

Analysis of Criminal Court Discourse on *Steven Avery* Case from the Perspective of Appraisal Theory*

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Abstract—In the recent decades, studies on the legal English field has drawn an increasing attention among the academics, due to the development of global economics and frequent inter-cultural communications. In the late 1990s, P.R.R. White and J.R. Martina had proposed the appraisal theory, which mainly was an extension of the study of interpersonal meaning under the structure of SFL (Systematic Functional Linguistics). Up to now, it has been widely applied into many types of text analysis, such as pedagogical texts, academic texts and mass media texts. However, there are few researchers conduct studies by bring appraisal theory into the analysis of criminal court discourse texts. The paper is undertaken to investigate the application of J.R. Martin and P.R.R. White's appraisal theory in criminal court discourse, which primarily consist by profiling the main appraisal resources in criminal court discourse and its application on those resources. Based on the transcript of *Steven Avery's* case selected from the website and by means of descriptive and expository methods, this paper first describes all the appraisal resources in criminal court discourse, which are constituted by attitude, engagement and graduation, after the specific analysis, came the conclusion that the engagement resources are most frequently used. This study proves the feasibility of analyzing the criminal court discourse texts from the perspective of appraisal theory, enlarging the research range and providing a new insight for criminal court discourse. It is hoped that the study of criminal court discourse on the basis of appraisal theory will offer inspiration and assistance for legal practitioners from the angle of linguistics.

Keywords—criminal case; court discourse; appraisal theory

I. INTRODUCTION

With the advancement of the science of law and intercultural communication, the criminal court discourse aroused widespread attention and heated discussion among domestic and foreign academic field, thus it plays a significant role in the legal practice. The appraisal theory has been applied in many aspects of discourse, like literary comments, political address and so on; but there is rare application in the criminal court discourse field. Therefore,

*Fund: 2018 Southwest University of Political Science and Law "Legal Translation Research under Legal Pluralism", school-level project, project number: 2018XZQN-50.

this study is conducted to apply the appraisal theory on the script analysis concerning criminal court discourse; the data for analysis are all based on the script of *Steven Avery* case.

A. The Objectives of the Study

This study is conducted from the perspective of J.R. Martin and P.R.R. White's appraisal theory, aiming to investigate the usage of criminal court discourse. Therefore, three questions have been raised in accordance with the goal:

- What kind of appraisal resources is mainly used in the criminal court discourse?
- Why do the legal practitioners use these main appraisal resources in the court?
- How do the legal practitioners use these main appraisal resources in the court?

B. Data Collection and Methodology

Steven Avery's case (State of Wisconsin v. *Steven Avery*) is one of the leading case in Manitowoc County, Wisconsin in 2007, which is rather representative thus being adopted as the script for analysis. *Steven Avery*, the defendant, is the man being convicted of sexual assault and attempted murder in 1985. However, after serving 18 years of a 32-year sentence, he was exonerated by DNA testing and released, only to be charged with murder two years later. *Steven Avery's* case aroused extensive and fierce debates. The criminal court discourse, taking the transcript of *Steven Avery's* case as an example, is analyzed by qualitative research methods. The transcript of *Steven Avery's* case can be reached on the webpage: <http://www.stevenaverycase.org>.

II. LITERATURE REVIEW

A. Overview of Court Discourse

Language, as the carrier of thoughts and the vehicle of communication, always plays an important role in our daily life, whereas law is an essential component in constructing the norm of society in the social life domain. According to

Gibbons (2003)¹, law is the representation of a society's value systems, which attempts or imposes obligations and guard rights, thus exercises the deprivation and enforces punishment on behaviors that go against the society's norms. The language of law is a language with special purposes, which is differentiated from the "ordinary" language in regular use. As Conley and O'Barr (1998)² defined the courtroom discourse, that is, in the context of law, discourse in the linguistic sense refers to the talk that constitutes courtroom testimony, for instance, the closing argument, attorney-client interviews, and arguments between disputants, mediation sessions, and the like.

