


Joke or threat? Competing genre uptakes in a Danish court case

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Abstract

This article examines a Danish criminal case concerning a high school student who posted a picture on Instagram with the caption ‘I’ll be the next school shooter guys, lmao, watch out’ (Danish: jeg bliver den næste school shooter guys, lmao, watch out). Reactions to – or uptakes on (Freadman, 1994, 2002) – the Instagram post were split between two types; some took it as a threat and some took it as a joke. Building on theory on threatening communications (e.g. Bojsen-Møller, Auken, Devitt, & Christensen, 2020; Fraser, 1998; Gales, 2019; Solan & Tiersma, 2005), on humor (Billig, 2005; Norrick, 2010; Tsakona, 2017) and on genre theory (Devitt, 2009; Freadman, 2012, 2020; Miller, 1984), this article studies the diverging uptakes as they are presented within the court case through examination of both transcripts of audio recordings from the court room and court documents. The findings of this study show that while linguistic interpretation is mostly limited to the netronym ‘lmao’, other non-linguistic behaviors are often used as justification for a particular interpretation of the linguistic behavior. Not only the prosecuted utterance itself, but also the utterances’ uptakes, i.e. an essential aspect of its context, have a bearing on the outcome of the case and the assessment of the defendant’s intent. As such, this study offers important insight into an area that Gales (2019) argues is in need of further interdisciplinary research, namely how contextual features can influence the outcome of criminal cases concerning disputed threats.

Keywords: Threatening Communications, Jokes, Uptake, Legal Genres, Textual Travels.

Resumo

Este artigo analisa um processo penal dinamarquês relativo a um estudante do ensino secundário que publicou uma fotografia no Instagram com a legenda "Serei o próximo atirador da escola, pessoal, lmao, cuidado" (em dinamarquês: jeg bliver den næste school shooter guys, lmao, watch out). As reações à publicação no Instagram - ou UPTAKES (Freadman, 1994, 2002) - dividiram-se em dois tipos: uns consideraram-na uma ameaça e outros uma piada. Com base na Teoria de Ameaça à Face (por exemplo, Bojsen-Møller et al., 2020; Fraser, 1998; Gales, 2019; Solan & Tiersma, 2005), no humor (Billig, 2005; Norrick, 2010; Tsakona, 2017) e na teoria de género (Devitt, 2009; Freadman, 2012, 2020; Miller, 1984), este artigo estuda as

reações divergentes apresentadas no processo judicial através da análise das transcrições das gravações áudio da sala de audiências e dos documentos do tribunal. As conclusões deste estudo mostram que, embora a interpretação linguística se limite sobretudo ao netronym "lmao", outros comportamentos não linguísticos são frequentemente utilizados como a justificação para uma determinada interpretação do comportamento linguístico. Não só o próprio enunciado processado, mas também as suas consequências, ou seja, um aspeto essencial do seu contexto, têm influência no resultado do processo e na avaliação da intenção do arguido. Como tal, este estudo fornece uma visão importante sobre uma área que Gales (2019) defende necessitar de mais investigação interdisciplinar, nomeadamente, a forma como as características contextuais podem influenciar o resultado de processos penais relativos a ameaças contestadas.

Palavras-chave: *Comunicações de ameaças, piadas, aceitação, géneros jurídicos, viagens textuais.*

1. Introduction

On September 11, 2018 around midnight a Danish high school student posted a picture of herself on Instagram with the following caption: ‘I’ll be the next school shooter guys, lmao, watch out’ (Danish: *jeg bliver den næste school shooter guys, lmao, watch out*)¹. This case study examines data from the criminal case that ensued, consisting of police record, court judgment and transcriptions of audio recordings from the trial. The data set shows that the court representatives discussed whether the Instagram post was to be interpreted as a threat or a joke, the latter in part with reference to the netronym ‘lmao’ (an abbreviation of the slang idiom ‘laughing my ass off’). My analysis shows that not only the formulation itself, but also the immediate and later reactions to the post were decisive for the outcome of the case. This article examines these reactions as genre uptakes (Freadman, 1994, 2002, 2020), meaning the responses and reactions to an utterance that show that an utterance is considered to be an instantiation of a given genre.

In this study, I analyze the different *uptakes* of the utterance as they appear in the data set, including the immediate uptakes of witnesses, as well as the later uptakes of the court’s representatives (prosecutor, defense lawyer, judges). Furthermore, I analyze the defendant’s *own* uptakes of her utterance as *accounts* of untoward behavior (Atkinson & Drew, 1979; M. L. Komter, 1994; Scott & Lyman, 1968).

Very little research has been conducted on the uptakes of disputed threatening communications by sender, recipients, victims and court systems (however, see Bojsen-Møller, 2022; Bojsen-Møller et al., 2020). This is an important empirical aspect to consider when working with criminal genres such as threatening communications, as it

¹All data in this article are translated by me (unless otherwise explicitly stated). See appendix A for a transcription in Danish of the original audio recording and of the original data from the police report and the court judgment that are analyzed in this study. Also, see appendix B for an English translation of the transcriptions of the audio recording.

offers insight into how these genres function and how contextual factors such as uptakes of an utterance can influence the outcome of a criminal case. In fact, Gales (2019) addresses the need for such interdisciplinary research on contextual aspects of threatening communications as well as on threatening words (locution), threatener intent (illocution) and effects on recipients (perlocution) (cf. Austin, 1962).

It is beyond the scope of this article to resolve the question of whether the utterance in this case study is, in fact, (meant as) a threat or a joke. Instead, this study has two primary and interrelated aims. The first aim is to show how one utterance within its specific and largely undisputed context can have distinctly diverging uptakes. Importantly, these diverging uptakes have entirely different sets of evidence supporting their interpretations. The prosecutor focused on the fact that the high school student had angrily flipped over a table in class on the same day as she posted the Instagram post, while the defense lawyer focused on the fact that she had a cosy afternoon with her two friends.

The second aim of the study is to show that these varying uptakes can have an important impact on how the intent of the sender of the utterance is debated and negotiated in court and court documents, including in judges' verdicts.

When these uptakes are presented in court and court documents, they will often have undergone different kinds of *textual travels* (Heffer, Rock, & Conley, 2013), which will be discussed when relevant. As such, this article is an interdisciplinary study that combines Forensic Linguistics with Rhetorical Genre Studies in incorporating research on threatening communications, textual travels within the legal system and genres and their uptakes.

1.1. Background

To situate the Instagram post, some background knowledge of the incidents leading up to and following from it will be useful. Earlier in the day, the high school student had felt bullied by a classmate with whom she was supposed to do a joint presentation. In frustration, she flipped over a classroom table. Two classmates summoned a teacher who knew her well and who had a chat with her. Later in the day, she went to a friend's house where she hung out with two friends. It was when she had returned home that she posted the picture of herself with the caption 'I'll be the next school shooter guys, lmao, watch out' in large, red letters. Subsequently, a classmate's mother wrote an e-mail to a school representative about the Instagram post and the earlier incident in class, and the school representative then reported the post to the police. The next day, armed police met the girl on the school grounds and arrested her for having threatened to commit a school shooting. The case was brought to trial by 'the Prosecution Service' (Danish: *Anklagemyndigheden*), first in district court and later in high court. Denmark has a three-tiered court system with 24 district courts, two high courts (the Western High Court and the Eastern High Court) and one Supreme Court. In the local district court, the case was judged by a 'court with lay judges' (Danish: *domsmandsret*) consisting of one professional judge and two lay judges. In high court, three professional judges and three lay judges adjudicated the case. The high school student herself explained to the police and to the courts that she meant the Instagram post as a joke. There were, thus,

two distinct kinds of genre uptakes to the post; some took it as a threat and some took it as a joke.

2. Theory

2.1. Genre, uptake and textual travels

Genres are utterances that are considered a type or a kind through perceived *recurrence* in their usage. As such, Rhetorical Genre Studies (RGS) describe genres as communicative *social actions* that are *typified* (Miller, 1984). The focus of RGS is typically more on the functional aspects of a genre and less on its formal traits, as communicative function directs genres and thereby influences their form. However, as a linguist, I agree with RGS scholars Devitt (2009) and Auken (2015) that both function *and* linguistic form have to be considered, as “[a]ny complete understanding of genre will need to include the language forms that serve to achieve [its] purposes and effects, the forms that make generic action happen” (Devitt, 2009, p.27). Genres are recognized through actual or perceived recurrence in form, function, content and context, but genre recognition is not necessarily only contingent on homogeneity in form (Medway, 2002). For instance, Bojsen-Møller et al. (2020) argue that threatening communications are in fact an exceedingly heterogeneous genre, but nonetheless a highly recognizable one. Some genres are much more stringent and formulaic than others (cf. Bojsen-Møller, 2022; Heffer, 2013; Heydon, 2013) on the formulaic nature of legal genres. For an overview of different kinds of genres, see Miller (2017).

In accordance with the above, Miller argues that “in genre we are seeking not the stabilization of [practices and performances] but rather the stabilization of shared recognitions and social agreements, as represented by naming, replication, and meta-commentary” (Miller, 2017, p.5) Responding to a genre either by labelling it (Nyboe, 2016), by commenting on it or by referring to it through different intertextual techniques is in genre terms called uptake (Freadman, 1994, 2002, 2020). Borrowing Austin (1962) term “uptake”, Freadman (2020) explains that uptake is to be understood in light of the Bakhtinian notion of utterances preceding and succeeding each other in “a very complexly organized chain of other utterances” (Bakhtin, 1986, p.69). In other words, the context of an utterance, including its uptakes, consists of “a sequence of events in time and across a variety of temporal sequences” (Freadman, 2012, p.558). Through their individual usages and uptakes, genres are changed and adapted (Devitt, 2009). Uptake is conditioned by “a relation of reciprocal difference” between genres (Freadman, 2020: 105), but genres also intertwine and mix through their uptakes, sometimes creating new genres if the reciprocal differences between the “source” genre and its uptakes become too great. Every utterance is in a complex dialogic, intertextual relationship with previous utterances. The most explicit way of taking up an utterance as a particular genre is by labelling it, and alternatively by describing its perceived purposes and effects (metacommentary) or simply responding to it in a way that shows that it is considered an instantiation of a given genre. However, uptake can also happen more indirectly through *textual travels* (different kinds of intertextuality; Heffer, 2013) of one genre into another genre (cf. Bojsen-Møller (2022), who links the notion of uptake to textual travels). As such, genres or parts of genres will often be *embedded* within other

genres (Auken, 2021). See figure 1 below for an overview of the genre embedding in this case beginning with the posting of the utterance and ending with the high court judgment and court record:

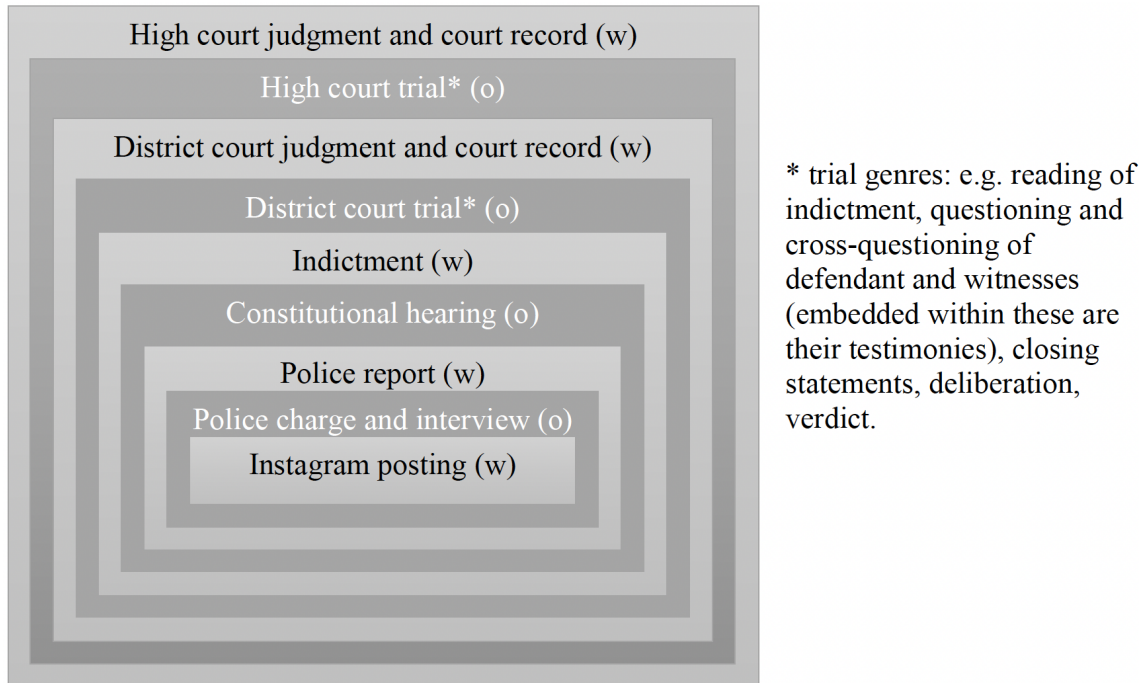


Figure 1. Embedding of genres in the case study (w=written, o=oral)

Figure 1 above is not meant to convey that an entire genre is embedded within another genre², but that traces from the previous genres are embedded within the encompassing genre. These traces can consist of different kinds of textual travels (of words, phrases, whole paragraphs or utterances), or they can consist more indirectly of sentiments, attitudes or norms from the previous genres. The fact that this legal *genre set* (Devitt, 1991) switches between written and oral genres means that different types of textual travels (e.g. summaries, direct and indirect discourse) are used throughout.³

Legal representatives are in possession of overt but also tacit knowledge (Auken, 2018; Freadman, 1994) of the genres in the legal genre set. The preceding genres in the legal genre set therefore lend themselves in design to the succeeding genres to secure a smooth uptake. As such, an utterance can project its desired uptake, but “no speaker or writer can completely secure an uptake” (Freadman, 2012, p.560). This is especially true when it comes to illicit genres and vernacular genres, as these will often be less homogeneous than for instance institutional genres (Bojsen-Møller et al., 2020; Miller, 2017). Genre labelling can then become a “discursive battleground” (Auken, 2019), where some people will take up an utterance as an instantiation of one genre and other people will take up the same utterance as an instantiation of another genre. A person’s uptake will (supposedly) be a reflection of their interpretation of the utterance in question –

²For example, the entire police report is not reproduced within the indictment. However, the entire district court judgment is reproduced within the high court judgment (for an overview of the structure of records of judgments in Denmark, see Bojsen-Møller, 2022).

³For an overview of some of the different textual travels that happen in the Danish legal system, see Bala (2020) and Bojsen-Møller (2022).

and also likely a reflection of the *perlocutionary* effect (Austin, 1962) that the utterance has had on them or others – but their uptake will also reflect the social action they themselves wish to accomplish.

2.2. Uptake on own utterance: Accounts

For the purposes of this article, it is important to distinguish between uptakes made on someone else's utterance and uptakes made on one's own utterance – what might be termed self-uptake. In a Bakhtinian sense, the “boundaries of an utterance⁴ are delimited solely by a change in speaking subject” (Bakhtin, 1986, p. 71), and in light of that, an uptake on one's own utterance would in principle have to happen *after* another person has taken up the utterance. In a courtroom setting, the notion of *accounts* (Scott & Lyman, 1968) becomes particularly relevant as a specific form of uptake that defendants often have on their own previous utterances or behavior (cf. Atkinson & Drew, 1979; M. L. Komter, 1994). An account is “a statement made by a social actor to explain unanticipated or untoward behavior” (Scott & Lyman, 1968, p. 46), and an account will primarily be generated as a response to an accusation. There are two main types of accounts, namely *excuses* and *justifications* (Scott & Lyman, 1968). One subtype of excuses relevant to this study is called ‘appeals to defeasibility’, which is when the person accused of untoward behavior makes a claim that would invalidate the accusation. This could for instance be that they did not intend for the behavior to be untoward or offensive, or that they had no knowledge of it being possibly understood as such. For the sake of clarity, the narrower term ‘appeals to intent’ is proposed and used throughout this article. Threatening communications can indeed be categorized as untoward—or what Bojsen-Møller et al. (2020) term “illicit”—behavior, especially if they are prosecuted as illegal threatening communications.

2.3. Threatening communications and the Danish threat statute

Existing Forensic Linguistic literature on threatening communications has identified salient linguistic features in threatening communications (Gales, 2010; Muschalik, 2018; Nini, 2017) and has offered important tools with which to analyze and assist in recognizing the speech act of threatening (Christensen, 2019; Fraser, 1998; Gingiss, 1986; Salgueiro, 2010; Yamanaka, 1995). Within Forensic Linguistics, threatening communications are described in terms that highlight

- their **illegality** (language crimes (Shuy, 1993), crimes of language (Solan & Tiersma, 2005), illegal speech acts (Christensen, 2019), and
- their **social disruptiveness** (linguistic acts of power (Gales, 2010), illicit genre (Bojsen-Møller et al., 2020)).

The general consensus among threat scholars is that the main function of threats is to intimidate their targets (Bojsen-Møller et al., 2020; Christensen, 2019; Fraser, 1998; Gales, 2010; Solan & Tiersma, 2005; Walton, 2000) which is part of the reason many threats are considered illegal acts in and of themselves in most societies. This act of intimidation is achieved by communicating that a future event will happen that is to the detriment of a victim and for which the threatener takes responsibility (Bojsen-Møller et al., 2020; Christensen, 2019; Fraser, 1998; Shuy, 1993). These aspects (futurity,

⁴This is similar to the delimitation of *turns* in conversational analysis (CA), which is unsurprising since both RGS and CA have roots in ethnomethodology (cf. Miller, 1984; Watson, 1992).

future harm, victim, sender's responsibility) can either be communicated directly or indirectly (Bojsen-Møller et al., 2020; Christensen, 2019; Gales, 2010; Muschalik, 2018). Threats that are indirectly phrased (such as 'I know where you live') are considered more amenable to *plausible deniability* in court (Solan & Tiersma, 2005) than direct threats (such as 'I will kill you'), since more aspects will have to be inferred from the context (Christensen, 2019). However, not only indirect threats require attention to contextual features: Gales (2019) emphasizes the fact that "the historical and conversational context in which a threat is allegedly made cannot be excluded from a threat's core definition" (475). Threat scholars have to consider form, function, effect and context in their research on threatening communications.

The Danish Criminal Code's § 266 criminalizes threats to *carry out an illegal act* that are *fit to provoke serious fear*, which means that it is the illegality of the threatened act and the potential of the threat for creating fear that determines whether a threat is illegal or not:

Whosoever threatens to carry out an illegal act in a way that is fit to provoke serious fear in someone for their own or other people's lives, health or wellbeing, shall be penalized by fine or imprisonment of up to 2 years (the Danish Criminal Code, Chapter 27, § 266. The translation is from Christensen, 2019).

