**11 Forensic Linguistics and Language and the Law**

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**What is Forensic Linguistics and Language and the Law?**

Forensic linguistics is a rapidly growing sub-field of applied linguistics; it is now well-established as a field of linguistic inquiry with its own professional organisation *International Association of Forensic Linguists*, peer-reviewed journal *International Journal of Speech, Language and the Law*, annual summer school *International Summer School in Forensic Linguistic Analysis*, research centres (e.g. Centre for Forensic Linguistics, Aston University), and a constantly increasing number of study programmes on offer (e.g. Aston University, University of Cardiff, Hofstra University). In its broadest sense, forensic linguistics is the study of language in legal and investigative settings. The field can further be categorised into three overlapping areas (Coulthard and Johnson, 2010; Coulthard *et al.*, 2011; Perkins and Grant, 2013**;** Oxburgh *et al.*, 2015):

1. investigative forensic linguistics (e.g. comparative authorship analysis, sociolinguistic profiling, determining disputed meaning, analysing disputed interactions, trademark and copyright infringement, plagiarism, deception detection, language analysis for the determination of origin, native language identification);
2. the study of the written language of law (e.g. readability and comprehensibility of legal language, ambiguity in legal language, interpreting legislation, issues in legal translation, language policy);
3. the study of communication in the legal process (e.g. police interviewing techniques, courtroom discourse, vulnerable victims/witnesses, legal-lay communication, court interpreting).

The three streams often focus on all levels of linguistic analysis (i.e. lexis, grammar, syntax, discourse), while drawing on general linguistics and applied linguistic studies (sociolinguistics, pragmatics, discourse analysis, psycholinguistics, conversation analysis, first/second language acquisition) as well as non-linguistic disciplines (law, criminology, psychology, forensic sciences). Given the interdisciplinarity and breadth of topics, the wider field of forensic linguistics and language and the law aims to enhance access to justice through the provision of linguistic expertise in criminal and civil cases, impact best practices in the legal sphere, and improve communication in legal and investigative settings. This chapter presents recent developments in all three streams while placing more emphasis on the latter area, i.e. communication in the legal process, as it is closely related to pedagogical implications of applied linguistics and the main focus of this edited collection, thus strengthening intersections with other chapters.

**Investigative Forensic Linguistics**

Investigative forensic linguists provide “advice and opinions for investigative and evidential purposes” (Coulthard *et al*., 2011: 536). The field is therefore constantly developing its methodology base, combining quantitative and qualitative approaches and establishing innovative methods to tackle new research challenges. Despite these developments, forensic linguistic methods are sometimes perceived as less scientific than methods of other forensic sciences. Interestingly though, a closely related field of forensic phonetics (see the web site of the professional organisation *International Association for Forensic Phonetics and Acoustics*) is considered to be more scientific because the provision of acoustic and articulatory analysis involves research methods which in their nature resemble more exact forensic sciences. As a result, in the UK, forensic phonetics is classed under the Forensic Science Regulator as a field of digital forensics (i.e. forensic phoneticians need to meet the quality standards of the regulator), whereas forensic linguistics research methods cannot be easily mapped out onto the strict requirements of the Forensic Science Regulator (“Forensic Language Analysis”, 2015). Since it is essential to be “cognizant of the needs of the court when undertaking any investigative work” (Coulthard *et al*., 2011: 536), investigative forensic linguists have been developing valid and reliable research methodology to ensure their expertise conforms to the practice directions of the applicable jurisdiction (e.g. the Daubert criteria in the US, the UK Law Commission criteria, the Criminal Procedure Rules of the Ministry of Justice in England and Wales) and can therefore be admitted in court (Grant, 2013: 468, “Forensic Language Analysis”, 2015). The challenge is that investigative work can be extremely varied and each case may require developing its own methodological approach.

