

UDC 811.111`42

DOI: 10.31891/2415-7929-2021-21-41

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## SPECIFICITY OF PERSUASION IN AMERICAN COURT DISCOURSE (BASED ON ADVOCATES` AND S PROSECUTORS` SPEECHES)

*This research is devoted to identifying the specifics of the implementation of persuasive influence in USA courts. The analysis is based on the material of feature films and authentic documents of trials that have taken place in recent years. It has been proved that the specific pragmatic context of the judicial discourse is determined by the invariability of illocutive goals: for the prosecutors – to prove the guilt of the defendant, for the lawyers – to prove the innocence of the defendant or reduce the term of the sentence. The peculiarities of the linguistic context of the judicial discourse are shown to be determined, firstly, by of the etiquette formulas of the judicial process, and, secondly, by the way of the linguistic expression of communicative strategies: explicit or implicit. The common features in the speeches of lawyers and prosecutors have been revealed – the implicit way of presenting the purpose of the persuasion, the construction of arguments on the basis of appeal to the value priorities of the linguistic community. The prosecutors focus on the contradictions between the generally recognised values of the society and the atrocities of the defendants; the lawyers - on the commonality of their own and the jury's views with the value priorities of the society. It is proved that in the speech of the prosecutor the persuasive purpose is implicitly represented through the use of linguistic means with a negative associative halo. Lawyers unlike accusers often use the communicative strategy of distance convergence with the jury. The types of arguments in the speeches of prosecutors and defence lawyers differ significantly. Prosecutors focus on facts whereas lawyers create persuasion with the help of the circumstances of the crime that mitigate the sentence together with implicitly presented an appeal to the principle of humanity.*

*Keywords: persuasion, argumentation, court discourse, advocate`s speech, prosecutor`s speech, implicit way, explicit way.*

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## СПЕЦИФІКА ПЕРСУАЗИВУ В АМЕРИКАНСЬКОМУ СУДОВОМУ ДИСКУРСІ (НА МАТЕРІАЛІ ПРОМОВ АДВОКАТІВ ТА ОБВИНУВАЧІВ)

*У статті розглянуто поняття персуазиву. Звернено увагу на особливості використання персуазиву в американському судовому дискурсі. Аналіз проведено на матеріалі художніх кінофільмів та автентичних судових процесів, що відбувалися в останні роки. Виявлено спільні ознаки в промовах адвокатів і прокурорів – імпліцитний спосіб представлення мети персуазиву, побудова аргументів на базі апеляції до ціннісних пріоритетів мовної спільноти. Відмінності стосуються ступеня вираженості мети персуазиву та використання стратегії зближення дистанції.*

*Ключові слова: персуазив, аргументація, судовий дискурс, промова адвоката, промова прокурора, імпліцитний спосіб, експліцитний спосіб.*

### **Formulation of the problem.**

The study of persuasive language holds a special position among the problems concerning the influential function of language owing mainly to linguistic and psychological reasons. First, it is in persuasive speech that the intention of influence comes into play to the greatest extent. Thus, the linguistic factor – the cognitive information verbalized by the word persuasive – plays a role. Second, people have always sought to exert an effective influence on their interlocutors. It is difficult to detect a discourse in which communicators do not influence each other to some degree. Here, the purely psychological and linguopragmatic aspects of communication intersect. Moreover, of the numerous types of influence, people are most interested in persuasive discourse because it provides a circle of like-minded people, a similarity of value priorities of the partners in communication, always brings people closer together and simplifies their interaction. In addition, in judicial discourse, a well-structured persuasion can determine a person's fate and influence the decision of juries and judges. Seemingly, such an important genre of speech should be in the first place in terms of the depth of its study, full comprehension of the mechanisms of its influential effect. However, experience has shown very different results and lawyers are each time confronted with the question of how to ensure the success of persuasive speech in the specific context of the discourse. Despite the availability of theoretically substantiated and practically tested recommendations [1;2;3;4;5;6;], the persuader has to choose ways of influencing the judges and, in a competitive system, the jury, and is forced to rely on his intuition, to act as if by groping, through trial and error, which in court discourse is extremely dangerous. Identifying specific ways of making and delivering persuasive speeches that are common in court discursive practices could contribute to understanding the mechanisms of persuasive impact. The focus of the topic on solving important practical problems and on the further development of theoretical issues related to persuasive influence confirms its relevance.