B. Related Studies of Appraisal Theory

In 2000, a book named *Beyond Exchange: Appraisal Systems in English* by J.R. Martin was published, which laid down the landmark of the appraisal theory. Since then, the appraisal theory has been widely used to analyze a large variety of discourse types, such as historical discourse, news discourse, legal discourse, argumentative writing, infant language, academic discourse, narratives and so forth. Recently, the prominent research is gaining ground in the news discourse and political speeches.

Rick Iedema, Peter White and Suan Feez (1994), under the leadership of J.R. Martin, did a research concerning appraisal theory and news discourse. They explored the "objectivity" and "subjectivity" in the news discourse as well as the variation of "voices" and sub-registers by reference to their use of appraisal values. Another leading study is conducted by Han (2006), who studied engagement resources in political speeches, aiming to find out how a speech deliverer manages to display his position and build a cooperative relation with the audience from the perspective of engagement resources. From these sweeping applications in various branches, it is safe to conclude that the appraisal theory has gained extensively use in the discourse analysis.

C. The Latest Development

Many scholars have done the researches on court discourse from the perspective of forensic linguistics. A book, named *An Introduction to Language in the Justice System* by John Gibbons (2003)³, discusses the law and literature, language and disadvantage before the law, the story and communication issues in the legal system, the pursuit of precision, interaction and power, law on language and linguistic evidence. In China, Du Jinbang, an famous expert in forensic linguistics, have done research on the court discourse from the perspective of information flow, which has established a new frontier in the field of legal discourse study.

There are also some other studies on court discourse in terms of pragmatics. Juan Liu (2008)⁴ in the Pragmatics Features of Court Language has discussed the strategy of presupposition in the court discourse. Liu thinks that the questioners never raise the questions that they never prepared. The purpose of asking questions is to make the debate develop towards the direction, which is beneficiary to the questioners, instead of obtaining new information.

As mentioned above, few scholars have done the research into criminal court discourse from the perspective of appraisal theory systematically. Therefore, it is necessary and rational to conduct this study on the criminal court discourse in terms of attitude, engagement and graduation.

III. THEORETICAL BASIS OF THE APPRAISAL THEORY

A. Introduction of the Appraisal Theory

Appraisal theory, which is a new lexico-grammar framework, has developed within Systematic Functional Linguistics (Halliday, 1994)⁵. There are three interacting domains in the appraisal theory — "attitude", "engagement" and "graduation". Attitude contains emotional reactions, judgments of behavior and evaluation of things, dealing with people's feelings. Engagement refers to the sourcing attitudes and the play of voices around perspectives in discourse. Graduation aims to grade phenomena whereby feelings are amplified and categories blurred (Martin & White, 2005)⁶. The concept of attitude, engagement, graduation and its subcategories will be further interpreted in the continuous part.

B. The Concept of Attitude

In the framework of appraisal theory, the *attitude* is the central part. Attitude deals with the assessment of things, people's emotions and their character (Martin & Rose, 2003)⁷. What's more, there are several features in the attitudinal resources: firstly, attitude can be implicit or explicit; secondly, attitude can be positive or negative, depending on people's emotions or systems of social norms and values; thirdly, attitude can be up-scaled or down-scaled and strengthened or blurred. Attitude itself can be divided into three subcategories: *affect*, *judgment* and *appreciation*.

Affect refers to the writer/speaker's emotional response towards behavior, text/process and phenomena, which can be subcategorized into three types — "affect as quality", "affect as process" and "affect as comment". "Affect as quality" refers to the writer/speaker uses quality lexical units by the realization of modified participants (*e.g. a sad boy*). "Affect as process" refers to the writer employs the lexical units to assess the target of attitudes by the realization of modified

¹ Gibbons, John. *Forensic Linguistics: An introduction to Language in the Justice System*. [M]. London: Blackwell, 2003.

² Conley, John M. and William M. O'Barr. *Just words: Law, Language and Power* [M]. Chicago: The University of Chicago Press, 1998.

