

Courtroom Accommodation: Lawyers' Use of Foreigner Talk

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0. Introduction

There has been a great deal of research into courtroom language, especially lawyers' questioning of defendants and witnesses (see papers in Gibbons 1984, Danet 1985, Shuy 1993, Conley and O'Barr 1998, Tiersma 1999).¹ Some of this research has focused on communication failure due to cultural and linguistic difference (Gumperz 1982). Much has focused in addition on power disparities. Some of these disparities have been attributed to factors such as the social pressure of the courtroom situation, and to the use of complex legal language by legal professionals (Tiersma 1999). Others have been attributed to age, for example in the cross-examination of children (Brennan 1994, Brennan and Brennan 1988), or systematic differences in interactional styles and communication patterns, for example differences between men's and women's styles (Conley and O'Barr 1998), or between English and aboriginal language users in Australia (Eades 1994). In some instances they have also been attributed to lawyers' racism (Eades 1994). In this work the focus has been on the dysfunctionality and powerlessness of certain types of discourses from the perspective of the defendants, or on how judges maintain control over proceedings (Philips 1998).

A complementary, and apparently much more limited, line of research has explored the role of accommodation in legal discourse, with attention to convergences between the parties to increase intelligibility and efficiency in court procedures. For example, Linell (1991) investigated the extent to which lawyers in Swedish larceny and fraud trials modified their questions to increase length of responses by using intonation questions vs. inverted questions. Linell assumes that intonation questions, having declarative syntax, are less controlling; by

¹ I am grateful to Sarah Roberts for drawing my attention to the pre-trial transcript of the *People of California vs. Ah Jake* trial, which Randall Kim made available at a meeting of the Society for Pidgin and Creole Linguistics; to Randall Kim for permission to use this and other materials he distributed on Chinese Pidgin English; and to Phil Hubbard for comments on an earlier draft. My very special thanks to Colin Warner for his analysis of the transcript, and for researching the Hoover Library archives at Stanford University, where he found the transcript of *Rex vs. Kong*. In keeping with the citations, I retain the form 'vs.' rather than the currently more common 'v.' used in identifying legal cases.

contrast, inverted yes-no and *wh*-questions are more controlling. He concludes that although accommodation using intonation questions may result in more efficient court procedures, “when interpreted against background assumptions and expectations of formality and social distance some symptoms of intended friendliness and empathy may be taken to overaccommodate” (1991:127). In other words, since most defendants bring background assumptions and expectations about power asymmetries and formality to the trial situation, too much accommodation may be perceived in the same way that too much intimacy in the wrong situation is perceived: as image-threatening.

In this paper I examine a different kind of accommodation: the use of foreigner talk to defendants with limited English skills, in this case Chinese defendants. The primary data are from *People of the State of California vs. Ah Jake* (1887).² The transcript records the speech of (i) a Chinese defendant, Ah Jake, who is accused of murdering Wah Chuck, (ii) a witness, Ah Ting, who says he is a gardener who grows vegetables, (iii) an interpreter, Lo Kay, who interprets primarily for the witness, Ah Ting, and (iv) two lawyers: the judge and the district attorney. I will also refer briefly to another preliminary examination for a murder trial, *Rex (Crown of Canada) vs. Kong* (1914) for confirmation that the discourse practices identified are not unique to the *California vs. Ah Jake* trial.

What is striking from the point of view of legal discourse is that in both transcripts the lawyers use simplified language akin to foreigner talk in their questioning. Like the lawyers in Linell’s study, they use intonation questions and some non-inverted *wh*-questions. Such forms can be considered instances of choosing the less controlling form, but, given the context of other syntactic and lexical forms selected, they also appear to be features of foreigner talk. An example is provided in (1) from *California vs. Ah Jake*, which involves the judge (“Court”) first addressing the witness, Ah Ting, through an interpreter, and then addressing the defendant, Ah Jake, who interrupts at turn 5:

