

Introduction

Despite the recent spate of textbooks, monographs, and review essays on language and law or what is often referred to as forensic linguistics, researchers rarely, if ever, mention the role of multimodal conduct – gesture, gaze, posture, and physical objects, and how they work in concert with the verbal modality in legal settings. In fact, the first major textbook in the field, *Just Words*, is quite revealing in its title, representative of prevailing sentiments that legal discourse consists solely of verbal and/or written modes of language.

By the same token, despite the proliferation of gesture and multimodal studies over the past several decades, researchers rarely, if ever, mention their role in the legal institution. This omission is all the more glaring because the law touches virtually all aspects of social existence, from the most intimate moments in a personal relationship (as in *Obergefell v. Hodges*, *Loving v. Virginia*) to broad scale social changes like voting rights, desegregation, and, for Max Weber, the “rationalism of world mastery” in the Occident.¹ Indeed, the two-volume, 2,200-plus-page *Handbook on Multimodality in Human Interaction* (Müller et al. 2013 and 2014) with 172 chapters makes no mention of multimodal conduct in the law, a rather glaring neglect of this most crucial institution for organizing social life.²

In this book, we demonstrate that legal discourse involves much more than *just words*, and that language and other modal resources operate

¹ In this regard, we might consider Weber’s statement that capitalism is the “most fateful force in our modern life” (1976: 17). As he goes on to note, since modern capitalism requires a formal rational system of law, an elective affinity exists between law and capitalism in which each feeds off the other to produce the uniqueness of Western civilization and its historical trajectory. If Weber is right that the law is “indispensable for a modern capitalist society” (Weber 1978: 682) then it might be more accurate to consider both formal rational law and modern capitalism as the “most fateful forces in modern life.”

² To be more precise, while the *Handbook* includes a number of chapters on the role of multimodality in theater, politics, music, television, classrooms, industrial settings, language acquisition, robotics, dance, religion, and nonhuman primates, it omits the relevance of multimodality for the legal system.

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together as co-expressive semiotic partners – as multimodal practices – in utterance construction, the production of meaning in legal interaction, and, from Goffman, in impression management.³ Focusing on just words neglects the role of multimodal conduct in legal proceedings – how both language and other modal resources mutually contextualize one another in a reciprocal dialectic – and leaves the study of language and law with an incomplete understanding of legal discourse. Drawing on analytic and empirical inspiration from scholars in embodied interaction (Goodwin, Streeck), linguistic anthropology (Silverstein), gesture studies (McNeill, Kendon, Müller, and Goldin-Meadow), and material conduct (Heath et al.), and using audio-video data from a notorious (yet quite fascinating) criminal trial, this book demonstrates in concrete detail the relevance of multimodality for understanding legal discourse and how the law offers a dynamic institutional site for the sociocultural investigation of gesture and other modal resources. In so doing we illustrate the interactive and co-constructed social organization of this neglected yet crucial aspect of the legal order.⁴

Plan of the Book

The plan of the book is as follows. Chapter 1 will introduce the basics of multimodal conduct: gesture, gaze, posture, movement, and materiality. We begin with a review of the work of Kendon, McNeill, Goldin-Meadow, and Müller on different types of gesture and how ad hoc, co-speech gestures relate to language and speech more generally. We then move into the study of gaze, and review work by Goffman and Goodwin on the contribution of gaze and posture and how these modalities, in concert with speech and gesture, figure in various discursive activities like involvement and participation. The next section of Chapter 1 moves into

³ The reader will soon see how indebted we are to Goffman, even beyond the universal emblems of dramaturgy and theater produced on the front cover. As he mentions (Goffman 1967: 3), “What minimal model of the actor is needed if we are to wind him up, stick him in amongst his fellows, and have an orderly traffic of behavior emerge? . . . A psychology is necessarily involved, but one stripped and cramped to suit the sociological study of conversation, track meets, banquets, *jury trials* [our emphasis] and street loitering.” We address how the “orderly traffic” of the trial emerges through multimodal conduct.

