

5 **Accusation and Defense: The Ideational Metafunction of Language in the Genre Closing Argument**

Cristiane Fuzer
Nina Célia Barros

INTRODUCTION¹

“Few professions are as concerned with language as is the law.” This idea from Tiersma (1993) may help us to understand the growing interest of legal professionals in the study of language, as well as the interest of linguists in the investigation of the language used in legal contexts. The complexity and technicality of the legal language presents a challenge to those involved with the education of legal practitioners. For this reason, a new branch of linguistics, which specializes in the study of legal language, has been growing lately: Forensic Linguistics. Its theorizations and practical applications indicate that linguists may contribute positively to the interpretation of laws and legal procedures. According to Gibbons (2003, p. 69), “whatever the technique used, the linguist would clarify and make more concrete and explicit the basis for [judicial] deciding, and in some cases might provide useful additional information.”

There are researchers who are concerned with understanding the functioning of legal language and its technicalities as a way of familiarizing the ordinary citizen with legal practices that concern, in one way or another, all of us. In this sense, Rodrigues (2005, p. 20) argues that “if (almost) all aspects of our life in society are guided by rules, that is, organized in legal terms, it is urgent that we pay some attention to the analysis of this language which defines and structures our behaviors.”

In this study, we intend to join this field of research,² searching for a better understanding of the functioning of legal practices and the ways social actors involved in criminal proceedings in the Brazilian context are represented in written texts.

Legal proceedings are crucial instruments in the judicial exercise and have the objective, according to Capez (2005), of providing an adequate solution for the conflict of interests between the State and the transgressor by following a specific sequence of acts: the elaboration of the accusation, the production of proof,

the defense and the public accusation. The criminal proceedings, therefore, are defined as “a series or sequence of acts that are carried out and developed across a period of time, with the purpose of penal law application in the concrete case” (Capez, 2005, p. 527).

Criminal proceedings have the objective of judging different types of crimes, such as crimes against life (attempted and completed), against customs, against someone’s physical and psychological integrity, against freedom, against properties (attempted or completed), against honor, against the affiliation to the State, etc. (Brasil, 1940). The crimes against life, in the Brazilian Penal Code (Brasil, 1940), are typified as: homicide, “when the agent wanted the result or assumed the risk of producing it” (art. 121); “the inducement, instigation or help to commit suicide” (art. 122); infanticide, “[for a woman] to kill, under the influence of the puerperal state, her own son/daughter, during the delivery or immediately after” (art. 123); abortion, either provoked by the pregnant woman, or with her consent (art. 124); or provoked by a third person (art. 125).

The proceedings of the Brazilian criminal justice system are based on the accusatory system, in which one party accuses, another defends and a third party judges. The accuser or prosecutor (who represents the State) and the defense (who represents the defendant) are situated at the same equity level; the representative who judges (the judge) keeps him/herself equally distant from both parties (Capez, 2005).

The Criminal Procedure Code (Brasil, 1941) is the law that rules who can or should take certain actions, allegations and decisions, for how long and in which place, and indicates what are the correct sequence of actions during the criminal proceedings. The Penal Code (Brasil, 1940) is the law that defines the types of crimes and establishes the penalties to be applied to their perpetrators.

In this essay we investigate the representation produced by the accusation and the defense in a type of text which instantiates one of the genres that is part of the judicial proceedings: the closing argument. The public prosecutor and the defense attorney in the genre of final arguments create different characterizations of actors to enlist the court in various representations of truth. The analysis has implications both for how we understand the realities created by various genres and the importance of those genres in creating institutional outcomes of material consequence in lives and social relations.

To do this, we will use the concepts of Systemic-Functional Grammar (SFG), described by Halliday & Matthiessen (2004), to characterize what grammatical roles are fulfilled by the accuser (public prosecutor) and by the defender (defense attorney). We will also use the categories proposed by van Leeuwen (1997) to verify how these social actors (public prosecutor and defense attorney) are represented, respectively, in the accusation and defense discourses at the socioseman-

tic level. After the presentation of the methodological guidelines, we will move to the description and analysis of the accusation and defense representations built in a closing argument that integrates a criminal case tried at the jurisdiction of Santa Maria, Rio Grande do Sul, Brazil, which followed the legal channels from 1997 to 2002.

CONTEXTUALIZING THE GENRE CLOSING ARGUMENT

Many of the activities that organize human society are only made possible through language. Bakhtin (2003) claimed that people, when communicating verbally, select the words according to the specific aspects of the genre they are participating in; certain types of utterances are generated by certain functions (scientific, technical, official, of the daily life, etc.) and by some conditions of communication, specific to each field.

These elements are revisited as foundations for the genre analysis currently developed by many authors, such as Meurer & Motta-Roth (2002). They claim that the awareness of these three aspects—what is said, who is saying it and how it is said—makes it possible for individuals to articulate themselves through the use of language so that they can reach their objectives through appropriating and expanding upon the relevant genres which are available in their culture.