As such, the act of intimidation and the *potential* perlocutionary effect of fear are central to Danish law. The victims of a threat need not actually have been scared, but the threatening utterance in its specific context will have to be considered fit – suitable – in general to elicit fear (Toftegaard Nielsen, Elholm, & Jakobsen, 2017).

The Danish threat statute does not explicitly mention intent (Danish: *forsæt*) but there are in fact three degrees of intent in Danish jurisprudence that also apply to threats: direct intent, probability intent, and *dolus eventualis* (which can be translated to 'possible deceit').

As the highest degree of intent, **direct intent** means that the offender is believed to have acted with 'knowledge and will' (cf. *mens rea*, 'criminal aforethought', 'a guilty mind') when they committed their offence (Waaben & Langsted, 2015, pp.171-172). **Probability intent** expresses a lower degree of intent, where the offender is believed to have considered it 'predominantly probable' (Danish: *overvejende sandsynligt*) that their action would have a certain consequence (Waaben & Langsted, 2015, p.173). **Dolus eventualis** is the lowest - and rarely used - level of intent in Danish law, where the offender is believed to have considered it 'possible' (Danish: *muligt*) that their action would have a certain consequence, but they consciously disregarded this and accepted the risk. *Dolus eventualis* is sometimes describes as 'conscious recklessness' (Danish: *bevidst uagtsomhed*) (Waaben & Langsted, 2015, pp.174-175).

Establishing intent is a notoriously difficult task (Fuller, 2015; Hurt & Grant, 2019; Shauer, 2003; Waaben & Langsted, 2015), since it is inherently a mental state that can thus only be assessed indirectly. Therefore, even though it is a necessary part of legal proceedings, it is not sufficient to consider intent, since such an assessment will always rest on premises that indirectly point to a person's state of mind. In most cases, there will be corroborating evidence that is important to consider. For instance, specific contextual features that may help clarify whether it is probable that the defendant had an intent to threaten. In threat cases, one of the contextual features may be the uptake by others in the specific situation since it shows a situated reaction to the possible threat.

In cases where diverging uptakes exist, like in the present case, the task of assessing intent becomes even more complicated.

In the case of threatening communications, direct intent would be proven if the offender were judged to have understood and accepted that their utterance was a threat that was fit to create fear, meaning they had knowledge and will. Probability intent would be proven if the offender were judged to have found it predominantly likely that the result of their words would be fear. *Dolus eventualis* would be proven if the offender were judged to have found it possible that the result of their words would be fear but accepted it and acted in the same way regardless.

2.4. Threats that are (purportedly) meant as jokes

An interesting uptake on the genre of threats are utterances that have the form of a threat (a future, harmful act towards a victim that the sender of the utterance takes responsibility for), but that the sender purports are intended as jokes. In such cases, context is key, since giving a threat a different genre label or negating the genre label – what Bojsen-Møller et al. (2020) call *re-labelling* and *anti-labelling* – can be a possibly useful explanation in a courtroom in terms of appealing to plausible deniability. The sender's *intent* may of course in fact have been to make a joke (see Threatening communications and the Danish threat statute), and recipients may or may not have perceived it as such. This is why uptake is such an important notion when pertaining to genres. The uptakes of a genre utterance – especially the immediate uptakes – can help establish how the genre utterance functioned within the situation it was made. In some instances, such utterances will still be taken up as threats (acts of intimidation), and in other instances, they will be taken up as jokes (acts of humor), and as we see in this case study, sometimes both uptakes will be present. In order to better understand this dichotomy, it is important to examine the notion of humor.

Humor is frequently considered *non-bona-fide* or non-serious communication (Raskin, 1985), and it is often used “to create humorous versions of genres or to manipulate [or violate] generic conventions” (Toftegaard Nielsen et al., 2017, p.489). Much humor thus relies on tacit knowledge of genres, and in such cases, humor can be seen as pretense where the sender expects their pretense recognized by others and does not intend it to be taken seriously (Norrick, 2010, p. 233; cf. the Gricean notion of implicature). However, such pretense will not always be recognized by others, which will then result in miscommunication and failed humor (Bell, 2017). Especially if humor occurs in a genre where it is not normally expected, “some members of the audience could interpret it as non-serious and inaccurate discourse, while some others could seek for ‘hidden’ serious, offensive, aggressive, etc. meanings” (Tsakona, 2017, p.501). However, instances of humor can also be *intended* as aggressive actions that are concealed under a humorous veneer, perhaps in order to gain or retain social control (Norrick, 2010, p. 234 and p. 240). Humor here becomes an either purposeful or self-deceptive strategy, where the sender can detach themselves from the aggressive or serious parts of their utterance and claim that they were joking (Billig, 2005, p. 185 and p. 192).

Humor scholars often divide humor into positive humor and negative humor (cf. Billig, 2005); i.e. humor that has a positive aim and uptake versus humor that has a negative aim and uptake. Positive humor is associated with humor with positive affect

that “builds camaraderie” and leads “to further joking” (Norrick, 2010, p.233). Here, the aim of the sender would be to *align* themselves with their target audience (cf. the notion of audience design; N. Mortensen J. and Coupland, 2018) in order to create a humorous effect. On the other hand, negative humor is associated with humor with negative affect that “can demean, cause suffering to and humiliate its victims” (Billig, 2005, p. 26), in which alignment with a target audience is at least not the only aim of the sender. However, Billig (2005) further argues that the categories of positive and negative humor are not as clear-cut as they may seem, since humor can “result in just a small number of people laughing and with many more people registering outrage” (160).

Some of the genres that are typically considered negative humor are *dark humor* (making “fun of situations usually regarded as tragic, such as death, sickness, disability, and extreme violence”, Bucaria, 2008, pp. 218-219), *killing jokes* (jokes about killing or “dehumanizing the human form”, Lewis, 1997) and *aggressive humor* (jokes where hatred and humor is linked; where “jokers derive pleasure from the expression of aggression against the target”, Billig, 2001, p.268).

Negative humor can have a harmful effect on potential targets, but can also create indignation or fear in some audiences. Different audiences may take up the same utterance in different ways, either because there are different norms and genre expectations in different communities *or* because the utterance has different functions for different audiences. For instance, there is a great difference between being the target of aggressive humor and being a participant in laughing at the target of aggressive humor.

3. Data and Method

The data material for this case study includes:

- a) the original utterance from the Instagram posting (see (1) below),
- b) my transcripts of audio recordings conducted by The Danish Broadcasting Corporation DR during the district court trial, and
- c) police report and district court and high court judgments⁵ (Danish, *dombøger*) from the case (see figure 1 above for an overview of how the different genres are embedded within each other in this threat case).

All names have been pseudonomised, and no information about court dates or court venues is disclosed. The original picture containing the utterance was publicized by different Danish media with the face of the defendant blurred to ensure her anonymity. The defendant’s facial expression in the picture could perhaps have been an indicator of her intent, but the picture itself was not discussed as an important factor, at least not in the parts of the data set that were available to me. As such, no multimodal analysis was conducted, but a formal analysis of the utterance follows in section 4.1.

Parts of the audio recordings from the trial can be accessed through a radio documentary about ‘school threats’ by DR’s radio channel P1 (DR, The Danish Broadcasting Corporation, P1 Documentary). Since I only have access to the parts of the audio recording broadcasted by P1, I cannot account for the remaining parts of the trial. The documentary is in two parts of 26.32 and 26.05 minutes respectively. The audio recording was transcribed in detail using Transcriber and following the transcription conventions

⁵The police and the prosecution’s office granted access (Danish, *aktindsigt*) to the police report and the district court judgment. The high court judgment is accessed through the judicial database Karnov.

of CA (for transcription conventions, see Jefferson, 2004). I only transcribed the segments of the radio documentary that include audio recordings from the trial itself. One witness (whom I have given the pseudonym 'the school representative') did not wish to have her voice recorded by DR, and I therefore did not transcribe any parts of the documentary that contained audio from the prosecutor's or the defense lawyer's questions to this witness. The parts of the audio recording transcribed amount to approximately 15.5 minutes, predominantly from part one of the radio documentary.

The excerpts from the transcription, the police report and the court judgments that are analyzed in this study were selected, because they include uptakes on the defendant's utterance and the justifications for these interpretations. The uptakes can either consist of direct labeling of the genre or descriptions of or metacommentary on the social action that the genre represents and enacts.

My primary data source for this is the transcripts of the audio recordings, since the uptakes of the people involved here are presented verbatim and not in a summarized form (as is the case in the police reports and court judgments). If no data is available in the audio recording on a particular uptake or if additional information about a person's uptake is present in the police report or the court judgments, then excerpts from police report or court judgments are included. Since the data from police report and court judgment consist of written summaries of oral statements, they are of course not verbatim renditions, and as such, it is not possible to know how much they diverge from the original statements. However, they can still be used to give indirect insight into uptakes, since general and central themes (the gist of things) will often be what people recall (e.g. Sachs, 1967). For an overview of the data sources for each of the uptakes on the utterance, see table 1 below:

Table 1. Overview of data sources for uptakes

	Through audio recordings from district court	Through district court and high court judgments	Through police report
The prosecution (P)	Prosecutor's <ul style="list-style-type: none"> • reading of indictment • questioning of defendant and witness teacher • closing statement 	Indictment	-
The defense lawyer (L)	Defense lawyer's: <ul style="list-style-type: none"> • questioning of defendant and witness teacher • closing statement 	-	-
The defendant (D)	Her testimony in district court	Summaries of her testimonies in district court and high court	Summary of her statement to the police (she read it through with her lawyer)
Witness teacher (T)	Her testimony in district court	Summaries of her testimonies in district court and high court	Summary of her statement to the police (it was read aloud to her)
The school representative who reported it to the police	- (She did not wish her testimony to be recorded, but <i>DR PI</i> summarizes it)	Summaries of her testimonies in district court and high court	Summary of her statement to the police (she did not wish to read it through)
The classmate and her mother who reported the IG posting to the school	The prosecutor reads aloud an e-mail from the mother in court + mentioned in D's testimony*	Mentioned in the summaries of the testimonies by D and the school representative*	Mentioned in the summary of the school representative's statement to the police*
The defendant's two friends	Mentioned in D's testimony*	Mentioned in the summaries of the testimonies by D*	Mentioned in the summary of D's statement to the police*
Other classmates	-	Mentioned in the summaries of the testimonies by the school representative*	-
People who responded to the IG post online	One of the posts is read aloud in court + mentioned in D's testimony*	Mentioned in the summaries of the testimonies of D*	-

The data material also exemplifies the complex textual travels that happen within the legal system. This aspect will be considered when relevant, for instance if data material from either police report or court judgments is used instead of audio recordings. However, even in the audio recordings, textual travels are prevalent, for instance whenever anyone offers hearsay evidence (indicated in table 1 by an asterisk *) or every time the purported threatening communication is alluded to or quoted.

4. Analysis

In the following analysis, I first briefly outline the formal aspects of the original utterance that the young female defendant is on trial for writing. Next, I concentrate on the uptakes of the utterance that take it as a threat, and then on those that take it as a joke. Finally, I discuss the uptakes of the district judges and the high court judges in their verdicts.

4.1. The Instagram utterance

The utterance from the Instagram post in (1) below has the form of a direct threat, since both a future, harmful event towards a target and the sender's responsibility for the event happening are explicitly stated (cf. section 2.3 See appendix A for all original data in Danish):

(1) 'I'll be the next school shooter guys, lmao, watch out'

The harmful event against a target is explicitly stated through the noun phrase *næste school shooter* 'next school shooter', i.e. the target is the school and the harmful event is the shooting (the imperative *watch out* also points to a harmful event). The sender's responsibility is made explicit through the agentive 1SG *jeg* 'I' together with the present tense of the copula verb *bliver*, which has future reference and therefore can be translated into English as the modal present with future reference 'will be'.

The abbreviation *lmao* can be seen as a *contextualization cue* (Gumperz, 1982) that is supposed to contravene the propositional content of the utterance⁶, i.e. 'this is not really a threat – it is a joke'. Alternatively, it may be interpreted as an intensifying cue that is supposed to strengthen the propositional content of the utterance, i.e. 'this is a threat – and I am having fun writing it'. Jefferson (1984, 1985) studies of laughter in *oral* conversations show that laughter particles are not only placed at the end of jokes, but also at the end of more serious utterances, sometimes as "signals to the listener that the speaker is aware that [something] might give offence" (from Billig, 2005).

The defendant alternates between Danish and English in the utterance, notably using English mainly to express the proposed harmful event (school shooter, watch out). Such code switching may function as a way of distancing herself from parts of her utterance (Gumperz, 1982), perhaps making the message less offensive or directly threatening. However, the laughter cue *lmao* is also written in English. That makes the intention of the code switching more unclear, since the defendant purportedly is not trying to distance herself from the humorous aspects of her utterance. In addition, seeing that the court case shows that many adult Danes are apparently not familiar with the abbreviation *lmao*, it makes a unified uptake of the utterance as a joke less likely. However, her intended addressees (her peers who are her own age) are more likely to know this type

⁶Thank you to Associate Professor Martha Sif Karrebæk for suggesting the term 'intensifying cue' for this context.

of netspeech, even if it is in English, but since she had an open profile, it is more difficult to control who her audience is.

4.2. The diverging uptakes of the utterance

The following analysis focuses on the different uptakes on the Instagram post as they appear in the audio recordings from the trial and as they are represented in the police report and the court judgment. An overview of these uptakes is shown in table 2 below (cf. table 1 for an overview of the data sources for this analysis), with abbreviations of the parties from the trial that appear in the transcripts:

Strategy	Freq.	Feature in the analysis	Type of feature
Emoticons/emojis ^a	62	Number of emojis ^b	scale
Opening	47	Type of first emoji ^b	categorical ^c
		Full opening	qualitative (string)
		Greeting	qualitative (string)
		Addressee	qualitative (string)
Punctuation	45	Punctuation	qualitative (string)
		Number of full stops	scale
		Number of commas	scale
Word use ^d	43	-	-
Writing style ^d	30	-	-
Sentence/message length	21	Number of separate text messages sent	scale
		Number of sentences	scale
		Number of words	scale
		Average sentence length	scale
Formality ^d	21	-	-
Sentence structure	18	Subject deletion	binary
		Article deletion	binary
Exclamation marks ^e	17	Number of excl. marks	scale
Closing	15	Full closing	qualitative (string)

Table 2. Overview of uptakes (excl. the district court and high court judges' verdicts)

As table 2 above shows, the uptakes of the defendant's Instagram post can be divided into two main categories, namely the ones who take up the utterance as a threat, and the ones who take up the utterance as a joke. The following sections will be organized according to these two distinct types of uptakes.

4.3. Uptake as threat

4.3.1. Uptake as threat by the classmate's mother and the school representative

Two of the most significant uptakes in this case are the uptakes by the classmate's mother and the school representative, in that their combined uptakes are what causes the defendant to be arrested by the police. The classmate's mother writes to the school representative, and the school representative then reports the defendant to the police. In sequence 1 below from the audio recording of the district court trial, the prosecutor reads aloud an e-mail from the classmate's mother to the school representative (see appendix A for the Danish transcription of the original audio recording from the district court trial).

Sequence 1: prosecutor's reading aloud of e-mail from classmate's mother

117 P: subject reg- imPORTant please call A S A P that is as soon as possible at telephone number; regarding a student from {NAME OF CLASS} who went aMOK in CLASS yesterday during a presentation (0.5) she has subsequently posted a: >my story< ((said in English)) (.) where she writes i'll be the next school shooter.

Sequence 1 not only shows the uptake of the classmate's mother, but also demonstrates how genres are embedded within each other through textual travels; the written e-mail is presented orally within the trial (see figure 1 for a general overview of the genre embedding in this case).

This uptake is a more or less immediate response to the utterance (the e-mail was sent the day after the utterance was posted). As such, it is more likely to reflect the immediate and impulsive affect of the people involved, as opposed to uptakes that happen later, which will often be more likely to include metacommentary or genre labels, since such later reactions often serve to evaluate an utterance from a temporal distance⁷.

In her e-mail, the mother does not explicitly label the genre a threat in sequence 1, but instead implicitly uses the incident in class to identify the utterance as dangerous or at least immediately demanding action ('please call A S A P'). In that way, she offers a possible explanation for the defendant having written the Instagram post, namely that she 'went aMOK' (Danish: *gik aMOK*) in class on the same day. In Danish, this phrase means that someone 'gets wild and uncontrollable, often out of anger or excitement and often followed by violence' (my translation of the definition from the Danish Dictionary, DDO). The mother clearly links the posting of the utterance to the incident in class where the defendant flipped a table in anger, thereby treating it as indirect evidence of the utterance being a threat. The sense of urgency in her e-mail suggests that she is worried or scared, but the e-mail does not directly mention fear.

Even though it is not necessary for a threat to have caused *actual* fear in order to be deemed illegal according to § 266 (see section 2.3 on 'fitness to create fear'), the presence of actual fear in threat cases is nonetheless often considered by Danish prosecutors and judges (cf. Bojsen-Møller, 2022). The defendant's utterance had in fact created fear among the students in school, as evidenced in excerpt 2 below from the high court judgment's summary of the testimony given by the school representative who received the e-mail from the classmate's mother. The excerpt refers to a conversation between the school representative and the classmate's mother:

(2) From the high court judgment:

'The mother said to her that her daughter and other students did not dare go to school.'

According to the court judgment's summary, both the daughter and other students in school were scared – in fact, they were so scared that they did not dare go to school the next day. There is no direct labelling of the genre of threats in either sequence 1 or in excerpt (2) above, but the mother's uptake of the utterance is still clearly reflected as that of a threat. Instead of labelling the genre a threat, the perceived (perlocutionary) *effect* of a threat is described, i.e. that threats often cause fear.

⁷However, there are examples of *in-situ* uptakes to threatening utterances where a recipient asks the sender of the utterance 'is this a threat?', i.e. they request that the sender labels their utterance themselves.

Aside from the students at the school, the school representative also clearly took up the Instagram post as a threat. In excerpt (3) below, which is taken from the high court judgments' summary of her testimony in court, she ('the witness') explains her reasons for reporting the defendant to the police:

(3) From the high court judgment:

'The witness' prior knowledge of the defendant and awareness of the incident on the day before were part of her considerations before calling the police. She cannot answer whether she would have called, if it had been a student without this background. Before contacting the police, she looked up the abbreviation »lmao«, which she didn't know in advance, but which means something like »I am laughing my ass off«. However, one cannot know whether the funny part was sending the message or carrying out the act. Since 2013, school shootings have been part of the emergency plan.'

