Language and Law

A resource book for students

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Chapter A4

Participant Roles and Speech Styles

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structures that, weighed up from the point of view of anticipated reforms of legal language, he concludes have different merits:

1 a 'telescoping' form, front-loaded with essential information presented before less important information;
2 a 'thematic' form, dealing with each main topic in succession along with everything that relates to it; and
3 a 'chronological' form, following steps in a transaction in the order in which they would take place, like a narrative.

Scope for such variation in structure points to a significant aspect of legal document genres hinted at above: that already tested structures are usually followed. This conventional aspect of document patterns is reinforced on each occasion of use, reflecting and contributing to wider legal conservatism. Ready-made, 'boilerplate' material containing standard formulations (including **specimen clauses**) is available for incorporation into documents, within law firms and commercially, including increasingly online. Because of law's precise procedural needs, use of templates that require only filling in of standardised forms is not frowned on, but encouraged, although responsibility for understanding how a particular use of language relates to the law in a given set of circumstances will normally remain with the document user.

A4 PARTICIPANT ROLES AND SPEECH STYLES

Extending our discussion of genre in Thread 3, especially Heffer's analysis of jury trials as a complex, hybrid genre in Unit D3, we now describe the main determinants of spoken language styles used in courtrooms. Even within a specialised legal setting, we show, speech style co-varies with participant roles and with different stages in legal proceedings. We then examine the main speaking roles and associated styles likely to be encountered in court, identifying prominent features for further analysis in Unit B4. The speech styles used by advocates, which form a distinct kind of adversarial rhetoric, are introduced in Thread 5.

Who talks during a trial, at what stage and in what capacity?

There are major differences between different kinds of trial. So our brief introduction here involves considerable simplification (for a fuller description, see Mauet 2002; Zander 2015). The stages we outline are the main steps in an overall institutional process that is simultaneously procedural, conceptual and linguistic. The process is also adversarial, in common-law trials, and may last varying amounts of time. Not all steps are present in all kinds of proceeding, or at all levels in a court hierarchy, or in all jurisdictions. Our description of speech styles needs to be read with such legal variation in mind.

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Here is a simplified list of the stages in a trial:

1 In jury trials, a selection process may be used to choose jurors. Some jurisdictions allow each party to raise challenges during selection; and where this is the case, such challenges may result in dismissal of potential jurors (a process known as **voir dire**, though this term has a wider meaning in some jurisdictions; Eades 2010: 41–2).
2 The judge instructs jurors on rules to be followed during the trial (these rules are known as **preliminary instructions**).
3 The prosecution or (in a civil case) the claimant's side presents an **opening statement**. This sets out their case and sometimes what witnesses will establish, leading to the main points in contention.
4 The opening statement stage is followed by presentation of evidence, in those hearings where evidence will be presented rather than purely legal argument. This phase is followed by the witness being cross-examined by the opposing lawyer, who asks questions to test that evidence. Witnesses who are present may be, but in most cases are not, re-examined by the lawyer who called them, in a bid to clarify or explain evidence that has emerged during cross-examination.
5 Next, the defending lawyer presents the defendant's case, seeking to refute the other side's claims. Defence witnesses also take an oath, are examined, cross-examined and possibly re-examined.
6 Each side presents a **closing argument**.
7 The judge instructs the jurors (where there is a jury) on the law applicable to the particular case; they retire to a private 'jury room' to deliberate. The jurors elect a foreperson to chair their discussion. They arrive at a verdict (either unanimously or by prescribed majority) that decides between restricted options prescribed by the court, and according to a given standard of proof.

The stages in this process (greatly simplified here) will mostly seem familiar from their representation in films and on television, though differences between actual proceedings and media representations of them should not be underestimated. What is important here is that the processes described above take place through the medium of language: mostly in speech, but supported as necessary by written documents and other evidence. Some stages involve exchanges between the judge and lawyers; others between lawyers; and others again lawyers and **laypersons**. **Cross-examination** (Stone 2009) is interactive, taking the form of questions calculated to elicit answers but constrained by precise rules. At other points, language is more standardised, for example in the form and content of **oaths** and **jury instructions**, which are recited monologues.