- (1)
1. Q. *Court*: [To Ah Ting] You see Wah Chuck touch Ah Jake; take hold Ah Jake?
 2. A. *Ah Ting*: (through interpreter) He say ah Jake lie. Wah Chuck no touch him.
 3. Q. *Court*: Wah Chuck no touch Ah Jake?
 4. A. *Ah Ting*: No.
 5. Def[Ah Jake]: Talk him [Ah Ting] lie. He help Wah Chuck; no like me—that two men kill me; he [Ah Ting] like him [Wah Chuck]; catch me.
 6. Q. *Court*: You say he take your money?
 7. A. *Def*: He take my \$30.
 8. Q. *Court*: One purse.
 9. A. *Def*: That bag.
 10. Q. *Court*: He take your purse; he take your pocketbook.

² The title page in the source-book, however, wrongly dates it as 1874.

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11. A. *Def*: I put one bag that side; I put down here, gold, gold coin.
12. Q. *Court*: He take all your money? (*California vs. Ah Jake* 51)

The judge uses partial repetition of a sentence in turn 3, presumably in part for purposes of confirmation and solicitation of clarification of the referent of *him* for the court record. Such uses of repetition complexify analysis of the judge's, and the district attorney's, foreigner talk, but there are enough examples of lawyers initiating non-repetitive turns in modified English (e.g. turn 6, 10, in which there is no tense marker), and turn 8 (use of *one* instead of *a*), to suggest they were not simply repeating the defendant's speech patterns. My hypothesis is that despite what are no doubt accommodation practices, the power semantic of linguistic disparity is nevertheless maintained by the use of foreigner talk.

1. The Linguistic Features

In order to understand this kind of discourse better, we need to look at the linguistic features used in more detail. In *California vs. Ah Jake* three main types of non-standard English are spoken:

- a) Pidgin English, spoken by Ah Jake, the defendant
- b) English as a second language, spoken variably by Lo Kay, the interpreter
- c) Foreigner talk English, spoken by the judge and the district attorney

I will outline the main features of each in §1.1.-1.3. The accuracy of the transcript is of course debatable. For one, it was written in shorthand: "I certify that the foregoing is a correct transcript from my shorthand notes" (57). For another, frequent mistakes have been noted in court transcripts. Furthermore, court reporters are known to attempt to change the speech of judges to make it appear more standard and less "crude and blundering" (Tiersma 1999:176, citing Walker 1990). However, as in most historical work, the text is all we have, and the usages appear consistent enough for it to be unlikely that there was an exceptionally high rate of editing by the court reporter in this case.

1.1. Pidgin English

Ah Jake appears to speak Pidgin English. Although we might expect Chinese Pidgin English, one of the structures he uses, clitic object marking on the verb preceding an animate object (see characteristic (iv) below), does not appear to be a feature of this language; it is, however, used in pidgins spoken in New Guinea, Australia, and other parts of the Southwest Pacific (see Holm 1989). Ah Jake's pidgin includes absence of tense marking and:

- i) Negation expressed as pre-verbal *no*:
- (2) a. I *no* got money. (42)
 - b. I *no* can fight him. (50)

- ii) Zero copula (the following examples also illustrate his increasingly emphatic use of comparatives):
 - (3) a. He strong me. (50)
 - b. He stronger me. (50)
 - c. He man more strong me. (50)
- iii) Paratactic complex clause combining in semantically dependent constructions:
 - (4) a. I shoot Wah Chuck I go down here. (temporal, 56)
 - b. I no shootum him he shootum me. (conditional, 50)
 - c. He no hold my foot I no fall down at all. (conditional, 51)
- iv) Clitic object marking on the verb, as in (4b) and (5):
 - (5) a. Q. You want to ask him some questions?
A. Me askum him. (47)
 - b. He say killum me. (54)

1.2. English as a Second Language

The interpreter, Lo Kay, speaks what can be considered to be English as a second language (ESL), in the sense of non-native English probably learned without much or any schooling (see McArthur 1998). His speech is distinct from Ah Jake's pidgin in that it does not exhibit paratactic clause combining or object clitic marking. In many respects it resembles foreigner talk (see §1.3 below), except that Lo Kay is not modifying his native language. Like many ESL speakers, he shows both systematic second language features as well as variable control of target features (see Huebner 1985). (6) shows that he knows tense forms and *do*-support:

