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Language and Speakers in the Courtroom

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I. Introduction

Speakers approach any speech situation with some body of relevant knowledge, or set of expectations, about the participant roles, purpose and topic involved. Since this knowledge is often incomplete, speakers must frequently evolve definitions of these situational variables across time, based on the ongoing interaction. In other words, the expectations speakers bring to a particular situation serve as the starting point of a dynamic process in which these expectations are evaluated and modified.

One important characteristic of discourse which emerges as a function of roles, purpose and topic is that of language style or register (Anderson 1977). As speakers define and modify their expectations about the courtroom situation, the degree to which they utilize the (in this case, lexical and syntactic) features or courtroom register or legalese will vary.¹ The aim of the present study is to show some of the ways in which uncertain expectations about the immediate situation and reactions to the topic of discussion interact to produce this variation.

II. Background

A useful and appropriate way of analyzing the data at hand is that termed by Hymes (1962) as "The Ethnography of Speaking". This approach is concerned primarily "with patterns and functions of speaking, patterns and functions that organize the use of language in the conduct of social life" (Bauman and Sherzer 1975). Particularly important here is the notion of the speech event. This is defined by Bauman and Sherzer as "the point at which speakers and means come together in use". The speech event to be discussed here is "the interview", specifically, an interrogation of prospective jurors by the judge who will be presiding at the trial.

A speech event may be viewed in terms of four "semantic features" (Bauman and Sherzer 1975). These are: topic, purpose, role structure and integrity. With respect to the juror interview, these may be defined as: topic: events leading up to, including and following the participation of Patricia Hearst in the robbery of the San Francisco Hibernia Bank, purpose: to determine whether the juror being interviewed is biased with respect to the guilt or innocence of the defendant, role structure: the judge poses questions concerning the events of the case and the prospective juror answers them. This relationship is never reversed unless the juror requests clarification of a previous question., integrity: the interview takes place in the courtroom, begins with the judge's statement of topics to be covered during the interview and ends with a decision on the part of the

attorneys to approve or deny placement of the interviewee on the jury panel.

An additional concern in the ethnography of speaking is with "the general patterns of expectation and activity" as influential factors in a speech event. This notion of "patterns of expectation" has received a great deal of attention recently by researchers in linguistics, psychology and artificial intelligence, who have coined such terms as "schema", "frame" and "script" in their attempts to make sense of this phenomenon (for a summary of this research, see Tannen 1977b). What is important here is that human activity in general and linguistic activity in particular, be it production or comprehension, influence, and are influenced by, structures of expectation.

Studies in this area have focused on expectations as they operate in the comprehension of texts (e.g. Shanck and Abelson 1975, Bransford et al 1972, Fillmore 1975) and in the production of narratives (e.g. Labov 1972, Bowditch 1976, Tannen 1977a). However, little linguistic analysis has been done with respect to discourse which occurs in situations where there is uncertainty of expectations. The courtroom situation is one with which most adult speakers have had little or no direct experience. Hence, they are often less competent communicators than they would be in speech situations with which they are more familiar. This paper deals with some of the ways speakers communicate this uncertainty about the rules governing language use in the courtroom.

III. Data Base

The corpus of data from which this evidence is taken consists of the published transcripts of the interviews of prospective jurors for the bank robbery trial of Patricia Hearst. Fifty-six people were interviewed for the twelve positions on the jury panel and the four alternate positions. Only the transcripts for those people who were selected for these sixteen positions are used in the present study because they form a relatively homogeneous sample (for more detailed biographical information, see appendix).

IV. Lexical and Syntactic Features of Courtroom Register

The variation in register alluded to in section I has certain lexical and syntactic realizations which are particularly clear-cut in the courtroom situation examined in the present study. The occurrence of these forms stems primarily from the fact that prospective jurors regard the interview situation as an unfamiliar and formal context and thus attempt to maintain distance from both the hearer (the judge) and the topic of discussion. They are concerned principally with 1) appearing knowledgeable about the immediate situation, 2) appearing knowledgeable about the case, and 3) not appearing to misrepresent the facts. These concerns are manifested, respectively, in the jurors' use of a) legal terminology (i.e. explicitly legal jargon and elaborate forms of common expressions), b) apologies (i.e. explanations and justifications), and c) hedges. A

fourth feature to be examined is the use of proper names in referring to the defendant. These forms reflect variations in speakers' use of courtroom register as well as their reactions to the actual events which they are being asked about.

IV.1 Legal Terminology

It is clear from the present data that many speakers have definite ideas about what language style should be used during the interview. The most pervasive evidence of speakers' efforts to appear knowledgeable about the immediate situation, and the judicial system in general, is the use of legal jargon. However, there are also less lexically specific ways in which speakers express these assumptions. For example, they often make a point of articulating their awareness of their responsibilities as prospective jurors. In examples (1) and (2), speakers make explicit their compliance with the judge's order not to engage in any discussions about the case:

- (1) J8 Now, over the weekend we were involved in a cocktail party situation where they would have loved to have talked about it, but I had to shut it off.
 (2) J12 But I mean, nothing that would be out of line or out of order, even with my wife.