### Recent researches analysis.

A thorough review of theoretical work has revealed a rather contradictory state of research of persuasive language. On the one hand, there are numerous scholarly studies concerning the influential potential of the language, including persuasion [7; 8], and on the other hand, there are just as many blank spots including issues that require in-depth study. Obviously, the characterised state can be explained by the versatility of persuasive communication: it is used in all spheres of human activity, from the domestic to the social, in most types of official and unofficial discourse, and in each case exhibits a certain specificity. For example, it can hardly be denied that persuasion in advertising discourse, pedagogical discourse and judicial discourse will be different. Consequently, identifying the specificity of persuasion in each of the fields of activity would fill in certain gaps. There are prerequisites for the analysis, therefore it can be said that a solid basis for the further study of the patterns of persuasiveness has now been established. Persuasiveness has its origins in a thoroughly developed theory of argumentation [9; 2; 10], and as it is known, without reasons there is no persuasiveness.

D. Hample introduces an aspect of the cognitive dimension of argumentation that involves the study of the processes of its production and perception. In his view, argumentation is a cognitive phenomenon because argumentation and cognition are similar, first, in that they form beliefs and, second, in that they generate new thoughts: «...argumentation and cognition...are similar in two fundamental respects. First, both organize belief fields. But in addition to organizing belief fields, argumentation and cognition have another basic concern in common: both produce new ideas. These two functions – organizing and producing beliefs – are basic to both fields of study» [11, p.157]. The strategic arsenal of persuasive influence is being actively explored. D. Walton and E. Krabbe single out a persuasive dialogue [12]. As H. Prakken propounds, the term ‘persuasion dialog’ has now become a technical term of argumentation technology in artificial intelligence and there are formal models representing species of persuasion dialogue [13].

Among issues relating to persuasion that have not been explored exhaustively there is the question of how persuasive influence is exercised. To what extent the fact of persuasion is overt, what elements are behind it and why, how arguments are delivered. As said, these questions still remain unanswered. Observations on the state of research have been taken into account in the formulation of the aim and objectives of our study.

**The aim** of the study is to identify the specifics of the use of persuasive language in real-life judicial discourse and that reflected in feature films.

Achievement of the goal implies step-by-step fulfillment of a number of **tasks**, the main of which are: 1) justification of the terminological apparatus involved in the paper; 2) identification and explanation of the types of communicative strategies and tactics used in the explicitly and implicitly presented persuasive influence in judicial discourse; 3) identification of similarities and distinctive features in the use of persuasive influence by different agents of judicial discourse; 4) establishment of similar and distinctive features of persuasive influence in real life judicial discourse and reflected in fiction films.

### Results and discussion.

Court discourse provides the researcher with extensive scope of texts for analysis, as the primary tool of all actors in this process is persuasion. During the pre-trial stage, the investigator gathers facts to convince the prosecutor; during the trial itself, all actors are trying to persuade their opponents: prosecutors, advocates, defendants, witnesses, plaintiffs. But, in view of the limited amount of the article, we are to focus on speeches of prosecutors and advocates at US trials.

We should note that this is not a random choice: it is in the speeches of these participants in the trial that the persuasive is most strongly represented. It also follows from the underlying and one of the working hypotheses of our study. The underlying hypothesis is the presence of persuasive specificity in judicial discourse, which we aim to discover. One of the working hypotheses is the assumption that the persuasive in the speeches of lawyers and prosecutors has not only common features, but also distinctive. If the results of the analysis confirm this assertion, then we have to identify the main common and distinctive features and explain their role. If the hypothesis is not confirmed (a negative answer is also an answer), then we will find linguistic means that realise persuasion in prosecutors' and advocates' speeches in courtroom.