This perspective is common to three theoretical approaches that focus on genre analysis: Australian Genre Theory, English for Specific Purposes (ESP) and Studies on New Rhetoric.³

For the researchers who work with Australian Genre Theory, as Christie and Martin (1997), language is considered a system of choices through which the speakers/writers may express their world experiences, interact with others and elaborate coherent messages in specific contexts. This conception is centered on the Systemic-Functional Linguistics developed by Halliday, who founded the Linguistics Department of the University of Sidney in 1975 and has had great influence on language theory and education in Australia. In this approach, emphasis is given to global text structure and characteristics at the clause level, associated with the field (the activity involved), the relation among the participants, and the manner (the communication channel) of the discursive event. Genres are seen, thus, as social processes directed to a purpose, structural forms that cultures utilize in certain contexts with the aim of achieving different objectives. People communicate using genres that provide expectations about a text (Hyon, 1996).

In the area of ESP, scholars such as Swales (1990) and Bhatia (1993) explore notions of dialogism and situations suitable for the utilization of a genre by one authorized participant. The focus of these scholars is more directed towards the

knowledge of the text structure belonging to a genre than to the social aspects of the genre (Hyland, 2004). The objective is to explain how individuals can demonstrate their skills and abilities as members of groups they participate in. Therefore, genres are defined as “communicative events” characterized “by their communicative purposes and by their different patterns, structure, style, content and audience” (Swales, 1990, p. 58).

To explain how social contexts and how written and spoken texts come together to constitute social practices, ESP scholars have been adopting the notion of “genre systems” in relatively fixed sequences, originally discussed by Devitt (1991) and Bazerman (2004), who are followers of the New Rhetoric perspective. For Bazerman (2004) and Miller (1984, 1994), genres may incorporate interests and values of a particular social group and reinforce social rules and relations between writers and readers. This perspective is more directed at the social aspects of communities and less focused on text forms. Therefore, to understand the meanings of a text it is necessary to understand the relationship⁴ between the participants of the social event of which the text is part. In this sense, the text is seen as a discourse that incorporates “speech acts,” based on the theories of the philosophers John Austin and John Searle. The speech act (the text) is the result of words said in the appropriate time, the appropriate circumstances and by the appropriate person. According to Bazerman (2004, p. 316), “one way we can help coordinate our speech acts with each other is to act in typical ways, ways easily recognized as accomplishing certain acts in certain circumstances.”

Within social groups, relatively stable patterns emerge as recognizable, familiar genres, seen as answers to recurrent social situations. Genres are, therefore, part of socially organized activities; they are part of the way human beings give form to social activities (Bazerman, 2004). For Miller (1984), comprehending genres under a social approach may help to explain how people find, interpret, react and create certain texts.

The collection of types of texts produced by the individual when performing a particular activity corresponds to what Bazerman (2004) denominates a set of genres. This set gathers all the genres used by an agent to exert his/her role in the group in which he/she participates. One may say that the set of genres used by a lawyer, for example, may include: power of attorney, petition, closing argument, etc.

The different sets of genres used by people who work together in an organized way (if one considers the patterned relations established in the production, flow and use of texts) are part of a system of genres. In a system of genres, the genre sets are linked and circulate in predictable temporal sequences and patterns. Therefore, the genre sets used by a lawyer, for example, will integrate the genre system used by the criminal institution. In this system, sets of genres produced

