

Deceptive Ambiguity by Police and Prosecutors

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10.21747/21833745/lanlaw/6_2rec2

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Roger Shuy (2017)

Oxford: Oxford University Press

Deceptive Ambiguity by Police and Prosecutors is part of the *Oxford Studies in Language and Law*, a series of volumes covering a broad range of topics at the intersection between language use and civil and criminal law. This book presents 15 cases in which five types of representatives of the legal system (police interviewers, prosecutors, undercover agents, cooperating witnesses and complainants) use ambiguity in a deceptive manner during the course of their interactions with suspects, defendants and targets of undercover operations. Each of the five analysis chapters deals with three cases. The data include transcripts, audio and video recordings, police statements and comparative documents.

The book is divided into nine chapters. The first two provide introductory comments and discussions of a number of main concepts such as (institutional) power, deception and ambiguity. All representatives of the legal system discussed in this book possess institutional power: for police interviewers and courtroom questioners, this power is *transparent*, while for undercover agents, cooperating witnesses and complainants the power is *camouflaged*. 'Deception' is commonly defined as 'the intentional effort to cause receivers to misperceive something' (p. 14; cf. Coleman and Kay, 1981, whereas 'ambiguity' is more subtle and nuanced, in that ambiguous expressions carry more than one possible meaning (p. 4). Language *per se* is famously ambiguous and interlocutors derive the correct meaning from the context that the interaction takes place in. The use of ambiguous statements or questions by representatives of the law can result in suspects, defendants and targets giving responses that can in turn be misinterpreted as

incriminating. Such ambiguous statements or questions are without a doubt deceptive, whether intentionally or not.

The introductory part of the book also offers a description of the methodological 'Inverted Pyramid' model used for the analyses. The model combines approaches rooted in conversation analysis, interactional discourse analysis and critical discourse analysis, and goes beyond typical linguistic approaches to ambiguity – lexis, syntax, pragmatics (p. 52) – by implementing also macro-approaches to add to the crucial discursive context. The use of deceptive ambiguity in each of the 15 interactions is examined systematically following a six-part sequence from broad macro-elements to narrow micro-elements (thus, the Inverted Pyramid). The six elements are speech event, schema, agenda, speech act, conversational strategy, and lexicon and grammar.

Speech events are events that have 'tacitly understood rules of preference, unspoken conventions as to what counts as valid information and what information may or may not be included' (Gumperz, 1982: 9), such as for example job interview speech events or police interview speech events. Schemas are born out of speech events and are what interlocutors bring to an interaction, i.e. their 'already existing information, attitudes, ideas, values, and beliefs that help them interpret and organize newly presented information' (p. 22). Representatives of the legal system tend to hold a schema of the suspect's guilt. Agendas are in turn born out of schemas and are described as the actualization of the schemas in the form of various topics. Speech acts are a speaker's illocutionary acts, i.e. what a speaker *does* by means of producing an utterance. Conversational strategies are defined as 'ways of planning and negotiating the discourse structure over long stretches of conversation' in order to accomplish a purpose (Hansell and Ajitrotutu, 1982: 87). Lexicon and grammar in the context of this book refer to the obscure use of legal jargon and the ambiguous use of pronouns and deictic references.

Chapters 3 and 4 analyse occurrences of deceptive ambiguity produced by transparent representatives of the legal system, police interviewers and courtroom questioners. Interviewers and questioners show a tendency to deceptively switch from information-gathering speech events to accusatory interrogation. In each of the six cases presented in this part of the book, the schemas of the interlocutors differ: the interviewees hold schemas of assisting law enforcement in their (perceived) roles as witnesses, whilst the interviewers hold schemas of the interviewees' guilt. In police interviews and courtrooms, representatives of the legal system have the ability to control their suspects' or defendants' agendas. They are able to do so by presenting their own agenda first, thereby not allowing the interviewees to reveal their own. In terms of speech acts, the cases show an overall tendency for interviewers to use accusation and for interviewees to use denial. Police interviewers show a tendency to deceptively misinterpret suspects' speech acts, for example by misinterpreting a suspect giving opinions ('I think...', 'I assume...') as them stating facts about the event in question (p. 90). Furthermore, defendants in the courtroom make use of the speech act of requesting clarification, although the prosecutors do not provide the requested clarification. Highly persuasive conversational strategies used by transparent representatives of the law include blocking (e.g. interrupting the interlocutor mid-turn), the hit-and-run strategy (asking a question then changing the topic before the interlocutor gets a chance to reply) and contaminating the conversation by blatantly ignoring the interviewee's response and instead proceeding as if the answer given confirmed the questioner's proposition. In terms of lexicon and grammar,

the interviewers deceptively misinterpret the pronoun 'it' as referring to something that makes the suspect or defendant look guilty. In an interview with a young man accused of murdering his elderly neighbour, the police decontextualized the suspect's statement 'I wish it didn't happen' (p. 74); the pronoun 'it' in this case is non-specific and considering the discursive context of the interaction, the suspect is more likely making an objective reference to the crime. The prosecution, however, interpreted 'it' as the suspect's violent action and thus construed the suspect's utterance as incriminating. Furthermore, the language used by the questioners is oftentimes peppered with legal jargon (cf. 'policiespeak', Hall, 2008) which is difficult, and for some vulnerable suspects impossible, to understand. Linguistic features observed on every level of the Inverted Pyramid provide evidence of deceptive ambiguity.