One of the working hypotheses of our research has to do with the choice of material for analysis. Starting to think of an alternative solution: persuasion in real-life trials or feature films, we came to the conclusion that it is interesting to analyse both types of sources in order to compare the ways of expressing persuasiveness in them. While formulating the working hypothesis we proceeded from the assumption that the cinematograph is based on, *inter alia*, on real life and, therefore, the ways of using persuasion in court discourse should be similar. With this in mind, **the factual material** of the study is American fiction films that represent judicial discourse, as well as authentic documents of American trials in recent years.

The aim, objectives and specificity of the material determined the choice of **methods of analysis**.

At the stage of justification of terminology the main methods are comparison (compare the views of different authors on the definition of terms, approaches regarding the problem analysis, positions in discussion topics, etc.), classification (distinguishing groups according to the types of information), generalisation (summarising information), argumentation (justifying own position).

At the stage of analysis of lawyers' and prosecutors' speeches we widely used the purposive sampling

method: we selected dialogues in which persuasive means were presented to a greater or lesser extent. The following attributes were identified according to the criterion of ways of influence: explicit or implicit way of expression of persuasive language; communicative strategies and tactics chosen by the persuader; the presence of manipulative strategies; types of arguments. The given attributes were derived from the working hypothesis that was formulated above – the assumption that it is the given attributes that characterise persuasion in judicial discourse.

The classification method served in differentiating the types of attributes, the types of information about the method of influence, as well as the types of dialogues according to the participants: lawyer – prosecutor; lawyer – judge; lawyer – jury; defendant's lawyer – prosecutor (or both advocates, for example, in a divorce trial).

In our approach to analysis, we have been guided by modern scientific paradigms: cognitive linguistics, pragmatic linguistics, and the theory of speech communication, but we have benefited from the achievements of twentieth-century linguistics, in particular lexico-semantic analysis. Elements of cognitive analysis have helped to identify the dependence of forensic discourse on social conditions. The paper uses the T. van Dijk discourse model as the basis for the analysis of speeches, which includes the characterization of three parameters: social context, pragmatic (objectives and communicative strategies of speakers) and linguistic [14].

At the stage of linguistic context analysis, the method of component analysis of word semantics was used to distinguish between explicit and implicit expression of persuasion.

The analysis showed that the specificity of judicial discourse manifests in all three of its parameters. The social context has unchanging – static, constant features and those that change over time – dynamic. Constant features include: the conditions of communication – always official, with a clearly defined hierarchy (the main one – the judge, then the jury, the levels of social status of the prosecutor and the lawyer; witnesses; defendants), the procedure of the judicial process is clearly defined. Dynamic characteristics are of a variety: one group combines characteristics that depend on the judicial process system adopted in the country; another group combines characteristics that are determined by socio-cultural factors and change in the course of historical development.

The specificity of the pragmatic context of court discourse is determined by the common illocutive goals: for prosecutors – to prove the guilt of the defendant, for lawyers – to prove the innocence of the defendant or reduce the term of the sentence; for jurors – to decide whether the defendant is guilty or not; for the judge – to choose the sentence according to the current penal code. The dynamic attributes of the pragmatic context are, firstly, the content of the criminal code and, secondly, the communicative strategies and tactics which are effective in the respective historical epoch in each particular country.

The linguistic context of judicial discourse is also specific. Firstly, it is purely formal – etiquette formulas of the judicial process, and secondly, the way in which communicative strategies are expressed – explicitly or implicitly.

Let us consider the prosecutor's speech from the film "I Accuse" at the beginning of the trial. The prosecutor gives a general characterisation of the suspects. He does not explicitly state the goal of the perjury ("Find them guilty"), but the content of his speech is aimed at an unspoken goal. The prosecutor is talking about the serious crimes of the drug mafia. He uses a communicative strategy of appealing to universal values priorities, which categorically reject the crimes he lists: *«Ladies and gentlemen! "We are the masters of New Jersey" is the motto of a Mafia family responsible for a long list of crimes. The term "conspiracy" is Latin for "breathing together". The defendants commit crimes together. Evidence will show that Carlo Moscafoli was one of the bosses of the Lucchese clan in New Jersey. The Lucchese are one of five families, ambitious and dangerous to the whole community. Gino Moscafoli. Gino was involved in gambling, usury and racketeering for his boss ...»*.