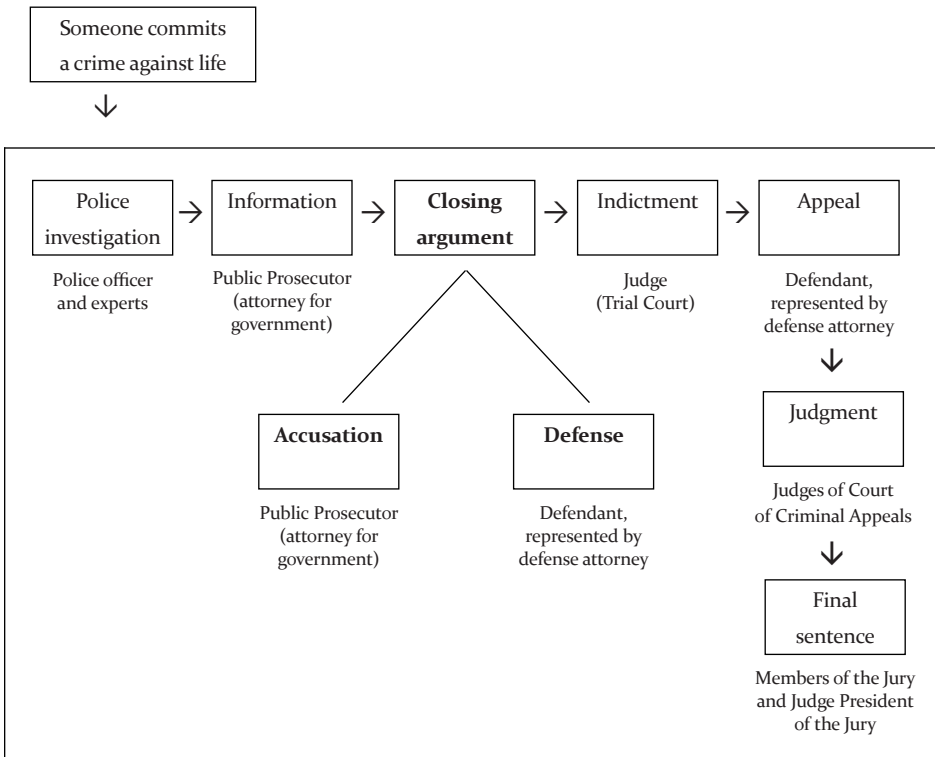


FIGURE 1: SYSTEM OF MAIN GENRES OF BRAZILIAN CRIMINAL PROCEEDINGS AND THEIR MAIN ACTORS

by other professionals (prosecutors [MP]⁵, police officers, justice clerks, judges) will be, in some ways, related (the inquiry report produced by the chief of police, for example, will serve as basis for the accusation text and, later, for the closing argument).

To locate the place of the genre closing argument in the Brazilian criminal proceedings, Figure 1 shows the sequence (in chronological order) of activities carried out by the social actors of the main genres that comprise the criminal proceedings. We also present the social actors who participate in each stage of the referred proceedings.

In the Brazilian legal system, after the police investigation (in which the author of the crime is charged) and the indictment, the parties present the closing argument. This genre is used in the instructional stage of the criminal proceedings, before the dispatch of the first judge's sentence⁶ and, therefore, before directing the case to a jury trial. In the text, the parties should present all their considerations, report the facts in detail, and describe what happened from the

opening of the police inquiry to the moment of the closing argument. According to Pimenta (2007), it is in this text that the legal argumentation operates well, once the parties have used all possible means to convince the judge of the “truth” of their versions of the facts, searching to influence the judge in his decision. In comparison to the other legal genres, the argument text (especially the defense one) is longer than the others.

The basic function of the closing argument is to request the defendant’s conviction or acquittal and/or the reduction of the sentence. The parties should construct their thesis (of accusation and defense) according to the types of crimes defined by the Penal Code, because penalties will be applied according to this classification. The judge decides which request from the parties is more valid, taking into account their arguments. In the judicial proceedings analyzed in this article (the trial of a woman accused of killing her own son during delivery), the accusation claims that this was a homicide (in which there was the intention to murder); however, the defense argues that it was an involuntary manslaughter (no murder intention) or an infanticide (murder under the influence of the postpartum depression).

To determine how the roles of prosecutor and defense attorney are represented in a text that instantiates the genre closing argument in judicial proceedings, we studied the grammatical (Halliday & Matthiessen, 2004) and the semantic-social roles (van Leeuwen, 1997) attributed to these social actors in the discourse.

METHODOLOGICAL GUIDELINES

To identify the representation of the accusation and defense in texts that instantiate the closing argument genre, we carried out a qualitative analysis of the clauses in which the social actors public prosecutor and defense attorney participate. The texts are part of the judicial proceedings of the 1st Criminal Jurisdiction from the District Court of Santa Maria-RS, Brasil, in a case tried between 1997 and 2000. The judicial proceedings deal with a case of infanticide (later disqualified to homicide) which consists of “killing [performed by a woman], under the influence of the puerperal state, her own son/daughter during delivery or immediately after” (Brasil, 1940, Penal Code, art. 123).

The following guiding questions were raised:

- (a) In which clauses do these social actors perform the acts of accusation and defense?
- (b) How are these social actors represented according to the transitivity system?

SOCIAL ACTORS	INCLUDED	BACKGROUNDED
Public Prosecutor (N = 14)	35%	65%
Defense attorney (N = 15)	40%	60%
Other legal practitioners (judge, police officers, experts) (N = 20)	15%	85%
Defendant (N = 32)	68%	32%
Victim (N = 23)	78%	22%

TABLE 1: INCLUSION AND EXCLUSION BY BACKGROUNDING OF THE SOCIAL ACTORS REPRESENTED IN THE TWO TEXTS WHICH INSTANTIATE THE CLOSING ARGUMENT GENRE IN CRIMINAL PROCEEDINGS⁷

To delineate the answers to these questions, we started the analysis by identifying in which clauses the social actors of accusation and defense have been included and/or backgrounded, and then the verbal processes performed by these social actors. In Table 1, we introduce the terms used in the texts to refer to the social actors of accusation and defense and the ways they were represented. Discursive representations may include or exclude social actors according to their interests and purposes in relation to the audience to whom they are addressed. When there is no reference to the social actor in any part of the text, a process of exclusion is carried out by suppression. On the other hand, it is possible to exclude the social actor only partially, leaving it in the background, that is, it is excluded in relation to a given activity, but is mentioned somewhere else in the text and may be inferred by the reader (van Leeuwen, 1997).