Other speakers are concerned with conveying their confidence in the judicial process:

- (3) J15 I have teenaged children and it's important, I think, that they see that justice is done.
 (4) J12 My honest answer on that is that I thought for this country, and it behooves me to uphold its laws, and I think everybody is entitled to a fair trial.

Returning now to examples of the more overt use of legal terminology, we find that many speakers make use of the explicitly legal term "alleged(ly)".

- (5) J7 I remember somebody-- there was another one of those reports where they allegedly saw her in a van...
 (6) J12 I guess the next was-- as far as Miss Hearst, the news media and-- I remember, recall-- was the alleged incident down in Southern California...
 (7) J14 ...Steven Weed being involved or allegedly beat up...

In addition to this overt legal jargon is the use of the more formal or elaborate counterpart of a common expression.

- (8) J5 ...One was where she was involved in it, of course, and that there was a gentleman, a black-- I know that a black gentleman, they said, was behind her.
 (9) J13 Well, only that she was abducted in Berkeley from the apartment of her boyfriend.

(10) J14 Basically, it consisted of her abduction from her Berkeley residence.

In example (8), the speaker refers to one of the members of the SLA as a "gentleman", a rather inappropriate description, given the circumstances. However, this speaker uses the word gentleman instead of man or person in another context as well, since she refers (somewhat more appropriately) to "this gentleman who was the coordinator of the (food) program". Examples (9) and (10) illustrate the frequently occurring substitution of abduction and residence for kidnapping and apartment, as well as the more formal possessed-of-possessor construction.

In several cases, speakers gave alternative descriptions of the same referent or event in responding to the question.

(11) J5 That she was taken to the San Mateo County prison or jail, and that is it.

(12) J3 I have heard her name and I know that she was up for a weapons charge, concealing or holding weapons...

(13) J16 ...Then, a short time later, there was the incident where the house where the SLA were, in fact, residing or living... (see also example 45)

In each of these cases, it is the more formal term which is given first. This specification of alternatives is one way in which speakers' uncertainty is manifested. In each case, the speaker appears to be unable to decide (or has changed his mind about) which language style is most appropriate.

This uncertainty is further revealed in the cases below where there is a switch from a "legal" style to a more colloquial style of speech. Examples (14) and (15) illustrate a switch from an impersonal construction to one which makes explicit reference to the speaker, and vice versa.

(14) J7 She's supposed to have had-- looked like a machine gun to me.

(15) J3 Not really, because I don't follow it that closely and I don't have, all the facts aren't in.

Example (16) illustrates a switch from a passive to an active construction. This provides an interesting syntactic parallel to examples (11)-(13), in that it also involves the expression of alternative descriptions of an event in which the more formal alternative (in this case, the passive) is encoded first.

(16) J12 ...that resulted in the death of the people in the house where they were and the burning of that house, theoretically or allegedly by tear gas, the tear gas started the fires, I understand, and the house burned.

In example (17), the speaker switches from the active to the passive, although in this case, the event referred to is not the same.

(17) J3 She saw her family and had some other visitors, and she was reported to have lost weight and was maybe sick.

The examples presented in this section illustrate clearly the varying degrees to which speakers make use of courtroom register, as it is manifested in legal terminology. Further, these examples demonstrate how uncertain expectations lead speakers to try out various modes of expression in an attempt to define the situational variables more clearly. Many other instances of the use of legal terminology as it has been discussed here can be seen in the examples which follow.

IV.2 Apologies

Another salient aspect of the data is the frequent occurrence of apologies and explanations concerning the amount of information which the speaker is able to provide. Because the case received such extensive media coverage, speakers often become embarrassed or defensive when they are unable to answer a question, or they make a point of explaining why they cannot provide certain information.

(18) J8 ...I don't remember if it's a picture of her actually in the bank or just a picture of her standing against the wall with a firearm. I'm sorry.

(19) J6 Oh, her boyfriend was with her. I'm sorry.

(20) J12 Q. Was anyone hurt, do you know?

I don't. I hate to be so ignorant, I'm up in that laboratory alone.

(21) J10 I remember hearing about it, but it really does not stick because, well, it had just gone on so long.

(22) J3 I think that maybe the Harrises and Patricia Hearst were supposed to have lived there, but that would be all I remember. You know, I didn't read that much. I didn't read that much.

(23) J9 Well, first of all, I don't remember a lot about it because my son was in the hospital at that time having his appendix out. So I was occupied with that, mostly...

