

Edited by LAWRENCE M. SOLAN,
JANET AINSWORTH, *and*
ROGER W. SHUY

SPEAKING *of*
LANGUAGE *and*
LAW

Conversations on the Work of Peter Tiersma

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Speaking of Language and Law

CONVERSATIONS ON THE WORK
OF PETER TIERSMA

Edited By Lawrence M. Solan,
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For Peter, of course



Peter Tiersma

1952–2014

PREFACE

Ceci n'est pas un Festschrift. Instead, to celebrate Peter Tiersma's distinguished career and many significant contributions to the study of law through language and the study of language through law, we have republished excerpts from some of his most important writings, and invited 32 scholars (including ourselves, we must concede) to write short essays that spring from Tiersma's work, and at the same time convey each author's views concerning some important aspect of the study of language and law. The result, we hope, is a book full of interesting pieces, each engaging in its own right, which together form a tribute to one of the great contributors to the study of language and law.

Indeed, it takes 32 scholars to provide meaningful commentary on Peter's work. One can never predict in advance that a particular individual will so shine, but once it happens, we can all learn much from looking back. We start with language. Peter was born in Friesland, in the north of the Netherlands in 1952. His first language was Frisian, his second Dutch. His family were dairy farmers, some of whom are still in California, where they moved when he was a child, after a brief stop in Wisconsin. Peter went to public school among many other immigrants, mostly Latinos, making English his third and Spanish his fourth languages. In college (Stanford), German became his fifth, with Latin a hobby.

Not surprisingly, Peter had become engaged not only in languages, but also language as a phenomenon, and earned a PhD in linguistics from the University of California at San Diego, where he focused on phonology and phonetics. He taught linguistics for a while, but soon decided that he would go into law, and enrolled in Boalt Hall School of Law at the University of California, Berkeley, where he earned a law degree. He then clerked for Stanley Mosk, a prominent justice on the Supreme Court of California, practiced law for a few years, and in 1990 accepted a position at Loyola Law School in Los Angeles, where he spent his entire academic life as a law professor, including many years with an endowed chair. He lived throughout these years with his wife Thea near Santa Barbara, from which he traveled weekly to Los Angeles to teach and engage in the life of his law school, until his premature death from cancer in April 2014.

As Peter began his teaching career, his scholarly research on language in legal settings was developing in earnest. Lawyers had contributed writings

analyzing legal language, often criticizing “legalese” for being turgid and incomprehensible. However, this work by lawyers was impressionistic in nature, uninformed by research in linguistics and psychology on the nature of language and linguistic competences, and frequently marked by personal idiosyncratic preferences about legal usage. Meanwhile, linguists, anthropologists, and psychologists were beginning to engage in a systematic examination of language use in legal contexts. The focus of this work explored the ways in which language used for special, particularized purposes in situated contexts—such as the varieties of legal language—could shed light on the nature of language in social contexts more generally. Often, however, these researchers lacked a full understanding of the legal contexts in which legal language was embedded and failed to appreciate the instrumental complexity of legal language as used by legal actors. The time was ripe for a scholar who had training in both law and in linguistics to examine the many facets of legal doctrine and practice that involve language issues. That scholar was Peter Tiersma.

Right from the beginning of his legal academic career, Peter launched into writing a series of articles on the tacit linguistic assumptions embedded in many legal doctrines. Often using the theory of speech acts, these articles unpacked legal doctrine, demonstrating which elements correspond to the ways people actually communicate, and which ways do not. Linguistic theory and legal theory have different goals. The former seeks to account for how language works, the latter seeks to establish a system in which values such as the rule of law and the sense of justice prevail. Yet when a legal system incorporates rules of language into the rules of law, the two fields merge. It was at these points of coincidence that Peter began his explorations. They included the theory of contract formation, defamation, inferences we draw from a person’s silence (so important in the law of evidence and the law of criminal procedure), the nature of consent, the interpretation of statutes, and the definition of crimes committed through language, such as perjury and threats. To these subjects Peter added the nature of legal language and its history, and a commitment to the goal of improving instructions to juries, which often remain incomprehensible to the average person even today.

In every one of these areas, Peter Tiersma became a leading scholar and has remained a leading legal scholar. Some of the work is recent, some now a quarter century old. All of it is influential in the literatures of different disciplines, especially law and linguistics, but also history, psychology, and philosophy. And, happily, Peter’s books in particular are also accessible to the uninitiated. It should not be surprising, then, that this book contains contributions from people educated in law, linguistics, criminology, philosophy, anthropology, psychology, history, and medicine. All of these pieces are tributes to Peter Tiersma’s excellent contributions.

All are good reads.

We had intended this book to be a living tribute to a great scholar. Sadly, that was not to be. We hope only that the excerpts and new contributions stand as a testament both to the vitality of the inquiry into questions of language and law, and to Peter Tiersma's contributions to it.

LMS

JA

RWS

March 2015

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Chapter 17. Nonverbal Communication and the Freedom of “Speech,” *Wisconsin Law Review* 1993: 1525–1569 (1993), 1569–75.

Chapter 21. The Language of Consent in Rape Law, in Janet Cotterill (ed.), *The Language of Sexual Crime*, 83–103, Palgrave Macmillan (2007), 83–103. Reproduced with permission of Palgrave Macmillan. The full published version of this publication is available from <http://www.palgraveconnect.com/pc/doi/10.1057/9780230592780>.

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Chapter 35. The Language of Perjury: “Literal Truth,” Ambiguity and the False Statement Requirement, *Southern California Law Review* 63:373–431 (1990), 409–14.

Chapter 36. *Speaking of Crime: The Language of Criminal Justice* (Lawrence M. Solan and Peter M. Tiersma), University of Chicago Press (Copyright 2005 by The University of Chicago), 198–204.

Chapter 40. The Judge as Linguist, *Loyola of Los Angeles Law Review* 27: 269–84 (1993), 279–83.

Chapter 45. The Rocky Road to Legal Reform, *Brooklyn Law Review* 66: 1081–1119 (2001), 1082–88.

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Finally, in a volume in which scholars are “talking about” the writings of Peter Tiersma, the obvious person to acknowledge is Peter Tiersma himself, for without his many books and articles on language and law, this book could not exist. Peter also worked with us to select the excerpts included in this volume in an effort to include the most representative of his thoughts about each substantive area. However, the identity of the contributors, all of whom have been marvelously cooperative and supportive of this project, and the substance of their contributions, remained the editors’ secret until the book was completed, and the contents shared with Peter

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PART I

Legal Language and Its History