⁴ Some may question or find problematic our use of the term *multimodal conduct* for the communicative practices we document in this book. In response, we can only offer the following. In a recent content analysis of the journal *Research on Language and Social Interaction*, Nevile (2015: 129) found “over 200 different forms of wording that seemed somehow to be used generally for the body in interaction . . . nonverbal, embodied action, visible action, multimodal resources . . .” etc. We find multimodal conduct sufficient for our purposes and offer no further justification other than that the term, for us, captures the active integration of gesture, gaze, physical objects, and posture/movement in concert with speech, to construct meaning in the law.

the role of material objects in court (such as exhibits, transcripts, and tape recordings), and reviews the conceptual resources that Heath and his colleagues have proposed for this taken-for-granted realm in the study of embodied action. In the last part of the chapter we will note how multimodal conduct possesses sociocultural resources for constructing identity, participation, and persuasive/charismatic speech in the law (referred to as the poetic function of language as found in the work of Jakobson, Bauman, and Silverstein). We also show how speakers in court can do things with multimodal conduct that is often prohibited in speech.

Part I examines how courtroom participants negotiate identity – who we are and what we are doing on a moment-by-moment basis – and participation, – the micro organization and projection of discursive roles in context – in multimodal conduct.⁵ Chapter 2 demonstrates the co-construction of expert roles in court and how the prosecuting attorney attempts to impeach the credibility of an expert witness by claiming he is an “academic” rather than a “private” (hands-on) physician. In response, the physician employs specific types of facial expressions, lip protrusions, hand gestures, and headshakes in concert with speech to negotiate the status of his expertise and experience. In one fascinating segment, the expert recalibrates the prosecuting attorney’s question and projects his own question to which his answer can be arguably heard through the use of gaze, head shakes, and open palms (that is, he recalibrates questioner and answerer roles through multimodal conduct).

Chapter 3 analyzes the intertextual construction of precedential identity in a pretrial motion to determine if a particular precedent applies to the facts of the case. We demonstrate how the prosecuting attorney brings multimodal resources and epistemic stance to bear on the constitution of legal evidence, identity, and sociocultural relationships in an intertextual and interdiscursive drive to shape a coherent, precedential narrative against the defendant. More explicitly, we show how a metaphoric gesture functions as an evidential practice in constructing the relevance of testimony from three other women who claimed that the defendant sexually assaulted them prior to the current victim.

Chapter 4 introduces a deviant case where the witness uses multimodal conduct like gaze and head nods to solicit a response from the defense attorney: a request to complete a spate of testimony from the previous day. In a stunning virtuosic response, the defense attorney evokes a metapragmatic

⁵ According to Goodwin and Goodwin (2004: 222), “participation refers to actor’s demonstration of involvement performed by parties within evolving structures of talk.” Along similar lines, we conceptualize participation as the micro-organization of interactional roles in the courtroom – real or virtual – and their possible laminations or embeddings.

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frame, or what Silverstein (1979) refers to as linguistic ideology (folk rationalizations about language) that shapes the epistemological criteria for gauging the authenticity and truth of testimony. As the witness' utterance progresses, we will see how her narrative and reported speech are signaled through body torque, middle-distance or thinking face gaze, eyebrow flash, and embedded parenthetical – multimodal conduct that, quite ironically, confirms the defense attorney's suggestion that she is speaking from a prepared script produced in collusion with her attorneys from the prior evening. Here we demonstrate in vivid detail how reported speech constitutes an interactive and multimodal co-construction rather than a mere discursive object that inheres in the grammatical and paralinguistic properties of an isolated speaker's utterance. In Goffmanian terms, we show how a particular footing and forms of participation emerge as a joint multimodal activity.

Part II focuses on how multimodal conduct figures in the prescriptive culture of trial advocacy (or advice manuals and textbooks on “effective trial techniques and tactics” Gaines 2016: 3): multimodal conduct in direct and cross-examination and its relation to legal strategies like motivation, control, and credibility. In Chapter 5, we study a specific type of hand gesture, what is often referred to as a “beat,” and investigate how this understudied gesture is more complex and multifunctional than orthodoxy conceived. In an analysis of witness motivation and resistance, we show how beat gestures do much more than beat out rhythm and foreground points of significance in speech. Looking at a witness (the victim) in a rape trial, we reveal how she fuses accusatory metaphors and deictic points with rhythmic beats to fragment legal reciprocity into institutionally emergent laminations of participation, keeping shifting alignments of participation in play simultaneously through multimodal conduct.