Similar to the classmate's mother, the school representative here clearly links the incident in class and her prior knowledge of the defendant to her reporting the defendant's Instagram post to the police. The incident again serves as indirect evidence or justification of the utterance being a threat. The fact that she reported the defendant to the police for threatening makes her uptake of the utterance as a threat particularly strong. In addition, she takes up on the possible act of school shooting (they are 'part of the emergency plan'), meaning that she considered it a real possibility that the defendant would carry out the threat communicated in her post. School shootings are almost non-existent in Denmark, but they are of course well-known from media reports from other countries, especially the United States. One can assume that a history of school shootings would have made the threatened act appear much more probable.

The school representative explains that she looked up 'lmao', but the meaning of the abbreviation did not change her uptake of the utterance from threat to joke, since she still called the police and reported her for threatening. Thus, she must have interpreted the laughter cue as an intensifying cue rather than a contextualization clue (see further in the section 4.1). Seeing it as an intensifying cue would mean that the defendant was serious about frightening people at school (and perhaps also serious about carrying out her threat), but that she simultaneously found it funny. In all the data available in the case, the school representative is the only one who addresses this double-sided nature of humor: the fact that humor is not always non-serious and positive, but that you can also use humor to disguise a serious and aggressive intent (see section 2.4).

4.3.2. Hesitant uptake as threat by the teacher

The teacher's uptake is more ambiguous than the remaining uptakes presented in this article. However ambivalent, her statements still correlate more with an uptake of the utterance as a threat than as a joke. In sequence 2 below, in a verbatim textual travel from the police report (turns 121 and 125), in which the summary of the teacher's testimony to the police is found, the prosecutor asks the teacher of her impression of the defendant after the incident at school where she got angry and flipped a table. The teacher did not witness the incident in class, but she talked to the defendant immediately after, having been summoned by some of the defendant's classmates. Similarly to the classmate's mother, though more indirectly, the prosecutor attempts to link the intense incident in class to the writing of the utterance later that day, thereby making the defendant's state of mind be evidence of her having threatened.

Sequence 2: from prosecutor's questioning of teacher

- 118 **T:** and she she's sitting like holding (.) herself right?
and she says that she's (0.8) very very SORRY
- 119 **P:** did she say that she was- f-felt put down by someone?
- 120 **T:** YES (0.4)
- 121 **P:** ^ookay^o (.) then I HAVE just one more thing
the defendant SAID that she had had a lot of NASTY thoughts
about that student that she (.) felt had put DOWN the defendant
the defendant said that she didn't want to FOLLOW these thoughts
>but would rather take it out on< an object.
have you [said] that to the police
- 122 **T:** [YES] YES
- 123 **P:** okay. (.)
>when asked how the defendant is as a student
the subject describes her< as a LOVELY girl
uh who very much wants all the RIGHT and GOOD things
- 124 **T:** YES
- 125 **P:** the defendant is a FRAGILE girl who can get angry
if others don't underSTAND what she MEANS (0.3)
the defendant SAYS that she has angry and nast-nasty thoughts (.)
she doesn't want to be someone (.) who has such thoughts
- 126 **T:** YES
- 127 **P:** is that also what uh you've ex[plained]
- 128 **T:** [YES]
- 129 **P:** (0.5) does that ONLY relate to that day?
o[r: (.) how should i understand it?]
- 130 **T:** [hhhhhhhhhhhhhhhhhhhh ((loud sigh))]
(0.9)
well really I haven't had any experiences with her (.)
uh:: (0.3) that is bad experience ON THE CONTRARY (.)
umm: i really haven't (0.5)
- 131 **P:** okay.
(2.9) ((turning of pages))

The teacher is hesitant about making negative statements that can be made to link the incident in class plus the defendant's general disposition to the writing of the utterance. The teacher agrees to having described the defendant both in positive terms as 'a LOVELY girl' (Danish: *en DEJlig pige*) (turn 123) and in terms that highlight more negative aspects of the defendant, such as her having issues with anger and having 'nasty thoughts' (Danish: *grimme tanker*) that she does not want to follow or have (turns 121 and 125). However, when the prosecutor asks her if that is in fact a general pattern for the defendant, the teacher is at first very hesitant about answering the question, as indicated by a very lengthy sigh of 1.3 seconds followed by a 0.9 second pause (turn 130). Afterwards, she vehemently denies having had any other negative experiences with the defendant. In effect, she thereby contradicts part of the statement that she agreed to having given to the police, namely the general statement that the defendant 'can get angry if others don't understand what she MEANS' (Danish: *som ka blive vred hvis andre ikke forstår hva hun MENER*). Since textual travels from oral to written will always involve (more or less acceptable) transformations (Heffer, 2013; Jönsson & Linell, 1991), it is not possible to know whether she did in fact speak of a general tendency during the police interview or whether she was only referring to the incident in class.

Even though the teacher's uptake is more ambivalent than the rest of the uptakes in the case, her descriptions of the defendant and the utterance correlate better with seeing

the utterance as a threat than a joke, as seen in excerpt (4) below from the summary of her testimony to the police:

(4) From the police report:

‘Confronted with the fact that the accused has put up a post on Instagram saying that the accused could become the next school shooter, the subject explained that she knows that the accused does not want to carry out these threats. The subject believes that the accused has not been able to control her thoughts when she wrote it.’

Since excerpt (4) contains a summary of an interaction between the teacher (‘the subject’) and a police officer, it is not possible to know whether the label ‘these threats’ (Danish: *disse trusler*) was produced by the teacher herself during the police interview or whether the label was introduced by the police, either in their questioning or in the report itself. Nevertheless, the teacher evidently did not describe the utterance as humorous, funny or a joke. She instead proposes a reason for the defendant in fact having threatened, namely that she was not able to ‘control her thoughts when she wrote it’ (Danish: *kontrollere sine tanker da hun skrev det*), and she denies that the defendant would ever act on her threats⁸.

The defense lawyer is actually the one who lets this part of the police report travel into the courtroom, as can be seen in sequence 3 below. He focuses on the fact that the teacher at least does not think the defendant capable of acting on her threats (even though that is not a requirement in order to be found guilty of threatening):

Sequence 3: defense lawyer’s questioning of teacher

132 L: you had said to the police that you were sure (0.3)
 that uh (0.8) the defendant wouldn’t carry out her threats
 133 T: YES i [am c-]ABSOLUTELY SURE that she would NEVER do that
 134 L: [()]
 nope

Notice how the defense lawyer curiously presupposes that the utterance in fact was a threat through the genre label ‘her threats’ (Danish: *hendes trusler*), the reason for this probably just being that he is directly quoting the police report. The teacher again does not label the utterance herself, but accepts the presupposition that they are threats, once more only focusing on the fact that the defendant would never ‘carry out her threats’ (Danish: *gøre alvor af sine trusler*). Despite her hesitation and evident warm feelings for the defendant, the teacher’s witness statements – especially her statements to the police that were taken closer to the event itself – clearly indicate that she did not take up the utterance as a potential joke but rather as a potential threat.

4.3.3. Uptake as threat by the prosecution in the indictment

One of the powerful and official uptakes a society can have to an utterance is when it is taken up as an example of a prosecutable, illegal act by a prosecutor (in Denmark by ‘the Prosecution Service’). The indictment is one of the required genres in the criminal trial genre set (see figure 1), which has the function of presenting the case to the court

⁸Actually, the defendant is not on trial for having intent to carry out a threat or even planning to *carry out* a threat (that would have required a much more serious charge than § 266); she is on trial for having *threatened* ‘to carry out an illegal act in a way that is fit to provoke serious fear’.

and the defense. It is part of the genre requirements of an indictment to be exact and precise when relaying the overall accusation of the prosecution. This includes naming the criminal act, the appropriate legislature as well as stating the specific details of the case (Kistrup, Poulsen, Røn, & Rørdam, 2018, pp. 125-127), in this case including the exact verbatim wording of the Instagram utterance and labelling the utterance a threat.

In sequence 4 below from the audio recording of the district court trial, the prosecutor orally presents the written indictment. Sequence 4 not only shows the Prosecution's official uptake of the utterance as a threat but also again demonstrates the intricate genre embedding and the shifts in written to oral mode that happen continuously throughout court cases:

Sequence 4: prosecutor's reading aloud of indictment

001 P: the indictment is dated {DATE} >and reads that<
 {NAME} is charged by the court of {NAME OF CITY}
 seeking punishment for (0.6)
 threats under the criminal code's section twohundredsixtysix (0.7)
 by on the {DATE} around midnight (0.5)
 as a student at {NAME OF CITY} high school (.)
 having threatened to commit a punishable act (0.5)
 in that the defendant put a picture of herself
 on instagram with the TEXT (.)
 i'll be the next school shooter (.) guys (0.3)
 L M A O (0.3) watch out! (.)

In the indictment, the Prosecution's uptake of the utterance as a threat is demonstrated clearly and explicitly through the genre label 'threats under the criminal code's section twohundredsixtysix' (Danish, *trusler efter straffelovens paragraf tohundredogsekstres*). It is also demonstrated through the more detailed genre description 'having threatened to commit a punishable act' (Danish: *at ha truet med at foretage en strafbar handling*), which is close to a verbatim textual travel from the Danish threat statute (§ 266). The indictment not only formalizes and categorizes the utterance and embeds it within the legal system; it also serves as an official accusation that is inherently present throughout the case.

4.3.4. Uptake as threat in the prosecutor's cross-examination of the defendant

Since the indictment introduces the overall accusation to the court and to the defendant, the accusation is not mentioned explicitly during the prosecutor's cross-examination of the defendant (at least not in any of the parts on the recording published by *DR P1*). This means that many of the defendant's answers to the prosecutor's questions include accounts wherein she attempts to deny the overall accusation that is made explicit by the prosecutor's reading of the indictment in the beginning of the trial.

In the examinations and cross-examinations of witnesses and defendants, Danish prosecutors have a duty to adhere to 'the principle of objectivity' (Danish: *objektivitet-sprincippet*) (Toftgaard Nielsen, 2016, p. 44). They are therefore obligated to seek out evidence that point away from as well as towards from the defendant's guilt (the same applies to the Danish Police). Even though Danish courtrooms have "an adversarial participation structure similar to that of the Anglo-American courtroom" (S. S. Mortensen & Mortensen, 2017, p.404), Danish courtroom interaction is often described as less confrontational and more casual and informal than the classic adversarial courtroom

interaction and even than the Continental inquisitorial system (S. S. Mortensen & Mortensen, 2017; cf. Anderson, 1992).

The Danish courtroom interaction is instead more indirect and subtle, as can also be seen in sequence 5 below. In this sequence, the prosecutor asks the defendant about the intense incident in class where she flipped a table, still as an indirect attempt to link the incident to the writing of the utterance later that day:

Sequence 5: prosecutor's cross-examination of defendant

004 P: and and did something happen then? (0.7)
 005 D: umm i got a bit ANGRY. (0.3) and flipped a table, (0.3)
 006 P: °yes°, what were you angry about?
 007 D: umm >I had got a bit< angry about >what's it called< (0.3)
 umm {NAME} who (0.6) eh came with proVoking °like°
 (1.0)
 references to me
 (1.4)
 008 P: was it something about a presentatio[n o]r:?
 009 D: [YES]
 010 P: °yes° try and tell me what it was=
 011 D: =well i was about to present and we had also rehearsed it also
 and then he took what i was supposed to say (0.8)
 and afterwards afterwards then he said
 >i'm just waiting for her to open her MOUTH< (0.6)
 aloud in class ((voice trembling))
 umm
 (1.4)
 which e- made >me a bit< irritated
 012 P: were you practically humiliated on that occa[sion]?
 013 D: [YES]
 014 P: yes yeah° where- was it in front of the WHOLE class and the teacher?
 015 D: uh-huh (0.8)
 016 P: and how did you react to it. (0.7)
 017 D: yeah that was- the:n then i flipped the table
 018 P: (0.3) °yes° were you also umm: (0.5) otherwise (0.5)
 reactive towards {NAME} or [>towards one of the others<]
 019 D: [NO: not at all]
 I quickly exited afterwards

The prosecutor does not explicitly label the utterance a threat, but he treats the incident in class as indirect evidence of her intent to threaten, since she acted negatively and violently on the day that she wrote the post.

In her account, in sequence 5 above, the defendant downplays the seriousness surrounding that incident, as can be seen by the mitigating modifier 'a bit' (Danish, *lidt* in front of the adjectives 'angry' (Danish: *sur*⁹ and 'irritated' (Danish, *irriteret*) (turns 005, 007 and 011). The word choice and choice of modifier in her account conveys that the situation in class was a minor and non-consequential dispute. In this way, she indirectly rejects that the incident in class was the reason for her posting the picture on Instagram later that day.

In comparison, the prosecutor intensifies the sense of seriousness of the incident. For instance, he uses the adjective 'angry' without any mitigating modifier in response to her 'a bit angry' (turn 006 and 005). Additionally, when asking about the defendant's state of mind during the incident, he uses the adjective phrase 'practically humiliated'

⁹The Danish adjective *sur* has a very broad meaning potential, varying from 'cross' to 'angry'.

(Danish: *nærmest ydmyget*) (turn 012) after she describes herself as feeling ‘a bit irritated’. He is thereby introducing a much stronger negative emotion than irritation, one that may feasibly correspond more easily with her having intended to threaten later that day. Furthermore, the prosecutor introduces the adjective phrase ‘otherwise reactive’ (Danish, *i øvrigt reagerende*) (turn 018) when he asks her if she did anything else to her classmates other than flip the table. He is actually referring to the specific situation in class; whether she did anything else in class except flipping the table, but the phrase ‘otherwise’ (*i øvrigt*) could also refer to other situations where she reacted negatively towards her classmates. The inference being that perhaps the Instagram she posted later that day was in fact *intended* as a negative reaction towards her classmates and the school—or in other words, she intended to threaten the school. Furthermore, the fact that he uses the adjectival predicative ‘reactive’ (in Danish, the present participle *reagerende*) instead of the verb ‘react’ (e.g. as in ‘did you react in any other way towards your classmates’) invites an additional inference. The use of the present participle in Danish is used to refer to an ongoing action or a continuous state. In this context, this would invite the inference that instead of the defendant being a person who simply reacted in a specific way in a singular, specific situation, the defendant may be a person who tends to react in this manner in general. Therefore, she could plausibly be viewed by the school as an actual threat—a person who is fit to provoke fear. The police report does in fact mention previous negative incidents concerning the defendant that could indicate a pattern, which the high court judgment also alludes to in excerpt 3 above. In excerpt 3, the school representative is referenced saying that she partly based her decision to report the defendant to the police on ‘prior knowledge of the defendant’. The defendant fervently denies the idea of her having been ‘otherwise reactive’, her answer even overlapping with his question, which does not happen often throughout the audio recording. No doubt, it is important for the defense’s case that she be viewed as a non-reactive, non-violent girl who could not foresee the consequences of her Instagram post, and not a reactive, violent adult who should know the possible consequences of posting such an utterance on an open online platform.

In sequence 6¹⁰ below, the prosecutor asks whether the defendant has experienced similar incidents to the one in class earlier. The link between the intense incident in class and her possibly having a general destructive disposition is made explicit in this sequence (as opposed to the more indirect insinuations in sequence 5 above):

Sequence 6: prosecutor’s cross-examination of defendant

060 P: this outburst uh that you had
have you HAD more of those.
(0.7)

061 D: no::

062 P: can you- uh: can you say that you sometimes get immensely angry (.)

063 D: ye:s i can get a bit angry

¹⁰The Danish dialogic particle *jo*, which signals (that there should be) consensus between speaker and audience, has no direct English equivalent, but can be translated into ‘of course’ or ‘as you know’.

- 064 P: yes (.) and of course {Danish: *jɔ*¹} what I am interested in uh that is of course {Danish: *jɔ*} kinda how the others perceive you and ho-how YOU somehow maybe KNOW that the others perceive you (0.7) uh: and yes according to count ONE appendix seven it's a police report (0.7) is it tru- can you remember that you've spoken with the police?
- 065 D: YES
- 066 P: yes umm it says on page four in the report the subject then explained that the subject has PROBLEMS WITH HER MOOD (1.0) the subject can get immensely ANGRY when she gets angry (1.0) can you uh: have you said anything like that to the police?
- 067 D: yes (.)
- 068 P: °yes° is that also how it was. (0.5)
- 069 D: yes
- 070 P: yes ((sharp voice)) >has there been other incidents where you got angry in class< and perhaps could have [<been a little>] (0.4) [enraged?]
- 071 D: [NO:::] [nonono<] i haven't been angry in class at all or anything (.)
- 072 P: NO (.) so this was the first time this
- 073 D: yes it w- (0.5)
- 074 P: >THANK YOU fn-for now i have no further questions for the defendant<

In sequence 6 above, the prosecutor continues to focus on the defendant's state of mind that day and on her overall disposition, in an indirect attempt to depict her as a person who is not able to control her emotions and therefore capable of threatening.

By taking up the defendant's "own" words from the police report, the prosecutor is attempting to render it probable that the situation surrounding the Instagram post was not consistent with making a joke but rather consistent with making a threat. In fact, the defendant was 'angry', 'humiliated' and 'reactive' that day, and in addition, she is by her own admission generally a person who has 'PROBLEMS WITH HER MOOD' (Danish: *PROBLEMER MED SIT HUMØR*) and who can get 'immensely ANGRY' (Danish: *vældig SUR*) (turn 066). Both of these phrases are verbatim textual travels from the defendant's statement as reproduced in the police report.¹¹

In a rhetorical question, the prosecutor addresses the question of how much the defendant knows or understands about how others perceive her and her actions (turn 064) – in fact, her knowledge or understanding of the probable or possible generic up-takes of her utterance. He continues by reading aloud her own acknowledgement to the police of her having what may be seen as an unstable and aggressive disposition. He implies that if *she* sees herself in that light, then she must also have understood that *others* would perceive her as being capable of either threatening someone or of carrying out a violent threat. The prosecutor is actually, though rather indirectly, addressing the

¹¹Notice how the prosecutor both uses the phrase 'immensely angry' (Danish: *vældig sur*) as a direct quote in turn 066, and also as a hidden quote in 062. The Danish adverb of degree *vældig* is an unusual word to use for a contemporary Danish teenager, especially when produced orally, as it would have been in a police interview ('immensely' has been chosen as an English correlation to that). In Denmark, oral police interviews consist of dialogues between police officers and suspects (or witnesses), but written police reports are recontextualized into monologues (Jönsson & Linell, 1991; cf. M. Komter (2019) for similar recontextualization techniques in the Netherlands). As such, it is not possible to know whether this specific word was used by the defendant herself at the oral police interview or whether it was produced by the police officer who wrote the police report.

question of intent. If a defendant is believed to have either known, found it *probable* or found it *possible* that others would perceive their utterance as a threat ‘fit to cause fear’ then intent would be proven (see section 2.3 on the different levels of criminal intent). In other words, the indirectly stated argument is that she must have understood that her posting the utterance shortly after the incident in class would mean that some people would take it up as a threat.