What is ironic about this point of view on the part of the jurors is that the judge and attorneys are primarily concerned with whether or not the interviewees are biased with respect to the guilt or innocence of the defendant. From their point of view, the less a person knows about the case, the better. One of the prospective jurors points this out as well:

(24) J8 I was going to kind of look this up and refresh my memory, but I thought maybe the less I read, the better off I would be.

The occurrence of apologies such as these is motivated by a set of expectations which conflicts with those which underlie the use of legal jargon. That is, the use of legal jargon is a means of distancing oneself from the topic, whereas apologizing or explaining, particularly when it entails a recounting of events in the life of the speaker as in examples (20), (22) and (23), serves to draw the speaker closer to both the hearer and the topic.

IV.3 Hedges

While on the one hand, jurors are aware that they are being questioned solely to determine whether they have a "fixed opinion" concerning the guilt of the defendant, they are also concerned with the accuracy of their statements. It seems that the imperative to "tell the truth, the whole truth and nothing but the truth" causes jurors to shy away from making unqualified claims about what happened. In the examples below, the speakers explicitly signal their desire to avoid appearing to intentionally misrepresent the facts. In examples (25) and (26), the speaker refers directly to his perception and memory of the events (remember, understand, recall) implying that they are possibly unreliable sources of information. In (26) he also supports his claim with reference to the news reports.

(25) J12 As far as I can remember, her boyfriend, as I understand it, as I recall, her boyfriend was with her.

(26) J12 Well, she was taken out of there bodily and, as I understand it, as the news reports came over, she was taken against her will, allegedly against her will, when she was taken out of there.

Examples (27) and (28) illustrate one speaker's way of avoiding exaggeration or misrepresentation of facts.

(27) J4 ...And there was a lot of, I guess there was, supposedly, some shooting.

(28) J4 I think that I remember that, supposedly, he said he had talked to her, but I don't really know.

In (27) the speaker begins by asserting that there was "a lot of" shooting. He then decides to play it safe, first by reference to his own memory of the event (I guess), then by more general or impersonal reference to the remembrance of the event (supposedly), and finally by actually substituting one lexical item for another (some). Very much the same progression occurs in example (28), except that the final disclaimer is more overt (but I don't really know).

Other speakers hedged their assertions by means of the phrase I think/believe:

(29) J16 I believe he was hit on the head, if I recall correctly, and he made his exit of the building over some fence, or something

like that.

(30) J15 They were-- I think they were arrested.

(31) J15 I don't remember anything else except that I think I read a list of things that they had found in the apartment.

Example (32) is particularly interesting in that it illustrates very clearly the speaker's decision-making process concerning how strongly to state her assertion. In the end, she decides to avoid any claim to knowledge of the event in question.

(32) J3 I don't know if her boyfriend was there or not. I don't know. Maybe he was. He was beaten up. Well, I don't remember.

One interesting contrast to this effort to avoid strong statements, is one speaker's description of the "shoot-out" in Los Angeles between SLA members and the police:

(33) J3 There were a lot of people murdered, and I think, I don't know if Cinque was murdered in that or not.

Although the judge views this use of murdered as a "general, descriptive term" and the prosecuting attorney characterizes it as "probably an unintentional choice of words", one nonetheless wonders what assumptions triggered its use.

IV.4 Proper Names Used to Refer to the Defendant

The three features discussed above-- legal terminology, apologies and hedges-- arise from the jurors' expectations about the immediate situation, that is, the interview. This section concerns ways in which speakers' reactions to the topic of discussion, i.e. the events of the case, are reflected in the discourse. Proper names are one interesting way of examining this, since they co-occur with some of the lexical and syntactic features discussed earlier.

Before pursuing this topic further, I would like to present some examples which convey the sense of involvement many speakers appear to have concerning the events in question, because it is this feeling of concern for, or reaction to, various events or participants which conflicts with the assumption discussed in the beginning of section IV that one must maintain distance from both the hearer and the topic of discussion in this situation. Examples (34)-(37) provide a sampling of the kinds of responses which speakers apparently felt it necessary to articulate concerning particular events or participants.

(34) J4 I mean, it affected me in the fact that I had gone to the University of California...

(35) J6 And I was hoping Patty wouldn't be there because if they could have the parents come, they would feel, you know...

(36) J16 For insight to me, I recall this, that the people had been living there without any regard to sanitation, because of

the litter.

(37) J9 Mostly that it was just a tragedy, so many people inside that were killed. And my own thoughts, whether Miss Hearst was in there or not.

Another measure of speakers' "emotional distance" from the topic is the use of the demonstratives this and that. As R. Lakoff (1974) points out, their use often signals some type of emotional response to the topic. In (38)-(40), the demonstratives this/these function in this way.

(38) J8 ...And then, that she was like pleading with her parents to go along with these people.

