



Linguistics and the Law

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Linguistics and the Law

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by Colleen B. Brennan

Mention linguistics and the law, and most people think of police cases involving handwriting or stylistic analysis to develop a writer profile for some piece of evidence -- for example, the ransom note in the JonBenét Ramsey murder investigation, or the Unibomber Manifesto. Although written language analysis has a long history of use, both in police investigations and in courtroom trials, and is, perhaps, a prototype of so-called forensic linguistics, it is but one task among many performed by forensic linguists today.

This paper gives an overview of modern forensic linguistics and discusses the increasingly important role of linguists and of linguistics in police investigations, courtroom trials, and other areas where language and the law intersect.

There is no consensus among linguists and legal experts as to a definition of the term forensic linguistics. Some adhere to a narrow definition such as "the use of linguistic techniques to investigate crimes in which language data constitute part of the evidence."¹ Others subscribe to a broad interpretation of forensic linguistics as the study of the intersection between language and the law. Within this broad view, forensic linguistics encompasses the following areas of study:

- legal language comprehensibility and reform
- courtroom discourse
- court translation/interpretation and cross-cultural communication facilitation
- acoustic analysis of audio-recorded evidence
- speaker profiling and speaker identification

Legal language

Language in legal settings is characterized by highly technical vocabulary and colloquial terms used in specialized ways. It is also plagued with lengthy noun phrases, heavy use of passive voice, multiple negatives, and complex grammatical structures, including multiple embedded clauses and unusually placed subordinate clauses.² Take, for example, an excerpt from the instructions delivered to jurors by Judge Lance Ito in the O. J.

Simpson criminal trial, held in Los Angeles in 1995:

Reasonable doubt is defined as follows: It is not mere possible doubt, because everything relating to human affairs is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the mind of the jurors in that condition that they cannot say they feel an abiding conviction of the truth of the charge.

The lack of comprehensible language in jury instructions can have dire consequences. In the early 1990s, a convicted murderer argued in U.S. federal court that his death sentence should be overturned on the grounds that the jury instructions were so incomprehensible that the law could not have been effectively communicated to the jurors.¹ At the same time, individual judges' attempts to simplify or clarify instructions for the jurors have led to reversals by appellate courts, leaving judges with little choice but to use the established language and, in response to jurors' requests for clarification, to simply refer the jurors back to the original instructions.⁴

Proposals for reforming jury instructions abound. Bethany K. Dumas² suggests using paraphrase, examples, and brief narratives to clarify difficult legal concepts such as *reasonable doubt* and *proximate cause*. Ian Langford⁶ proposes replacing the established definitions of terms such as *murder*, *manslaughter*, and *homicide* with simpler definitions based on a method of analysis that represents meaning through a limited set of basic words and a simple grammar. New instructions for California's criminal courts are in the works.⁷

The effort to render legal language in a form accessible to lay people should not stop at jury instructions, argues Kate Storey-Whyte,⁸ but should also be extended to expert evidence in the courtroom and, outside the courtroom, to police warnings issued to suspects who are being arrested or searched. The movement to adopt plain legal language has had some success in the drafting of new laws, where recommendations include greater use of the active voice, personal pronouns, and reduced relative clauses.

Courtroom discourse

In contrast to legal language reform's focus on comprehensibility, analyses of courtroom discourse tend to focus on the interaction between specific linguistic features and their socio-interactional functions. For example, grammatical omission of the agent is frequently used in cases of sexual assault or rape, where it serves to take the focus off the accused rapist.⁹ Sandra Harris,¹⁰ in her discourse analysis of three high-profile court cases--O. J. Simpson, Louise Woodward, and the bombing of the Oklahoma

federal building--found that open-ended wh- questions (who, where, when, etc.) elicited narrative from a witness, whereas yes/no questions tended to limit the amount and type of information that could be offered by a witness. Greg Matoesian¹¹ analyzed transcripts of audio-video recordings from another famous trial, the 1991 William Kennedy Smith rape trial, and concluded that lawyers employed the grammar and prosody of reported speech to essentially discredit a witness's testimony. Another indirect strategy used to influence juries is metaphor. In "If it doesn't fit, you must acquit," Janet Cotterill¹² examines the effect of metaphors (including those of the jigsaw puzzle, sport, and war) in defense attorney Johnny Cochran's closing arguments.

Coercive questioning techniques resulting from the use of specific linguistic features have been the focus of much courtroom discourse analysis; yes/no questions and tag questions are considered to be among the most coercive. These analyses, however, are based primarily on English-speaking participants and Western societies. The picture changes with different cultural settings and the use of different languages.

Cross-cultural/cross-linguistic differences

Diana Eades,¹³ in her study of Australian courtroom discourse, discovered yes/no questions are not considered coercive in Australian Aboriginal interactions, but rather are understood as an invitation to explain or elaborate. The difference in cultural meaning attached to silence can also lead to fractured communication in the courtroom; whereas silences longer than a few seconds are barely tolerated in Western English-speaking societies, Eades's courtroom data reports an Aboriginal silence as long as 23 seconds.

