the eye, they have done nothing to disgrace them" (Kiselev, 1967:88).

In the final part, the speaker also finds room for high assessment of the court and their work: "judicial thought, inquisitive, not knowing calm" (Kiselev, 1967:142–143); "deciding the fate of a person, the court acts especially cautiously and vigilantly" (Kiselev, 1967:30).

A characteristic feature of the final part of Kiselev's speeches should also be noted: the defense counsel conducts educational work with all those present in the courtroom; he speaks of the social significance of fair punishment, gives a moral assessment of the behavior of the defendant, victim and other persons who happened to be involved in the offence. That is what Kiselev says about the inevitability of punishment for an illegal act: "Every honest citizen should be sure that <...> the investigation and the court will stand up for an honest person, and the slanderer will be exposed" (Kiselev, 1967:183); about the importance of punishment: "A criminal spared from legal responsibility is a threat to society" (Kiselev, 1967:212); about the painful repentance concerning the committed wrong: "Judgment over oneself is a difficult and necessary thing. Very necessary. And for Kudryavtseva, this trial will not end soon. The longer it goes on, the more she will realize with a truly merciless clarity <...> how monstrously she has resolved this dispute" (Kiselev, 1967:45); about self-exactingness and responsibility for his/her family and their

children's future: "you need to be exacting to yourself, <...> you need to overcome petty resentment in yourself, <...> unworthy ways and methods of strengthening the family cannot give good results" (Kiselev, 1967:195).

### **Practical recommendations for the construction of a judicial defense statement**

This research allows to formulate some recommendations that may be useful to defense lawyers.

The preparation of a defense statement is carried out in two main stages. The first stage is pre-trial, when the lawyer studies the case materials and communicates with the defendant; as a result, he forms his position on the case and develops a line of defense. Most of the work on the speech is carried out at this stage. Here, the creation of a court pleading is carried out in the main volume. Within this stage, the composition of speech is also thought over: the micro themes that will be actualized in the main part of the speech, their arrangement, as well as the compositional elements of introduction and conclusion are determined, since the construction of statement is maximally conditioned by its content and the speaker's target goal.

The second stage covers the work of the defense counsel on the speech during the court session, when the judge conducts his own investigation of the case, and the prosecutor sets out the position of the prosecution in court pleadings. Here, the lawyer closely monitors the progress of the judicial investigation, takes part in interrogations conducted by the judge, attentively listens to the prosecutor's speech, notes down the mood of the audience, their attitude to the defendant, to the crime committed, to the behavior of the defendant at the time of the commission of the criminal act and after it, as well as in the court session. Based on all he has seen and heard, the lawyer finalizes his speech – determines the line of defense, the micro themes of the main part of the speech and their arrangement, develops and includes an analysis and evaluation of the accusatory speech (and the indictment if necessary), defines and develops the type of introduction.

The content of the introduction is set by the tasks and goals of the defense counsel in a particular trial, which, in turn, is conditioned by the materials of the case being heard. The specifics of the case, contradictions discovered during the trial in the assessment of the defendant, in the testimony of the participants in the case, etc. may be indicated. Effective, in our opinion, is the idea concerning the public significance of a fair judicial decision and the responsibility of judges. At the same time, the position of the defense must be clearly expressed in this part of the statement.

At the first stage of speech preparation, an intrinsic introduction should be thought over. The expediency of another introduction will be revealed at the second stage. If the situation of the trial (the mood of the audience, the degree of impact of the accusatory speech) is such that it is necessary to quickly switch the attention, make the audience forget about fatigue, about the impression from what they have just heard, a figurative and/or unexpected type of introduction should be used.

The defense counsel should begin the main part of his statement with the analysis and evaluation of the accusatory speech. This is a mandatory micro theme: its absence signifies that the counsel agrees with the position of the prosecution. During the analysis and evaluation of the accusatory speech, the lawyer should refer to those micro themes

or parts whose representation raises objections. Only after a consistent analysis and rebuttal of the prosecution's arguments he can proceed to the defense's position.