³ Gibbons, John. *Forensic Linguistics: An introduction to Language in the Justice System*. [M]. London: Blackwell, 2003.

⁴ Liu, Juan. On Pragmatics Features of Court Language. *Journal of Jixi University* 2, 2008.

⁵ Halliday, M.A.K *Exploration in the Function of Language* [M]. London: Edward Arnold, 1994.

⁶ Martin, J.R., & White, P.R.R. *the language of evaluation: appraisal in English* [M]. New York: Palgrave Macmillan, 2005.

⁷ Martin, J.R. & Rose working with discourse: meaning beyond the clause [M]. London: continuum, 2003.

process (e.g. the present **pleased** the boy.). “Affect as comment” refers to the writer uses adverbs as modal adjunct to assess people’s emotions toward the entire proposition (e.g. **happily**, he had a long nap). The following table demonstrates some realization of attitude resources (see “Table I”):

TABLE I. THE LEXICAL TERMS IN AFFECT SUBSETS (ADOPTED FROM MARTIN & WHITE, 2005⁸)

| Affect | Positive | Negative |
|------------------|--|--|
| Dis/inclination | miss, yearn for, long for | fearful, wary, terrorized |
| In/security | comfortable, trusting, confident; together, confident, assured | surprised, startled, astonished; anxious, uneasy, freaked out |
| Un/happiness | like, love, adore; cheerful, buoyant, jubilant | sorrowful, grief-stricken, dejected; sad, melancholy, despondent; downcast, low, depressed; wet-eyed, weepy, tearful |
| Dis/satisfaction | Impressed, charmed; satisfied, engrossed, absorbed | thrilled, pleased, chuffed, involved, jaded, stale, flat; angry, cross |

Judgment refers to the resources used to make evaluation of human behaviors positively or negatively according to various normative principles (Martin & White, 2005). The normative principles of judgment are the shared community culture and institutionalized regulations about how human should behave as the member of a society. Judgment can be divided into two sub-types: social esteem and social sanction. Judgments of social esteem deals with “normality” – how special someone is, “capacity”- how capable someone is, “tenacity”- how dependable someone is. Judgments of social sanction concentrate on “veracity”- how honest someone is, “propriety”- how ethical someone is.

Appreciation refers to the system to assess “things”, including natural phenomena and either product or process positively or negatively from aesthetic perspectives. For instance, the words as ugly, pretty, dramatic, dull and so on. Appreciation is composed of three subcategories, which are reaction, composition and valuation. Reaction of appreciation, which is “interpersonally tuned”, focuses on the emotional impact of the work on listener/reader/ audience, as Rothery and Stenglin (2000) suggest. Rothery and Stenglin also has pointed out that composition is “textually tuned”, concentrating on the texture of a work based on the complexities or details. What’s more, valuation refers to the evaluation of process / product by reference to various social conventions.

⁸ Martin, J.R., & White, P.R.R. the language of evaluation: appraisal in English [M]. New York: Palgrave Macmillan, 2005.

C. The Concept of Engagement

Engagement is related to the source of attitudes, which means it focuses on where the language user’s attitude comes from. Inspired by dialogism of Bakhtin, Martin divided engagement into two sub-types, which are *monogloss* and *heterogloss*, in his book *Beyond Exchange: APPRAISAL System in English*. Monogloss refers to no recognition or engagement with dialogical alternatives and the language users may make their own ideas without any dialogism, that is, the source of voice is simply the speaker himself. On the contrary, if the speakers project their own ideas with other people’s words to support them, that is heterogloss. Heterogloss is concerned with recognition and engagement with other voices and other viewpoints. Heterogloss itself is composed of two sub-categories: dialogic contraction and dialogic expansion. The “Fig. 1” illustrates the overview of engagement.