Perhaps one of the most well-known and methodologically interesting areas of investigative forensic linguistics is comparative authorship analysis; such cases typically involve a disputed/anonymous text or texts and a set of undisputed texts for comparative purposes. The objective is to determine whether the anonymous or disputed text(s) could have been authored by the author of undisputed texts; in case there are more suspects, several sets of their sole-authored undisputed texts would be compared to the disputed text(s). Typologically, anonymous texts under investigation vary from ransom notes and suicide notes through wills to extortion letters and terrorist conspiracy communication; in recent years the need to examine shorter texts such as text messages, emails or social networks (e.g. Twitter feeds) has been on the increase (Coulthard *et al.*, 2011: 536). To ensure the comparative analysis can be conducted, it is important to have a large enough database of the known texts in the genre as similar as possible to that of the disputed text(s). Unless these criteria are met (i.e. adequate quantity and representativeness of texts as well as their genre comparability), forensic linguists cannot contribute much to the investigation as the analysis would not be reliable (Grant, 2013: 473). Interestingly though, the length of the text is not an issue: text messages or Twitter feeds, for instance, offer a rich source of syntactic, grammatical and lexical idiosyncrasies (e.g. omission of auxiliary verbs or other word classes, irregular spellings, language play), which can reinforce their function for investigative purposes (Grant, 2013: 474-475).

The starting point for authorship analysis has traditionally been the premise that every native speaker has an idiolect and uses language in unique and distinct ways (*see* Chapter XXX, *Sociolinguistics*). Forensic linguists have therefore worked with “the assumption that (…) idiolect will manifest itself through distinctive and idiosyncratic choices in speech and writing” (Coulthard and Johnson, 2007: 161). The theory “has not thus far been supported by empirical research” (Kredens, 2002: 405) and it is applied by forensic linguists to various degrees. One approach stems from the cognitive theory of idiolect (also referred to as stylometry), which relies on quantitatively measurable aspects of individual’s cognitive capacity (Grant, 2010: 510), such as syntactic and sentential complexity, vocabulary richness, word frequency, content analysis, readability measures, use of punctuation, and errors in punctuation, grammar, spelling or word forms (Chaski, 2001: 1). The clear advantage of the approach is its quantifiability that is often perceived as more objective (Grant, 2013: 470). Another approach is more qualitative in its essence, i.e. a stylistic theory of idiolect (Grant, 2010: 512). It provides an explanation as to how and why the language of individuals varies: our linguistic experiences help us develop distinctive features in our language use (Grant, 2010: 512). As opposed to the stylometric approach, the stylistic approach to idiolect does not work with universally pre-determined features; it becomes the task of the forensic linguist to identify distinctive features upon the qualitative examination of the texts, which makes this approach more suitable for shorter texts (Grant, 2013: 471).

One such example of utilisation of the stylistic approach comes from the case of Jenny Nicholl, a nineteen-year-old teenager from Richmond in the UK, who disappeared in June 2005. She was killed by her lover David Hodgson, who subsequently sent four messages from her phone to her friends and relatives in the period of nine to fourteen days after her disappearance. The forensic linguist Malcolm Coulthard was asked by the police to analyse these four text messages sent from Jenny’s phone as well as 11 text messages she sent previously and seven text messages sent by David Hodgson for comparative purposes. Coulthard analysed Jenny’s undisputed messages and Hodgson’s messages separately in order to identify a series of consistent and distinctive lexical choices for both (Grant, 2010: 515-517; Grant, 2013: 475-476; Perkins and Grant, 2013): Jenny was more likely to use ‘my’ and ‘myself’ whereas Hodgson tended to use pronouns ‘me’ and ‘meself’ characteristic of North Yorkshire variety; Jenny used ‘im’ whereas Hodgson used ‘I am’; Jenny used ‘am not’ or ‘I’m not’ whereas Hodgson used ‘aint’; Jenny used ‘2’ for ‘to’ without space afterwards but this feature was missing from Hodgson’s texts; Jenny used ‘cu’ for ‘see you’ whereas Hodgson used ‘cya’. The comparison of these features alongside a few other ones in the three text messages of unknown authorship helped Coulthard come to the conclusion that the text messages sent after Jenny’s disappearance were consistent with Hodgson’s style, but not compatible with Jenny’s style (Grant, 2010: 515). Although the body was never found, David Hodgson was convicted of murder based on such circumstantial evidence as mobile company records, car hire records and forensic linguistic evidence. Coulthard had a unique opportunity to present his evidence in court with a Power Point presentation highlighting all the distinctive features in Jenny’s texts and how they appeared in the suspect texts (Coulthard, 2010). In this case, Coulthard did not only “describe consistent patterns of written style within an author’s text, [but] also attempted to account for the level of intra-author variation in writing style” (Perkins and Grant, 2013), i.e. by showing the differences between the two authors in relation to the same features. This descriptive approach nonetheless relied on the expert’s identification and selection of the lexical features for the analysis (Grant, 2013: 476).