Chapters 5-7 cover deceptive ambiguity in the discourse of camouflaged representatives of the law, i.e. undercover agents, cooperative witnesses and complainants. The latter two types of representative are somewhat similar but must not be confused. Cooperative witnesses are 'known offenders who are used by law enforcement because they are familiar with the type of crime being investigated and have already been caught', and then cooperate with law enforcement in return for more lenient punishments (p. 147). Complainants are citizens who report alleged offences that have been committed or are yet to be committed by a person or persons they know personally. A common type of report from a complainant concerns alleged sexual offences committed on a child by a family member (p. 169).

Camouflaged representatives of the legal system tend to misrepresent the speech event in which they involve their target, e.g. the target believes they are taking part in a casual business transaction or a business progress event, whereas the interaction is in fact being converted into a bribery speech event by the undercover representative. The targets hold schemas ranging from finding investors and resolving tax issues to selling products and building schools. Just as with the speech events, none of the targets reveals a predisposition to commit a crime. The undercover agents, cooperating witnesses and complainants tend to camouflage their own schemas, and instead deceptively misinterpret the schemas of their targets. Similar observations are made with regards to agendas; representatives of the legal system misinterpret and intentionally misunderstand their targets' agendas, or simply convert the agendas into their own using deceptive ambiguity. We see the speech act of an undercover agent offering a bribe and the speech act of the target rejecting said bribe; however, the rejection is ultimately ignored and deceptively misconstrued by the undercover agent as an agreement. The speech act of 'asking for help with tax issues' gets misinterpreted by the undercover agent as asking for a 'way out' (i.e. bribery). In addition to the occurrence of conversational strategies discussed in the previous paragraph (blocking, hit-and-run, conversational contamination), one complainant successfully uses the technique of repeated questioning to wear their target down. In one of the cases, deceptive ambiguity is used when describing a target as having 'accepted' bogus documents, while in reality the documents were foisted upon the target, i.e. he 'received' them from an acquaintance but had never agreed to accept them. In addition to more misinterpretations of the pronoun 'it', as well as the deceptive use of deictic referents 'this' and 'that', we observe an instance of a cooperating witness using ambiguous nouns such as 'training' and 'security' in an (unsuccessful) attempt to get his target to reveal plans to set up a terrorist cell. As becomes apparent from his re-

sponses, the target's perception of these nouns is benign, for he is under the impression that the conversation is about the creation of a new school for Muslim children.

Chapter 8 recapitulates the observations in chapters 3-7, discussing all 15 cases collectively in six sections, each dedicated to one element of the Inverted Pyramid. The final chapter provides overall conclusions, as well as some notes on the relative frequency of the government's use of deceptive ambiguity. Shuy provides a table of the frequency with which every element from the Inverted Pyramid is used by each of the five types of representative of the legal system (p. 235). For this, he uses the subjective categories 'consistently', 'frequently' and 'sometimes'. This admittedly 'broad-brush comparison of the relative frequency' reveals that, unsurprisingly, camouflaged representatives tend to use deceptive ambiguity more than their transparent counterparts (p. 234). This can be ascribed to the fact that in interview and courtroom settings, questioners are (rightfully) restricted in their use of ambiguity; the interview record is subject to evaluation by prosecutors, and interactions in the courtroom are directly scrutinised by other legal participants including, perhaps most prominently, the judge. Undercover agents, cooperating witnesses and complainants do not *visibly* represent the law, and are thus able to carry out their work with fewer restrictions in place.

The book concludes with a valuable Appendix, which briefly discusses the language used by representatives of the law and their interlocutors in the context of socio-cultural differences. For example, described here are considerations of the discourse between white interviewers vs. minority suspects, adults vs. juveniles, native vs. non-native English speakers, and mentally competent vs. mentally incompetent persons, and how these socio-cultural differences can also provide evidence of deceptive ambiguity. Overall, *Deceptive Ambiguity* is a valuable contribution to the *Oxford Studies in Language and Law*. It is dedicated to the lesser-explored side of deceptive discourse produced by representatives of the legal system rather than by suspects and defendants. The book presents a broad range of verbal interactions (or records thereof) and examines them thoroughly using a rigorous methodological model. The analyses show the legal agents using deceptive ambiguity both intentionally and unintentionally to achieve their goals. The findings are evaluated against critical concepts including questioners' intentionality, predisposition and voluntariness.

One critical remark that must be made about this book is that the data used for the analyses are hardly recent, and therefore do not necessarily offer an accurate reflection of current law enforcement practice in the USA. More than half of the cases discussed in the book are more than 30 years old. Shuy mentions the need to conduct further analyses with *more* data, and I would suggest that these further analyses should include the aspiration for *more recent* data.

References

- Coleman, L. and Kay, P. (1981). Prototype semantics: the English word lie. *Language*, 57(1), 26-44.
- Gumperz, J. (1982). *Discourse Strategies*. Cambridge: Cambridge University Press.
- Hall, P. (2008). Policespeak. In J. Gibbons and M. T. Turell, Eds., *Dimensions of Forensic Linguistics*. Amsterdam: John Benjamins, 67-94.
- Hansell, M. and Ajitrotutu, C. (1982). Negotiating interpretations in inter-ethnic settings. In J. Gumperz, Ed., *Language and Social Identity*. Cambridge: Cambridge University Press, 85-94.