4.3.5. Uptake as threat in the prosecutor’s closing statement

The prosecutor sums up the findings presented during the case and offers the Prosecution’s recommendations to the judges during the prosecutor’s ‘closing statement’ (Danish: *procedure*) (Toftgaard Nielsen, 2016, pp. 198-199). The prosecutor still has to adhere to the principle of objectivity here, but a prosecutor’s “closing statement is in practice shaped by his point of view”¹² (Toftgaard Nielsen, 2016, pp. 198). Seeing that this trial genre allows for the prosecutor to take a more direct and somewhat stronger stance, the prosecution’s uptake of the utterance as a threat culminate in the closing statement (see sequence 7 below):

Sequence 7: from prosecutor’s closing statement

135 P: in class was a violent incident.
 we also know (0.5) that she threw or flipped a table in ra:ge
 or in (.) frustration
 and that she (0.4) was in a very BAD state (0.6)
 and that was the LAST the w-uh persons in the CLASSroom saw of her
 (0.3) and some of these persons (0.5)
 she must of course {Danish: jo} to some degree have realized (.)
 would probably go and look
 when fourty FIFTy would normally look at her posts (0.6)
 and that she then on that same night (0.3) put up a post where she wrote
 i'll {said in English} (.) uh i'll be the next <school shooter> guys
 (0.4) we also know that uh the teacher was
 familiar with her having NASTY thoughts
 she also had a FEAR that these NASTy thoughts would be REAlized (0.5)
 and because of that she would AIM it against objects
 (1.3)
 it is ACTUALLY WELL-KNOWN that uh school shootings HAPPEN other places
 (0.3) we all know that (0.6)
 but tha:t the reason that i say that is NOT
 to uh accuse uh: the defendant OF wanting to DO this here (0.5)
 as such i don't think she would do that EITHER
 that's not deCIasive for the conviction either (.)
 in reality there is of course {Danish: jo} actually no NEED
 in order for uh the defendant to be convicted here
 for anyone a:ctually to be scared
 it only needs to be FIT to creATE this serious fear
 for life health or welfare (0.7)
 but there was (0.6)
 also {THE SCHOOL REPRESENTATIVE} took it quite seriously
 >and before we knew it< (0.3)
 the police had arrived (0.9)
 can one then (.) do away with all this by writing L M A O (0.8)
 can one be TOTALLY sure that everyone is thinking
 this is just for fun? (0.3)
 yes there ARE some (0.6) uh: who have <another> (0.6)
 insider uh: immediate understanding of THIS (.)
 when they write something to each other
 but she hadn't limited it to them (0.9)
 when all that's (.) said

¹²Original quote (my translation): "I praksis er hans procedure dog naturligt præget af hans synsvinkel."

i'm really trying to sum this UP and recommend
 that the pro- that the court (0.7) establishes
 that she is to be convicted in accordance with the indictment (.)
 and found guilty of violation of section twohundredandsixty-six
 (1.3)
 this is really something that AFFECTS a lot of people (.)
 it is something that has had a BIG effect on the SCHOOL (0.5)
 and it is also something that has a SIGNalling effect (0.3)
 uh that which (0.4) uh becomes the reAction from the court toDAY
 (1.4)

The prosecutor again addresses the defendant's negative state of mind during the incident in class, now using stronger terms ('violent incident', 'rage'), and concludes in unambiguous terms that she 'was in a very BAD state' (Danish: *havde det rigtig DÅRLigt*). He links her bad state to the question of criminal intent to threaten by concluding that the defendant must 'of course to some degree have realized' (Danish: *jo i et eller andet omfang have indset*) that her classmate's would get scared when she wrote the purported threatening communication shortly after having been in a self-admitted bad state. In other words, she must have had some degree of criminal intent to threaten (see section 2.3 on criminal intent).

The prosecutor addresses the question of intent to *carry out* the threat through a textual travel from the teacher's statement to the police (see sequence 2, turn 121). The teacher said that the defendant did not want to act on her negative thoughts, which the prosecutor here interprets as the defendant having 'a FEAR that these NASTy thoughts would be REalized' (Danish: *en FRYGT for at de GRImme tanker de blev OMsat*). This particular textual travel is thus influenced by the stance of the prosecutor, since not wanting to act and fearing to *act* are not the same – the latter could potentially be much more dangerous. The prosecutor concedes that he himself does not really think that the defendant had intent to *carry out* a school shooting (this is probably a result of his adherence to the principle of objectivity). However, he emphasizes that such intent to carry out the threat is not 'decisive' (Danish: *afgørende*) in order to be found guilty of threatening according to § 266, only intent to threaten to carry it out.¹³

Even actual fear is not required according to § 266, but the prosecutor emphasizes that people at the school were in fact scared and 'took it quite seriously' (Danish: *tog det ganske alvorligt*). He uses the fact that many people were very affected and that it had a 'BIG effect on the SCHOOL' (Danish: *STOR effekt på SKOlen*) as evidence of the utterance having been a threat that was 'fit to provoke serious fear'. He never actually labels the utterance 'a threat' but simply refers to § 266 and explains the legal requirements that this statute imposes.

Similarly to the school representative's uptake (see section 4.3.1), the prosecutor does not take up 'lmao' as an instantly recognizable contextualization cue that shifts the meaning of the utterance from threat to joke. He argues that the defendant could not be sure that other witnesses to the communication would not see it as a threat simply because she wrote 'lmao', even though there were people on Instagram who had

¹³DR P1 who published the audio recording apparently found it distressing that the prosecutor did not think the defendant would have carried out her threat but still wanted her to be found guilty. At least, they play sad music throughout the remainder of the prosecutor's closing statement from the moment he says 'as such i don't think she would do that either' (Danish: *det tror jeg sådn set heller ik hun ville gøre*).

an ‘insider’ (Danish: *intern*) understanding of the utterance as a joke. The uptakes of these people with ‘insider’ understandings and the uptake of the defendant herself will be the focus of the following sections.

4.4. Uptake as joke

4.4.1. Uptake as joke by the defendant and her friends

The defendant’s uptake of her own utterance is reflected in the accounts she gives to the police, the prosecutor and the defense lawyer (see section 2.2 on accounts). The defendant’s uptake is of course different from the uptakes of all other people involved in the case, seeing that she herself produced and posted the utterance. Her uptake therefore becomes a self-evaluative action, but not one that necessarily requires frankness or truthfulness.¹⁴ However, it is not relevant to this article to attempt to determine whether the defendant’s uptake in her accounts reflects her *actual* intent in writing the utterance or not. If she indeed intended to threaten the school, admitting that would earn her a prison sentence, and as such, the stakes are much higher for the defendant than for any of the witnesses or legal representatives.

In sequence 8 below, in an attempt to disassociate the incident in class from the writing of the Instagram post, the defendant explains to the prosecutor how her state of mind changed after exiting the school:

Sequence 8: defendant’s account to prosecutor of her state of mind after school

025 **D:** yes she then drove me home and said THAT i could (0.3)
 start (0.4) over again tomorrow
 i felt much better after having talked to {TEACHER}† (.)
 and then >i then chose to be with< a couple of friends (.)
 after it happened (0.4)

026 **P:** mm

027 **D:** >where we then just made lasagna and enjoyed ourselves
 and i thought that it was over< (0.6)

028 **P:** yeah did you talk about anything specific? (0.5)

029 **D:** we had talked about many things and we had also talked a bit about
 li:ke school shootings and things like that (.)
 in the other countries (0.4)

The defendant distances herself from the negative parts of the intense incident in school. She instead focuses on the redeeming aftermath of the incident, thus placing emphasis on the positive aspects of her day instead of the negative situation in class. This focus on the shift to positivity can be seen through phrases like ‘start over again’ (Danish: *starte forfra igen*) and ‘I felt much better’ (Danish: *jeg fik det meget bedre*) (turn 025) and ‘[we] enjoyed ourselves and I thought that it was over’ (Danish: *[vi] hyggede os og jeg tænkte at det var ovre*) (turn 027). She focuses on the positivity and camaraderie she had later that day with her two friends, which means that she uses that more positive context as indirect evidence of her having meant the utterance as a joke instead of the negative context in class. She also distances herself from the act of school shooting by referring to it as something that happens ‘in the other countries’ (Danish: *i de andre lande*) (turn 029)—not in Denmark.

The prosecutor has placed great emphasis on the defendant’s negative disposition and negative state of mind (see sequences 5 and 6) in order to argue that she had intent

¹⁴Defendants are not obliged to speak the truth, according to Danish law. Only witnesses are instructed to speak the truth under penalty of law (Kistrup et al., 2018, p. 657).

to threaten or at least would have realized that others would perceive her utterance as a threat. Instead, she attempts to render it probable that the utterance was meant as a joke and could not plausibly be taken up as a threat to commit something as foreign as a school shooting. However, here the prosecutor could have argued that her statement regarding her talk with her friends about school shootings could be seen as evidence that she had in fact had the actual act of school shooting in mind on the same day that she posted the Instagram post. In that way, she could thereby be viewed as having been aware that her utterance could be taken up as a threat to commit such a school shooting, which would constitute direct intent to threaten according to Danish law (see section 2.3 on the different degrees of criminal intent).

In sequence 9 below, the defendant gives an account of why she posted the picture containing the purported threatening communication:

Sequence 9: defendant's account to prosecutor of posting picture

043 D: just like for FUN ((forceful voice))
 044 P: [mm]
 045 D: [and] >we had taken pictures together and things like that< (0.4)
 umm and then i went home and thought that i would post a picture (0.3)
 046 P: [mm]
 047 D: [then] i took that picture where i sat on the toilet
 048 P: mm
 049 D: and so then i wrote and then-th >i had to find something to write<
 and that became it then.
 (1.2)
 050 P: what did you mean by it?
 (1.0)
 051 D: i meant like, it was something li:ke (0.7)
 especially for THOSE two basically (.) ⁰that⁰ (0.3)
 >they would be able to understand it because we just talked about it<
 (.) so it was like <a joke> (0.5)
 052 P: so when you <write> >i'll be the< next <school shooter guys>
 lmao! watch out.
 053 D: yes (0.3)
 054 P: just so we all understand it
 [what] does lmao stand for
 055 D: [yes] uh laughing my ass off ((said in English))
 056 P: yes umm >laughing my ass off< ((said in Danish))
 057 D: [YES EXACTLY]
 058 P: [yes yes] (0.3)
 059 D: which makes it a joke.

The indictment (see sequence 4 further above) still serves as an implicit accusation of illegal and untoward behavior for which the defendant gives her account, for instance in sequence 9 above. The defendant's uptake of her own utterance as a joke involves references to intent to be humorous and lack of intent to threaten, in other words she mainly uses the subtype of excuse 'appeals to intent' in her account (see section 2.2 on accounts). The defendant describes her intention behind posting the picture in phrases that highlight the non-seriousness and lightheartedness of her action. This can for instance be seen in phrases like 'just like for FUN' (Danish: *bare sån for SJOVT*) (turn 043), '[i] thought that i would post a picture' (Danish: *jeg tænkt at jeg ville lægge et billed op*) (turn 045) and 'i had to find something to write and that became it then' (Danish: *så sku jeg find på noget at skrive og det blev så det*) (turn 049). The implication seems to be that this was just something she wrote in the spur of the moment, nothing of any consequence – i.e. it was only a joke. She directly labels the utterance 'a joke' (Danish: *en joke*) (turns 051 and 059), which is in contrast to the absence of such direct labelling of the utterance as a 'threat' by the prosecutor (except in the indictment).

In turn 051, the defendant identifies her desired audience, namely the two friends that she was having fun with after school on the day that she wrote the utterance, making lasagna and talking about school shootings. According to the defendant, her two friends would also take up the utterance as a joke, which was in agreement with her intention behind writing it: ‘they would be able to understand it because we just talked about it’ (Danish: *de ville ku forstå det fordi vi lige havde snakket om det*) – ‘it’ referring to school shootings. She uses their (purported) uptake as indirect evidence of her own account being true. In that light, ‘lmao’ would then have been written in order for the defendant to align herself with her target audience (see section 2.4), in an attempt to procure an uptake of the utterance as a joke. In sequence 10 below (turn 076), the defendant agrees with the defense lawyer that she and her friends have a particular sense of humor, namely a ‘DARK sense of humor’ (Danish: *SORT humor*):

Sequence 10: Defense lawyer’s questioning of defendant

075 L: you ha- you:- >i think you’ve explained<
that they could have a DARK sense of humor? (.)

076 D: yes (0.5)

077 L: uh try and explain who- what could that wha-what can THAT BE

078 D: uh we can write things like that uh
we will kill ourselves the next day (.)
and then we write lol or l m a o (.) aft-afterwards (.)
as if like >of course we won’t do that< it’s a joke, (0.3)

079 L: yeah
(1.6)
SO when you wri- when you express L M A O (0.7)
uh you then mean what (0.6)

080 D: that it’s a JOKE↑

081 L: that it’s a joke.

082 D: yes

083 L: i-is that something everyone underSTANDS? (.)
i [me:an]

084 D: [all] teenagers and (0.6)
<people> who are online un- should understand it,

085 L: basically all those (.) who who see (0.3) [your] posts (0.4)

086 D: [yes] yes

087 L: they know what it me[ans]

088 D: [yes]

The defendant goes from explaining this dark sense of humor in an abstract way to referring to the specific utterance that she wrote. She does this by first using a fictitious example ‘we can write things like that uh we will kill ourselves the next day’ (Danish: *vi kan skrive ting som om at øh vi vil dræbe os selv næste dag*) to then including the particular abbreviation ‘lmao’ in combination with the similar netronym ‘lol’ (i.e. laughing out loud) (turn 078). In that way, the purported threatening communication is framed as an acceptable and ordinary genre, at least within the small discourse community (Swales, 2016) of her and her two friends. The abbreviation ‘lmao’ would thus have been used as a contextualization cue (see section 4.1), which was to signal to the audience that the utterance is not to be taken seriously. In her own words, ‘lmao’ means: ‘of course we won’t do that it’s a joke’ (Danish: *det gør vi selvfølgelig ikke det en joke*) (turn 078).

The defense lawyer moves away from her opinion on the more localized uptakes of her friends to asking whether everyone in general would understand ‘lmao’ as an indication of a joke (turn 083). In her answer, the defendant expands the small ‘insider’ discourse community of three friends to instead being a large ‘insider’ discourse community of ‘all teenagers’ (Danish: *alle teenagere*) and ‘people who are online’ (Danish:

folk som er på nettet) (turn 084). They should all understand it – and therefore the entire utterance – as a joke. Through this line of questioning, the defense lawyer attempts to render it probable that the defendant was certain that people would only take this up as a joke, which would mean that she did not have intent to threaten (see section 2.3). The genre label ‘joke’ is repeated several times (turns 078, 080 and 081), making this uptake particularly strong and explicit.

In sequence 11 below, the defense lawyer and the defendant discuss the actual and immediate uptakes of people online. One of the immediate responses to the Instagram post is read aloud by the defense lawyer in court (again displaying the abundance of textual travels and genre embedding that happen in court cases):

Sequence 11: Defense lawyer’s questioning of defendant

- 100 L: you GET some reACTions on this post isn’t that true,
 101 D: yeah (0.4)
 102 L: uh try and just try and explain what it- what it says THERE
 103 D: yes he has written can you school shoot at my school then? x d (0.5)
 and xd that is like writing (0.5)
 uh it’s like a smiley (.) that’s laughing (0.7)
 so tha:t p- is part o:f forexample lol and these things (.)
 104 L: a-and when HE says that
 can you school shoot at MY school [also] X D SMiley
 105 D: [YES] YES
 106 L: >what THEN does he MEAN by THAT. he doesn’t mean it seri[ously]<
 107 D: [no]
 then it’s just like for fun
 108 L: >for fun he says it< (0.6)
 you said before that (.) there were also OTHERs who
 <wrote like you< on THESE >medias<
 109 D: yes (0.5) yes <lots of other> you know on FACEbook
 where in groups- where they write that they will DO: the sa:me
 and ^othings like that^o
 110 L: for fun.
 111 D: for fun.
 112 L: you have explained to the poLIce (0.4)
 you are uh Cited saying
 that it was supposed to be understood as <a> JOKE
 or a s- or sarcastically (0.4)
 >and then you write< (0.3) >or then you say< (0.3)
 all who know the subject (.) knows that the subject
 >would never THINK of< <HARming ANYone>
 113 D: yes
 (1.2)

The defense lawyer and the defendant co-construct the argument that people on Instagram took up her utterance as a joke and that it is a normal way of making a joke online (e.g. ‘there were also others who wrote like you on these medias’, turn 108). In other words, they argue that this is an existing genre online that is generally accepted within particular communities – and therefore not seen as an illicit genre among them. One of the responses to her utterance ‘can you school shoot at MY school then? x d’ (Danish: *ka du skoleskyde på MIN skole så? x d*) (turn 103) was exactly like her own utterance ‘just like for fun’ (Danish: *bar sådant for sjovt*) (turn 107). The defendant links the use of the symbol of a laughing smiley face ‘XD’ in the response to her own use of the abbreviation ‘lmao’ – they both mean this as a joke. The defense lawyer and the defendant use the immediate uptakes of others online (as well as references to similar

conduct by others online) as indirect evidence that her utterance was in fact a joke. Thus, they portray her utterance in combination with the online responses as an example of positive humor that seeks to build affinity and camaraderie in a community and that leads to “further joking” (Norrick, 2010, p.233).

The defense lawyer attempts to strengthen the defendant’s claims of innocence by referencing her “own” words to the police that everyone knows she would never think of ‘HARming ANYone’ (Danish: *GØRE NOgen forTRÆD*) (turn 112), again focusing on the fact that she would never carry out a threat. He does this through a textual travel from the written police report, which causes him some trouble to reference as an originally oral testimony, again underlining the complexity of the textual travels in this genre chain. In sequence 12 below, as her final words to the judges, the defendant vehemently negates that she meant the utterance as a threat:

Sequence 12: Defendant’s final word before deliberation

140 D: umm uh i would just say that i never meant it as a THREAT
(0.5) and that i’m of course SORRY about ^owhat has happened^o

In that way, her final words become a final and clear repudiation of the genre label stated in the indictment.