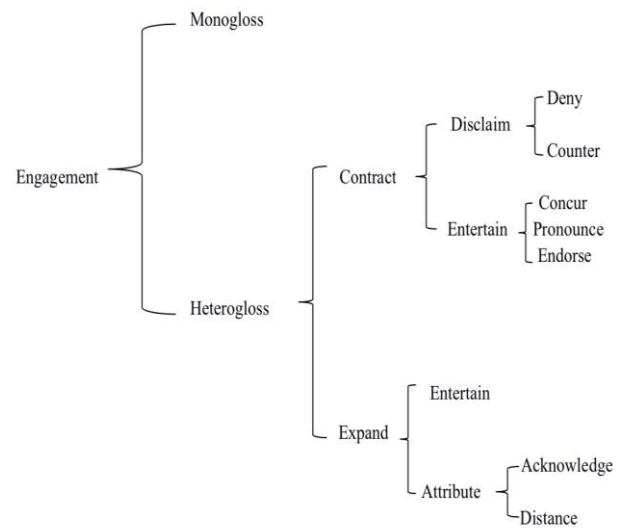


Fig. 1. The Overview of Engagement (Martin & White, 2005)⁹.

Contraction refers to the heteroglossic resources which are used to challenge, shut down or restrict the alternative positions and voices. Contraction can be classified into two sub-types, which are *disclaim* and *proclaim*. Disclaim deals with the linguistic locution which are used to reject or replace some prior utterance or some previous viewpoints directly. Proclaim is concerned with the formulations used to limit the scope of dialogistic alternatives in the ongoing talk indirectly. On the contrary, expansion refers to heteroglossic resources used to open up the alternative or substitutable positions (Martin & Rose, 2005)¹⁰. The two subcategories of dialogic expansion are *entertained* and *attribute*. Entertain refers to the wordings by which “the authorial voice indicates that its position is but one of a number of possible positions and thereby, more or less makes dialogic space for

⁹ Martin, J.R., & White, P.R.R. the language of evaluation: appraisal in English [M]. New York: Palgrave Macmillan, 2005.

¹⁰ Martin, J.R., & White, P.R.R. the language of evaluation: appraisal in English [M]. New York: Palgrave Macmillan, 2005.

those possibilities and entertains those dialogic alternatives” (Martin & Rose, 2005). Attribute refers to the linguistic locutions by which the propositions are formed certain external voices, instead of the text’s internal authorial voice.

D. The Concept of Graduation

Graduation is a scaling system for evaluating resources, which shows the weakness or strength in meaning and different levels. Graduation can be categorized into two types: *force-* grading according to intensity or amount, *focus-* grading according to prototypicality and preciseness. Force is concerned with the variable scaling of intensity, while focus deals with the blurring or sharpening of the strength of boundaries between categories. Therefore, the force can be classified into *intensification* and *qualification*; the focus can be divided into *sharpen* and *soften*. The following table represents the preliminary outline of graduation¹¹ (see “Fig. 2”).

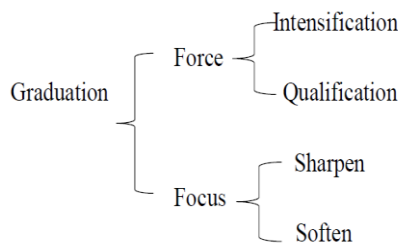


Fig. 2. A preliminary overview of graduation (adapted from Martin & Rose, 2005).

IV. ANALYSIS UNDER THE BINDING OF APPRAISAL THEORY

The previous chapters present the framework of appraisal theory and the background and the objective of this research. In this chapter, the main appraisal resources in criminal court discourse will be analyzed, at the same time, how these resources are used will be discussed on a micro perspective.

A. Application of Attitudinal Resources

The attitudinal resource remains as the central part, dealing with the assessment of things, people’s emotions and their character. According to analysis of the transcript of the *Steven Avery* case, affect and appreciation resources are rarely used, therefore, this analysis will focus on judgment, especially, about social esteem and social sanction.

