

# Discourse Analysis: An Instance of the Language of the Bar

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**Abstract**— For several centuries human communication has been through the spoken medium until the transition of human kind from hunter-gatherer to more permanent agrarian encampments. It then became necessary to account more precisely for all human activities going on in the society. Hence, human beings started representing their thoughts using graphic symbols. This paper is an attempt to x-ray the use of language in a law court where the data was gathered and thereafter the data collected was analysed using Discourse Analysis as a theoretical framework. The revelation from the study shows the dynamism of language in human society and this has been deployed through the dexterity and versatility of the interlocutors. This paper concludes that court room discourse, like other former spoken discourse, is highly structured and that actions are performed through language.

**Keywords**— Courts, Discourse Analysis, Pragmatics Jury.

## I. INTRODUCTION

Yule (1996) and Rotimi (2012:1,3) observe that interest of linguists has over the years been / shifting from the components i.e. forms of language to the 'use' to which it is put. This is because some of the most interesting questions in the study of language arise in connection with the way a language is 'used'. Such question as, the 'intended Speaker meaning' is answered by the branch of linguistics called Pragmatics. In it, we are asking how is it that language-users interpret what other language-users intend to convey. A little step further takes us to the terrain of Discourse Analysis. Here, 'attempt is made to answer the questions; how do we, as language users make sense of what we read in texts; understand what speakers mean despite what they say; recognize connected as opposed to jumbled or incoherent discourse; and successfully take part in that complex activity called conversation'. (Yule 1996), Johnson (2009) and Jolayemi (2010:6). The Discourse Analyst brings knowledge in such diverse fields as Psychology, Semiotics, Philosophy, Anthropology and Sociology to bear on the process.

Discourse Analysis studies the relationship between language and the contexts in which it is used. It studies language in use: written texts of all kinds, and spoken data, from conversation to highly institutionalized forms of talk. (McCarthy 1991) Oyeleye L. (2004:10), Olateju M. (2004:24). Part of the interest of the Discourse Analyst is to establish the structural pattern of naturally occurring spoken and written discourse; to point out its form in the sense that it has a

beginning, a middle and an end. It has its precept in J. R. Fifth's linguistic theory, which in turn is built on Malinowski's notion of 'Context of Situation'. Firth, J.R., 1955; Akorede, O. et al (2009:21) see all languages as the study of meaning and all meaning as function in a context.

Different model of analysis proposed by researchers include that of the Birmingham School with specific development by Sinclair and Coulthard (1975) of a model for the description of teacher-pupil talk, based on the hierarchy of discourse units. This model which followed the structural-linguistics criteria of isolation of units and sets of rules defining well-formed sequences of discourse, is also greatly influenced by Halliday's functional approach to language. Their discourse rank scale for structural analysis of classroom discourse consists of lesson, transaction, exchange, moves, and acts, in descending order. Each unit is made up of combination of the unit next below.

This model can be applied in the analysis of formal discourse, which often conforms to highly structured sequences like doctor-patient interaction, interviews, business negotiations and indeed, courtroom discourse. In this paper, it is our intention to apply this model in the analysis of the courtroom discourse especially the judge-lawyer talk (case presentation), lawyer-witness talk (cross-examination), among possible interactions in the courtroom.

## II. LANGUAGE AND ACTION IN CONVERSATION

Austin (1962) was the first to observe that 'utterances are actions' and this gives us important insight into the fact that language and action are intertwined. His 1955 lectures also emphasized the fact that language, action, knowledge and situation are inter-related. Austin points out that some actions can be performed through language (e.g. promising, apologizing, naming). Others can be performed either verbally or non-verbally (e.g. threatening). The shared knowledge and assumptions between speakers and hearers is also paramount to the communication process especially in social interaction.

Stubbs (1983) and Oyeleye, L. (2004:28) observe that language is not to be taken literally; that language is used to perform actions and that different social situations produce different language. Language and situation cannot be separated. Situations in certain cases determine the kind of language and the actions we perform with the language. For instance, in formal situations and rituals, the actual forms of words are often part of the laid down proceedings. Forms usually vary according to function, and along with this, variation in speech event (sermon versus lecture), speech-act (informing versus question) and the intended addressee (child versus adult

initiated versus layman) and other factors. (Stubbs 1983). The actions we perform with language in each context, form part of the interest of Discourse Analysis.

In the courtroom, the form of language has its peculiarities and, failure to use it properly may lead to being held in 'contempt'. According to Crystal (1997), legal experts face 'such linguistic constraints as how to 'introduce' evidence, or cross-examine witnesses'. Language is 'used' in many ways to manipulate witnesses, intimidates co-counselors, impress judges and influence juries. Participants in courtroom transactions are thus expected to be conversant with the rules of linguistic behavior in the courtroom in order to fully participate.

### III. TEXT AS A DISCOURSE DATA COLLECTION PROCEDURE

The technique of audio recording was employed in order to collect data that is naturally oriented without the knowledge of participants in the discourse. With surreptitious recording, the sample of the language of the courtroom was collected and later transcribed for analysis. The writer also sat in a court session to observe and take notes as this may help in the analysis of the paralinguistic features of the discourse. The courtroom observation was done at court 7 of the High court of Justice, Ring Road, Ibadan. The data obtained involve Judge-lawyer exchanges in 'case-presentation'. Other possibilities include 'lawyer-lawyer' exchange in 'case-argument' and lawyer-witness exchange in cross-examination.