As we can see in Table 1, the social actors most frequently included in the closing argument, both by the defense and the accusation, are the defendant and the victim. The social actors most frequently backgrounded are the legal practitioners. In the following section, we will describe and analyze the ways the social actors that perform the acts of accusation and defense are represented.

DESCRIPTION AND ANALYSIS

Starting with the classification of the clause components (participants, processes and circumstances) it is possible to recognize in which of them the representatives of the State (public prosecutor) and the defense (defense attorney) participate. We apply this analysis to the closing arguments in this section.

Representation of the accusation

In the closing argument produced by the accusation, the district attorney's office appears as Actor in processes related to the legal activity, as we can see in the clauses that open and close the text, respectively:

A PROMOTORIA DE JUSTIÇA ofereceu denúncia contra XXX
THE DISTRICT ATTORNEY'S OFFICE **has offered** accusation against XXX

ANTE O EXPOSTO, a Promotoria de Justiça requer a procedência parcial da denúncia
IN THE FACE OF THE EVIDENCE, the District Attorney's Office **requests** the partial granting of the indictment

In the first fragment, the district attorney engages in the process of “offering an accusation.” The action of offering, more than to give or propose something, in the context of the criminal justice system, denounces somebody to the judicial institution. We can therefore classify “has offered” as a material process in this context.

In the second fragment, the process “requests” may generate different interpretations depending on the approach that the analyst adopts to study the text. It may at first be considered a mental process, expressing a desire. However, in the legal context, “to request” does not refer only to internal experiences in the world of consciousness of the text's author; rather, it builds the representation of a specific legal action performed by the district attorney's office in any text related to the genre closing argument. By the way, to request is a typical practice of this genre (the same is observed in the defense context). Therefore, it is possible to classify “to request,” in the genre closing argument, as a material process.

In both fragments, the Actor is explicit, that is, the district attorney is represented as the agent of the legal activities by means of, in the terms of van Leeuwen's (1997) taxonomy, Inclusion by activation. This way of representing the accusation occurs only in the opening of the closing argument (in which the prosecutor's main activity is mentioned—to denounce) and in its closing (in which requests are directed to the judge—in this case, to indict the defendant).

Besides activation, it is possible to observe other categories of the public prosecutor's representation included in the discourse. The personalization of this social actor occurs only once, at the final part of the text, by means of nomination and functionalization, when the public prosecutor's signature is registered. In the other two times in which the prosecutor is included (in the first and last paragraph), as Actor and Sayer (main participants of material and mental processes), according to Halliday's (2004) system of transitivity, this social actor is represented through reference to its institution ("attorney's office").

In the other passages, exclusion mechanisms backgrounding the social actor are used, since there are no marks of the district attorney's representation, with little visibility of the agent (van Leeuwen, 1997) of the accusation. This occurs in:

*. . . Sem maiores detalhamentos da prova, basta **ser salientado** que a ré escondia a gravidez e logo após a morte do filho, também escondeu-lhe o cadáver*

. . . Without more details about the proof, it is enough **to be stressed** that the defendant hid the pregnancy and immediately after her son's death, also hid the corpse

By means of the deletion of the passive agent, it is from the background that the prosecutor participates in the process of emphasizing certain actions practiced by the accused. This way, a saying that does not belong exclusively to the prosecutor (**to stress**) is built. The role of Sayer could be fulfilled either by the prosecutor or by the judge (to whom the text is directed initially) or by anyone familiar with the case. With this, a subtle co-participation is created for the reader, thus making the utterance part of a consensus.

Following the first clause ("Without more details about the proof"), the nominalization also operates as a mechanism for the backgrounding of the social actor "public prosecutor." This form of exclusion, associated with the idea of dispensing further proof, indicates that the proof will be neither further examined nor contested.

Exclusion by backgrounding is also observed in mental process clauses, as we can see in the fragments below:

*. . . também escondeu-lhe o cadáver, para **se concluir** que o alegado proceder culposos não encontra respaldo seguro no contexto probatório e fático, **podendo-se** facilmente **concluir** ao contrário, ou seja, que, em vistas das circunstâncias apontadas, tenha agido com dolo direto de matar.*

. . . also hid his corpse, **which allows one to conclude** that the alleged involuntary conduct is not supported safely in the probatory and factic contexts, **making it safe to conclude** the contrary, that is, that, due to the circumstances pointed out, she had acted with intent to kill.

