I DON'T THINK IT'S AN ANSWER TO THE QUESTION: SILENCING ABORIGINAL WITNESSES IN COURT

- BY DIANA EADES

GOAL OF THIS STUDY: To use linguistic methods to analyze how aboriginal witnesses in Australia are controlled during examination-in-chief.

- There tends to be an imbalance in courtroom discourse between the legal professionals and the aboriginal witnesses.
- Subsequently, aboriginal witnesses feel they are not able to tell their story.
- This imbalance in courtroom discourse generally occurs because aboriginal witnesses are silenced.

BACKGROUND:

- There is an over representation of aboriginals in the Australian police and prison system.
- Previous research showed that different linguistic and pragmatic factors affect communication between aboriginals and non-aboriginals (i.e. approach to questioning in court and use of silence).

AUSTRALIAN JUSTICE SYSTEM:

- Lower court is for minor cases.
- Intermediate court is for more serious cases, sentencing and appeals.
- In the intermediate court "not guilty" pleas are tried with a jury, "guilty" pleas have a sentencing hearing with a judge and sentencing/conviction appeals are heard by a judge.

TERMINOLOGY:

- EXAMINATION-IN-CHIEF: predominately occurs during sentencing and appeals in which a defense lawyer questions witnesses and the defendant to establish the defendant's character (i.e. how much of a danger to society the defendant is).
- SILENCING: two uses appear in the study
  - TRANSITIVE VERB: the ways witnesses are unable to tell their story because the legal professional(s) presents their interpretation of the witnesses' story (i.e. type of questions, etc.).
  - NOUN: pause in conversation (i.e. these are used and interpreted differently by aboriginals and non-aboriginals).

THE STUDY:

- An analysis at the discourse level of criminal cases in both lower and intermediate courts in New South Wales (Mapletown), Australia from 1993-1995.
- 21 aboriginal witnesses (defendants, appellants and defense witnesses).
- Analysis: detailed notes and transcribed tape recordings for 9 days of lower court hearings and 13 intermediate court cases.
- 3 different judges (no jury cases).

EVIDENCE OF SILENCE IS THREE-FOLD:

1. The syntactic structure of the questions asked during examination-in-chief.
2. The aboriginal witnesses are interrupted by legal professionals while telling their story.
3. Metalingusitic comments about how a witness should answer a question are made by the legal professionals.

NOTE:

Aboriginal people often like to use some silence in their conversation, and they do not take it as an indication that communication has broken down, Furthermore, Lawyers are often advised to be prepared to allow the Aboriginal person to "use silence between answers and following questions". (Eades 1992:41)

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CASE STUDY 1: MS. MORRIS

- Ms. Morris gave "longer-than-usual" answers compared to her husband whose answers were typical in length among the Aboriginal witnesses in the study which range from one word to one sentence
- Due to Ms. Morris having an education and the fact that she talked about certain issues that are familiar to the judge and lawyer, she was not interrupted at all during the examination-in-chief
- The examination-in-chief shows *evidentiary harmony* between Ms. Morris and her lawyer, where the two work together in harmony to follow the lawyer's flow in telling the witness' story

CASE STUDY 2: MRS: WALSH

- Mrs. Walsh gave evidence in a sentence hearing following her plea of guilty to assault charges in a brawl
- For the most part the lawyer controls the conversation; he sets up a line of questioning to set the scene of the even in formal speech
- Yes-no questions are the lawyers only means of posing a question to his witness at this point in time without having it become inadmissible to the court (otherwise it would be considered a *leading question*)
- Yes-no question in turn, limits the witness's contribution to their own statement/evidence
- This form of presenting evidence is also known as "*evidentiary harmony*" (Barry 1993): witnesses harmonize with their lawyer, elaborating when required, confirming or disconfirming propositions
- 43 of the first 46 questions are yes-no questions
- The first 30 are all answered by *yes* or *yeah*
- On a few occasions the witness attempts to give a longer answer but she is either not understood (once) or interrupted (three times)
- When the witness uses silence as part of her answer she is interrupted
- Furthermore, when the witness is invited to answer in her own words, using a WH-question, she is interrupted yet again but this time it is due to cultural and social differences on behalf of the judge and the lawyer
- After reading/listening to Ex.10 it is clear how all these actions took place
- The lawyer takes control of the conversation, setting it in legal terms for the judge after the judge makes his frustration clear
- Over all the examination-in-chief has the following effects according to Eades:

    - It has disrupted the evidentiary harmony
    - It prevents Mrs. Walsh from engaging in any meaningful exchange
    - It prevents the court from listening to her, and thus from gaining any clear or detailed impression of her character
    - It clearly indicates that Mrs. Walsh's participation in the proceeding is secondary to that of the counsel and judge, who can engage in a discussion, effectively in another "language", without giving any interpretation of their discussion to her

WHY?

The process and procedure are bound by rigid discourse patterns, and an obsession with this structure prevents legal practitioners from realizing how much they fail to understand about the character and situation of witnesses like Mrs. Walsh.