### IV. THE STRUCTURE OF DISCOURSE IN A COURT ROOM TURN-TAKING

Sacks, Schegloff and Jefferson (1974) using the ethnographic tradition of Conversation Analysis observe that conversation in all situations is characterized by turn-taking. Part of the organization of discourse is this issue of turn-taking. Conversations in both casual and formal situations consist of turn exchange [in which one person speaks at a time. Couthard (1977) observes that majority of turns in any conversation consist only of a single utterance (move). This is part of the organization of discourse. How do participants know whose turn it is and how do we time a participant in his turn? Sacks et al (1974) observe that certain sociological variables come to play in each speech event that answer these questions and place order on discourse. Conversationalists address the problem through a set of rules whose ordered options operate on a turn by turn basis. The timing of a participant depends on the length of what he has to say. Our data confirm this observation.

In the courtroom conversation, especially the judge-lawyer dialogue, the judge who has a + HIGHER role initiates the discourse and he selects the next speaker. He sometimes self-selects through the process of interruption. The courtroom discourse can be broken down into transactions, dealing with each 'case'. Each transaction begins with the judge who uses paralinguistic features, such as 'nodding' to prompt the clerk who in turn reads out the next case file. From then onward, the judge selects speakers who make presentations in turn. Evidence of this is seen in all the texts of our data.

### V. THE EXCHANGE

An exchange contains structuring moves which are the contributions made by two interlocutors in the discourse. In the Sinclair and Coulthard classroom observation, the three elements of an exchange (three moves) are I, R, F, i.e. Initiation — Response — Follow-up in which only 'I' is obligatory while the two others are optional. An illustration of this in teacher-pupil interaction is:

T: Can you tell me who discovered River Niger?

P: Mungo park.

T: Mungo Park, yes — Mungo Park.

The judge — lawyer discourse mainly elicits information from the lawyer whose role is to make presentation on behalf of his clients. As proposed by Sinclair and Conthar (1975), the IRF is a primary structure for interactive discourse in general. The I predicts a following F and R occur in response to a preceding I, F functions to close an exchange. In the courtroom, the lawyer has the information which, on behalf of his client, he seeks to present to the court. Once the judge initiates the exchange, the lawyer is set to respond. The judge follows this with a Follow-Up move which may also be an Initiation for another exchange. The initiation move in the courtroom discourse has the structure 'h

(ph)', an obligatory head and an optional post head.

Judge: Appearances

Judge: Appearances, please.

In text 1, we have exchanges which run smoothly as 'question — answer' pair with follow-up from the judge in form of expressions like 'Yes' (29), 'oh!' (24), very well (6), a nod (21) or even; silence as in texts 2 (13). The lawyers need these follow-ups to confirm that their presentation is being followed by the judge who at each point is taking record (note) of information being presented. H

Text 2 also presents us with evidence of this exchange structure. The judges utterance 'Yes' in (5), (7), (9), (11) are 'Janus-faced' (Stubbs 1983) serving as follow-up, closing one exchange and initiating the next. Like the classroom discourse, the courtroom interaction is highly structured. The exchange, once initiated runs its course ending in a follow-up. Speakers know their turn and take it appropriately. Interruption is only permitted by a holder of + HIGHER role and even then it would be for the purpose of instilling order, correction, clarification etc. An example from the data is in text 1 (25) where the judge cautioned a member of the audience, Elder Alaba. Even then, this does not disrupt the coherence of the discourse as the following exchange is a return to the original transaction. It therefore presents no problem for analysis as Labov (1972) in Stubbs (1983) has noted that, "the fundamental problem of Discourse Analysis is to show that one Utterance follows another in a rule-governed manner". It should be noted that in casual conversation, this may not be so. The maxim of relevance (Gricean CP). which is obviously being followed in the courtroom discourse is easily flouted in casual conversation. Speakers may refuse to answer questions or take command, yielding incoherent conversation. In this ease, the concept of well-formedness or ill-formedness of an exchange in discourse comes in. (Stubbs 1983).

## VI. TRANSACTION

This is the highest category in the discourse rank scale and it is made up of exchanges. It takes off with a preliminary exchange (opening) and ends with a final exchange (closing). Structurally, it could have the opening, medial and closing exchanges.

In most formal situations, the preliminary (opening) exchange involves 'greeting or vocative and a + HIGHER role participant normally opens the discourse. In the courtroom discourse, as our data confirms, the preliminary exchange involves greeting which is non-verbal. At the dot of time, when participants in the courtroom interaction are properly seated, the judge knocks thrice from the inner chamber indicating his desire to enter and open the discourse. Everyone in the courtroom stands up as the judge enters. On getting to his desk, he bows low to the assembled crowd and sits down. Everyone responds in like manner. This opening exchange is always very brief and it involves paralinguistic gestures. The judge's bow is the initiation move and the crowd's bow is their response move. It represents an example of 'greeting-greeting' adjacency pair.