. . . *as lesões provocadas, como se vê de fls. 48 e 49, são indicativos de padecimento intenso da vítima*

. . . the provoked lesions, **as can be seen** on pages 48 and 49, indicate the intense suffering of the victim

Again the deletion of the agent leaves open who would be the social actors fulfilling the role of Senser of these mental processes (**allows one to conclude; being safe to conclude; can be seen**). In reality, these conclusions are drawn by the prosecutor, but it is not this that is represented discursively. Who concluded that the defendant had acted voluntarily? The judge, the prosecutor, the defense attorney, the jury—any of these social actors could have done it. When the public prosecutor builds this representation, he takes for granted that everyone will come to the same conclusion, that is, will accept the conclusion that he himself arrived at. This form of backgrounding that operates as an argumentative strategy for the thesis support is also used in the defense's closing argument (see section 4.2).

Besides the prosecutor, other social actors from the legal institution are represented in the text, as can be observed in these examples:

Materialidade comprovada pelo auto de fl. 10 e fotos de fls. 48/50

. . . .

Materiality proved by the proceedings on page 10 and pictures of pages 48/50

. . . o alegado proceder culposo não encontra respaldo seguro no contexto probatório e fático

. . . the alleged involuntary behavior is not safely supported in the probatory and factic context

*ANTE O EXPOSTO, a Promotoria de Justiça requer a procedência parcial da denúncia, para **pronunciar** a ré nos termos da inicial*

DUE TO THE EXPOSED FACTS, the district attorney's office requests the partial granting of the accusation, **to indict** the defendant in the terms of the initial request

In the first fragment, “the proceedings on page 10 and pictures on pages 48/50” are Actors of the material process to prove. The “proceedings on page 10” correspond to the record of the necropsy, written by the medical experts who examined the body and attested the circumstances of death. The “pictures on pages 48/50” correspond to the photographic register done by the police officers who went to the crime scene. In both cases, these social actors are impersonalized, referred to neither by their names nor by their functions, but only by the pages in which the results of their activities (a medical report, photos) are found. Using van Leeuwen’s (1997) terms, we may classify this representation as objectivation of the social actors by means of utterance autonomization. In this category, the social actor is represented by metonymic reference to his/her utterance—in these cases, texts that instantiate other genres integrating the judicial proceedings in which the utterances are found. Therefore, it is only possible to know who the referred actors are through recourse to these texts.

In the second fragment, although there is no indication of localization in the judicial proceedings, it is possible to infer that the Carrier of “the alleged involuntarily behavior” is related to the defense utterance. This can be explained by taking into consideration the classification given to the crime by the parties: for the accusation it is murder; for the defense, involuntary manslaughter or infanticide. Therefore, “the alleged involuntarily behavior” is a nominalization of the saying and requesting activity performed by the defendant’s lawyer.

In the third fragment, there is the exclusion by backgrounding of the judge in the second clause (“to indict the defendant”). It is possible to infer that the judge is the Actor of the material process “to indict” because, in the Brazilian legal context, only the judge has the right to indict a defendant.

The examples analyzed above illustrate some of the ways by which the prosecutor represents himself in his closing argument text and how he represents other social actors involved in the criminal proceedings.

Representation of the defense

The closing argument by the defense has a particularity in relation to the accusation. While the accusatory discourse is built by a social actor—the prosecutor—the defense discourse is represented as if it were built by the defendant herself, as it is shown in the analysis of the transitivity of the clauses that are part of the first and the last paragraph of the text:

MATILDA, qualificada nos autos, vem perante V. Exa., por intermédio de seu defensor firmatário, no prazo do art. 406 do CPP, dizer e requerer o seguinte

MATILDA, qualified in the proceedings, **comes** before Your Ex-

cellency, through her authorized defense attorney, within the time limits of art. 406 of the Criminal Procedures Code, **to say** and **request** the following

*POR TODO O EXPOSTO, **requer***
DUE TO ALL THE EXPOSED, [she] **requests**

*N. Termos, P. [**Pede**] Deferimento.*

In these Terms, [she] A. [**Asks**] her request to be granted.

In the clause that introduces the text, “MATILDA” (the defendant) is represented as the Actor of “comes to say and request.” In the same way, at the closing of the text the defendant is again the Actor of the processes “requests” and “asks” (considered material processes due to the same reasons specified in the analysis of “request” earlier). This strategy creates the idea that the defendant is the author of all that is being said and requested in the text.

However, in other passages there are marks of representation of the defense attorney as the real text author, as in:

*A defesa, por sua vez, **entende** que a ré deve responder por homicídio culposo, diante da circunstância do fato*

The defense, on its turn, **understands** that the defendant should be indicted for involuntary manslaughter, due to the circumstances of the fact

In this fragment, the defense attorney (who had already been represented in the introduction as the defendant’s “authorized defense attorney”) signals his participation as Senser of the mental process “**understands**,” which projects the clause as Phenomenon. From this point on, the defendant is represented only as the author of a crime (who “should be indicted for involuntary manslaughter”). During the text development, the social actor who performs the legal activity of defense is the lawyer. This also takes place in other passages:

*. . . Assim sendo, a defesa **entende** que deve ser operada a desclassificação para homicídio culposo*