Chapter 6 illustrates a questioning strategy in trial examination designed to control an evasive witness, referred to in legal texts as “nailing down an answer.” In “nailing down” we show how question control functions through the interactive contours of verbal and embodied conduct. The attorney punctuates the pace and rhythm of each phrase with a series of forefinger gestures, moving up and down, that evoke a metaphoric imagery of “nailing” to enhance emphatic stance, and build a dramatic tension into the questioning. What is also novel in this segment is how the attorney uses postural shifts, facial expression, and gaze shift to comment negatively on the witness' testimony without using any words, enabling him to circumvent legal constraints on verbal evaluation. This reveals the necessity of looking to multimodal conduct for a more comprehensive analysis of legal discourse.

Chapter 7 focuses on the art of impression management as it emerges in the integration of exhibits, movement, and speech that deals with

previously inconsistent statements made by the witness. Here we explore how material objects and language reflexively animate one another and other modal resources, such as tape recordings of speech. We examine how disparate streams of multimodal resources converge in an incremental build-up of suspense, and intertextual escalation of evidence that circulate around a key piece of material evidence: an urn. The urn anchors shifting contexts of legal evidence as it transforms its own identity across current and historical discourses. We show that the urn is not so much relevant momentarily to a particular sequence of speech or utterance or lexical item, as it is to the incremental and progressive build-up of suspense about itself, within and between the narrative segments – retaining its physical presence even in the midst of significant evidential transformations. It indexes inconsistencies in the witness' statements and promotes an iconic representation of confusion not just in the current speech, but even more importantly, during the reported event as well.

The final part explores rhythmic gestures and the integration of gesture and material objects in closing argument. Chapter 8 investigates how the attorney's narrative integrates hand movements, material objects (transcripts and photos), and speech to reinforce significant points of evidence and reduce the social distance between himself and the jury: what we refer to as *material mediated gestures*. In particular, the attorney uses polyrhythmic patterns and laminations of multimodal conduct to transform a partisan and unilateral interpretation of evidence into a joint construction between him and the jury – bringing them into a state of deictic immediacy as a persuasive legal strategy. The chapter shows how material objects like photos and transcripts are used to gesture, and how the attorney uses them to point out significant pieces of evidence. We display how metaphoric gestures point to and beat out displacement of mind to transcript, giving it a corporeal quality that he can reference as an object.

Chapter 9 continues with an example from closing argument and demonstrates how movements of the hands and fingers can vary in form to invoke semantic content, and reference objects along with their rhythmic function. Such gestures engineer emergent forms of propositional imagery (or add to the propositional meaning in the utterance) in addition to, and simultaneously with, their more orthodox rhythmic function, producing a multifunctional dimension of meaning that cannot be conveyed as richly through speech alone. In so doing, we offer a critical perspective on gesture typologies and seek to anchor such conceptual taxonomies in a detailed analysis of naturally occurring data, making a contribution to the study of both courtroom interaction and gesture.

In the movie, *The Devil's Advocate*, Al Pacino's character, Satan, refers to the law as the "ultimate backstage pass," and lawyers as the

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“new priesthood,” along with a thoroughly unveiled allusion about their (and his) power in society. To continue with the Goffmanian analogy, the law is not just part of the backstage region but a sacred front stage ritual, a sociocultural performance that permeates our modern and postmodern condition from the most intimate aspects of social life to the most impersonal contracts, accelerating the globalization of rationality, and channeling the powerful conflicts associated with and resolved through it. However, in sharp contrast to the current state of scholarship in the field of language and law, we demonstrate in concrete detail how the “new priests” (like the old priests), perform their rituals with quite more than just verbal and/or written modes of language. We offer this study as an empirical exercise, not only on how the study of language and law can draw on analytic resources from the field of gesture studies to generate a more comprehensive analysis of legal interaction, but also how the study of multimodality in the legal order can make distinct and novel contributions in its own right to the study of the gesture-speech relationship.