As we can see, in the prosecutor's opening statement, the persuasive language is based on the concept "Crime". The words and phrases he uses are composite frames, which have a negative aura "Klan", "Collusion", "Gambling", "Racketeering" and some others. Reliance on associative ties is one way of implementing persuasion. Negative associations are reinforced by the use of epithets with negative rational and emotional evaluation: a long list of crimes, ambitious and dangerous for society, crimes against the whole America. Thus, the prosecutor's assessment of the actions of the defendants is explicit, as evidenced by the words with a negative emotional halo, which contradicts the national values of the United States and those of all mankind. The prosecutor is well aware of the psychological mechanism of the influencing power of words: the negative is more memorable, more worrisome and evokes a desire to counteract negative phenomena. The implicit purpose is to claim that the atrocities committed by the defendants negate the values of society and to call for the conviction of the accused. The tone of the prosecutor's statement is also significant. It shows that the prosecutor accusing the defendants and expects a similar reaction from the jury, but these expectations are subtracted from the subtext. And explicitly the idea is expressed that the prosecutor himself is as if he is alienated from the content of the decision:

*«The decision will be yours. And yet a hint of the expected solution is - its indicator is the word Act: I'm sorry, but the gravity of these crimes against the people of this city, against all of America, requires your action. From you»*.

A peculiar conflict of explicit and implicit features in the speeches of the prosecutors creates some influential effect on the jury. Explicitly the idea is expressed that the prosecutor himself seems to be alienated from the content of the decision, laying it solely on the jury. The powerful influence on the decision of the jury through rational and emotional channels of information perception is implicitly given. The lack of an explicit verbal impact

creates the effect of no decision being imposed from the outside, which reduces the resistance to the speaker's thoughts.

In the said film, which is based on real events, the main defendant refuses from a lawyer and defends by himself. It is clear that his aim is to get a positive verdict from the jury. He starts his last speech with a prepared text, which uses the strategy of acquittal:

*«Ladies and gentlemen! I won't take up too much of your time. It's a long process, and we're all tired. I've said a lot of things here. I hope I haven't offended anyone. I just wanted to show that I'm not a gangster, I'm just a joker...»*

However, he immediately removes the sheet with notes and starts to speak, using the strategy of distance approximation:

*«I'm not going to read that. A long time ago, I promised that I would speak from my heart ... Can you see this photo? ».*

In line with this, it should be noted that there is no direct plea for acquittal in his speech, moreover, he accepts the blame:

*«Blame it on me. Tell these people to go back to their families.... I guess that is it. Thank you for your time».*

Once again, the purpose of persuasion (desire for acquittal) is presented implicitly – using communicative strategies of rapprochement (showing a photo from childhood), blaming the government (*the government invented the process*), and appealing to shared values (family: *go to their families*).

As can be seen from the above examples, the common features in the speeches of the lawyer and the prosecutor are the implicit way of presenting the goal of persuasion, the use of certain communicative strategies to achieve the goal of persuasion, the construction of arguments based on an appeal to the value priorities of the linguistic community. The prosecutor focuses on the contradiction, even a peculiar conflict, between the generally recognised values of society and the atrocities of the defendants. The lawyer focuses on the commonalities between the value priorities and the wrongdoings of the government (in most countries, citizens criticise the government mercilessly). The differences relate to the degree to which the aim of persuasion is expressed. The prosecutor has a higher degree of expressed purpose of speech due to the use of language means with a specific associative halo: negative (based on the concept "Crimes" or intensifying (requires you to act), as well as the tone of speech.

