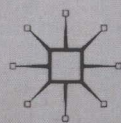


Language in the Legal Process



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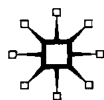
Language in the Legal Process

Edited by

Janet Cotterill

*Lecturer in Language and Communication at the
Centre for Language and Communication Research
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Preface to Paperback Edition

Since *Language in the Legal Process* was first published in 2002, the field of forensic linguistics/language and law has continued to grow. The number of modules offered at both undergraduate and postgraduate levels has increased, with courses attracting large numbers of students. The field's flagship journal *Forensic Linguistics: The International Journal of Speech, Language and the Law* has received a record number of submissions during 2003, and for the first time, the conference of the International Association of Forensic Linguists (held in 2003 in Sydney, Australia) had to be organised into parallel sessions, due to the large number of submissions. All of this is evidence of a growth in interest in language and the law, not only by linguists but also by members of the legal profession, the police authorities and the judiciary. As the field continues to develop, there is increasing recognition of the importance played by language in the legal process and as a consequence, research which feeds back into the texts and practices of law, or, increasingly, which is commissioned by professionals working in these areas, is becoming more common.

One note of great sadness marks the transition of *Language in the Legal Process* from hardcover to paperback. Dr Sonia Russell, whose contribution "'Three's a Crowd": Shifting Dynamics in the Interpreted Interview' (Chapter 7) deals with the influence of foreign-language interpreters in police interviews, sadly passed away in November 2002. Sonia continues to be missed by all who knew her and her passing is a great loss to the forensic linguistics community. This paperback version of the book is dedicated to her memory.

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I am, as always, most grateful to Malcolm Coulthard, who introduced me to forensic linguistics in the first place, and who continues to be a great inspiration, and to Michael Hoey for his unfailing support and encouragement. I have been greatly assisted by the staff at Palgrave Macmillan, though particular thanks are due to Jill Lake who has guided me through the editorial process with considerable patience.

My final and greatest thanks must be reserved for my family, Jean and Doug, Michaela and Erik. During a difficult year, they have provided both sanity and sanctuary. Without their love, support and friendship, this book would not have been completed.

JANET COTTERILL

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Janet Cotterill is a Lecturer in Language and Communication at Cardiff University, UK, where she teaches forensic linguistics, systemic functional linguistics and language and gender. She has recently completed a doctoral thesis at the University of Birmingham on the discourse structures and strategies of the criminal courtroom. In addition to her research into courtroom language, she is also involved in ongoing work on the comprehensibility of legal language. She is joint editor of *Forensic Linguistics: The International Journal of Speech, Language and the Law*.

Malcolm Coulthard is Professor of English Language and Linguistics in the Department of English, University of Birmingham, UK. He was the founding editor of *Forensic Linguistics: The International Journal of Language and the Law* and was the founding President of the International Association of Forensic Linguists. He has been commissioned to write reports as an expert witness in over 150 cases and has given evidence in three terrorist trials in Northern Ireland and in a case of academic plagiarism in Hong Kong. He has appeared as an expert twice in the Court of Appeal, including the successful

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Débora de Carvalho Figueiredo lectures at Faculdades Barddal in Southern Brazil. Her research interests include the investigation of issues of gender and power in legal discourse from the perspectives of critical discourse analysis, gender studies and feminist legal studies, as well as the investigation of professional discourses. She has published articles about the discourse of women's magazines, the teaching of reading from the perspective of critical discourse analysis, and the discourse of legal decisions on rape.

Chris Heffer lectures in linguistics at Nottingham Trent University, UK. His doctoral dissertation at the University of Birmingham dealt with the language of legal professionals in the courtroom. For many years he lectured in English Language at the University of Venice. He has also been a professional translator, editor, courtroom interpreter and voiceover artist. He is a member of the Birmingham Forensic Linguistics Group and has presented a number of papers on forensic topics at international conferences.

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Sonia Russell was a Member of the Institute of Linguists and graduated from Aston University, Birmingham, in 1998, with a MSc in teaching English for specific purposes. She was a French/English legal interpreter based in Dover, England, and worked for Kent Police, the Facilitation Support Unit, Dover and HM Customs & Excise. She received her doctorate from Aston University, Birmingham, UK.

