

## ***Courtroom Talk and Neocolonial Control.***

**Diana Eades (2008)**

New York: Mouton de Gruyter. 389 pp.

*Reviewed by Gregory Matoesian*

While a graduate student in linguistics some years ago, I participated in a sociolinguistic conference at our university with John Gumperz as the guest speaker. *Discourse Strategies* (Gumperz 1982) had just come out, and he used two VCR monitors to demonstrate his work on conversational synchrony, contextualization cues and sociocultural background knowledge in the interethnic interview setting. Those familiar with this classic study will recall the striking misalignment in communicative expectations between the Pakistani speaker of English and the native speaking English teacher. This was played on the first monitor. On the second monitor, Gumperz played a tape of how the Pakistani speaker *should have spoken* in the job interview to match the cultural expectations of the interviewer. In the ensuing question-answer discussion, a black professor from the audience stood up and stated that the same type of stylistic difficulties and misalignments arose in black-white encounters in the US, but the major difference was that if black speakers attempted to speak like their white counterparts they were seen as ‘uppity n...s’.

In my view, the professor’s comment captured the most complex tension in the study of discourse: that there were aspects of talk that were not only or even primarily in the talk, and these aspects constitute socially structured and historically inherited forms of domination that permeate the microcosmic fabric of situated forms of conduct. Diana Eades’ new book is a theoretically sophisticated and interactionally detailed analysis of this enduring – perhaps

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inextricable, at times inscrutable yet always contentious – dilemma in the institutional context of courtroom talk. More specifically, she examines how neocolonial control over the Aborigine population in Australia (Southeast Queensland) occurs in the cross-examination phase of a trial. This is a fascinating study of the linguistic mechanisms that contribute to neocolonial control and how language intersects with the adversary system to legitimate legal hegemony over Aborigine youths.

Part one gives an in-depth and rich ethnographic account of the legal case under consideration, the theoretical orientation for the study and the history of colonial and neocolonial control of the Aborigine population in Australia. Chapter one provides ethnographic background to the Pinkenba case and the ultimate cross-examination in a committal hearing (similar to a preliminary hearing or grand jury in the US). Three Aboriginal boys (12, 13 and 14 years old) were picked up by the local police, driven to a remote industrial area and abandoned there for no apparent reason. Six police officers were charged with depriving the boys of their liberty by forcing them to get into the police car, and a committal hearing, the first stage in the Australian legal system, determined if the evidence warranted a jury trial. Of course, the police defense rested on their claim that the young boys had ‘consented’ to get into the police vehicle.

Eades, an expert in Aborigine English and an expert witness in this particular case, uses official transcripts, tape recordings, transcripts of audio recordings, direct observation and informal interviews with participants as data.

Chapter two sets the theoretical stage with an introduction to Gumperz’ interactional sociolinguistics and the problems in intercultural communicative settings, as well as the grammatical and stylistic differences between Aboriginal English (AE) and Standard English (SE). But for Eades, like the black professor mentioned above, the ‘difference’ approach backgrounds the role of power in discourse and the broader social structural conditions and cultural understandings that shape courtroom discourse. In response, she develops what she calls a ‘critical sociolinguistic’ approach that incorporates work of Gumperz and conversation analysis on the one hand with power driven approaches to discourse on the other. Critical sociolinguistics, similar to critical discourse analysis, pays close attention to the situated details of linguistic conduct while grounding analysis in broader historical and social contexts that shape the dynamic processes of interaction in subtle yet powerful ways. Chapter three provides an overview of the history of colonial and neocolonial control and how the Australian criminal justice system is instrumental in producing and reproducing subordination of Aboriginal people through overpolicing and surveillance, a process strikingly similar to police-minority relations in the United States.

In part two, Eades begins her critical sociolinguistic exploration of neocolonial control in the micro space of the trial. Chapter 4 analyzes several features of AE and how these depart from SE forms. More specifically, silence (AE departs rather dramatically from the one second metric for silence in SE), gratuitous co-occurrence (saying 'yes' to the attorney's questions whether the boys actually agree or not) and avoidance of eye contact (a relevant gaze difference between AE and SE) lead to severe misunderstandings in the courtroom that works to disadvantage the young boys. I would add too that some of the questions, such as those on page 101, are 'double-barrel' and even triple-barrel questions that embed numerous propositions in a single questioning turn. In an ironic twist, defense attorneys exploit the above stylistic differences as interactional and stylistic resources to mount powerful attacks on moral character and impeach credibility, attacks made all the more ironic because Eades wrote the legal manual for more effective communication between speakers of SE and speakers of AE! The sense of injustice conveyed in this chapter is quite stunning, and one can feel the sense of despair and anger of these young boys as their fate and the prosecution case slips away.

Chapter 5 turns to the defense attorney's lexical strategies that impeach credibility, such as using technical legal jargon (or unfamiliar words) and switching descriptions, switching the boy's use of *friends* to *gang* or *walking* to *prowl*ing, which fosters the impression that they were 'loitering' or vagrants looking for trouble. The key switch, however, occurs when the defense transforms the boy's use of *forced to get into the car* into *asked to get into the car*, which indexes their consent rather than police force. As Eades demonstrates, in the case of institutional authority an invitation or even 'suggestion' to get into the police car possesses the illocutionary force of a command, especially given the ages of the young boys and the quite justified fear of chronic police harassment, not to mention more sinister forms of abuse. This shows how the Australian police and legal system consider Aborigine teens a 'threat' to public safety and the tourist trade, how they are seen as 'less than human' and to be removed from public sight (in much the same way that the legal order removed them from native lands to 'reserves' in colonial times, removed them from public spaces in the neocolonial era, and removed their legal rights and voices in the courtroom).