The medial exchange in the courtroom discourse has been described under the label 'Structure of Exchange'. These are all the exchanges that follow the opening exchange except the closing exchange.

The closing exchange also involves greeting-greeting pair with such discourse cues as 'by', goodbye, goodbye sir, (Onadeko 2000). However, in the courtroom discourse, no such greeting is used to bring a transaction a close. The judge's pronouncement of judgment or adjournment date and the lawyer's chorus of acceptance/consent are the pair of moves found in the closing exchange. (refer to Text 1,2,3,4. at the Appendix). This 'informs — acknowledge' adjacency pair signifies the end of a transaction.

## ACT.

Act is the smallest unit in discourse strategy and it relates to the functional characteristics of an utterance, that is, the illocutionary property of an utterance. (Onadeko 2000).

An utterance in discourse can perform any of the three acts: inform, elicit or direct. An informative act may receive its response appropriately with verbal expression of acknowledgement or challenge or a paralinguistic response with a nod. A good example of informative act can be found in the judge's move intended to end each transaction.

Judge: By consent of both counsels, the case is adjourned till 23rd October.

Lawyers: (chorus) As your Lordship pleases.

The opening exchange which is initiated by the judge is an example of elicitation act. It involves kinesics — bow from both parties to indicate greeting. Also, the judge's statement calling for appearances is an example of elicitation act and the response often come in form of introduction of self by each lawyer representing parties to the case.

An elicitation act often comes in form of question. In the judge — lawyer interaction the judge who holds a + HIGHER role is seen to often use this act to. seek clarification. (see text 1

'(10 — 11), (33-34), text 4 (6-7, 12-13) . The response is usually verbal and is never delayed.

A directive act is one which requests an action to be performed. This act 'which has the illocutionary force of 'commanding' is used mostly by the judge who has + HIGHER role. However, in the lawyer-witness or lawyer-accused talk,' the lawyer also uses the act for examination and cross-examination. When used by the judge, the response it predicts is usually verbal or combinations of verbal and non-verbal. The utterance realizing the act may be unmarked (imperative) or marked (interrogative, declarative etc). In text 1, (25-26), the judge uses a marked utterance (interrogative) to realize a directive act. The response is both verbal "sorry Sir" and non-verbal — immediately leaving the section of the gallery.

## VII. CONCLUSION

Our analysis in this paper has shown that courtroom discourse, like other formal Spoken discourse, is highly structured and that, actions are performed through language. However, Courtroom Discourse offers other areas of research which include; the role of logic in the conversations and that of Truth-Conditional Semantics in the resolution or determination of court cases.

## REFERENCES

- [1] Adrian A.A., Richard A.D., Annk K.F., Robert T.M. (2008). *Linguistics. An Introduction to Language and Communication*. New Delhi, Prentice Hall Ltd.
- [2] Rafiu, Jimoh (2009). Towards Expounding Pragmatics and Pragmatic Principles, in Akorede, Y.O., Ogunsiyi, Y.M., Boko, G.C. Ed. *Languages, literature and Culture in the Current Technological World*. Republic of Benin. Sonon Press.
- [3] Coulthard M. (1977). *An Introduction to Discourse Analysis*. London: Long man.
- [4] David Crystal ed. (1997). *The Cambridge Encyclopedia of Language*. Cambridge University Press.
- [5] John Lyous (2009). *Language and Linguistics on Introduction*, Cambridge, Cambridge University Press.
- [6] Jolayemi, S. *An Introduction to Morphology, Syntax and Semantics*, Ibadan, Saccolad Press
- [7] Mccarthy M. (1991). *Discourse. Analysis for Language Teacher*. New York, Cambridge University Press.
- [8] Olateju, M. (2004). *Discourse Analysis in Nigeria, Ile-Ife*, OAU Press.
- [9] Onadeko, T. (2001) "Discourse Analysis: The Fundamentals" In Babajide A.O. (ed). *Studies in English Language*, Ibadan, ECFP.
- [10] Oyeleye, L. (2004). The power of Words and techniques of Public Communication in Oyeleye L. Ed. *Language and Discourse in Society*. Ibadan, Eny Press
- [11] Alo, M.A (2004). Content and Language Variations: The EL2 Example in Oyeleye L. Ed. *Language and Discourse in Society*. Ibadan, Eny Press
- [12] Rotimi, Taiwo (2012). *Language and Mobile Telecommunication in Nigeria, Ile-Ife*, OAU Press,
- [13] Sacks, H. Schegloff, E.A. and Jefferson, G. (1974) " A Simplest Systematic for the Organization of Turn-Taking in Conversation". In *Language*, Vol 50, No 4. PP 696-735  
<https://doi.org/10.2307/412243>
- [14] Sinclair, J. M. and Coulthard, R.M (1975) *Towards an Analysis of Discourse: The English used by Teachers and Pupils*, Oxford University Press.
- [15] Stubbs, M. (1983) *Discourse Analysis*, United Kingdom, Basil Blakwell.
- [16] Yule G (1996) *The Study of Language*, United Kingdom, CUP