- (6) a. Q. Was he dead then?
A. He was dead. (46)
- b. [reporting on an interruption by the defendant, Ah Jake]
He [Ah Jake] say don't know what he [Ah Ting] say. (44)

More often, however, we find absence of tense (see (7-9)), and of *do*-support,

- (7) [N]o see him dead that place. (45)

as well as absence of prepositions:

- (8) Wah Chuck he say Ah Jake steal his pair boot and sack rice. (43)

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We also find uses of *one* for indefinite *a*:

- (9) He run down this way; give one piece of paper to one family house; he run very quick; then he write one piece paper to Lew Barnhardt. (44)

Occasionally we find absence of infinitive *to*, giving the impression of a serial verb construction, as in:

- (10) He say he run down get buggy come up take him down. (45)

The latter may be a feature of direct translation, however.

1.3. Foreigner Talk

What then do the judge and the district attorney use? As expected, lawyerly language at times. At the beginning of *California vs. Ah Jake* the judge says to the defendant, who has claimed not to have enough money to hire an attorney,

- (11) Having no attorney I will say to you that it would be better for you not to say anything that will have a tendency to criminate you.³ (42)

and at the end:

- (12) Order will be made requiring him to give bail in the sum of \$500 with two good and sufficient sureties to be approved by the Court. (57)

However, he does not use this register in questioning the witness or the defendant. Rather, he chooses accommodation devices. In the direct questioning portion the questions are short, and mostly in simplified English characterized by many features of foreigner talk (Ferguson 1975, see also Romaine 1988 and references therein):

- i) tenseless verbs
- ii) absence of *do*-support
- iii) preverbal negative *no*
- iv) absence of possessive clitic or preposition
- v) phrasal adverbs like *what for*

These are illustrated in (13):

³ The Oxford English Dictionary cites several instances of this form from the mid-seventeenth century on.

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- (13) a. Q. *Court*: How long you have that gold dust?
A. *Def*: One month ago.
Q. *Court*: What for you no sell him?
A. *Def*: I keep buy grub. (52)
- b. A. *Def*: I see last night my coat burn. (shows his coat with holes in it) I under him—
Q. *Court*: What you say the man name who gave you the \$30?
A. *Def*: Ah Chung.
Q. *Court*: What pocket you have \$30 in?
A. *Def*: This. (showing left side)
Q. *Court*: You have the other this pocket.
A. *Def*: This pocket carpet sack.
Q. *Court*: Little carpet sack this pocket (54)

Much of this foreigner talk appears to facilitate comprehension, although it can also be construed to be condescending (absent intonation this is somewhat hard to tell). But on one occasion it causes breakdown with the witness's interpreter:

- (14) *District Attorney*: I guess we will have to lead him a great deal.
Q.⁴ When Ah Jake shoot Wah Chuck, what Wah Chuck do?
A. You mean Ah Jake shoot, what Wah Chuck do?
Q. Yes.
A. No say anything at all.
Q. What he do after he get shot? After he get shot what he do?
A. You mean Wah Chuck? (45)

Although the interchange becomes more functional it does not become fully so until a more standard style is used:

- (15) Q. He bleed any? Did he go back after he went to Barnhardt's? (45)

The district attorney then continues his questioning of the witness via the interpreter using tense and *do*-support most of the time, but maintaining non-inverted questions. He switches back to foreigner talk when Ah Jake takes the stand, and this time no breakdown appears to occur. Ah Jake, while readily admitting to the shooting, fails to establish that he was justified in doing so. There is no evidence that the lawyers' use of foreigner talk modifies the power relation between them.

2. The Second Transcript

We turn now to the second transcript. Here the defendant is a sixteen-year-old called Kong Yu John ("Jack Kong"), who, prior to the trial, had lived for four

⁴ The transcript fails to indicate whether the question is posed by the judge or the district attorney at this point. I assume that when "Court" is not specified, the district attorney is speaking.