Roger W. Shuy is Distinguished Research Professor of Linguistics, Emeritus, at Georgetown University, USA where he specialised in sociolinguistics and forensic linguistics. After retiring to the mountains of Montana, he continues to consult with attorneys, carry out research and write. His most recent books include *Language Crimes* (Blackwell, 1996), *The Language of Confession, Interrogation and Deception* (Sage, 1999), *Bureaucratic Language* (Georgetown Press, 1999) and *A Few Months to Live: Different Paths to Life's End* (Georgetown Press, 2001). He has consulted on hundreds of criminal and civil law cases and has served as expert witness on 50 occasions.

Lawrence Solan is a Professor of Law at Brooklyn Law School, USA. He holds a PhD in linguistics from the University of Massachusetts, and a law degree from Harvard Law School. After graduating from law school, he clerked for Justice Stewart Pollock of the Supreme Court of New Jersey, after which he practised law in New York. He is the author of *The Language of Judges* (University of Chicago Press, 1993), and a number of articles on the relationship between linguistics and matters of legal interpretation. He has lectured widely on issues of language and law, including to American judges, and has recently taught a course on that subject as a visiting faculty member at Princeton University. He is the current President of the International Association of Forensic Linguists.

Gail Stygall is Associate Professor of English Language and Literature at the University of Washington, USA, where she teaches discourse analysis, rhetoric and legal discourse. She has written *Trial Language* (Benjamins, 1994), as well as articles on legal discourse, narrative, social constructions of minority students in the USA, writing assessment, and language and gender, appearing in collections and journals. She is also the co-editor of *New Directions in*

Portfolio Assessment (Boynton/Cook, 1994) and her co-edited collection with Ellen Barton, *Discourse Studies and Composition* will appear in March 2001 (Hampton Press). She consults on cases ranging from patent and trademark to immigration and criminal confessions. She is currently completing *The Discourse of Divorce and the Foucaudian File*.

Peter Tiersma is Professor of Law and Joseph Scott Fellow at Loyola Law School in Los Angeles, USA, where he has taught for the past ten years. He holds both a doctorate in linguistics (University of California, San Diego) and a JD in law (Boalt Hall, U.C. Berkeley). He is the author of *Legal Language* (University of Chicago Press, 1999) and several articles on language and law published in the *Texas Law Review*, *Wisconsin Law Review*, *Southern California Law Review*, *Rutgers Law Review*, *Language*, and other venues. Presently, he and Lawrence Solan are writing a book that is tentatively entitled *Language on Trial: Linguistics and the Criminal Law*.

Karen Tracy is Professor of Communication at the University of Colorado, Boulder, USA. She studies problematic exchanges in institutional settings. She has published articles in communication and language/discourse journals examining different kinds of interactional difficulties in citizen calls to the police, and is the author of *Colloquium: Dilemmas of Academic Discourse*. She is currently editor of the journal *Research on Language and Social Interaction*.

Introduction: Language in the Legal Process

The aim of this collection is to bring together into a single volume some of the key researchers currently working in the areas of forensic linguistics and language and the law. A distinctive feature of the book is the range of contributors involved; researchers from six countries and four continents are represented, including North America, the UK, Brazil, Australia and South Africa. Many of the authors, in addition to being academics, are currently or have previously been employed as practitioners in the legal process; thus, the collection includes papers by an ex-police officer, courtroom and police interpreters, lawyers and a bankruptcy judge, as well as academics who are actively involved in language reform in legal contexts or in expert witness work.

Several important issues and concerns permeate this collection of papers. Many of the chapters (Coulthard, Tracy and Agne, Johnson and Cotterill) deal with the communicative difficulties which occur at the legal – layperson interface, in terms of interactional problems faced by victims, witnesses and suspects who come into contact with the legal process. A second group of papers deals with the communicative problems caused by legal texts (Stygall, Tiersma, Heffer and Dumas), with several suggesting practical measures for improving the comprehensibility of legal language. Finally, a number of chapters, including those by Tiersma, Russell, Berk-Seligson, Eades, Moeketsi and Bernstein, address the particular problems faced by non-native-speaker witnesses, suspects and defendants within the legal system.