. . . Therefore, the defense **understands** that [the charges] should be disqualified to involuntary manslaughter

*. . . Apenas para **argumentar**, caso este juízo entenda em mandar a ré a júri popular pelo homicídio doloso, **entende** a defesa que deve ser*

afastada a qualificadora da crueldade, isto porque a ré não poderia, dentro do contexto, de querer ser cruel, de querer fazer a vítima (seu filho recém-nascido) padecer de sofrimento desnecessário

. . . Only **for argument's sake**, in case this court decides to try the defendant for homicide before a jury, the defense **understands** that the aggravating factor of cruelty should be left aside, because the defendant could not, in this context, have wanted to be cruel, have wanted to make the victim (her newborn child) undergo unnecessary suffering

Bearing in mind the description of the sociosemantic roles, one may say that, in the three fragments mentioned, the defense is represented by means of inclusion through activation (van Leeuwen, 1997).

Exclusion by backgrounding, as has occurred in the accusation's closing argument, is also observed in the defense's final argument:

. . . Note-se que em ambas as situações há necessidade da vontade livre e consciente de produzir o resultado morte

. . . **It should be noted** that in both situations there is the need of a free and conscious will of causing the death

. . . De outra banda, deve-se examinar a hipótese da ocorrência do delito de infanticídio

. . . On the other hand, the hypothesis of the crime of infanticide **should be examined**

The deletion of the passive agents makes it possible for the role of Senser of the mental processes "to notice" and "to examine" to be fulfilled either by the defense attorney, or by other social actors who had access to the text. If the participant had been made explicit (noted/examined "by the defense," "by the prosecutor" or "by the judge"), the agency would be defined and, thus, the ambiguity of meaning would have been avoided. So, at the same time that the agents of the mental processes are excluded, there are openings, in the reading context, for involving other social actors.

In another passage, this ambiguity of agency is softened, and the engaging effect is evident:

O comportamento de MATILDA, como já vimos, não revela que queria matar seu filho recém-nascido ou que assumiu o risco de produzir o resultado morte.

The behavior of MATILDA, as we **have** already **seen**, does not reveal that she wanted to kill her newborn son or that she assumed the risk of causing his death.

In the clause “as we have already seen,” the Senser is “we,” which includes necessarily the utterer, besides other agents inserted in the legal proceedings. The defendant is excluded from this mental process, since she appears as participant of another clause, in which she is represented as agent of mental processes related to the intention to kill (wanted to kill; assumed the risk of causing his death). This way, the defendant is represented as someone who does not understand, does not observe, does not perceive the meaning of her actions; she is merely represented as someone who murdered somebody. This denies the impression, created at the opening of the text, that the defendant was speaking for herself, and had come “to say and request” things in her own defense. The one who really performs those actions, semantically speaking, is the lawyer.

Another typical feature of the closing argument, as a resource to appeal to the judge, is that the activities related to the decision are represented with the deletion of their agents, as it is indicated in the processes underlined in the following fragments:

Mandar a ré a julgamento popular por homicídio doloso é entender que a mesma agiu com dolo, ou seja, queria matar ou assumiu o risco de matar.

To send the defendant to a trial by jury for homicide is to consider that she has acted with malice, that she wanted to kill or assumed the risk of killing.

*A qualificadora **deve ser afastada.***

The aggravating circumstance **should be dismissed.**

POR TODO O EXPOSTO, requer:

(1) **Seja operada** a desclassificação para HOMICÍDIO CULPOSO, pois a ré não queria matar e nem assumiu o risco de matar seu filho recém-nascido

DUE TO ALL THE EXPOSED, [we] request:

(1) That the charge **should be disqualified** to INVOLUNTARY MANSLAUGHTER, because the defendant did not want to kill and neither assumed the risk of killing her newborn son

In the first fragment, through the infinitive clause “To send the defendant to

a trial by jury for homicide,” an action that can only be executed by the judge is mentioned, in case he decides to classify the crime as homicide (thus granting the prosecutor’s request). When the action of a social actor is transformed into a grammatical participant, the agent (in this case, the judge) is excluded by backgrounding.

This same way of representing judicial actions occurs in the other two fragments. By means of passivation without agent, the social actor whose role is to dismiss the aggravating circumstance and to operate the disqualification of the crime is pushed into the background, even though anyone familiar with criminal legal proceedings knows that such social actor can only be the judge.

FINAL COMMENTS

The analysis of the grammatical and sociosemantic roles present in the genre closing argument, part of the process which begins with the indictment and precedes the sentence, has shown how the social actors involved in judicial proceedings are represented in this specific genre.

Both the accuser and the defense lawyer are represented in active form as petitioners who operate in opposition. While the first requires that the accused person be indicted (judged by a jury), the second requires that the crime be classified as one of the types for which the law accepts attenuating circumstances and, consequently, gives more lenient penalties. This is one of the typical characteristics of the genre closing argument, that is, by means of this genre the activity of requiring something from the Court in the instructional phase of the criminal proceedings is performed.