Grant (2013) built on Coulthard’s methodology and proposed a more robust quantified methodology tested on the case of Amanda Birks. In January 2009, Amanda’s body burnt in the attic of her house under suspicious circumstances. In the morning on the day, she and her husband, Christopher Birks, were seen in the house by an employee of their joint company. In the afternoon, several text messages were sent from her phone to her husband, employees and relatives. The messages suggested that she and her husband were experiencing marital problems and that she would go to bed early, “relaxing with candles” in the attic room (Grant, 2013: 468). In the evening, Christopher Birks called a fire brigade before rescuing his children from the house. When the fire brigade arrived, they were told that Amanda was trapped in the attic room, but they were only able to recover Amanda’s burnt body, which made it difficult to assess the cause or manner of death. Forensic examination of her body revealed that she went to bed in her day-time clothes and that she did not inhale any carbon monoxide from fumes; the burglar alarm log showed that there was no movement in the house during the afternoon. The police also suspected that the text messages sent in the afternoon could have been written by somebody else. Grant was asked to examine Amanda’s undisputed text messages sent to eleven different recipients a few days prior and 203 text messages by her husband to ten different recipients in order to determine the authorship of the disputed messages sent in the afternoon on the day of the fire.

Similarly to Coulthard, Grant (2013: 478-483) started by identifying consistent features for both of the authors using corpus linguistic tools (word lists) and identifying lexical items, spelling choices, use of spaces, letter/number substitutions, and any abbreviations and initialisms. To avoid potential subjectivity and selectivity of the analysis, Grant, however, only incorporated features which occurred in both sets of undisputed text messages at least ten times, which left him with twenty-eight features. The following step was to determine discriminatory features, i.e. features that were used predominantly by one of the authors but not the other one. The benchmark set was for the feature to occur at least twice as often in one of the author’s messages than in the other one’s, which further reduced the number of features to eighteen (e.g. Amanda used ‘t’ for ‘the’, but it was rare in her husband’s messages; Amanda used ‘ad’ for ‘had’ but this did not occur in her husband’s messages; her husband used ‘2’ for ‘to’ without space, but this feature did not occur in her messages). The features helped “demonstrate a relative consistency of habit and a pairwise distinctiveness which thus can be used to stylistically discriminate between messages” (Grant, 2013: 480). To demonstrate the degree of distinctiveness, Grant (2013) used Jaccard’s coefficient (i.e. a binary correlation used in forensic psychology as a similarity/distance measure) to test a random sample of 100 text messages for both authors in contrast to the disputed texts. The results showed that disputed texts were much closer in style to the husband’s messages. The final stage included a qualitative comparison of individual disputed messages to the list of the eighteen distinctive features, which showed that the disputed messages are distinctive from those authored by Amanda but consistent with the style of those written by her husband. Christopher Birks was subsequently charged and sentenced for murder of his wife and the endangerment of the lives of his children and firefighters (Grant, 2013:468).

By building on different areas of applied linguistics, forensic linguists have helped in investigations and testified for prosecution and defence in different types of cases. Drawing on sociolinguistic research, Shuy analysed a ransom note and concluded that the author was an educated man from Akron, Ohio trying to disguise himself (he made spelling mistakes in simple words, but spelt correctly more complex words and included dialectal lexis), which provided the police with enough information to find the suspect (Perkins and Grant, 2013). In trademark litigation, linguists are called in to testify on the likelihood of confusion in relation to sight, sound and meaning and the strength of the mark (Butters, 2010: 353). Butters (2010) reports on the case of Circuit City Stores, Inc. v. Speedy Car-X, Inc. when he provided expert evidence in court that customers were unlikely to confuse CarMax (a chain of second hand car shops established by Circuit City) with CAR-X (car servicing company). As a result, Circuit City was allowed to continue using CarMax trademark. Linguists also contribute to deception detection cases by analysing verbal cues (Vrij *et al*., 2016) and consistency in presentation of facts. Shuy (1998: 79-86) reports on a case when he was able to show that a man suspected of killing his wife was consistent in his statements to the police revealing potentially incriminating motive but denying the knowledge or memory of allegedly killing his wife, which contributed to the police dropping the charges.