The first part of the book begins with a pair of papers which analyse the work of the linguist as an expert witness. Two highly experienced linguistic consultants, Shuy and Coulthard, discuss the roles and responsibilities of the linguist as consultant, each illustrating their discussions with high-profile cases with which they have been associated. Shuy outlines some of the types of evidence linguists are able (and, significantly, are *not* able) to present to lawyers and juries, whilst Coulthard's paper discusses three cases referred successfully to the Court of Appeal in the late 1990s. A second pair of papers, by Stygall and Tiersma, focus on immigration documentation and warning labels, respectively, and deal with the role of the linguist as language reformer. They explore the issues of transparency and comprehensibility in documents designed by the legal community but intended ostensibly for a lay end-user.

The next part of the book has a more descriptive orientation. The chapters move through the chain of forensic events from an initial 911 emergency call reporting a crime through to the police interview situation and beyond into

the courtroom. Tracy and Agne's paper analyses the interactional dynamics of the emergency call centre. The chapter's concern is to explicate how, where, and in what ways person-description is a morally loaded undertaking in both spontaneous and elicited descriptions. The following papers by Russell and Johnson focus on the UK police interview, both in its monolingual and interpreted forms, and explore some of ways in which the strategic choices in questioning strategies may influence the evidence elicited from native and non-native-speaker witnesses and suspects. This theme is further developed by Berk-Seligson, who studies linguistic coercion in the setting of a US police interrogation which involved the violation of the suspect's Miranda rights. The case discussed demonstrates the dangers of using police officers as foreign language interpreters during interrogations.

The second half of the book takes the courtroom as its setting, and includes coverage of both criminal and civil courtrooms, as well as appeal courts and non-trial routes to justice. Part III includes papers on two of the highest profile US cases of the late 1990s; Cotterill begins with a comparative analysis of testimony from the criminal and civil trials of O.J. Simpson, tracing intertextual echoes in the narratives of the two trials. Solan's chapter explores ex-President Clinton's impeachment trial testimony, and, drawing on speech act theory, pragmatics and lexical semantics, discusses what it means to tell the truth, and what it means to tell a lie in a legal context.

The third and fourth papers in this part discuss some of the linguistic and cultural difficulties faced by witnesses in court. Eades' chapter analyses the trial testimony of three teenage Aboriginal boys in Australia. She illustrates how some of the linguistic strategies used by the cross-examining lawyers succeeded in manipulating and misconstruing the evidence of the three boys. The section concludes with Moeketsi, who presents an analysis of Alternative Dispute Resolution (ADR), a structured alternative to conventional litigation processes. Drawing on data from South African tribunals, she argues that untrained and inexperienced interpreters are being used to facilitate discourse where business and labour almost invariably comes from different language and cultural groups.

The final section of the book focuses on the judge and the jury in the adversarial trial setting and returns to the issue of comprehension and comprehensibility. In the context of a US bankruptcy hearing over which the author presided as judge, Bernstein explores what forensic linguistics can contribute to improving a trial judge's understanding of talk exchanges between parties, and encourages linguists to carry out further research in bankruptcy court settings.

For Heffer and Dumas (reporting on trial data from the UK and the US, respectively) the focus is the jury rather than the judge and the problems faced by jurors in understanding complex and legalistic jury instructions. Heffer argues that different modes of reasoning between legal professionals and laypeople may lead to problems with comprehensibility. Dumas' paper,

relating to instructions in capital cases, also raises concerns about comprehension and comprehensibility; she reports a collaborative critique of the *reasonable doubt* standard and argues that jurors in a recent case were confused by the jury instructions presented to them by the trial judge.

The final chapter of the book moves to the appellate stage of trial proceedings. Figueiredo analyses a corpus of appeal decisions in English rape cases. Within a Foucauldian framework, she discusses the judicial discourse surrounding sexual assault and rape, and explores the relationship between trial testimony and legal judgements in reported appellate decisions on rape cases.

In summary, *Language in the Legal Process* represents an attempt to provide an overview of current and ongoing concerns in forensic linguistics and language and the law, and, it is hoped, will serve as an inspiration for further research in this dynamic and important area of applied linguistics.

JANET COTTERILL
Cardiff

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Part I

The Linguist in the Legal Process