Discourse styles in the courtroom

Speech styles are relevant to court hearings because they combine to create a complex **speech event** type. Linguistic, and especially sociolinguistic, work on courtroom discourse makes possible more precise description of the different styles and of issues they raise (Gibbons 2003; Eades 2010).

Everyone's dominant speech patterns are connected, in sometimes complicated ways, to demographic categories (including age, gender, education level, socio-economic status and ethnic group). But people also typically speak differently in different contexts, hence the dynamic relationship between linguistic and social variables explored in sociolinguistics. Even within the same sociolinguistic setting, a person assuming a fixed role (e.g. as a judge) may adjust his or her speech depending on the audience and purpose of the interaction or stage in a particular interaction. Relatively stable **indexical features** of speaker identity (dialect and sociolect signalling regional and class formation, profession and status) interact in patterned ways with features of register (situational variation) and genre (variation of discourse structure by purpose) that we explore in other units.

Courtroom discourse follows procedural conventions that superimpose an institutional level onto such variation. Acknowledging such factors in courtroom behaviour can be important, however, if they affect what might otherwise be conceived as purely legal dimensions of proceedings. Even without presenting details, a number of introductory observations can be made about the roles and turn-taking rights of the main participants in courtroom interaction. In our concluding section below, we draw attention to some of the consequences of these structures.

Judges

The generic term *judge* is used to include roles at a number of ranks that are precisely differentiated in a legal hierarchy. Depending on the type of case, there may be more than one judge (usually an odd number in appeal hearings), who enter the courtroom through a private door and sit ('preside') on an elevated bench, symbolising their personification of authority in the 'hearing'; other symbols, in layout and ritual, reinforce judicial authority and the solemnity of the courtroom.

These aspects of physical context and procedure are reflected in **turn-taking conventions** as well as in speech styles. Being the most powerful persons in a courtroom, judges initiate speech whenever they wish. They can command behaviour (e.g. tell someone to stop talking or sit down; or draw a line of questioning to a close); they formally instruct the jury; they can interrupt proceedings in order to manage time or ensure proper procedure; and they deliver a judgment. Judicial decisions are presented as objective and almost inevitable because of the legal reasoning followed in arriving at them (Ferguson 1990). The judge is depersonalised as 'the court' or 'the bench', reinforcing his or her function as an embodiment of the judicial system (Gibbons 2003). Other courtroom participants address the judge as 'Your Honour' or 'My Lord' (depending on the type of court, and with variation across courts and between common-law jurisdictions; see Evans 1998). In some ritualised formulations, lawyers address the judge in the third person, as in the archaic introduction to a submission, 'May it please your Lordship'. The resulting interaction is a hybrid of second-person address and third-person reference (e.g. 'I don't know if your Lordship has had the opportunity to read . . .'). Judges not present in the courtroom are commonly referred to respectfully as 'the learned judge' even in disagreement; and attention is drawn to disagreement only by suggesting that the learned judge may have 'erred' or 'fallen into error'.

Lawyers

Lawyers may also be known as 'attorneys' or 'counsel'. In the UK, they are divided into solicitors and barristers: the former do preparatory legal work and manage client relations while the latter argue in court (though professional structures are currently undergoing reform). No equivalent division is made in the USA or in some other countries of what is often referred to as the 'common-law family'. In this unit, we use generic 'lawyer' unless there is a reason to use a more specialised term; in this section, we focus on the **advocate** role (i.e. the role played by barristers arguing a case).

Lawyers normally stand while they speak in court but remain seated facing the bench when not talking. As regards speech style, lawyers switch according to addressee and other secondary but still intended audiences. Lawyers address or refer to each other as 'my learned friend' initially, subsequently contracted to 'my friend', conveying an assumption that they are a professional community (membership of which is reflected differently in interactional styles with one another outside the courtroom).

Where jurors are present, lawyers minimise apparent 'legalese'; and in examining witnesses, they orient themselves towards a coherent narrative linking the questions they ask. An opposing lawyer may occasionally raise objections by interrupting, in a formulaic **objection sequence** (in conversation analysis terms) that consists of the objection itself (e.g. 'I object' or 'Objection'), then the basis of the objection or claimed violation (e.g. 'Immaterial' or 'Calls for hearsay'), then the judicial decision. Such interruptions are rare, however, by comparison with television or filmic dramatisations of courtroom interaction (see also our discussion in Unit B5).