In the case of the defense, there is a particularity as to the authorship of the text. In the introduction, the role of the Actor of the process “to require” is fulfilled by the accused person, as if she assumed the legal role of defending herself. However, as the text develops, she is only Actor of the processes related to the crime committed, while the processes related to the argument that are the basis for the initial request have as their agent the defense attorney. With this, the text creates, at its opening, the fiction that the accused presents her defense to the Court, but, at the same time, there are linguistic indications that the lawyer is the real utterer of the argument. After all, is the one who alleges something in a legal defense the accused or her lawyer? The effect of this ambiguity seems to bring the accused woman closer to the judge who is reading the request, which in a certain form contributes to the representation of the trial as a humane—and not solely a bureaucratic—process.

However, along the text, when the lawyer is represented as Actor, discursively he assumes his role instituted by the law. Therefore, the larger occurrence of rep-

representations of the defense attorney as the one who “understands” and “argues” makes this professional the main agent in the activities mentioned, leaving to the accused the role of author of a crime, not as a Sayer. So, in the closing argument the defendant has no voice, and all the things her accuser and defense attorney alleged about her are represented as facts, as the truth.

This analysis points out another characteristic of the genre closing argument: the use of exclusion by backgrounding of the main social actors due to the fact that it is assumed that the readers (especially the judge, the text’s addressee) already know who these actors are. This strategy also avoids the identification of the legal practitioners involved in the trial, who are represented, when included, in an impersonal manner. While these actors are represented mainly by reference to their functionalization (“prosecutor,” “district attorney’s office,” “defense attorney,” “defense,” “court,” etc.), the defendant is represented generally by nomination (proper name) and categorization (“defendant,” “accused”).

In other genres present in judicial proceedings various linguistic means besides the name personalize the accused person with a unique identity. Legal practitioners, on the other hand, are rarely identified in detail, which, as it was observed by van Leeuwen (1997) in reference to bureaucratic language, backgrounds the responsibility for human activities “governed by impersonal procedures which, once put in place, are well-nigh impermeable to human agency” (p. 60).

The high representation of the defendant, coupled with the low inclusion of legal practitioners, emphasizes the role of the accused in the text, backgrounding the responsibility of the legal representatives. These social actors, when made explicit, are agents only of processes related to typical legal activities. In other words, the social actors of the law do not act by themselves, they act in the name of their institution.

NOTES

¹ This paper integrates the doctoral thesis of the first author, developed at the Graduate Program in Languages and Linguistics of UFSM, with the support of CAPES (Coordination for the Improvement of Higher Education), under the supervision of the second author. We wish to thank Prof. Dr. Carlos Gouveia, from graduate program at Faculdade de Letras of the University of Lisbon (FLUL), for his contributions. We also thank Luciane Ticks and Sara Scotta Cabral for their readings and suggestions, and Vera Maria Xavier dos Santos for helping to review the text.

² Bhatia (1993, 1994), Cotterill (1992), Coulthard (1992, 2005a, 2005b), Eagleson (1994), Figueiredo (2004), Gibbons (2003), Goodrich (1987), Pimentta & Fuzer (2007), Shuy (1993), Tiersma (1993, 1999), among others.

³ For a more detailed comparative description of the three approaches, see Hyon (1996) and Hyland (2004).

⁴ According to Hyland (2004), when this relation is complex, many individuals may be excluded from the genres which comprise the social event (and this happens with some frequency in relation to the genres typical of the legal interaction).

⁵ MP (*Ministério Público*) is the acronym for the Brazilian Department of Justice, which is represented in the criminal proceedings by a district attorney (public prosecutor). This legal practitioner should examine the inquisition report (the text in which the police officers that investigated the case narrate the facts) and decide whether or not to criminalize the charges, if he/she understands that the materiality of the crime is proven and that there are clues that identifying somebody has committed, which requires eight testimonies (Oliveira, 2005).

⁶ Taking the closing argument as basis, the judge indicts the defendant. In a district court seven members representing the society compose the jury (Capez, 2005).

⁷ N corresponds to the number of occurrences of the social actor's participation in the two texts.