4.4.2. Uptake as joke in the defense lawyer’s closing statement

Unlike the prosecutor, the defense lawyer should not adhere to the principle of objectivity, but is instead obligated to plead the defendant’s case to the court (Toftegaard Nielsen, 2016, p. 198). The defense lawyer’s uptake will therefore naturally emulate the defendant’s uptake closely (unless this would harm the defendant rather than help them). In an even more direct sense than what we see in the prosecutor’s closing statement (see section 4.3.5), the defense lawyer’s closing statement in sequence 13 below shows the stance of the defense and the uptake of the utterance as a joke most clearly and strongly:

Sequence 13: From defense lawyer’s closing statement

136 L: >the a- the defendant still pleads< not guilty (0 .6)
and i umm am of course {Danish: jo} in a NUMBER of (0.3)
esSEntial points in DISAGREEMENT with the prosecutor
uh- one has to interpret <the formuLation itself> (.)
AND (.) >one has to< take into considerAtion (.) in what CONtext (.)
it is stated. (0.4)
it is STATED in- on social media (.) on instagram (0.4)
it ISn’t STATED (0.9) towards the school† (0.3)
it is stated (.) uh in a forum (0.3)
where they SPEAK to each other and use a:n- a (0.3)
>yeah well almost< for: those who DON’T know it (0.7)
which apparently is {THE SCHOOL REPRESENTATIVE} (0.5)
they then almost SPEAK in a CODED LANGUAGE† (0.7)
and if you’re NOT <CAPABLE> (0.3)
of uh- of reading and underSTANDING that <conversational form↓> (0.6)
then of course {Danish: jo} you’re not really capable of ASSESSING
whether we’re talking↓ about a THREAT† or a joke. (0.3)
>and then you can say< it can be a: STUpid joke
(1.3)

it can be a <RECKLESS> joke (0.6)
 >you can't convict that after twosixtysix< (0.6)
 BUT but you have to (0.3) underSTAND (0.4)
 what L M A O MEANS in this <CONtext> (0.4) it is s- uh stated↑ within
 to the (0.4) uh young people to the (.) TEENAGERS
 who ALL↓ communicate in the same way (0.3)
 and when they use that EXPRESSION (.)
 and it's of course {Danish: jo} important the court UNDERSTANDS this
 (0.6) then it MEANS (0.6)
 i'll be the next <SCHOOL shooter> (0.8) just for fun (0.8)
 and it's clear (.) >that if you don't< UNDERSTAND this. (0.7)
 then of course {Danish: jo} it can be a PROblem↑ (0.5)
 but that is of course {Danish: jo} not (0.5) your honors↓ (.)
 in (.) the criminal code's section tohundredsixtySIX' san-sense (.)
 it's not supposed to be <held against> the DEFENDANT
 (1.0)
 because the SECOND article (0.4) in TWOsixtySIX is (0.7)
 that the DEFENDANT has had inTENT (0.6) to proDUCE a threat
 (1.1)
 a-and that's not an article that can be inflected (0.6)
 one can't REALIZE AFTERwards that this was too STUPID (.)
 or (0.3) <this could have been> something or other
 or SOMEONE could PERHAPS understand it-
 (1.1)

The defense lawyer shifts the attention from the context of the intense incident in school (which the prosecutor focused on in his closing statement) to the immediate context of 'the formulation itself' (Danish: *selve den formulering*), namely that it was stated on social media and not sent directly to the school.

He creates a sharp divide between insider people who understand 'that conversational form' (Danish: *den samtaleform*) and outsider people who do not understand it and for whom it becomes a 'CODED LANGUAGE' (Danish: *kodesprog*). In what may be seen as an *ad hominem* argument (Walton, 2000, p. 10), he singles out the school representative as one of the people who do not understand the 'coded language'. According to the defense lawyer, she is therefore 'of course not really capable of assessing whether we're talking about a THREAT or a joke' (Danish: *jo reelt ikke i stand til at vurdere om der er tale om en TRUSSEL eller en spøg*). Young people and teenagers in fact 'ALL communicate in the same way' (Danish: *kommunikerer [ALLEsammen] på samme måde*), and it is not the defendant's fault if other people take it up in a different manner. As a result of this argument, the judges would then have to become one of the outsiders who do not understand, if they are to find the defendant guilty.

The defense lawyer emphasizes that the defendant meant that she would be the next school shooter 'just for fun' (Danish: *bare for sjov*), i.e. as a joke. According to him, that would completely negate an intent to threaten, since she cannot be found guilty of producing a 'STUpid joke' (Danish: *ÅNDssvag spøg*) or a 'RECKLESS joke' (Danish: *uagtsom spøg*). If he had changed the genre label into 'reckless threat', then that would possibly have been precarious for the defendant, since the seldom used degree of intent *Dolus Eventualis* is sometimes interpreted as a form of 'conscious recklessness' (see section 2.3).¹⁵ However, besides saying that the school representative would not be capable

¹⁵The defense lawyer refers to the 'SECOND article' (Danish: *ANDET led*) of § 266 and claims that it explicitly references 'intent'. He is referring to § 266b (known as the 'racism section'), which (unlike §

of assessing whether the utterance was a threat or a joke, the defense lawyer seems very careful not to utter the label ‘threat’ in his closing statement. This strategy is especially clear at the end of the closing statement, where he says that it is not enough to find someone guilty if they first realized afterwards that ‘this could have been something or other or SOMEONE could PERHAPS understand it-’ (Danish: *det ku godt være etellerandet eller NOGEN ku MÅSKE forstå det-*). Instead of saying ‘threat’, he uses the indefinite pronominal phrase ‘something or other’ (Danish: *et eller andet*). He also cuts himself off before specifying what precisely someone might understand the utterance as, namely a threat. On the other hand, he repeats the genre label ‘joke’ three times, conceivably to emphasize the strength of that particular uptake in an attempt to persuade the judges.

4.5. And the verdict is

The verdict offers the most important uptake of the case, as it proclaims the outcome of the case. In their verdict, the district court judges emphasize lack of intent as the deciding factor in their decision to acquit the defendant (see sequence 14 below):

Sequence 14: from reading of verdict

141 J: and i can say to you that uh we agree that you are to be acquitted
(0.9) no:t because (0.3) we are not talking about an (0.8)
objectively seen illegal threat but because we believe
that uh you didn’t have the required intent. uh: (0.5)

In effect, the judges’ verdict combines the two different uptakes presented in the case. On the one hand, they label the utterance an ‘objectively seen illegal threat’ (Danish: *objektivt set strafbar trussel*), using the double negation ‘not because we’re not talking about’ (Danish: *ikke fordi der ikke er tale om*). On the other hand, they do not believe the defendant had ‘the required intent’ (Danish: *det fornødne forsæt*) to threaten. The summary of the district court verdict in excerpt (5) below from the high court judgment includes more details from the judges’ verdict that further underline the duality of the judges’ uptake:

(5) From summary of district court verdict in high court judgment:

‘The City Court stated that the post was fit to provoke fear for life or health, cf. the Criminal Code’s § 266, even if it was not meant literally or seriously and included the slang phrase »lmao«. The court did however find that D [the defendant] meant the post as a joke that would be read by her friends, and that these would also perceive the post as a joke. The court therefore found that the defendant had not understood that the post would be perceived as a threat, and that consequently she had not had intent to violate the Criminal Code’s § 266.’

The utterance is deemed ‘fit to provoke fear’ (Danish: *egnet til at fremkalde frygt*) as stated in § 266, and the laughter cue ‘lmao’ does not in itself change this fact. Aside from that, the summary does not offer any additional information about the judges’ stance on how ‘lmao’ should be understood – either as an indicator of a joke or as an intensifier

266) does mention intent explicitly. However, §266 and not § 266b is the statute that the defendant is indicted under (see section 4.3.3). Nevertheless, as mentioned in section 2.3, the three degrees of intent still apply to § 266 (as well as to § 266b). So even though the defense lawyer says that intent cannot be ‘inflected’ (Danish: *bøjes*), the three degrees of intent might be seen as exactly that – three inflections of intent.

in a threat. Nevertheless, they believe that the defendant intended the utterance to be a 'joke' (Danish: *vittighed*) that would also be perceived as a joke by her friends. The fact that her friends take it up as a joke serve as evidence for the judges that she did not have intent to threaten. They find that she had not understood (and in that, perhaps they mean that she had not even seen it as a possibility) that it would be taken up as a threat, thus excluding any intent. Their primary uptake of the utterance is therefore that of a joke, but the duality of the verdict is perhaps what causes the case to be appealed and taken up by the high court.

The summary from the verdict by the high court judges in excerpt (6) below from the high court judgment instead shows an even split between the two uptakes. Three judges vote for a conviction because they believe the defendant had intent to threaten, and three judges vote for an acquittal because they did not believe the defendant had intent to threaten:

(6) From summary of high court verdict in high court judgment:

'In the high court, three judges voted for acquittal for the reasons that the district court had stated, while three judges voted for conviction, because they found that the defendant had had the necessary intent to make the threat, including that it was fit to provoke the mentioned fear in the Criminal Code's § 266. Because of the distribution of votes, the defendant was then acquitted.'

Interestingly, the opposing uptakes of the utterance that we see throughout the case (via the prosecution and the defense) are morphed together in the district trial verdict (see sequence 14 and excerpt (5) further above), but in the high court verdict, they are instead split into two distinct and opposite uptakes (see excerpt (6) above). Because of the legal principle in *dubio pro reo* (from Latin: '[when] in doubt, in favor of the accused'),¹⁶ the defendant is acquitted when there is a parity of votes (Kistrup et al., 2018, p. 31 and 781). The case never went to the Supreme Court, and as such, the defendant was found not guilty.

5. Discussion and conclusion

One of the contributions of a genre perspective to Forensic Linguistics is that it offers a systematic examination of the context of an utterance, including how an utterance and its context is interpreted by various parties through their uptakes. Gales (2019) has specifically identified the need for greater attention to the social context of disputed threatening communications. This study has delved into the interrelation between a genre's uptake and the function thereby attributed to it. The disputed utterance is taken up – and therefore effectively also functions – as two different genres, as a threat and as a joke. These uptakes first happen within the immediate situation, and later – through various textual travels – the uptakes are recontextualized as part of the opposing sides in a courtroom.

The specific uptakes of an utterance can reveal important facets of genre conventions and genre understandings, since these are not fixed or immovable but rather (to a greater or lesser extent) flexible and negotiable. The two uptakes reflect the participants' understanding of the genres in question. As evident from the data, threats are

¹⁶ *In dubio pro reo* is often explained as an equivalent to the standard of proof *beyond a reasonable doubt*.

associated with a negative and destructive state of mind in the threatener, with seriousness (whether about intending to carry out a threatened act or about uttering a threat), and with the consequent effect of fear in victims. As a stark contrast, jokes are associated with a positive state of mind, non-seriousness, camaraderie and fun. The two genres are thus treated as each other's direct opposites in this case.

The view that a joke can only be funny and positive is not grounded in facts, however, as witnessed by negative humor. This case raises the question of what determines whether something is a joke – is it when the sender of an utterance claims to be joking or when both the sender and the audience see it as being funny. Moreover, humor can be part of destructive and extremely serious acts such as bullying or hate speech (e.g., Billig, 2001; Holmes & Marra, 2002). The tacit knowledge of genres that allows the defendant to write her utterance includes a tacit knowledge of threats, and even of the usual or recurrent form of a classic, direct threat. On top of this, it may also be a special kind of uptake on the genre of threats; one that includes that it is not meant to be taken seriously. As Tsakona describes it, “humor may result from incongruities in terms of genre expectations, that is from the fact that the boundaries between genres are often blurred as speakers deliberately and more or less playfully combine discursive features coming from different genres” (2017, p. 494). If in fact two such different genres were intended to be hybridized in this case, the effect of it did not just create a “humorous effect”, but prompted two entirely different uptakes, one of them extremely negative and serious. If, on the other hand, the defendant intended the utterance only to be funny, then the negative uptake is a confirmation of Freadman's (2012) assertion that no one can secure a specific uptake and therefore cannot even decide what genre their utterance represents. This is at issue particularly with social media, since it is difficult to know who one's entire audience or uptake community is. If, on the other hand, the defendant also intended to threaten or intimidate (while not necessarily intending to carry out the threat), then the negative uptake of the law is a response in kind, unwelcome as it may be for her. In a legal context, when a sentence is to be passed, the judges have to consider whether the utterance is an illegal threat or not – there is no in-between. As seen in this case, the dualistic potential of the utterance and its uptakes are reflected in the paradox within the district court verdict and also in the division of the high court judges' opinions.

In the two diverging uptakes, non-linguistic behavior is used as indirect evidence of or justification for the preferred interpretation of the linguistic behavior. As such, the context of the utterance becomes a means to justify the uptake of the utterance itself, but different parts of the generally undisputed context is used to serve each interpretation. The prosecution side focuses on the defendant's disruptive actions in class on the day that she wrote the Instagram post, on the fact that the utterance actually induced fear (and therefore was demonstrably ‘fit to provoke fear’) and to a minor degree on the fact that school shootings do happen. The defense side instead focuses on the positive situation later that same day where the defendant had a nice afternoon with two friends and on the fact that the utterance was posted on Instagram to friends who write in a similar manner. When referring to the act of school shooting, they are only talked about in relation to what happens in other countries, not as something that happens in Denmark. To explain the meaning of the utterance (its function, its genre), both sides refer to her ancillary actions and to whether school shootings are realistic or

not, which means that non-linguistic acts and behavior are an important part of their interpretations of the utterance.

In contrast, the linguistic interpretation is limited to the abbreviation 'Imao'. To my knowledge, the prosecutor does not explain anything about the linguistic content of the utterance itself, except in his closing statement, when he mentions that 'Imao' cannot function as a disclaimer of all other content in the utterance. In that way, he treats the language and genre knowledge as shared knowledge, i.e. everyone must know what a threat looks like (also see Bojsen-Møller, 2022). The only feature that needs explaining is the presumed apparent genre anomaly 'Imao'¹⁷, which the school representative in particular does not consider to be an unambiguous signpost of a joke. Aside from that, the prosecution takes the linguistic elements for granted. Considering the crucial role that different kinds of textual travels have in court cases, it is curious how the travel of the disputed utterance itself happens without any greater assessment of the content of the utterance. This substantiates one of the common claims about genres, namely that genre knowledge is tacit. Often, there is no inclination – and for non-linguists typically no acquired terminology – to explain explicitly what the linguistic or generic features of a specific genre are, because it is treated as shared and unproblematic, common knowledge that is intuitively understood. The district judges seem to agree with prosecution that no further explanation is needed, since they conclude that the utterance is an 'objectively seen illegal threat', which seems to be an indirect comment on the linguistic content of the utterance. They are not swayed by the defense's explanation of 'Imao' as a sufficient cue to change the genre from a threat to a joke (and we do not know what the high court judges' stance on the laughter cue is).

Despite the categorization and labelling of the utterance as an 'objectively seen illegal threat', the defense claim that the defendant lacked an intent to threaten becomes the deciding factor for the district court judges. In this way, the case clashes rather surprisingly with the established legal norm of cases tried under § 266, which focuses more on the perceived "character" of the utterance itself and less on the criminal intent of the defendant (Bojsen-Møller, 2022). This reflects the difficulty in objectively verifying what a person's actual intent is (see Threatening communications and the Danish threat statute). It is not uncommon for people accused of committing a language crime to disagree with the genre label that alleged victims, police or prosecution use and instead use a non-criminal or non-illicit genre label (Bojsen-Møller et al., 2020). The alternative label can either be a deceptive, or even self-deceptive, re-labelling technique to avoid legal repercussions, or a true reflection of their original intent behind the words. As this case study illustrates, determining intent will not only include an assessment of the credibility of the defendant, but also an assessment of contextual factors, such as the uptakes of others. This demonstrates that the uptakes of a disputed criminal utterance can have a deciding impact on the outcome of a criminal trial. In this case, the two diverging uptakes from two different groups of people make the situation more complicated and less straight-forward than if there had been one unanimous uptake of the utterance as either a threat or a joke. If everyone had taken up the utterance as a joke, then of course there would not have been a trial, but if everyone had taken up the

¹⁷People may not expect humor in threatening communications, but laughter cues do in fact occur in threats (cf. KORP threats), both as a way of intensifying the scary aspects of the threat and as a way of making other people laugh while the victim gets scared.

utterance as a threat, the outcome of the case would probably have been less divided. Instead, the dual (and duelling) uptakes are reflected in the ambivalence expressed in the verdicts. In other words, the differing uptakes of the utterance contribute to the conclusion of sufficient (reasonable) doubt for the defendant to be found not-guilty.

Sometimes genre interpretations have very real consequences. Sometimes they are the difference between guilty and not-guilty, prison and freedom.

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References

- Anderson, S. (1992). The transition from inquisitorial to adversarial criminal procedure in Denmark. *Scandinavian Studies*, 64(2), 181–198.
- Atkinson, J. M., & Drew, P. (1979). *Order in Court: the Organisation of Verbal Interaction in Judicial Settings*. London: Macmillan.
- Auken, S. (2015). Utterance and function in genre studies: a literary perspective. In J. Andersen (Ed.), *Genre theory in information studies* (1. ed ed.). Bingley: Emerald.
- Auken, S. (2018). Understanding genre. *Journal of Zhejiang International Studies University*, 3(2), 14–27.
- Auken, S. (2019). Summing up. In T. K. Christensen & M. Bojsen-Møller (Eds.), *Illicit genres. Symposium*. Department of Nordic Studies and Linguistics, University of Copenhagen.
- Auken, S. (2021). Genres inside genres. A short theory of embedded genre. *Discourse and Writing/Rédactologie*, 31, 163–178. doi: 10.31468/dwr.883
- Austin, J. L. (1962). *How to Do Things with Words*. London: Oxford University Press.
- Bakhtin, M. (1986). The problem of speech genres. In C. Emerson & M. Holquist (Eds.), *Speech Genres and Other Late Essays* (pp. 60–102). Austin: University of Texas Press.
- Bala, P. (2020). ‘Tiltalte var ikke sur eller ophidset, da han gik.’ På sporet af tiltaltes stemme [‘The defendant wasn’t angry or upset when he left.’ Searching for the defendant’s voice]. *Spindet Sprogpsykologisk Information og Debat*, 16–19.
- Bell, N. D. (2017). Failed Humor. In S. Attardo (Ed.), *The Routledge Handbook of Language and Humor* (1st ed., pp. 356–370). New York, NY: Routledge. doi: 10.4324/9781315731162-25
- Billig, M. (2001). Humour and hatred: the racist jokes of the Ku Klux Klan. *Discourse and Society*, 12, 267–89.
- Billig, M. (2005). *Laughter and Ridicule: Towards a Social Critique of Humour*. London: Sage Publications.
- Bojsen-Møller, M. (2022). Fit to provoke fear?: Uptakes and textual travels of threatening communications in legal genres. *International Journal of Speech, Language and the Law*. doi: 10.1558/ijsl.18869
- Bojsen-Møller, M., Auken, S., Devitt, A. J., & Christensen, T. K. (2020). Illicit Genres: The Case of Threatening Communications. *Sakprosa*, 12(1), 1–53. doi: 10.5617/sakprosa.7416
- Bucaria, C. (2008). Dubbing Dark Humour: A Case Study in Audiovisual Translation. *Lodz Papers in Pragmatics*, 4(2), 215–240. doi: 10.2478/v10016-008-0014-2
- Christensen, T. K. (2019). Indirect threats as an illegal speech act. In K. Ramshøj Christensen, J. Wood, & H. Jørgensen (Eds.), *The Sign of the V. Papers in Honour of Sten Vikner Festschrift* (pp. 113–130). Aarhus: Aarhus University.
- Devitt, A. J. (1991). Intertextuality in tax accounting: Generic, referential, and functional. In C. Bazerman & J. Paradis (Eds.), *Textual Dynamics of the Professions: Historical and Contemporary Studies of Writing in Professional Communities* (pp. 336–57). Madison: University of Wisconsin.
- Devitt, A. J. (2009). Re-fusing form in genre study. In J. Giltrow & D. Stein (Eds.), *Genres in the Internet: Issues in the Theory of Genre* (pp. 27–48). Amsterdam: John Benjamins.