(39) J2 It was some time before they discovered these people.

(40) J4 And I had a little, let's say, from the shoot-out, I had a reaction, but it had nothing to do with Patricia Hearst. It was really more or less with this group of people.

In (41) and (42), the demonstrative that is used to distance the speaker from what he is talking about as a means of conveying a negative view of the individuals and events.

(41) J5 No. After that I kind of just didn't bother to watch the news. Everything was about that, the Harrises and the SLA and all that.

(42) J3 Q. Does the name Field Marshall Cinque--

Oh, yes.

Q. Cinque?

Oh, yeah, that.

Returning now to the use of proper names, the following examples illustrate three of the most clear-cut cases.

(43) J1 ...And I watched the news, you know, really a lot, you know, that day and, in fact, I left the radio on by my bed that whole night just, you know, for fear Patty was in there and they would find her body in the fire.

(44) J6 The SLA group. And we didn't hear from Patty for two or three days, I guess.

(45) J16 I believe I originally heard a, it was either a radio communique or on television, that Patricia Campbell Hearst had been abducted or kidnapped from her place of residence in Berkeley, where she was residing with, I believe his name is Steven Weed...

Looking at the syntactic and semantic environments in which these various forms occur, we find that the name Patty occurs in contexts characterized by the frequent use of hedges (you know, really, just) and also by reference to the speaker's emotional state or personal involvement (for fear, by my bed, we didn't hear from Patty). The reference to "Patricia Campbell Hearst", on the

other hand, occurs in a context in which there are no hedges or references to emotional states. Instead, this context is characterized primarily by the use of legal terminology (abducted or kidnapped, place of residence, residing).

The use of proper names varies not only across speakers but within one speaker's narrative as well. For example, juror #16 later recounts the following, in which reference to "Patty Hearst" and "Patty" occur in discourse contexts very similar to those in (43) and (44).

(46) J16 ...and at this time Patty Hearst, herself, speaking in a much firmer non-drugged type of dialogue, which I recall, but I must note, too, that this dialogue, at the time it didn't seem to my mind, didn't seem anything at all like the dialogue I originally heard from Patty.

Examples (34)-(46) are suggestive of the kinds of things jurors chose to comment on, indicating much more than a disinterested spectator's recall of the events. The fact that speakers choose at various times to encode information which deviates in style and/or content from courtroom register indicates that speakers are evaluating and redefining their expectations as the interaction progresses.

V. Conclusion

I have tried to show in these pages that the expectations with which speakers operate in a given situation should not be viewed as a static set, but rather as a starting point for an ongoing process of definition, evaluation and modification of these expectations. In the situation examined here, the form and function of language is clearly affected by uncertain expectations.

In addition to this goal, an analysis of this type is a step toward the development of a typology of discourse situations based on such factors as role structure, purpose and content (Bauman and Sherzer 1975). This typology complements Keenan's (1977) discourse planning typology in that the latter focuses on the internal factors (i.e. forethought and organization) which influence the encoding of propositions, while the former focuses on the external situational factors which affect language use.

The methodological importance of the present study rests in the nature of the corpus of data used. Transcripts of trial proceedings of various kinds (e.g. criminal proceedings, jury selection, small claims) are a rich and illuminating source of data. Much information can be gleaned from transcripts concerning events which are perhaps less spectacular than those in the present study, but which are certainly equally interesting from a linguistic point of view.

APPENDIX

- J1: Marilyn Wentz, 36, Hayward, dental assistant
- J2: William Wright, 55, Mill Valley, retired army colonel
- J3: Linda Magnani, 24, San Francisco, receptionist
- J4: Phillip Crabbe, 35, Oakland, mail carrier
- J5: Marion Abe, 30, Burlingame, airline stewardess
- J6: Helen Westin, 54, Mill Valley, housewife
- J7: Oscar McGregor, 38, Rhonert Park, civilian deckhand for U.S. Army
- J8: Charlotte Gonway, early 40's, property owner
- J9: Cloveta Royall, 32, Novato, dry cleaning store employee
- J10: Beatrice Bowman, 48, San Francisco, housewife
- J11: Bruce Braunstein, 32, Napa, potter
- J12: Richard Ellis, 54, Hayward, photo technician
- J13: Norman Grimm, 44, San Mateo, aircraft technician
- J14: Steven Riffel, 23, Hayward, clothing store employee
- J15: Mary Neiman, 42, Pleasant Hill, nurse
- J16: Robert Anderson, 44, Newark, housing representative for Oakland

These people were characterized as "white" and "middle-class" by the Los Angeles Times, February 5, 1976.

Notes

1. By "courtroom register", I am referring only to the spoken language used by lay people in this situation. Legalese as it is spoken and written by judges and attorneys is comprised of a much different set of linguistic and non-linguistic phenomena.

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