Similarly, Coulthard’s expert testimony helped to overturn a guilty verdict posthumously when he showed that the statement of the executed teenager Derek Bentley given at the police station was not a verbatim record, but a combination of questioning and response turns presented as an incriminating monologue (Coulthard and Johnson, 2007: 173-180). The case of Patrick Molloy also involved fabricated evidence by the police in which Coulthard was able to show that the handwritten record of the police interview was constructed on the basis of a forced confession and was not authored by the defendant (Coulthard *et al*., 2011: 540). The two cases are from a time when statements were produced on the basis of contemporaneously handwritten transcript of the interview. The introduction of routine tape-recording as part of the Police and Criminal Evidence Act 1984 alongside the enforcement of the protocol for non-coercive police interviews contributed to the fact that since then there have not been cases of coerced confessions in the UK (Grant, 2010: 219).

The cases referred to in this section illustrate an important role that linguists play when working with the police, prosecution and defence teams on facilitating access to justice. The last two cases also show how strong the link is between the three streams of forensic linguistics, i.e. investigative forensic linguistics, written legal language and communication in the legal process. These links will become even more evident when jury instructions or police caution are explored in further sections.

**Written Legal Language**

Whereas in the field of investigative forensics, linguists are constantly proactively pushing for their evidence to be accepted by courts, linguistic expertise in relation to written legal language is perhaps more readily accepted. Recent edited volumes (Gibbons and Turrell, 2008; Coulthard and Johnson, 2010; Tiersma and Solan, 2012; Solan *et al*., 2015) showcase an incredible breadth of research topics in the area: history of legal language, syntactic and lexical complexity of legalese, ambiguity and interpretation of legal language, reforming written legal language and the plain language movement, legal translation challenges, language policy, and multilingual jurisdictions. The focus of these research studies revolves around the obscurity of legalese and its syntactic, grammatical, semantic and lexical complexities.

The main features of impersonal and decontextualized legislative writing have been shown to include: nine times longer sentences than in academic writing (Bhatia, 1993: p. 106); nominal phrases (e.g. ‘treatment’ instead of ‘to treat’), prepositional phrases (e.g. ‘by virtue of’); binominal and multi-nominal expressions (e.g. ‘acknowledge and confess’ or ‘give, devise and bequest’); complex sentences with several subordinate clauses (Hiltunen, 2012: 43); minimal use of punctuation to avoid ambiguity (Hiltunen, 2012: 48); initial case descriptions prolonging the subject; qualifications specifying conditions in which the provision applies; syntactic discontinuities (Bhatia, 2004: Chapter 5). The plain language movement and its UK-based plain English campaign, have been advocating for improving readability and overall presentation and organisation of legal documents and different forms of institutional communication since the 1970s. With the example of two insurance documents from 1963 and 2008, Couthard *et al*. (2011: 532-535) show a shift towards a more personable style and the introduction of numbered sections as a co-reference device creating a hypertext document. The syntactic and lexical complexity of the language is nevertheless retained and the authors suggest it is due to the fact that legal language needs to remain context-free.

Adler (2012) argues for the need to further implement the plain language drafting strategies, which include organisational, design-related, grammatical, syntactic and lexical simplifications. Although legalese does present seemingly unnecessary psycholinguistic challenges to lay readers in relation to processing and overall comprehension of the information, it is the complex nature of reality that legislative documents reflect which influences their content and form (Bhatia, 2004: 209). This is the very reason Bhatia (2004) advocates for two versions of legal documents: an ‘easified’ version for the wider specialist public retaining the original integrity of the text while improving its processing and a simplified version for the wider audience explaining everything clearly. According to the author, ‘easification’ devices include clarification of cognitive structuring, reducing information load at a particular point, indicating legislative intentions, and illustrating legislative issues (Bhatia, 2004: 209–218). Tkacukova (2016) illustrates ‘easification’ processes on the example of a court form for financial remedy proceedings filled in as part of divorce proceedings in England and Wales. The author argues that a closer interdisciplinary cooperation with linguists would be beneficial for drafting the court forms, which function for court purposes and elicit legally relevant information but are primarily filled in by lay people.