- Fraser, B. (1998). Threatening revisited. *Forensic Linguistics*, 5(2), 159–173. doi: 10.1558/sll.1998.5.2.159
- Freadman, A. (1994). Anyone for tennis. In A. Freedman & P. Medway (Eds.), *Genre and the New Rhetoric* (pp. 43–66). London: Taylor & Francis.
- Freadman, A. (2002). Uptake. In R. Coe, L. Lingard, & T. Teslenko (Eds.), (pp. 39–53). Cresskill: Hampton Press.
- Freadman, A. (2012, December). The Traps and Trappings of Genre Theory. *Applied Linguistics*, 33(5), 544–563. doi: 10.1093/applin/ams050
- Freadman, A. (2020). A Tardy Uptake. *Discourse and Writing/Rédactologie*, 30, 105–132. doi: 10.31468/cjsdwr.781
- Fuller, P. B. (2015). Evaluating intent in true threat cases: The importance of context in analyzing threatening Internet messages. *Hastings Communications and Entertainment Law Journal*, 37, 37–58. Retrieved from https://repository.uchastings.edu/hastings_comm_ent_law_journal/vol37/iss1/2
- Gales, T. (2010). *Ideologies of Violence: A Corpus and Discourse Analytic Approach to Stance in Threatening Communications* (Doctoral dissertation). University of California, Davis, CA.
- Gales, T. (2019). Threatening contexts. In M. Evans, L. Jeffries, & J. O’Driscoll (Eds.), *The Routledge Handbook of Language in Conflict* (1st ed., pp. 472–490). Routledge. doi: 10.4324/9780429058011-27
- Gingiss, P. (1986). Indirect threats. *WORD*, 37(3), 153–158. doi: 10.1080/00437956.1986.11435774
- Gumperz, J. J. (1982). *Discourse Strategies*. Cambridge: Cambridge University Press.
- Heffer, C. (2013). Communication and magic: Authorized voice, legal-linguistic habitus, and the recontextualization of “beyond reasonable doubt”. In C. Heffer, F. Rock, & J. Conley (Eds.), *Legal-Lay Communication, Textual Travels in the Law* (pp. 206–225). New York: Oxford University Press.
- Heffer, C., Rock, F., & Conley, J. (2013). *Legal-Lay Communication, Textual Travels in the Law*. New York: Oxford University Press.
- Heydon, G. (2013). From legislation to the courts: Providing safe passage for legal texts through the challenges of a police interview. In C. Heffer, F. Rock, & J. Conley (Eds.), *Legal-Lay Communication, Textual Travels in the Law* (pp. 55–77). New York: Oxford University Press.
- Holmes, J., & Marra, M. (2002). Over the edge? Subversive humor between colleagues and friends. *International Journal of Humor Research*, 15, 65–87.
- Hurt, M., & Grant, T. (2019). Pledging to harm: A linguistic appraisal analysis of judgment comparing realized and non-realized violent fantasies. *Discourse & Society*, 30(2), 154–171. doi: 10.1177/0957926518816195
- Jefferson, G. (1984). On the organization of laughter in talk about troubles. In *Structures of Social Action*. Cambridge: Cambridge University Press.
- Jefferson, G. (1985). An exercise in the transcription and analysis of laughter. In T. A. van Dijk (Ed.), *Handbook of Discourse Analysis, vol. 3*. London: Academic Press.
- Jefferson, G. (2004). Glossary of transcript symbols with an introduction. In G. H. Lerner (Ed.), *Pragmatics & Beyond New Series* (Vol. 125, pp. 13–31). Amsterdam: John Benjamins Publishing Company. doi: 10.1075/pbns.125.02jef
- Jönsson, L., & Linell, P. (1991). Story generations: From dialogical Interviews to written

- reports in police interrogations. *Text - Interdisciplinary Journal for the Study of Discourse*, 11(3). doi: 10.1515/text.1.1991.11.3.419
- Kistrup, M., Poulsen, J. L., Røn, J., & Rørdam, T. (2018). *Straffeprocessen. [Criminal Procedure]* (3rd edition. ed.). Copenhagen: Karnov Group.
- Komter, M. (2019). *The Suspect's Statement: Talk and Text in the Criminal Process*. Cambridge University Press.
- Komter, M. L. (1994). Accusations and Defences in Courtroom Interaction. *Discourse & Society*, 5(2), 165–187. doi: 10.1177/0957926594005002002
- Lewis, P. (1997). The killing jokes of the American eighties. *Humor: International Journal of Humor Research*, 10, 251–83.
- Medway, P. (2002). Fuzzy genres and community identities: The case of architecture students' sketchbooks." In R. Coe, L. Lingard, & T. Teslenko (Eds.), *The Rhetoric and Ideology of Genre: Strategies for Stability and Change* (pp. 123–153). Cresskill NJ: Hampton.
- Miller, C. R. (1984, May). Genre as social action. *Quarterly Journal of Speech*, 70(2), 151–167. doi: 10.1080/00335638409383686
- Miller, C. R. (2017). "Where Do Genres Come From?". In C. R. Miller & A. R. Kelly (Eds.), *Emerging Genres in New Media Environments* (pp. 1–34). Cham: Springer International Publishing. doi: 10.1007/978-3-319-40295-6_1
- Mortensen, N., J. and Coupland. (2018). Style and styling. In *Handbook of Pragmatics*.
- Mortensen, S. S., & Mortensen, J. (2017). Epistemic Stance in Courtroom Interaction. In F. Poggi & A. Capone (Eds.), *Pragmatics and Law* (Vol. 10, pp. 401–437). Cham: Springer International Publishing. (Series Title: Perspectives in Pragmatics, Philosophy & Psychology) doi: 10.1007/978-3-319-44601-1_16
- Muschalik, J. (2018). *Threatening in English: A Mixed Method Approach*. Amsterdam: John Benjamins Publishing Company.
- Nini, A. (2017, June). Register variation in malicious forensic texts. *International Journal of Speech Language and the Law*, 24(1), 99–126. doi: 10.1558/ijsl.30173
- Norrick, N. R. (2010, April). Humor in Interaction: Humor in Interaction. *Language and Linguistics Compass*, 4(4), 232–244. doi: 10.1111/j.1749-818X.2010.00189.x
- Nyboe, J. (2016). The Game of the Name: Genre Labels as Genre and Signature. *Scandinavian Studies*, 88(4), 364–392. doi: 10.5406/scanstud.88.4.0364
- Raskin, V. (1985). *Semantic Mechanisms of Humor*. Dordrecht: D. Reidel.
- Sachs, J. (1967). Recognition memory for syntactic and semantic aspects of connected discourse. *Perception & Psychophysics*, 2, 437–444.
- Salgueiro, A. B. (2010). Promises, threats, and the foundations of speech act theory. *Pragmatics. Quarterly Publication of the International Pragmatics Association (IPrA)*, 213–228. doi: 10.1075/prag.20.2.05bla
- Scott, M. B., & Lyman, S. M. (1968). Accounts. *American Sociological Review*, 33(1), 46. doi: 10.2307/2092239
- Shauer, F. (2003). Intentions, conventions, and the First Amendment: The case of cross-burning. *Supreme Court Review*, 197–230.
- Shuy, R. W. (1993). *Language Crimes: The Use and Abuse of Language Evidence in the Courtroom*. Cambridge: Blackwell.
- Solan, L. M., & Tiersma, P. M. (2005). *Speaking of Crime, the Language of Criminal Justice*. Chicago: University of Chicago Press.

- Swales, J. (2016). Reflections on the concept of discourse community. *ASp*(69), 7–19. doi: 10.4000/asp.4774
- Toftegaard Nielsen, G. (2016). *Straffesagens Gang. [The Course of the Criminal Trial]*. Copenhagen: Jurist- og Økonomforbundet.
- Toftegaard Nielsen, G., Elholm, T., & Jakobsen, M. N. (2017). *Kommenteret Straffelov, Speciel Del. [The Annotated Criminal Code, Special Part.]* (11th ed.). Copenhagen: Jurist- og Økonomforbundet.
- Tsakona, V. (2017). Genres of Humor. In S. Attardo (Ed.), *The Routledge Handbook of Language and Humor* (1st ed., pp. 489–503). New York, NY: Routledge. doi: 10.4324/9781315731162-34
- Waaben, K., & Langsted, L. (2015). *Strafferettens Almindelige Del [The Criminal Law's Ordinary Part]*.
- Walton, D. (2000). *Scare Tactics, Arguments that Appeal to Fear and Threats*. Dordrecht, Netherlands: Kluwer Academic Publishers.
- Watson, D. R. (1992). Ethnomethodology, conversation analysis and education: An overview. *International Review of Education*, 38(3), 257–274. doi: 10.1007/BF01101432
- Yamanaka, N. (1995). On indirect threats. *International Journal for the Semiotics of Law*, 8(1), 37–52. doi: 10.1007/BF01677089

Appendix A: Danish data

- (1) Fra Instagram-opslag, citeret i anklageskriftet og lagt op som billede på dr.dk:
jeg bliver den næste school shooter guys, lmao, watch out
- (2) Fra resumeet i Landsrettens dombog af skolerepræsentantens vidneforklaring:
Moren sagde til hende, at hendes datter og andre elever ikke turde møde i skolen.
- (3) Fra resumeet i Landsrettens dombog af skolerepræsentantens vidneforklaring:
Vidnets forudgående kendskab til tiltalte og kendskabet til episoden dagen i forvejen indgik i hendes overvejelser, inden hun ringede til politiet. Hun kan ikke svare på, om hun ville have ringet, hvis der havde været tale om en elev uden denne forhistorie. Inden hun kontaktede politiet, slog hun forkortelsen »lmao« op, som hun ikke på forhånd kendte, men som betyder noget i retning af, at »jeg griner min røv i laser«. Man kan dog ikke vide, om det sjove var at sende beskeden ud eller at udføre handlingen. Siden 2013 har skoleskyderier været med i beredskabsplanerne.
- (4) Fra resumeet i politirapporten af lærerens forklaring:
Foreholdt at sigtede har lagt et opslag ud på Instagram omkring at sigtede kunne blive den næste skoleskyder, forklarede afhørte, at hun ved at sigtede ikke ønsker at gøre alvor af disse trusler. Afhørte mener, at sigtede ikke har haft kunne kontrollere sine tanker da hun skrev det.
- (5) Fra resumeet af byretsdommen i Landsrettens dombog:
Byretten anførte, at opslaget var egnet til at fremkalde frygt for liv og helbred, jf. straffelovens § 266, selv om det ikke var ment bogstaveligt eller alvorligt og indeholdt slangudtrykket »lmao«. Retten lagde dog til grund, at T [tiltalte] mente opslaget som en vittighed, der ville blive læst af hendes venner, og at disse også ville opfatte opslaget som en vittighed. Retten fandt derfor, at T ikke havde forstået, at opslaget ville blive opfattet som en trussel, og at hun derfor ikke havde haft forsæt til overtrædelse af straffelovens § 266.
- (6) Fra resumeet af landsretsdommen i Landsrettens dombog:
I landsretten stemte tre voterende for frifindelse af de grunde, byretten havde anført, mens tre voterende stemte for domfældelse, da de fandt, at T havde haft det fornødne forsæt til at fremsætte truslen, herunder at den var egnet til at fremkalde den i straffelovens § 266 nævnte frygt. Efter stemmefordelingen blev T herefter frifundet.

Transskription af den originale danske lydoptagelse fra byretten

P=prosecutor (anklager)

D=defendant (tiltalte)

L= defense lawyer (forsvarer)

T=teacher (lærer)

Tidsinterval: 2,042-2,357 minutter

001 **P:** anklageskriftet er dateret ((DATO)) >og lyder at<
 ((NAVN)) tiltales ved retten i ((BYNAVN)) med påstand om straf for (0.6)
 trusler efter straffelovens paragraf tohundredogseksogtres (0.7)
 ved den ellefte september totusindatten omkring midnat (0.5)
 som elev på ((BYNAVN)) gymnasium (.)
 at ha truet med at foretage en strafbar handling (0.5)
 idet tiltalte lagde et billede af <sig> selv
 på instagram med TEKSten (.)
 jeg blir den næste school shooter (.) guys (0.3)
 L M A O (0.3) watch out↑ (.)

((imellem 001 og 002 forklarer anklageren og journalisten skiftevis om sagen))

Tidsinterval: 5,351-6,347 minutter

002 **P:** dagen før det her skete
 var du så i: gymnasiet dagen før

003 **D:** JA

004 **P:** og og skete der noget der? (0.7)

005 **D:** øhm jeg blev lidt SUR. (0.3) og væltede et bord, (0.3)

006 **P:** °ja°, hvad var du blevet sur over?

007 **D:** øhm >jeg var blevet lidt< sur over at >hva hedder det< (0.3)
 øhm ((NAVN)) som (0.6) æh kom med provoKERne °altså°
 (1.0)
 hentydninger til mig
 (1.4)

008 **P:** var det noget med en fremlæggels[e el]ler:?

009 **D:** [JA]

010 **P:** °ja° prøv at fortæl hva det var=

011 **D:** =jamen jeg sku fremlægge og vi havde øvet det osse
 og så tog han så hva jeg sku sige (0.8)
 og derefter sagde han så
 >jeg venter bare på hun klapper MUNDEN op< (0.6)
 højt i klassen ((sagt med skælvende stemme))
 øhm
 (1.4)
 hvilket e- fik >mig til at være lidt< irriteret

012 **P:** blev du nærmest ydmyget ved den lejligh[hed]?

- 013 D: [JA]
- 014 P: °ja jaeh° hvor- var det over for hele klassen og læreren?
- 015 D: mm (0.8)
- 016 P: og hvordan reagerede du på det. (0.7)
- 017 D: ja det var så: så vælted jeg bordet (0.3)
- 018 P: °ja° var du os øh: (0.5) i øvrigt (0.5)
reagerende over for ((NAVN)) eller [>over for en af de andre<]
- 019 D: [NE:J slet ik]
jeg gik hurtigt ud bagefter
- ((imellem 019 og 020 forklarer journalist at to veninder gik efter hende og en lærer kom også og snakkede med hende))
- Tidsinterval: 6,442-8,266 minutter
- 020 P: og den (0.3) øh: LÆRER du så snakked med EFTER
hvem var det.
- 021 D: øhm ((NAVN))
- 022 P: var det ((FORNAVN EFTERNAVN))? (0.7)
som kommer og afgiver forklaring i dag oss.
- 023 D: [jæe]
- 024 P: [ja] okay.
tog du så hjem efter at ha snakket med ((NAVN))
- 025 D: ja så kørt hun mig hjem og sagde at jeg ku (0.3)
starte (0.4) forfra igen i morgen
jeg fik det meget bedre efter jeg havde snakket med ((NAVN))† (.)
og så >valgt jeg så at vær sammen med< nogen venner (.)
efter det sket (0.4)
- 026 P: mm
- 027 D: hvor vi så bare laved lasagne og hyggede os
og jeg tænkt at det var ovre (0.6)
- 028 P: jah snakked i om noget bestemt? (0.5)
- 029 D: vi havde snakket om mange ting og vi havde også snakket lidt om
så:n skoleskyderier og sånoget (.) i de andre lande (0.4)
- 030 P: mm (0.7) hvorfor faldt snakken på det.
ka du husk det?
- 031 D: ja altså vi var sån på nettet (0.4)
- 032 P: [°ja°]
- 033 D: [og] så SÅ vi sådn nogen ARTI-ARTIKLER
(1.1)

- 034 **P:** ja (0.8) hvorhenne på nettet så i det?
- 035 **D:** facebook
- 036 **P:** ja (0.5) og så ved titiden tog du hjem. (0.4)
- 037 **D:** ja
- 038 **P:** ja. og hva sket der så?
(1.0)
- 039 **D:** så spilled jeg computer indtil klokken blev tolv
(1.0)
og så sku jeg gå i SENG† (0.5)
og jeg havde taget det billede da jeg var sammen med dem
- 040 **P:** mm
- 041 **D:** hvor jeg sad på TOILETTET† (0.3) ((kraftfuld stemme))
- 042 **P:** mm
- 043 **D:** bare sån for SJOVT ((kraftfuld stemme))
- 044 **P:** [mm]
- 045 **D:** [og] >vi havde taget billeder sammen og sådn noget< (0.4)
øhm og så tog jeg hjem og tænkt at jeg ville lægge et billed op (0.3)
- 046 **P:** [mm]
- 047 **D:** [så] jeg tog det billed hvor jeg sad på toilettet
- 048 **P:** mm
- 049 **D:** og så skrev jeg så og så-d >sku jeg find på noget at skrive<
og det blev så det.
(1.2)
- 050 **P:** hva ment du MED det?
(1.0)
- 051 **D:** jeg ment altså:, det var lissom sådn:(0.7)
specielt til DE to altså (.) °at° (0.3)
>de ville ku forstå det fordi vi lige havde snakket om det< (.)
så det var lissom <en joke> (0.5)
- 052 **P:** der hvor du <skriver> >jeg blir den< næste <school shooter guys>
lmaO‡ watch out.
- 053 **D:** ja (0.3)
- 054 **P:** bar så vi allesammen forstår det
[hva] står lmao for
- 055 **D:** [ja] øh laughing my ass off
- 056 **P:** ja øh >griner min røv i laser<
- 057 **D:** [JA PRÆCIS]
- 058 **P:** [ja ja] (0.3)

059 **D:** hvilket er med til det en joke.

((imellem 059 og 060 forklarer journalist at tiltalte her uploader billedet hvor alle hendes følgere kan se det))

Tidsinterval: 8,316-9,246 minutter

060 **P:** det her udbrud øh som du havde

(0.7)

har du haft flere af dem.