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years in the household of the Millards, and had some Canadian schooling. While halting, his speech is considerably more fluent than that of Ah Jake or the interpreter. The linguistic disparities are therefore not as large in *Rex vs. Kong* as they are in *California vs. Ah Jake*. However, similarities are evident. The defendant speaks ESL and the prosecutor uses foreigner talk. Jack Kong was accused of murdering Mrs. Millard, dismembering her, and burning her in a furnace. The prosecutor asks:

- (16) 1. Q. And they treated you very, very kindly?
2. A. Yes.
3. Q. Mrs. Millard treat you kindly?
4. A. Yes.
5. Q. Always?
6. A. Well, she sometimes cross, very cranky.
7. Q. Yes. Why?
8. A. Being something which I had done not please her.
9. Q. Being something which you have done not please her, would make her a little cranky with you? (*Rex vs. Kong* 6)

In this trial the defendant spoke very low, and so at times the lawyers appear to have been repeating for the benefit of the jury. This seems to be in part what the question in turn 9 is aimed at. We may note that the switch from Kong's *had* in turn 8 to *have* in turn 9 particularizes the "not doing" from habitual, iterative events to the day in question. This is actually not in the prosecutor's best interests, since he appears at this point to want to get Kong to admit to general frustration and anger with Mrs. Millard, not simply frustration on that day, seeing he has just asked at turn 5 in (16) about *always* and then goes on to ask in (17) about temperament. Whatever is going on in turn 8, the absence of *do*-support in turn 5, *Mrs. Millard treat you kindly?*, is not a case of repetition of the defendant's speech. Right after (16) the prosecutor asks,

- (17) Q. What was her temperament? Was she calm? (7)

and is stopped for asking a leading question. He tries again:

- (18) Q. Do you understand the word "temperament"?
A. No.
Court: Use another word, *disposition*.
Q. What was her disposition?
A. I do not understand that.
Q. You do not understand that word. What was her nature? (7)

After this exchange, which again would benefit from information on intonation, there is a long sequence of turns in which the defendant's English is corrected, suggesting that *You do not understand that word* was used as a putdown. Exam-

ples appear in (19). (19a) corrects the lack of infinitive and copula verb, (19b) corrects the infinitive with the gerund, and (19c) corrects lack of tense marking:

- (19) a. A. You mean what caused her angry?
Q. Yes, what caused her to be angry with you? (7)
- b. A. She insist me to do it.
Q. She insisted on your doing it?
A. Yes. (10)
- c. A. And then I carry her down to the basement.
Q. You carried her down to the basement. Now how long between the time, how long between the time that you hit her with the chair and the time you carried her down the stairs, how long time elapsed? (12-13)

Again the defendant is not denying the murder (indeed, he had already confessed) but trying to give extenuating circumstances. Again the lawyers are not sympathetic. Rather, they seem to be using their exploration of the circumstances as a means for extracting further incriminating evidence.

3. Conclusion

This little study has shown that the power semantic can be present because of the structural properties of the situation, even when accommodating devices such as rising intonation questions and foreigner talk are used. At the same time, *California vs. Ah Jake* has shown us that the stereotype of the judge as upholder of form, linguistic as well as situational, does not always hold. We may have less stereotyped views of prosecutors, but here too *Rex vs. Kong* has shown us that style-shifting toward the defendant's speech is possible. Philips has discussed ways in which "[t]he ideological diversity enacted by the judges...is itself partly stimulated by and can be seen as an engagement with the defendants' resistance, showing how even resistance that does not articulate a clear ideological position can influence and shape the nature of ideological diversity in a local cultural scene" (Philips 1998:122). Philips is concerned with judges' political ideologies, and proposes that there is on the one hand a conservative-liberal continuum usually denied by the public, and on the other a record- vs. procedure-oriented ideology that is often not recognized at all; both of them play out in different forms of courtroom control. I propose that we add use of foreigner talk as well as non-native varieties as an additional window on to ideological diversity in interactional legal discourses.

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