Another mandatory micro theme of each defense speech is the analysis and evaluation of the evidence collected in the case. This micro theme permeates the main part of the speech: the evidence available in the case is analyzed and evaluated both in the process of refuting the accusatory argument and during substantiation of the defense position.

It is also necessary to determine the main micro theme through which the protection line will run. Other issues, important for proving the lawyer's position should be closely related to the main one: they can be included in the main one, disclosed within it, intertwined with it, etc.

The composition of the micro themes of the main part of the defense speech, except for the mandatory ones, is conditioned by the circumstances of the case under consideration, arguments of the prosecution and the chosen line of defense. Thus, when considering cases of murder, suicide, etc., when it is important to understand the relationships of people, their passions, which feelings, actions, words brought one person to the dock and the other turned into a victim of a crime, it is essential to build a defense on the psychological characteristics of the actors of the judicial case. This issue will play a dominant role. It will also be important in this case to present the factual circumstances of the case, which will help to analyze and evaluate the specific actions of each of the participants in the tragedy as well as to understand why this tragedy was inevitable.

In cases involving various financial frauds, bribery, etc., special attention should be paid to refuting the position of the prosecution, as well as analyzing and evaluating the evidence gathered in the case. The circumstances of the case will prompt what other micro themes will be necessary in each particular case: a statement of the factual circumstances of the case, psychological profile of the defendant and other participants in the criminal act, or some others.

The conclusion should be laconic. It must contain a clearly formulated defense position. Proceeding from the fact that the conclusion is the last opportunity to influence the audience, it is advisable to present here an argument in order to cause sympathy, compassion or trust for the defendant. It would also be appropriate to appeal to the court to acquit the defendant or impose a more lenient punishment.

### **Conclusion**

The analysis allows to draw some conclusions concerning the compositional features of the court speeches of the famous lawyer Ya.S. Kiselev.

In a defense statement, both an intrinsic or hype up/figurative introduction are appropriate. The choice of the type of introduction is conditioned by the degree of readiness of the audience to perceive the address of the defense lawyer. Kiselev's speeches represent various methods of opening defense speeches, but they have something in common: they always clearly communicate the counsel's position, the line of defense and the conflict the judicial speech is based on.

Mandatory micro topics of the main part of Kiselev's defense speeches are analysis and evaluation of the accusatory speech, analysis and evaluation of the factual evidence collected in the case. They may involve the description of the defendant's personality

(other participants in the offence), statement of the factual circumstances of the case and/or substantiation of crime qualification depending on the circumstances of the case, content of the accusatory speech (arguments of the prosecution), and/or defense line chosen by the speaker.

As for the sequence of micro themes, Kiselev begins the main part of each speech with the analysis and evaluation of the accusatory speech, followed by the dominant micro topic, and all other issues are woven into the main one.

The following structural elements can be distinguished in the final part of Kiselev's statements: an address to court (Fellow judges!), a clearly formulated position of the defense in the case, a pathetic part, an educational part, an appeal to the court with a request for leniency or acquittal of the defendant.

The analysis has shown that the construction of the defense speech is determined by the circumstances of the case, the position of the prosecution, and the chosen line of defense, i.e., it is conditioned by the substantive material that needs to be presented, as well as specifics of the audience.

There are often similar cases in court; similar crimes are dealt with. Therefore, modern counsels may use the structure of effective defense statement by Ya.S. Kiselev as an example or as a ready-made scheme for constructing a successful performance on similar cases. However, it should be borne in mind that simply transferring the compositional scheme of an effective speech into a new speech does not guarantee success. There is another, perhaps the most important factor in creating a successful speech – the personality of the orator, i.e., his/her moral qualities, erudition, and communication skills.

Thus, the creation of a defense (as well as any public) speech is a creative process. A well-thought-out composition promotes efficiency of the performance in combination with the psychological and logical components and oratorical skills of the defense counsel.

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