1) *Social esteem*: Social esteem usually relates to ethics, in criminal court discourse, it is often used to judge the opposite party negatively from the aspect of social ethics. Here comes the example (1):

(1) ATTORNEY KRATZ: That not *withstanding*, Judge, we will — Oh, I’m sorry. I’m sorry, Judge. I misspoke. I was

¹¹ Martin, J.R., & White, P.R.R. the language of evaluation: appraisal in English [M]. New York: Palgrave Macmillan, 2005.

hearing two things; page 185, the third last paragraph is the information regarding the other cell phone that was found, that mystery one down by the river. (pp. 259)

In the example listed above, the lawyer used “not withstanding”, which means unreasonable, to show the inaccurate description of the opposite party.

2) *Social sanction*: Social sanction relates to veracity or honesty in criminal court discourse, therefore, it is usually used in criminal court trial to judge whether one’s testimony is veracious or not. As demonstrated in example (2):

(2) ATTORNEY: I will take it back from you, no cheat sheets. Now that you have had a chance to refresh your recollection about what you told the police, it’s true that they had asked you if anything happened between 3:30 and 5:00 on that Halloween afternoon and you said that nothing happened, right? (pp.100)

In this example, the word “cheat” is regarding to people’s truthfulness or honesty depending on social contextual values. The lawyer used this word to request the respondent to be honest. Thus, it can be concluded that, in criminal court discourse, the judgment of social sanction is often used by the lawyer to get the anticipant answer.

B. Application of Engagement

Engagement is related to the source of attitudes, which means it focuses on the original source of the language users’ attitude. Inspired by dialogism of Bakhtin, Martin divided engagement into two sub-types, which are *monogloss* and *heterogloss*, in the book *Beyond Exchange: APPRAISAL System in English*. Technically, engagement can be widely applied in the criminal court discourse.

1) *Application of denial resources*: Deny is a lexicogrammatical feature denying the scoped or framed entity or process, but its discourse semantic effects are multiple and depend on other co-textual signals. In criminal court discourse, denial resources can be commonly detected, as showed in example (3) and (4):

(3) ANSWER: *Nothing* was introduced, um, between the time that we discovered the pit and the time that the Crime Lab arrived. We did *not* have proper equipment, gloves or, uh, proper clothing to, uh, to process that. (pp.21)

(4) QUESTION: There did *not* appear to be burnt ground or burnt grass in the area of that first bone fragment?

ANSWER: There was *not*. (pp.33)

From the two examples listed above, the denial resources can be both employed by the lawyer and the respondent. The respondent often uses denial resources to answer the lawyer’s questions, which is to show the fact is inconsistent with the lawyer’s point of view or describe the fact. On the other hand, the lawyer uses the denial resources in order to get a negative answer.

2) *Application of counter resources*: Counter covers all instances where contrast occurs for discourse semantic reasons. It is usually signaled by lexical items such as yet, although, but, amazingly, etc., but it can be present through straight comparison-contrast such as via parallelism. In criminal court discourse, the counter resources are widely used to emphasize the contradiction, making and accepting the jurors attach greater importance to the latter part. Here comes the example (5):

(5) ANSWER: Not necessarily, **but** just the way the body's positioned and evaluated, for instance, under the motor vehicle seat. (pp.41)

3) *Application of pronouncement resources*: In criminal court discourse, both parties may use these expressions- I contend, I think, the facts of the matter are and etc.- to attract attention, so that the judge and the audience can grasp what they intend to convey. For example :

(6) QUESTION: I don't **think** it is a statement of the testimony. (pp.46)

In this sentence, "I don't think" makes the lawyer's point of view stand out, which is clear for people present to grasp their focus and stance. At the same time, the pronouncement resources are also extensively used by the respondent to express his/her standpoint.

4) *Application of entertain resources*: Entertain refers to the wordings by which "the authorial voice indicates that its position is but one of a number of possible positions and thereby, more or less makes dialogic space for those possibilities and entertains those dialogic alternatives"(Martin & Rose, 2005). There are two sub-types of entertain resources: modality and vague language. Here are the examples:

(7) THE COURT: I'm not — I don't view it as a significant part of ... that — that is reference the fact that the State is not claiming that it didn't get some notice it **should** have gotten. Before we leave jury instructions... if the verdict forms are acceptable. (pp.58)

(8) QUESTION: Now, those belts are hard to see, um, but **I think** the material you're referring to as — as belts almost looks like a tumbleweed or a bramble bush or something?