061 **D:** na:rj

062 **P:** ka du-øh: kan du sige du nogen gange blir vældig sur (.)

063 **D:** ja: jeg ka godt blive lidt sur

064 **P:** ja (.) og det jeg jo interesserer mig for øh

det er jo lidt hvordan de andre opfatter dig

og hvorda-hvordan DU etelandetsted måske VED at de andre opfatter dig

(0.7) øh: og ja i forhold ET bilag syv

det en afhøringsrapport (0.7)

er det ri-kan du huske du har snakket med politiet?

065 **D:** JA

066 **P:** ja øhm der står på side fire i rapporten

afhørte forklarede videre at afhørte har PROBLEMER MED SIT HUMØR

(1.0)

afhørte kan blive vældig SUR når hun bliver sur

(1.0)

ka du øh: har du sagt sådn til politiet?

067 **D:** ja (.)

068 **P:** °ja° er det osse sådn det var. (0.5)

069 **D:** ja

070 **P:** ja ((skarp stemme))

har der været andre episoder hvor du blev sur i klassen

og måske ku ha [<været lidt>] (0.4) [vred?]

071 **D:** [ne:j] [>nejnejnej<]

jeg har overhovedet ikke været sur i klassen eller noget (.)

072 **P:** nej (.) så det var første gang det her

073 **D:** ja det v- (0.5)

074 **P:** TAK jeg har fl-foreløbigt ikke flere spørgsmål til tiltalte

((imellem 074-075 forklarer journalist at det nu er forsvarerens tur til at udsøge tiltalte og at hun siger opslaget var en joke så forsvarer vil høre mere om humor og sproget på nettet))

Tidsinterval: 11,531-12,355 minutter

- 075 **L:** du ha- du:- >jeg sys du har forklaret<
at de godt ku ha en SORT humor? (.)
- 076 **D:** ja (0.5)
- 077 **L:** øh prøv at forklare hve-hva ku den hva-hva ka DET VÆRE
- 078 **D:** øh vi ka skrive ting som om at
øh vi vil dræbe os selv næste dag (.)
og så skriver vi lol eller l m a o (.) bagv-bagefter (.)
som om at >det gør vi seføli ikke< det en joke (0.3)
- 079 **L:** jaeh
(1.6)
SÅ når du skr-når du udtrykker L M A O (0.7)
øh så mener du hvad? (0.6)
- 080 **D:** at DET en JOKE†
- 081 **L:** at det en joke.
- 082 **D:** ja
- 083 **L:** e-er det noget alle forSTÅR? (.)
alts[å:]
- 084 **D:** [al]le teenagere og (0.6)
<folk> som er på nettet burde fu- ku forstå det,
- 085 **L:** altså alle dem (.) som som ser (0.3) [dine] opslag (0.4)
- 086 **D:** [ja] ja
- 087 **L:** de ved hvad det bety[der]
- 088 **D:** [ja]

((imellem 088-089 forklarer journalist at en elev fra klassen blev utryg ved opslaget))

Tidsinterval: 12,396-13,075 minutter

- 089 **L:** den pige hvis mor (0.4) vi kan se (0.3)
kontakter ((SKOLEREPRÆSENTANT)) om morgenen angiveligt
var det en af dem her?
- 090 **D:** nej det var ikke nogen af mine venner: det var en fra klassen (0.7)
som ik (0.5) KENDT mig °så godt°

091 L: men men øh kontakter HUN dig om natten [eller om morgenen]?

092 D: [nej slet ik]

093 L: nej

094 D: der ikke nogen (0.8) altså ik [ik hende]

095 L: [>der ik nogen kontakt<]

096 D: [nej]

097 L: [imel]lem dig og hende på nogen måder

(0.9)

ved du om hun har SET_↑ dit opslag

098 D: ja vi var VENner på instagram jeg så hendes og hun så osse mine

099 L: jaeh

((imellem 099-100 forklarer journalist at tiltalte fik andre typer reaktioner på opslaget i form af venner der bryggede videre på hendes spøg))

Tidsinterval: 13,126-14,214 minutter

100 L: du FÅR nogen reakTIONer på det her opslag er det ikke korrekt,

101 D: jo (0.4)

102 L: øh prøv og prøv lige og forklar hva det-hva der står DER

103 D: ja han har skrevet ka du skoleskyde på min skole så? x d (0.5)

og xd det er lissom at skriv (0.5)

øh det lissom en smiley (.) som griner (0.7)

så det: m-er med til: foreksempel lol og de der ting (.)

104 L: o-og når HAN sir det ka du skoleskyde på MIN skole [osse] X D SMiley

105 D: [JA]

JA

106 L: hva MENer han SÅ med DET. det mener han ik alv[orligt]

107 D: [nej]

så det bar sådant for sjovt

108 L: >for sjovt han sir det< (0.6)

du sagde før at (.) der osse var ANDre der

<skrev som dig> på DE >medier<

109 D: ja (0.5) ja <mange andre> altså på FACEbook

hvor i grupper hvor de skriver at de vil GØ:re det sam:

°og sån noget°

110 L: for sjov.

111 D: for sjov.

091 L: men men øh kontakter HUN dig om natten [eller om morgenen]?

092 D: [nej slet ik]

093 L: nej

094 D: der ikke nogen (0.8) altså ik [ik hende]

095 L: [>der ik nogen kontakt<]

096 D: [nej]

097 L: [imel]lem dig og hende på nogen måder

(0.9)

ved du om hun har SET_↑ dit opslag

098 D: ja vi var VENner på instagram jeg så hendes og hun så osse mine

099 L: jaeh

((imellem 099-100 forklarer journalist at tiltalte fik andre typer reaktioner på opslaget i form af venner der bryggede videre på hendes spøg))

Tidsinterval: 13,126-14,214 minutter

100 L: du FÅR nogen reakTIONer på det her opslag er det ikke korrekt,

101 D: jo (0.4)

102 L: øh prøv og prøv lige og forklar hva det-hva der står DER

103 D: ja han har skrevet ka du skoleskyde på min skole så? x d (0.5)

og xd det er lissom at skriv (0.5)

øh det lissom en smiley (.) som griner (0.7)

så det: m-er med til: foreksempel lol og de der ting (.)

104 L: o-og når HAN sir det ka du skoleskyde på MIN skole [osse] X D SMiley

105 D: [JA]

JA

106 L: hva MENer han SÅ med DET. det mener han ik alv[orligt]

107 D: [nej]

så det bar sådant for sjovt

108 L: >for sjovt han sir det< (0.6)

du sagde før at (.) der osse var ANDre der

<skrev som dig> på DE >medier<

109 D: ja (0.5) ja <mange andre> altså på FACEbook

hvor i grupper hvor de skriver at de vil GØ:re det sam:

°og sån noget°

110 L: for sjov.

111 D: for sjov.

112 **L:** du har til poliTIet forklaret (0.4)
 du er øh ciTEret for at sige
 at det skulle forstås som <en> SPØG
 eller en s- eller sarkastisk (0.4)
 >og så skriver du< (0.3) >eller så siger du< (0.3)
 alle som kender afhørte (.) ved at afhørte
 >ikke kunne finde PÅ< <at GØRE NOgen forTRÆD>

113 **D:** ja
 (1.2)

114 **L:** o-og hvorfor sir du hvorfor mener du det? (0.4)
 altså hva BYGger du det PÅ?

115 **D:** øh jeg bygger det PÅ at folk ved at jeg (.)
 ik ku find på at lave sådn noget
 og at jeg bare en følsom lille pige ((stemme skælver))

116 **L:** jae:rh

((imellem 116 og 117 forklarer journalist at det er skolerepræsentanten der afgiver forklaring om at have modtaget en mail fra en bekymret forælder))

Tidsinterval: 16,043-16,260 minutter

117 **P:** emne ved-VIGtigt ring meget gerne A S A P altså så snart som muligt
 på teleFONnummer, vedrørende en elev fra ((NAVN PÅ KLASSE))
 som gik aMOK i KLASSEN i GÅR i forbindelse med en fremlæggelse (0.5)
 hun har efterfølgende lagt en: >my story< OP (.)
 hvor hun skriver jeg blir den næste school shooter.

((imellem 117 og 188 gengiver journalist dele af skolerepræsentantens vidneforklaring og dernæst forklarer journalist at tiltaltes lærer er næste vidne))

Tidsinterval: 18,435-19,417 minutter

118 **T:** og hun sidder sådn og holder (.) på sig selv ik?
 og hun siger at hun er (0.8) meget meget KED af det

119 **P:** fortalt hun om hun var f-følt sig nedgjort af nogen?

120 **T:** JA (0.4)

121 **P:** °okay° (.) så HAR jeg lige en enkelt ting mere
 sigtede forTALTE at hun havde haft en masse GRIMME tanker
 om den eLEV som hun (.) havde følt havde NEDgjort sigtede
 sigtede fortalte at hun ik ville FØLGE de tanker

- >men hellere la det gå ud over< et objekt.
 har du [sagt] sådan til politiet
- 122 **T:** [JA] JA
- 123 **P:** Okay. (.)
 >adspurgt om hvordan sigtede er som elev
 beskriver afhørte hende< som en DEJlig pige
 øh som meget gerne vil alle de RIGtige og GODE ting
- 124 **T:** JA
- 125 **P:** sigtede er en SKRØbelig pige som ka blive VRED
 hvis andre ikke forSTÅR hva hun MEner (0.3)
 sigtede SIger at hun har vrede og gramme-grimme tanker (.)
 hun ønsker ikke at være en (.) som har sådanne tanker
- 126 **T:** JA
- 127 **P:** er det osse sådn øh du har for[klaret]
- 128 **T:** [JA]
- 129 **P:** (0.5) relaterer det sig så KUN til den her dag?
 el[ler (.) hvordan ska jeg forstå det?]
- 130 **T:** [hhhhhhhhhhhhhhhhhhhh ((langt suk))]
 (0.9)
 ahm altså jeg har ik nogen oplevelser med hende (.)
 øh:: (0.3) altså dårlig oplevelse TVERTIMOD (.)
 øhm: det har jeg altså ik (0.5)
- 131 **P:** Okay.
 2.9 ((bladren af papirer))
- Tidsinterval: 19,417-19,512 minutter
- 132 **L:** du havde sagt til politiet at du var sikker på (0.3)
 at øh (0.8) tiltalte ik ville gøre alvor af sine trusler,
- 133 **T:** JA jeg [er f-]STENSIKKER på det ville hun ALDRIG gøre
- 134 **L:** [()]
 arj
- ((imellem 134 og 135 forklarer journalist at det er tid til procedurerne))
- Tidsinterval: 20,039-22,191 minutter
- 135 **P:** vi VED fra vidnerne og osse fra hende selv
 at der jo altså har været nogle episoder og

øh: det ka være mere eller mindre alvorligt sådn som man opfatter det
 men vi ved i HVERT fald at der dagen FØR (0.7)
 i klassen var en voldsom episode.
 vi ved osse (0.5) at hun kastede eller væltede et bord i vrede
 eller i (.) frustration
 og at hun (0.4) havde det rigtig DÅrligt (0.6)
 og det var det SIDste de v-øh personer i KLASseværelset så til hende
 (0.3) og nogen af de personer (0.5)
 må hun jo i et eller andet omfang have indset (.)
 formentlig ville gå ind og kigge
 da fyrre halvtREDS normalt kigged på hendes opslag (0.6)
 og hun så samme aften (0.3) slog et opslag op hvor hun skrev
 i'lll (.) øh jeg blir den næste <school shooter> guys (0.4)
 vi ved osse at øh læreren blev gjort bekendt med
 at hun havde GRIMME tanker
 hun havde også en FRYGT for at de GRIMme tanker de blev OMSat (0.5)
 og derfor så ville hun RETte det mod objekter
 (1.3)
 det er FAKTISK VELKENDT at øh skoleskyderier FINDER sted andre steder
 (0.3) det ved vi allesammen godt (0.6)
 men det: grunden til jeg siger det er IKKE
 at øh beskyldte øh: tiltalte FOR at ville GØRE det her (0.5)
 det tror jeg sådn set HELLER ik hun ville gøre
 det heller ik AFgørende for domfældelsen (.)
 i virkeligheden BEHØVer jo det faktisk ikke
 for at øh tiltalte ka blive dømt her være sådn
 at der er nogen der for: alvor blir bange
 det ska bare være EGNET til at SKAbe denne her alvorlige frygt
 for liv helbred eller velfærd (0.7)
 men det blev der (0.6)
 også ((SKOLEREPRÆSENTANTEN)) tog det ganske alvorligt
 >og inden vi vidst af det var< (0.3)
 politiet kommet til stede (0.9)
 ka man så (.) AFLive det hele ved at skrive L M A O (0.8)
 ka man være HELT sikker på at alle tænker
 det bare for sjov? (0.3)
 ja der ER nogen (0.6) øh: som har <en anden> (0.6)

intern øh: umiddelbar forståelse af det HER (.)
 når de skriver noget til hinanden
 men hun havde ikke begrænset det til dem (0.9)
 når det så er sagt (.) altsammen
 så er det altså at jeg prøver at summere det OP til og anbefale
 at an-at domsmandsretten (0.7) lægger til grund
 at hun skal dømmes i overensstemmelse med anklageskriftet (.)
 og findes skyldig i overtrædelse af paragraf tohundredogseksogtres
 (1.3)
 det er altså noget der BERØRER mange mennesker (.)
 det er noget der har haft en STOR effekt på SKolen (0.5)
 og det er noget: som også har en sigNALværdi (0.3)
 øh hva det er (0.4) øh der blir reaktIonen fra domsmandsretten i DAG
 (1.4)
 på DEN baggrund (.) så er det min ANbefaling til domsmandsretten
 >at det her ska< AFGøres m:ed en
 kortere fængselsstraf på tyve til tredive dages fængsel;

((imellem 135 og 136 opsummerer journalisten anklagerens procedure og forklarer at det nu er forsvarerens tur))

Tidsinterval: 22,378-24,448 minutter

136 L: >s-tiltalte nægter sig< FORTsat skyldig (0.6)
 og jeg øhm er jo på en RÆKKE (0.3)
 VÆsentlige områder UENIG med anklageren
 øh- man er nødt til og fortolke på <selve den formulering> (.)
 OG (.) >man er nødt til< at ta HENSyn TIL (.) i hvilken SAMmenhæng (.)
 at den er fremsat. (0.4)
 den er FREMsat i de-på de sociale medier (.) på instagram (0.4)
 den er IKke FREMsat (0.9) til skolen; (0.3)
 den er fremsat (.) øh i et forum (0.3)
 hvor man TALER til hinanden og bruger e:n-et (0.3)
 >ja vel næsten< for: dem der IKKE ved det (0.7)
 som åbenbart er ((SKOLEREPRÆSENTANTEN)) (0.5)
 så TALER man jo nærmest i et KODESPROG; (0.7)
 og hvis IK man er i <STAND TIL> (0.3)
 og øh- og læse og forSTÅ den <samtaleform; > (0.6)

så man jo reelt ikke i stand til at VURDERE
om der er tale om en TRUSSEL eller en spøg. (0.3)
>og så kan man sige< det kan være e:n ÅNDSSVAG spøg
(1.3)
det kan være en <UAGTSOM> spøg (0.6)
>det kan man ik dømme for efter toseksogtres< (0.6)
MEN men man er nødt til (0.3) og forSTÅ (0.4)
hvad L M A O beTYder i den <SAMMENhæng> (0.4) den er f- øh fremsat i
til de (0.4) øh unge mennesker til de (.) TEENAGERE
som ALLESammen kommunikerer på samme måde (0.3)
og når man bruger det UDTRYK (.)
og det jo VIGtigt at domsmandsretten FORSTÅR det (0.6)
så BETYDER det (0.6)
jeg blir den næste <SKOLEskyder> (0.8) bare for sjov (0.8)
og det klart (.) >at hvis ik man< FORSTÅR det. (0.7)
så ka det jo være et proBLEM (0.5)
men det jo ikke (0.5) høje domsmandsret (.)
i (.) straffelovens paragraf tohundredeseKSogtres forstæn-forstand (.)
ska det jo ikke <gå udover> TILTALTE
(1.0)
fordi ANDET led (0.4) i toSEKSogTRES er (0.7)
at TILtalte har haft FORsæt (0.6) til at FREMkomme med en trussel
(1.1)
o-og det ik et led der ka bøjes (0.6)
man ka ikke BAGEfter blive KLAR over at det var for DUMT (.)
eller (0.3) <det ku godt være> etellerandet
eller NOGEN ku MÅSKE forstå det-
(1.1)
med hensyn til (0.4) hvis det høje domsmandsret må nå frem til
der skal ske en (.) DOMFÆLDELSE i nærværende sag (0.3)
så-så må det være rettens ABSOLUT mildeste DOM

((imellem 136 og 137 forklarer journalist at tiltalte får sidste ord over for dommeren))

Tidsinterval: 24,509-25,058 minutter

137 J: er der noget du vil sige før vi går ud (.)

og drøfter sagen?

og kommer tilbage og træffer en afgørelse?

138 D: øh (0.7) lidt (0.7)

139 J: værsgo

140 D: øhm øh jeg ville bare sige at jeg aldrig havde ment det som en TRUSSEL

(0.5) og jeg selvfølgelig er KED af ⁰hva der er sket⁰

((imellem 140-141 forklarer journalist at dommer og domsmænd voterer og kommer ind igen))

Tidsinterval: 25,236-25,474 minutter

141 J: thi kendes for ret (.) tiltalte ((NAVN)) skal frifindes. (0.6)

statskassen ska betale sagens omkostninger (0.5)

ta plads

(3.1)

og jeg kan sige til dig at øh vi enige om at du skal frifindes

(0.9) ikke: fordi (0.3) der ikke er tale om en (0.8)

objektivt set strafbar trussel men fordi vi mener

at øh du ikke havde det fornødne forsæt. øh: (0.5)

Appendix B: Transcription of Danish audio recording from district court

P=prosecutor

D=defendant

L= defence lawyer

T=teacher

Time interval: 2.042-2.357 minutes

001 P: the indictment is dated ((DATE)) >and reads that<
 ((NAME)) is charged by the court of ((NAME OF CITY))
 seeking punishment for (0.6)
 threats under the criminal code's section twosixtysix (0.7)
 by on the eleventh of september twothousandeighteen around midnight (0.5)
 as a student at ((NAME OF CITY)) high school (.)
 having threatened to commit a punishable act (0.5)
 in that the defendant put a picture of herself
 on instagram with the TEXT (.)
 i'll be the next school shooter (.) guys (0.3)
 L M A O (0.3) watch out! (.)