Witnesses

Witnesses come from all sections of society, so their speech styles vary greatly. Lay witnesses include complainants (or victims), eyewitnesses (or earwitnesses), character witnesses and defendants (though this last category may not be compelled to give evidence against themselves). Police witnesses may include the officer in charge of a case and an interviewing or arresting officer or officers. Expert witnesses are professionals (e.g. forensic evidence gatherers, industry experts or doctors) called to assist the **trier of fact**, subject to rules governing expert and opinion evidence. For technical reasons and to project authority, police and expert witnesses tend to adopt, even over-accentuate, features of their specialised professional language.

The **oath** taken by witnesses, we have said, is a ritualised, scripted performance. In their constrained answers to questions, witnesses then have little control over when to speak or what (or how much) to say, despite courtroom principles that evidence should be freely given, not coached and not biased by leading questions.

Unlike legal professionals, who are experienced users of courtroom language, police witnesses have been shown to engage in what is described as **copspeak**: a speech style characterised by jargon and over-elaboration (i.e. over-complex or unduly formal statement), possibly as a way of asserting authority (see Gibbons 2003: 85–7). For example, in a testimony cited in Maley and Fahey (1991: 8), a police sergeant is reported as saying, 'I was able to maintain the light being illuminated', meaning simply 'to keep the torch on'.

Juries

Traditional justifications for trial by a jury of peers include the aim of preventing abuses of power. In modern forms, this aim is symbolised by jurors entering through a private door and sitting in a box, signifying independence both from the parties and from legal professionals. As regards speech style, there is not much to say because juries do not say much. While jury members are the essential audience for courtroom discourse, they are almost entirely non-interactants. They cannot interrupt or ask questions; and their deliberations take place confidentially, weighing up what they have heard in a room that is closed to the public (and not directly researchable, to preserve the concept of jury integrity).

The role of juries in the delivery of justice is fiercely defended as a principle, particularly when linked to criticisms of alternative systems and especially as presumption of jury trial is gradually withdrawn. On the other hand, since juries do not interact with other court participants or report their dialogue, the degree of their comprehension of the judge's instructions to them, or of the detail of trials in which they are responsible for verdicts, is not easy to assess.

Other voices

Other courtroom personnel are also involved in the production, reception and reporting of speech in court besides these main protagonists. These other persons vary between types of proceeding, but typically include clerks, ushers and shorthand writers. Clerks speak in formalised chunks of discourse when handling procedural matters, such as announcing the judge's entry, juror selection or administering oaths; shorthand writers collect speech rather than speak. Observers sitting in the public gallery do not have any speaking rights at all, and may be imprisoned for **contempt of court** if they call out, applaud or take part in some other kind of disruptive behaviour.

The complexity of the speech situation constructed in courts in terms of roles, rituals and rights can be highlighted by introducing a further contrast, that between professional participation and participation by legal amateurs. Some litigants enter the discourse arena described above without legal representation (they are known variously as **self-representing litigants**, 'unrepresented litigants', **litigants in person** or **pro se litigants**). Such litigants attempt to participate in court interaction on the same footing as lawyers; but many enter the courtroom without any understanding of relevant speech styles or turn-taking, as well as ignorant of legal procedures and rules of advocacy or evidence. Such litigants often underestimate the contribution made to legal outcomes by speech event structure, trusting instead that they will be legally successful if or because they have a good case and will simply tell the truth. But since adversarial trial procedures have evolved as a complex, rule-governed discourse process, unrepresented litigants often struggle to adjust their speech to the continuous and subtle balancing needed between content, speech style and trial procedure, or to combine their narrative of disputed events with exposition of a legal problem. Because of limitations imposed by their **communicative competence**, some introduce strategies not permitted by legal procedures, such as calling names, exaggerating claims, or making additional, serious accusations or even threats. Judges may try to treat such discourse difficulties sympathetically, in order to ensure as fair a trial as possible, but can only do so by risking compromising judicial neutrality and creating a possible ground of appeal.