In the material we analyzed, the lawyers often use communicative strategies of distance approximation, and the forms of their use are varied. Thus, in the film «Devil's Advocate» the main character demonstrates a peculiar use of this strategy. He begins his speech with the words:

*«Ladies and gentlemen of the jury! I know you've been listening to Mr... and you're very tired. But what I'm about to say won't take long».*

What we have here is a cooperative strategy that is implemented through a sympathetic tactic. It is then based solely on common values that always bring communicators closer together. The element of surprise plays a significant role in the jurors' perception of speech. They are surprised to hear a statement that is more reminiscent of the prosecutor's speech than of the lawyer's:

*«I don't like Mr. Kevin, I don't think he's a nice man and I don't expect you to like him. For all his three wives, he was a terrible man, played the role of an evil genius in the lives of his foster children, cheated the municipality, his partners and employees, I don't like him! ».*

The subtext asserts that the lawyer is upholding the same moral values as the jury - this idea destroys the barricades between speaker and audience, moving them into a group of like-minded people. Further emphasis is placed on the facts:

*«But we are not having a popularity contest. A murder case is being heard. And the only proven fact of the trial is that Alexander Kevin was elsewhere at the time this heinous crime was taking place».*

The way in which the purpose of persuasion is implicitly presented is also original. The lawyer does not openly say, for example: *«The facts show that my client should be acquitted»*. He asks the jury to give an answer (not to him, but to themselves) to the question:

*«I want you to ask yourselves the question: Is the fact that a person is disliked a sufficient reason to find him guilty of murder?».*

Again, the lawyer is helped by working with the psychology of perception: the statements presented by the speaker are often perceived as a kind of imposition of his thoughts. And in this case, the lawyer encourages the listeners to find an answer: they will doubt, argue painfully, but admit the facts.

And the tactic of convergence at the end of the speech will play its positive role:

*«Enjoy your lunch! We'll talk again».*

Let us turn to the analysis of the authentic material. First, consider the speeches of the prosecutor and the lawyer at the high-profile trial of The O. J. Simpson Trial (1995).

The prosecutor begins her presentation with a philosophical reflection on the concept of «beyond a reasonable doubt». Her presentation is built on contextual synonyms: possible versus reasonable.

*«I have a possible doubt that the sun will come up tomorrow. Do I have a reasonable doubt about it? No. I have no doubt founded in reason that that's going to happen - just for a basic example. So think about that, too.»*

*We're not talking about what possible doubt is; it's reasonable doubt».*

The prosecution plays on the meaning of the words, taking the phrase "beyond a reasonable doubt" to the point of absurdity:

*«It's kind of a funny definition, because it talks to you about 'reasonable' in very negative terms. It says, 'That state of the evidence, which, after the entire comparison, you cannot say that you have an abiding conviction.' It's very weirdly worded».*

The prosecutor does not establish an emotional connection with the audience, but rather addresses them with a certain degree of superiority, emphasising his knowledge of legal issues. The tone of the speech can be described as mentor-like, paternalistic, towards the recipients. She then provides detailed evidence on the defendant's case and directs the process of indoctrination and pressure on the listeners using the same tone of voice:

*«All right, now I'm going to direction your attention down here; Now you recall; As you may recall; You'll recall that; I don't know whether you remember it now – it's really been a very long time».*

The lawyer in this process implements the opposite strategy, positioning himself not above the audience, but together with the audience or even slightly "below" the audience, starting his speech with a heartfelt greeting:

*«JOHNNIE COCHRAN, Simpson Attorney: Thank you very kindly, Your Honor. Judge Ito, my colleagues on the defense, my colleagues on the prosecution, the Goldman family, the Brown family, and to the Simpson family, good afternoon, ladies and gentlemen».*

He stresses that he does not intend to enter into a dispute in any way, thanking the judge for the opportunity given to the defendant to deliver his speech:

*«The defendant, Mr. Orenthal James Simpson, is now afforded an opportunity to argue the case, if you will, but I'm not going to argue with you, ladies and gentlemen».*

However, he emphasizes the seriousness of the trial and the importance of the verdict rendered by the jury, recalling their oath of office:

*«It will lie in the quality of the verdict that you render and whether or not that verdict bespeaks justice as a move towards justice. Now you recall, during a process called voir dire examination, each of you were thoroughly questioned by the lawyers».*

Interestingly, there is a fact of «flirting» with jurors when the lawyer uses a colloquial interchange «gee» and an expressive form of Subjunctive Mood:

*«You probably thought, gee, I wish they'd leave me alone. But you understood, I'm sure, that this is very serious business».*