REFERENCES

- Alcântara, H. R. (2006). *Perícia médica judicial* (2nd ed.). Rio de Janeiro: Guanabara Koogan.
- Bakhtin, M. (2003). *Estética da criação verbal*. São Paulo: Martins Fontes.
- Bazerman, C. (2004). Speech acts, genres, and activity systems: How texts organize activity and people. In C. Bazerman & P. Prior (Eds.), *What writing does and how it does it: An introduction to analyzing texts and textual practices* (pp. 309-337). Mahwah, New Jersey: Erlbaum.
- Bhatia, V. K. (1993). *Analysing genre: Language use in professional settings*. Harlow: Longman.
- Bhatia, V. K. (1994). Cognitive structuring in legislative provisions. In J. Gibbons (Ed.), *Language and the law* (pp. 136-155). London: Longman.
- Brasil. (1940). *Presidência da República, código penal, decreto-lei n. 2.848, December 7, 1940*. Retrieved April 24, 2005, from <http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del3689.htm>
- Brasil. (1941). *Presidência da República, código de processo penal, decreto-lei n. 3.689, October 3, 1941*. Retrieved April 10, 2005, from <http://www.planalto.gov.br/CCIVIL/Decreto-Lei/Del2848.htm>
- Capez, F. (2005). *Curso de processo penal* (12th ed.). São Paulo: Saraiva.
- Christie, F., & Martin, J. (1997). *Genre and institutions*. London: Continuum.
- Cotterill, J. (2002). *Language in the legal process*. Hampshire, United Kingdom: Palgrave.

- Coulthard, M. (1992). Forensic discourse analysis. In R. M. Coulthard (Ed.), *Advances in spoken discourse analysis* (pp. 242-257). London: Routledge.
- Coulthard, M. (2005a). *Some forensic applications of descriptive linguistics*. Retrieved October 14, 2007, from <http://www.aston.ac.uk/lss/staff/profile/coulthardm.jsp>
- Coulthard, M. (2005b). *The linguist as expert witness*. Retrieved October 12, 2007, from <http://www.aston.ac.uk/lss/staff/profile/coulthardm.jsp>
- Devitt, A. J. (1991). Intertextuality in tax accounting. In C. Bazerman & J. Paradis (Eds.), *Textual dynamics of the professions* (pp. 336-357). Madison: University of Wisconsin Press.
- Eagleson, R. D. (1994). Forensic analysis of personal written text: A case study. In J. Gibbons (Ed.), *Language and the law* (pp. 362-373). London: Longman.
- Figueiredo, D. C. (2002). Vítimas e vilãs, monstros e desesperados: Como o discurso judicial representa os participantes de um crime de estupro. *Linguagem em (Dis)curso*, 3, 135-156.
- Figueiredo, D. C. (2004). Violência sexual e controle legal: Uma análise crítica de três extratos de sentenças em casos de violência contra a mulher [Special issue]. *Linguagem em (Dis)curso*, 4.
- Gibbons, J. (2003). *Forensic linguistic: An introduction to language in the justice system*. London: Blackwell.
- Goodrich, P. (1987). *Legal discourse*. London: Macmillan.
- Halliday, M., & Matthiessen, C.M.I. (2004). *An introduction to functional grammar* (3rd ed.). London: Arnold.
- Hyland, K. (2004). *Genre and second language writing*. Ann Arbor: University of Michigan Press.
- Hyon, S. (1996). Genre in three traditions: Implications for ESL. *Tesol Quarterly*, 30(4), 693-722.
- Martin, J., & Rose, D. (2003). *Working with discourse: Meaning beyond the clause*. London: Continuum.
- Meurer, J. L., Bonini, A., & Motta-Roth, D. (Eds.). (2005). *Gêneros: Teorias, métodos e debates*. São Paulo: Parábola.
- Miller, C. (1984). Genre as social action. *Quarterly Journal of Speech*, 70, 151-167.
- Miller, C. (1994). Rhetorical community: The cultural basis of genre. In A. Freedman & P. Medway (Eds.), *Genre and the new rhetoric* (pp. 67-68). London: Tylor & Francis.
- Oliveira, M.V.A. (2005). *O julgamento em plenário do Júri Popular*. Retrieved April 15, 2005, from <http://www1.jus.com.br/doutrina/texto.asp?id=1070>
- Pimenta, V.R. (2007). *Textos forenses: Um estudo de seus gêneros textuais e sua relevância para o gênero "sentença."* Unpublished doctoral dissertation, Federal University of Uberlândia, Uberlândia, Minas Gerais, Brazil.

- Pimenta, V.R., & Fuzer, C. (2007). O direito positivo brasileiro e suas heterotopias: mas esta é uma questão lingüística? *Proceedings of Seminário Internacional em Letras, Santa Maria, Brazil, 2007*.
- Rodrigues, C.C.C. (2005). *Contributos para a análise da linguagem jurídica e da interação verbal na sala de audiências*. Unpublished doctoral thesis, University of Coimbra, Coimbra, Portugal.
- Shuy, R. (1993). *Language crimes: The use and abuse of language evidence in the courtroom*. Cambridge: Blackwell.
- Swales, J. (1990). *Genre analysis: English in academic and research settings*. Cambridge: Cambridge University Press.
- Tiersma, P.M. (1993). Linguistic issues in the law. *Language*, 69, 113-137.
- Tiersma, P.M. (1999). *Legal language*. Chicago: University of Chicago Press.
- Van Leeuwen, T. (1997). The representation of social actors. In C.R. Caldas-Coulthard & M. Coulthard (Eds.), *Texts and practices: Readings in critical discourse analysis*. London: Routledge.