ANSWER: Correct. (pp.43)

The listed example (7) explains the modality of entertain resources, which is more acceptable by other people, by means of leaving some dialogic space for other people instead of being absolute. The example(8) shows the second category is vague language. For the purposes of achieving special communicative aims, speakers often use vague expressions to substitute the ones, which can be got across clearly and directly.

C. Application of Graduation

Graduation is a scaling system for evaluating resources, which shows the weakness or strength in meaning and

different levels. In terms of the application of graduation resources, the use of intensification, qualification, sharpen and soften will be analyzed.

1) *Intensification*: Intensification can be defined as "intensifies an attitude", such as extremely, quite, very, etc. For instance:

(9) QUESTION: And, as a matter of fact, in your experience, it's not unusual at all for perpetration of crimes to take efforts to alter crime scenes, is it? (pp.135)

ANSWER: That's **quite** common to — to see attempts being made to clean up. (pp.135)

In this example, "quite" is used to highlight the fact that cleaning up the crime scene is a usual thing. Therefore, the intensification is often used by the respondent to emphasize the genuineness of fact.

2) *Qualification*: Qualification consists of scaling with respect to amount (e.g. weight, size, number, strength), as well as with respect to extent covering scope in space and time and proximity in space and time. The semantics of qualification can be either abstract or concrete. Qualifications graduate concerning imprecise number (e.g. many, a few), imprecise reckonings of mass of presence (e.g. large, small; thick, thin; heavy, light; bright, dim) and imprecise reckoning of extent in space and time, with space and time measured concerning distribution (e.g. sparse, wide-spread; short-term, long-lasting) or proximity (e.g. recent, ancient; near, far). For instance, the large-small usage in criminal court discourse:

(10) QUESTION: How **large** was this bedroom?

ANSWER: Rather **small** bedroom, actually. (pp.183)

In this example, the lawyer and the respondent realized qualification by imprecise reckonings of mass of presence by "large" and "small", providing the imprecise measuring of the entities by referring to their size.

3) *Sharpen or soften*: Under focus, there are two categories: sharpen and soften. When it is possible to up-scale, which can be also called "sharpen", the specification so that prototypicality is indicated. When it is possible to down-scale, which is also named "soften", the specification so as to characterize an instance as having only marginal membership in the category. With regard to soften, the example is as follows:

(11) ANSWER: I have **never** been on Avery Road in my entire life. (pp.131)

When it comes to soften, the example is as follows:

(12) QUESTION: Actually, looks to me like it may be **slightly** different, but you mentioned that there were two little areas that you thought might be bloodstains there? (pp.68)

The word "never" is oriented towards the sharpen end of the focus scale, while the word "slightly" is oriented towards the soften end of that. In criminal court discourse, sharpen or

soften are rarely used, because sometimes it is not accurate whiling using sharpen and soften.

V. CONCLUSION

In the criminal court discourse, the main appraisal resources used is engagement. Attitude and graduation are also frequently employed as well. When it comes to the discourse of the judge, the most frequently used appraisal resources is engagement, on the contrary, the much less frequently used appraisal resources are attitude and graduation.

Concerning scene of the criminal court trials, when the lawyer or the respondent uses the engagement resources, whether it deny or highlights the perspectives, legality, the authenticity or weight of its own evidence, it consists of perspectives, legality, the authenticity or weight of its own evidence. When the judge uses engagement resources, he often tries to announce the court's standpoint about the evidence or about the whole case. When the lawyer uses the appraisal resources of attitude, mainly judgment, he often uses negative social esteem and social sanction to require an honest and anticipant answer. The specific analysis lies in chapter four.

This article is going to shield some light on the criminal court trials from the perspective of linguistics, enriching the scope of application of appraisal theory. But this study is conducted on a relatively small scale, and only adopts one transcript for analysis in this study. For further study, it would be appropriate to expand the study to a larger scale.

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