The prosecutor's speech in the heinous Casey Anthony Trial (2011) is structured differently. The prosecutor starts her speech with cognitive dissonance, stating that this case is not about Casey Anthony, but about Caylee Anthony, the little girl who was murdered. By influencing cognitive elements such as knowledge, beliefs, values and psychological attitudes, the prosecutor expects the actions of the recipients (judge and jurors) to be conditioned by given parameters and ultimately lead to a guilty verdict. The prosecutor prioritises the values that hold all those involved in the trial against the accused, because it is about the immutable values in any society – any person's life, and the life of a small child especially. The prosecutor reinforces the tragedy of the situation by describing the child's life: *quiet residential street, her grandparents filled her room with toys, Winnie-the-pooh items, a playhouse.* She then turns to the facts of the case in her speech.

The lawyer in this case as if swaps places with the prosecutor and begins his speech by stating that no one has answered the question: What happened? The question implies a lack of information that can be trusted. At the same time he implicitly sends the message that all that has been said before is emotion but not facts and that in court facts, not emotions, should be stated, although later on he moves away from facts and turns to emotions, describing the difficult childhood of the defendant who was abused by her father and elder brother.

The difference between the judicial discourse presented in a feature film and a real trial lies, in our opinion, in the cognitive plane: a real trial can last for years, all interrogations, evidence, descriptions are presented fully, with all details, whereas in a feature film it is greatly reduced. In a film, there is a focus on the spectacle but in a real trial on the details and legal content of the case.

### **Conclusions and perspectives.**

The analysis of the trials in feature films and real court speeches confirmed both the fundamental and working hypotheses of the study. First, the judicial discourse has a specificity of the use of persuasion, which is also found in real trials, and in feature films; second, there are differences in the use of persuasion in speeches delivered by prosecutors and lawyers. All trial participants never explicitly express the purpose of their speeches. It is a presuppositional element of communication: everyone knows social functions performed by the prosecutor and by the lawyer as well as other participants. Yet in the speeches of prosecutors, the purpose of persuasion is sometimes partly explicitised through emotionality and the negative tone of the speech. Linguistic markers of emotionality are words with a negative semantic halo in the description of the atrocities of the defendants. The cognitive mechanism of the effective power of such words is based on the contrast between the concept «crime», verbalised in appropriate lexemes; and the concept «moral values», presented implicitly, as a presuppositional element of social consciousness.

Communicative strategies for appealing to common values are the way to achieve the goals of persuasion in trials, and they are organized differently in the speeches of lawyers and prosecutors. Prosecutors reinforce the

confrontation between the atrocities committed by defendants, the types of which are expressed explicitly in speeches, and the values of society, represented implicitly and actualized by the use of a communicative contrasting strategy. The conflict between the actions of the defendants and the demands of society for an assessment of these actions of citizens reinforces the influential effect of persuasion. Advocates use a different communication strategy of appealing to the values of society. They explicitly express their own assessment of the actions of the defendants, demonstrating their adherence to the moral values of society, or in their speeches they use words that recruit certain moral values. They are thus demonstrating their adherence to them. Lawyers are more likely than prosecutors to use communicative convergence strategies, explicitly expressing an understanding of jurors' feelings, concerns and assessments.

The types of arguments differ significantly in the speeches of prosecutors and lawyers. Prosecutors focus on the facts (explicitly presenting arguments and facts), while implicitly presenting their inconsistency with the law and the law. Advocates focus on the circumstances of the crime that mitigate the sentence (psychological arguments are explicit), while the appeal to the principle of humanity is implicit. These features can be observed in real-life trials and in feature films. Thus, the working hypothesis of the identity of persuasive methods in real-life court activities and those reflected in films was confirmed.

The analysis carried out in the paper has shown that the influencing power of persuasion is increased if the presuppositional axiological elements of social consciousness constitute the implicatures of persuasion and the speakers organise their speeches so that they become actualised in the consciousness of the jurors to help them make a decision on their own. Nevertheless, will it be their own solution? What other factors might influence the result of persuasion? What role do socio-cultural factors play in ensuring the outcome of persuasion? We consider the above questions as a **prospect** for further research of the problem of persuasion.

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