((the prosecutor and the journalist take turns in explaining about the case))

Time interval: 5.351-6.347 minutes

002 P: the day before this happened
 where you then a:t high school the day before

003 D: YES

004 P: and and did something happen then? (0.7)

005 D: umm i got a bit ANGRY. (0.3) and flipped a table, (0.3)

006 P: °yes°, what were you angry about?

007 D: umm >I had got a bit< angry about >what's it called< (0.3)
 umm ((NAME)) who (0.6) eh came with proVoking °like°
 (1.0)
 references to me
 (1.4)

008 P: was it something about a presentatio[n o]r:?

009 D: [YES]

010 P: °yes° try and tell me what it was=

011 D: =well i was about to present and we had also rehearsed it
 and then he took what i was supposed to say (0.8)
 and afterwards then he said
 >i'm just waiting for her to open her MOUTH< (0.6)
 aloud in class ((voice trembling))
 umm
 (1.4)
 which e- made >me a bit< irritated

012 P: were you practically humiliated on that occa[sion]?

013 D: [YES]

014 P: °yes yeah° where- was it in front of the WHOLE class and the teacher?

015 D: uh-huh (0.8)

016 P: and how did you react to it. (0.7)

017 D: yeah that was- the:n then i flipped the table

018 P: (0.3) °yes° were you also umm: (0.5) otherwise (0.5)
 reactive towards ((NAME)) or [>towards one of the others<]

019 D: [NO: not at all]
 I quickly exited afterwards

((the speaker from The Danish Broadcasting Corporation explains that two of the defendant's girlfriends went after her and that a teacher came out to talk to her as well))

Time interval: 6.442-8.266 minutes

020 P: and the (0.3) uh: TEACHER you then talked to AFTERwards
who was that.

021 **D:** umm ((NAME)) ((voice trembling))
 022 **P:** was it ((NAME SURNAME))? (0.7)
 who is coming to give testimony today also.
 023 **D:** [yeah]
 024 **P:** [yes] okay.
 did you then go home after having talked to ((NAME))
 025 **D:** yes she then drove me home and said THAT i could (0.3)
 start (0.4) over again tomorrow
 i felt much better after having talked to ((NAME))† (.)
 and then >i then chose to be with< a couple of friends (.)
 after it happened (0.4)
 026 **P:** mm
 027 **D:** >where we then just made lasagna and enjoyed ourselves
 and i thought that it was over< (0.6)
 028 **P:** yeah did you talk about anything specific? (0.5)
 029 **D:** we had talked about many things and we had also talked a bit about
 li:ke school shootings and things like that (.)
 in the other countries (0.4)
 030 **P:** mm (0.7) why did you get to talk about that.
 do you remember that?
 031 **D:** yes so we were like online (0.4)
 032 **P:** [⁰yes⁰]
 033 **D:** [and] then we saw like some ARTI-ARTICLES
 (1.1)
 034 **P:** yes (0.8) where online did you see that?
 035 **D:** facebook
 036 **P:** yes (0.5) and then around ten ((PM)) you went home. (0.4)
 037 **D:** yes
 038 **P:** yes. and then what happened?
 (1.0)
 039 **D:** then i played computer until it was twelve o'clock
 (1.0)
 and then i had to go to BED† (0.5)
 and i had taken that picture when i was with them
 040 **P:** mm
 041 **D:** where i sat on the TOILET† (0.3) ((forceful voice))
 042 **P:** mm
 043 **D:** just like for FUN ((forceful voice))
 044 **P:** [mm]
 045 **D:** [and] >we had taken pictures together and things like that< (0.4)
 umm and then i went home and thought that i would post a picture (0.3)
 046 **P:** [mm]
 047 **D:** [then] i took that picture where i sat on the toilet
 048 **P:** mm
 049 **D:** and so then i wrote and then-th >i had to find something to write<
 and that became it then.
 (1.2)
 050 **P:** what did you mean by it?
 (1.0)
 051 **D:** i meant like, it was something li:ke (0.7)
 especially for THOSE two basically (.) ⁰that⁰ (0.3)
 >they would be able to understand it because we just talked about it<
 (.) so it was like <a joke> (0.5)
 052 **P:** so when you <write> >i'll be the< next <school shooter guys>
 lmao† watch out.
 053 **D:** yes (0.3)
 054 **P:** just so we all understand it
 [what] does lmao stand for
 055 **D:** [yes] uh laughing my ass off ((said in English))
 056 **P:** yes umm >laughing my ass off< ((said in Danish))
 057 **D:** [YES EXACTLY]
 058 **P:** [yes yes] (0.3)
 059 **D:** which makes it a joke.

((the speaker explains that the defendant uploads the picture so that all her followers can see it))

Time interval: 8.316-9.246 minutes

- 060 **P:** this outburst uh that you had
have you HAD more of those.
(0.7)
- 061 **D:** no::
- 062 **P:** would you- uh: would you say that you sometimes get immensely angry (.)
- 063 **D:** ye:s i can get a bit angry
- 064 **P:** yes (.) and of course ((Danish: jo)) what I am interested in uh
that is of course ((Danish: jo)) kinda how the others perceive you
and ho-how YOU somehow maybe KNOW that the others perceive you
(0.7) uh: and yes according to count ONE appendix seven
it's a police report (0.7)
is it tru- can you remember that you've spoken with the police?
- 065 **D:** YES
- 066 **P:** yes umm it says on page four in the report
the subject then explained that the subject has PROBLEMS WITH HER MOOD
(1.0)
the subject can get immensely ANGRY when she gets angry
(1.0)
can you uh: have you said anything like that to the police?
- 067 **D:** yes (.)
- 068 **P:** °yes° is that also how it was. (0.5)
- 069 **D:** yes
- 070 **P:** yes ((sharp voice))
>has there been other incidents where you got angry in class<
and perhaps could have [<been a little>] (0.4) [angry?]
- 071 **D:** [NO::] [nonono<]
i haven't been angry in class at all or anything (.)
- 072 **P:** NO (.) so this was the first time this
- 073 **D:** yes it w- (0.5)
- 074 **P:** >THANK YOU fn-for now i have no further questions for the defendant<

((the journalist explains that it is now the defense lawyer's turn to question the defendant and that she says the post was a joke so the defense lawyer wants to hear more about the humor and language online))

Time interval: 11.531-12.355 minutes

- 075 **L:** you ha- you:- >i think you've explained<
that they could have a DARK sense of humor? (.)
- 076 **D:** yes (0.5)
- 077 **L:** uh try and explain who- what could that wha-what can THAT BE
- 078 **D:** uh we can write things like that uh
we will kill ourselves the next day (.)
and then we write lol or l m a o (.) aft-afterwards (.)
as if like >of course we won't do that< it's a joke, (0.3)
- 079 **L:** yeah
(1.6)
SO when you wri- when you express L M A O (0.7)
uh you then mean what (0.6)
- 080 **D:** that it's a JOKE↑
- 081 **L:** that it's a joke.
- 082 **D:** yes
- 083 **L:** i-is that something everyone underSTANDS? (.)
i [me:an]
- 084 **D:** [all] teenagers and (0.6)
<people> who are online un- should understand it,
- 085 **L:** basically all those (.) who who see (0.3) [your] posts (0.4)
- 086 **D:** [yes] yes
- 087 **L:** they know what it me[ans]
- 088 **D:** [yes]

((the speaker explains that one of the defendant's classmates felt unsafe seeing the instagram post))

Time interval: 12.396-13.075 minutes

- 089 **L:** the girl whose MOTHER (0.4) we can see (0.3)
contacts ((THE SCHOOL REPRESENTATIVE)) in the morning allegedly
was it one of these here?

090 **D:** no it wasn't any of my frie:nds it was someone from the class (0.7)
 who didn't (0.5) KNOW me ^oso well^o
 091 **L:** but but uh does SHE contact you at night [or in the morning]?
 092 **D:** [no not at all]
 093 **L:** no
 094 **D:** there's no (0.8) like no [not her]
 095 **L:** [>there's no contact<]
 096 **D:** [no]
 097 **L:** [be]tween you and her in any way
 (0.9)
 do you know if she has SEEN[†] your post
 098 **D:** yes we were FRIends on instagram i saw hers and she also saw mine
 099 **L:** yeah

((the speaker explains that the defendant got other kinds of reactions to the instagram post namely friends who continued her joke))

Time interval: 13.126-14.214 minutes

100 **L:** you GET some reACTIONS on this post isn't that true,
 101 **D:** yeah (0.4)
 102 **L:** uh try and just try and explain what it- what it says THERE
 103 **D:** yes he has written can you school shoot at my school then? x d (0.5)
 and xd that is like writing (0.5)
 uh it's like a smiley (.) that's laughing (0.7)
 so that p- is part o:f forexample lol and these things (.)
 104 **L:** a-and when HE says that
 can you school shoot at MY school [also] X D SMILEY
 105 **D:** [YES] YES
 106 **L:** >what THEN does he MEAN by THAT. he doesn't mean it seri[ously]<
 107 **D:** [no]
 then it's just like for fun
 108 **L:** >for fun he says it< (0.6)
 you said before that (.) there were also OTHERs who
 <wrote like you> on THESE >medias<
 109 **D:** yes (0.5) yes <lots of other> you know on FACEbook
 where in groups- where they write that they will DO: the sa:me
 and ^othings like that^o
 110 **L:** for fun.
 111 **D:** for fun.
 112 **L:** you have explained to the poLIce (0.4)
 you are uh CITED saying
 that it was supposed to be understood as <a> JOKE
 or a s- or sarcastically (0.4)
 >and then you write< (0.3) >or then you say< (0.3)
 all who know the subject (.) knows that the subject
 >would never THINK of< <HARming ANYone>
 113 **D:** yes
 (1.2)
 114 **L:** a-and why do you say- why do you mean that? (0.4)
 i mean what do you BASE this UPON?
 115 **D:** uh i'm basing it UPON that people know that i (.)
 would never think of doing such a thing
 and that i'm just a sensitive little girl ((voice trembling))
 116 **L:** yea:h

((the journalist explains that the school representative gives her statement in court about having received an e-mail from a worried parent but she does not want to be recorded))

Time interval: 16.043-16.260 minutes

117 **P:** subject reg- imPORTant please call A S A P that is as soon as possible
 at telephone number, regarding a student from ((NAME OF CLASS))
 who went aMOK in CLASS yesterday during a presentation (0.5)
 she has subsequently posted a: >my story< ((said in English)) (.)
 where she writes i'll be the next school shooter.

((the journalist reports parts of the witness statement of the school representative og then explains that the defendant's teacher is the next witness))

Time interval: 18.435-19.417 minutes

- 118 **T:** and she she's sitting like holding (.) herself right?
and she says that she's (0.8) very very SORRY
- 119 **P:** did she say that she was- f-felt put down by someone?
- 120 **T:** YES (0.4)
- 121 **P:** ^ookay^o (.) then I HAVE just one more thing
the defendant SAID that she had had a lot of NASTY thoughts
about that student that she (.) felt had put DOWN the defendant
the defendant said that she wasn't going to FOLLOW these thoughts
>but would rather take it out on< an object.
have you [said] that to the police
- 122 **T:** [YES] YES
- 123 **P:** okay. (.)
>when asked how the defendant is as a student
the subject describes her< as a LOVELY girl
uh who very much wants all the RIGHT and GOOD things
- 124 **T:** YES
- 125 **P:** the defendant is a FRAGILE girl who can get angry
if others don't underSTAND what she MEANS (0.3)
the defendant SAYS that she has angry and nasty-nasty thoughts (.)
she doesn't want to be someone (.) who has such thoughts
- 126 **T:** YES
- 127 **P:** is that also what uh you've ex[plained]
- 128 **T:** [YES]
- 129 **P:** (0.5) does that ONLY relate to that day?
o[r: (.) how should i understand it?]
- 130 **T:** [hhhhhhhhhhhhhhhhhhhh ((loud sigh))]
(0.9)
well really I havn't had any experiences with her (.)
uh:: (0.3) that is bad experience ON THE CONTRARY (.)
umm: i really haven't (0.5)
- 131 **P:** okay.
(2.9) ((turning of pages))

Time interval: 19.417-19.512 minutes

- 132 **L:** you had said to the police that you were sure (0.3)
that uh (0.8) the defendant wouldn't carry out her threats
- 133 **T:** YES i [am c-]ABSOLUTELY SURE that she would NEVER do that
- 134 **L:** [()]
nope

((the journalist says that it is time for the closing statements))

Time interval: 20.039-22.191 minutes

- 135 **P:** we KNOW from the witnesses and also from herself
that there actually have been some incidents and
uh: that can be more or less serious depending on how you look at it
but we do IN FACT know that the day BEFORE (0.7)
in class was an violent incident.
we also know (0.5) that she threw or flipped a table in ra:ge
or in (.) frustration
and that she (0.4)was in a very BAD state (0.6)
and that was the LAST the w-uh persons in the CLASSroom saw of her
(0.3) and some of these persons (0.5)
she must of course ((Danish: jo)) to some degree have realized (.)
probably would go and look
when fourty FIFTy would normally look at her posts (0.6)
and that she then on that same night (0.3) put up a post where she wrote
i'll ((said in English)) (.) uh i'll be the next <school shooter> guys
(0.4) we also know that uh the teacher was
familiar with her having NASTY thoughts
she also had a FEAR that these NASTY thoughts would be REalized (0.5)
and because of that she would AIM it against objects
(1.3)
it is ACTUALLY WELL-KNOWN that uh school shootings HAPPEN other places
(0.3) we all know that (0.6)
but tha:t the reason that i say that is NOT

to uh accuse uh: the defendant OF wanting to DO this here (0.5)
 as such i don't think she would do that EITHER
 that's not deCIIsive for the conviction either (.)
 in reality there is of course ((Danish jo)) actually no NEED
 in order for uh the defendant to be convicted here
 for anyone a:ctually to be scared
 it only needs to be FIT to creATE this serious fear
 for life health or welfare (0.7)
 but there was (0.6)
 also ((THE SCHOOL REPRESENTATIVE)) took it quite seriously
 >and before we knew it< (0.3)
 the police had arrived (0.9)
 can one then (.) do away with all this by writing L M A O (0.8)
 can one be TOTALLY sure that everyone is thinking
 this is just for fun? (0.3)
 yes there ARE some (0.6) uh: who have <another> (0.6)
 insider uh: immediate understanding of THIS (.)
 when they write something to each other
 but she hadn't limited it to them (0.9)
 when all that's (.) said
 i'm really trying to sum this UP and recommend
 that the pro- that the court (0.7) establishes
 that she is to be convicted in accordance with the indictment (.)
 and found guilty of violation of section twohundredandsixtysix
 (1.3)
 this is really something that AFFECTS a lot of people (.)
 it is something that has had a BIG effect on the SCHOOL (0.5)
 and it is also somethi:ng that has a SIGnalling effect (0.3)
 uh that which (0.4) uh becomes the reACTION from the court toDAY
 (1.4)
 in light of THESE facts (.) then it is my recommenDation to the court
 >that this must be< settled wi:th a
 shorter term of imprisonment, of twenty to thirty days

((the journalist sums up the prosecutor's closing statement and explains that the time has come for the defense lawyer's closing statement))

Time interval: 22.378-24.448 minutes

136 L: >the a- the defendant still pleads< not guilty (0 .6)
 and i umm am ((Danish: jo)) in a NUMBER of (0.3)
 esSEntial points in DISAGREEMENT with the prosecutor
 uh- one has to interpret <the formulation itself> (.)
 AND (.) >one has to< take into considerATIOn (.) in what CONTEXT (.)
 it is stated. (0.4)
 it is STATED in- on social media (.) on instagram (0.4)
 it ISn't STATED (0.9) towards the school† (0.3)
 it is stated (.) uh in a forum (0.3)
 where they SPEAK to each other and use a:n- a (0.3)
 >yeah well almost< for: those who DON'T know it (0.7)
 which apparently is ((THE SCHOOL REPRESENTATIVE)) (0.5)
 they then almost SPEAK in a CODED LANGUAGE† (0.7)
 and if you're NOT <CAPABLE> (0.3)
 of uh- of reading and understanding that <conversational form†> (0.6)
 then of course ((Danish: jo)) you're not really capable of ASSESSING
 whether we're talking† about a THREAT† or a joke. (0.3)
 >and then you can say< it can be a: STupid joke
 (1.3)
 it can be a <RECKLESS> joke (0.6)
 >you can't convict that after twosixtysix< (0.6)
 BUT but you have to (0.3) understand (0.4)
 what L M A O MEans in this <CONTEXT> (0.4) it is s- uh stated† within
 to the (0.4) uh young people to the (.) TEENAGERS
 who ALL† communicate in the same way (0.3)
 and when they use that EXPRESSION (.)
 and it's ((Danish: jo)) important that the court UNDERSTANDS this (0.6)
 then it MEANS (0.6)
 i'll be the next <SCHOOL shooter> (0.8) just for fun (0.8)
 and it's clear (.) >that if you don't< UNDERSTAND this. (0.7)

then of course ((Danish: jo)) it can be a PROblem↑ (0.5)
 but that is of course ((Danish: jo)) not (0.5) your honors↓ (.)
 in (.) the criminal code's section tohundredsixtySIX' san-sense (.)
 it's not supposed to be <held against> the DEFENDANT
 (1.0)
 because the SECOND article (0.4) in TWOSixtySIX is (0.7)
 that the DEFENDANT has had inTENT (0.6) to PRODUCE a threat
 (1.1)
 a-and that's not an article that can be inflected (0.6)
 one can't REALIZE AFTERwards that this was too STUPID (.)
 or (0.3) <this could have been> something or other
 or SOMEONE could PERHAPS understand it-
 (1.1)
 with regards to (0.4) if your honors it must come to
 there being a CONVICTION↓ in the present case (0.3)
 then-then it must ABSOLUTELY be the court's most lenient SENTENCE

((the journalist explains that the defendant gets the final word in front of the judges))

Time interval: 24.509-25.058 minutes

137 **J**: is there anything you wish to say before we go outside (.)
 and discuss the case?
 and come back and make a decision?
 138 **D**: uh (0.7) a little (0.7)
 139 **J**: here you go
 140 **D**: umm uh i would just say that i never meant it as a THREAT
 (0.5) and that i'm of course SORRY about ⁰what has happened⁰

((imellem 140-141 forklarer journalist at dommer og domsmænd voterer og kommer ind igen))

Time interval: 25.236-25.474 minutes

141 **J**: it is adjudged that (.) the defendant ((NAME)) is to be acquitted. (0.6)
 the state treasury must pay the costs of the case (0.5)
 take your seats
 (3.1)
 and i can say to you that uh we agree that you are to be acquitted
 (0.9) no:t because (0.3) we're not talking about an (0.8)
 objectively seen illegal threat but because we believe
 that uh you didn't have the required intent. uh: (0.5)