Indeed this chapter displays in vivid detail how the boy's interpretation of police force is transformed into *consent* in the cross-examining attorney's questions, much like attorneys in rape trials transform the victim's experience of force into consensual sex. To draw the analogy in more explicit terms, Eades draws on Drew's (1992) work on alternative descriptions or contrastive versions but, as with Gumperz, reaches into a broader cultural domain of power and domination in the courtroom. For example, in Drew's classic study on rape trials the defense attorney asks the victim, 'you knew at the time the defendant

was interested in you?’ (edited), and she responds by stating, ‘He asked me how I’d been’ (edited), suggesting some form of intimacy or sexual interest. However, what does ‘interest’ mean and how does it function? In rape trials defense attorneys try to show that the victim was ‘interested’ or ‘attracted’ to the defendant (and vice versa of course) but this suggests quite more than mere sexual intimacy and reciprocal interest. It constitutes an attempt to erase the victim’s female sense of ‘interest’ and naturalize a male ideology of sexual interest for both parties – not some culturally generic or democratic sense of intimacy or sexual interest but a dominational logic imposed in the courtroom (along with dominational double binds in the process). In the same critical sociolinguistic spirit, this goes beyond the immediate situation of talk to index structurally conditioned and historically inherited forms of domination in the courtroom. In much the same way, Eades shows how the defense attorney’s questions and lexical transformations in the Pinkenba case embed the immediate situation within broader social struggles relevant to neocolonial control while under the ideological guise of adversarial justice.

Part three reveals the linguistic mechanisms for identity construction: entextualization, presuppositions embedded in questions, affective stance and sarcasm. Chapter 6 focuses on the defense attorney’s construction of Aboriginal identity as this pertains to the issue of the boys getting into the car voluntarily or if the police coerced them, while chapters 7, 8 and 9 focus on the cross examination of each boy individually, showing that, as in rape trials, the victims rather than the police are on trial. As Eades demonstrates, identity emerges as an interactional and interactive co-construction between the cross-examining attorney and the boys, but to her credit she also shows how it involves quite a bit more than that. It involves the interpenetration of postcolonial images of Aboriginal youth as dangerous to public safety and the adversary portrayal of the boys as criminal liars, thieves etc. As an illustration of the analytic delicacy of her observations, consider how the defense attorney uses the following: asserted propositions (‘You’ve had years of experience with the police before this?’); assertions in pseudo-declarative questions (‘Last year you were put on probation, right?’); presuppositions in pseudo-declarative questions (‘It’s not a bad place to steal some money- is it- from someone?’); and presuppositions in *WH-questions* (‘What sort of things did you steal- when you were wan- prowling around the streets?’). Put more prosaically, the cross-examining attorney’s identity in this trial emerges more like a ‘bully’ intimidating children than a lawyer questioning a witness in a court of law (keep in mind that the committal hearing is more informal preliminary hearing than a trial per se).

Eades further shows how attorneys decontextualize talk from one setting (such as prior police statements) and recontextualize that talk in the trial to ‘expose’ inconsistencies in the current talk. As is always the case, such

entextualization practices are selective and designed with an eye toward the interactional work at hand. In so doing we see a legal-linguistic ideology of words belonging to the 'owner' rather than as an interactive co-construction involving attorneys, concealing their participation in the process of generating rather than revealing inconsistencies.

As the questioning continues, it becomes apparent that the case is not about facts in any objective sense (as if it ever could be) but about the identities of the young boys – not just any identities but ideological representations of Aborigine identity in a harrowing degradation ceremony (in the fullest Garfinkelian sense of the concept). On a methodological dimension, the critical sociolinguistic perspective shows that researchers cannot make claims about participants' orientation to linguistic activity based solely or even primarily on the surface dimensions of talk. In the courtroom, in particular, participants have good reasons (often legal) for concealing their orientations to some interactional activity in and through various discursive strategies. For instance, the defense attorney would doubtless insist that coercive verbal strategies were a 'test' for truth, built into the adversary system, not questions about ethnic identity or attacks based on Aboriginal identity. Put another way, attorneys conceal their ideological attacks on Aboriginal youth under the auspices of doing adversarial 'justice' (as Eades notes, explicit or direct reference to Aboriginal identity occurs infrequently in the data). Just as germane to the above points, while the young boys employ minimal responses to defense impeachment strategies ('Yes' or 'I don't know'), these may also index their resistance to proceedings they know are 'rigged' against them, to aggressive and unfair questioning, thus questioning the legitimacy of the neocolonial trial.

Part 4 consists of several concluding chapters (10, 11 and 12) that describe the outcome of the case (the judge dropped the case against the police), policy implications and legislation prohibiting certain trial practices, and the powerful consequences of trial talk.

The most impressive feature of the book is how Eades manages to integrate discursive practice, ethnography, law and social structure into a coherent and systematic demonstration of neocolonial control and legal injustice against Aborigines. She balances micro features of talk such as stance, repetition, affect, presupposition in question/answer sequences with mediating structures of intertextuality, entextualization, and linguistic and legal-linguistic ideologies of the adversary system as these shape and are shaped by the macro (re)production of neocolonial structure. *Courtroom Talk and Neocolonial Control* is the most conceptually sophisticated, comprehensive and compelling attempt to manage the daunting challenge of macro-micro integration in the law and language literature – and one that brings this crucial theoretical issue to the forefront of not just language and law studies or forensic linguistics but social science more

generally. This is necessary reading not only for socio- and forensic linguists but law and society/social theorists as well. For those more interested in the applied relevance of forensic linguistics, I strongly recommend *Courtroom Talk and Neocolonial Control* to legal practitioners involved in interethnic and intercultural settings where linguistic-dominational ‘misunderstandings’ occur.

## References

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