Tag questions can be a source of misunderstanding in testimony that must be interpreted. Whereas negative tag questions in English require a negative answer to deny an accusation (e.g., *You took the money, didn't you? No, I didn't*), tag questions in many other languages, including Spanish and some Asian languages, can be answered either negatively or affirmatively with relatively no alteration in meaning.

Although tag questions posed no problem in the interpreted testimony of Rosa López during the O. J. Simpson murder trial, it was found that incorrect interpretation of modals did--by contributing to a more coercive-sounding cross-examination in Spanish than in the original English.¹⁴

A case for linguists as expert witnesses

Misunderstandings in the courtroom can result not only from imprecise interpretation, cultural differences, or unintelligible local language, but also from linguistic nuance in the courtroom

legal language, but also from linguistic naivete in the courtroom and the absence of a forensic linguist who has the expertise to analyze language-related evidence and explain it to the court. Consider this case: A man who spoke English with a Haitian Creole accent was sentenced to prison for 12 years for allegedly having sold three tenths of a gram of crack cocaine to an undercover police officer. The only hard piece of evidence presented at the trial was a taped recording of a telephone conversation between the undercover officer and the drug dealer. Had a linguist, preferably a phonetician, listened to both the voice on the tape and samples of the defendant's voice (i.e., conducted a voice comparison), he/she could have told the jury with absolute certitude that the voices belonged to two different speakers.

Such was the conclusion made by Robert Rodman,¹⁵ who was consulted during the appeal. Based on auditory perceptual analysis, Rodman determined that the speaker on the taped recording spoke a commonly heard variety of African-American English, easily differentiated from Haitian-Creole-accented English. Without the expert opinion of a trained linguist, the prosecutor in the original trial was able to convince the jury that the suspect could speak English without an accent whenever he chose to. In fact, the research shows that speakers with a foreign accent cannot speak with less of an accent or change the sound of the accent they normally speak with, except to accentuate it.¹⁶ In addition, the suspect had learned English late in life (age 18), past the critical age for learning a foreign language without retaining an accent.

Forensic speaker identification

The man on trial in this case would most likely have been acquitted had the court accepted as evidence some form of forensic speaker identification data. There are two main tasks involved in forensic speaker identification, speaker profiling and voice comparison, and three main methodologies for accomplishing these tasks, auditory perceptual analysis, acoustic analysis, and automatic speaker recognition technology.

Research in the area of auditory perceptual voice analysis, which consists mainly of perception experiments with trained and/or untrained listeners, shows that it is the speakers with the most distinctive foreign or regional accents who are the most readily identified.¹⁷ Other noticeable speech characteristics unique to a particular speaker also lend themselves to positive speaker identification by both trained and untrained listeners. In a case study in Germany, a forensic phonetician's detection of a slight lisp in voice samples from TV interviews led to the arrest of a man who had been at large for 13 months.¹⁸

In the absence of any pronounced foreign or regional accent, idiosyncratic speech feature, or other easily perceived auditory

distinction, forensic phoneticians, in their quest to identify a speaker, will resort to the method of acoustic analysis. This method of speaker identification consists of analyzing spectrograms (so-called voiceprints) to determine patterns unique to a particular voice. Different voices produce different spectral patterns, particularly in the formant frequencies (especially F2-F4) and bandwidths, voice pitch frequency (F0), and amplitude. Two perceptually indistinguishable voices will have different acoustics unless they are the same voice.¹⁹ There is much research that points to the significant role of F0 in voice identification. Voices with either high or low average F0 are more easily identified than others for both trained phoneticians and untrained listeners.²⁰

New technologies for automatic speaker recognition are being developed. These technologies analyze speech samples using a variety of parameters. For example, notch filtering and denoising techniques were used to enhance intelligibility in an audio analysis of the Rodney King beating videotape. The findings--that no racial slurs were uttered but that frequency and spectral distributions were consistent with the activation of a taser (a prodding device that police use to shock resisting or violent suspects into submission)--were used as the basis of a request for a new criminal trial.²¹

Unresolved issues

Many of the unresolved issues in the field of forensic linguistics pertain to the area of speaker identification. For example, to what degree can nonexpert listeners accurately identify the perpetrator's voice in a voice line-up? How valid is acoustic analysis as a method of speaker identification when it involves visual (and therefore somewhat subjective) interpretation of spectrograms? Are the automatic speaker recognition technologies any more valid? How does voice disguising affect forensic speaker identification? And how much do speech variability factors, such as the influence of a common cold on a person's voice, affect forensic speaker identification?

The legitimacy of linguists as expert witnesses in the courts is another highly debated issue among both linguists and legal professionals. What types of linguistic evidence should be allowed and under what circumstances? Should linguists be allowed to interpret complex legal language for jurors? Are linguistic analyses considered scientifically valid? The growing body of research in the area of forensic linguistics provides proof of the value of linguists and linguistic knowledge in the legal arena. Increasing cooperation between linguists and law professionals, as well as continued interdisciplinary research, can aid in the determination of innocence or guilt and contribute to the overall improvement of an imperfect justice system.

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