What is equally important is that understanding and using legal concepts does not only involve linguistic competence, but also such skills as “the ability to identify the pertinent legal rules, principles, and doctrines, to recognize the relevant facts and classify them into the pertinent legal categories, and to engage in a particular type of interpretation and reasoning” (Assy, 2011, p 378). It is discursive competence and practice that play an important role in the ability to actively engage with law (Tkacukova, 2016). The acquisition of discursive competence in professional and institutional settings involves the following aspects: textual competence, generic competence and social competence (Bhatia, 2004: 144). Textual competence is directly related to language and can be broken down into linguistic competence (ability to use specialised language) and communicative competence (ability to interpret and produce contextually relevant texts). Generic competence helps interpret and produce generic conventions of professional practice to achieve desired professional aims (e.g. producing a logical, well-organised and coherent witness statement meeting all formal requirements). Social competence defines one’s social identity and institutional role via the ability to communicate effectively in social and institutional contexts (e.g. effective negotiation strategies). Despite the fact that neither social nor generic competence are of linguistic nature, they contribute to discourse development and help accomplish professional aims, which is consequently reflected in linguistic performance (Bhatia, 2004: 144). Developing discursive competence requires professional training and experience and as such needs to be reflected in pedagogical approaches towards English for Specific Purposes curriculum. Embedding employability into the curriculum and planning the teaching provision around task-based learning and communities of practice is an effective way of supporting the development of students’ discursive competence.

**Communication in the Legal Process**

The study of communication in the legal process focuses mostly on legal-lay spoken interactions, but also communication at the intersection of written and spoken genres. For instance, juror instructions are customarily read out loud by the judge and as such they tend to include complexities characteristic of written legal language. What makes jury instructions even more complex is that they are being perceived through the spoken medium, thus causing even more challenges to the comprehension process. Due to syntactic and lexical complexities and the fact that written text is being read out, jurors often experience problems understanding instructions (Marder, 2012). Since the recipients are lay members of the public, the techniques of the plain language movement become important to ensure the text is accessible. One example of a successful linguistic intervention is Tiersma’s involvement in the simplification of juror instructions in California (Schane, 2006: 4); below is the beginning of the older version alongside the new one:

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| Old California instruction: BAJI 2.00  Evidence consists of testimony, writings, material objects or other things presented to the senses and offered to prove whether a text exist or does not exist.  Evidence is either direct or circumstantial.  Direct evidence is evidence that directly proves a fact. It is evidence which by itself, if found to be true, establishes that fact.  Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn. | New instruction: No. 202  Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone’s opinion.  Direct evidence can prove a fact by itself. For example, if a witness testifies she saw a jet plane flying across the sky, that testimony is direct evidence that a plane flew across the sky. Some evidence proves a fact indirectly. For example, a witness testifies that he saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as “circumstantial evidence.” In either instance, the witness’s testimony is evidence that a jet plane flew across the sky. |

The new version is easier to follow as the text clearly specifies and illustrates different types of evidence. Similar to jury instructions, police caution is another area where it is essential to ensure mutual understanding. The police recite the caution when arresting a person or beginning an interview, but since there is a lot at stake for detainees, the police may need to check their understanding or explain the official wording in a clear way (Rock, 2012: 313). An example of a successful cooperation between linguists and legal professionals is Gibbons’ contribution to the revisions of the New South Wales Police Code of Practice drafted with the aim to encourage use of interpreters, improve police interviews, and enhance the intelligibility of the scripts for police cautioning (Gibbons, 2001). Despite these individual achievements, jury instructions and police caution need to be further explored in different jurisdictions with linguistic advice as part of the process (Rock, 2012: 325).

Since numerous legal-lay interactions happen on a daily basis, the research on communication issues in investigative and legal settings plays an increasingly important role in facilitating access to justice through raising the awareness of legal professionals and the wider public to the role language plays in defining power relations and imbalances in interactions, eliciting narratives and confessions or detecting deception. Recent edited volumes (Tiersma and Solan, 2012; Coulthard and Johnson, 2010; Heffer *et al*., 2013; Oxburgh *et al*., 2016a) cover topics on police interviewing, communication in court, communication with suspects and defendants, communication with victims/witnesses, engagement with vulnerable victims/witnesses, self-representation, and interpreting in legal settings.

Given the significance of legal-lay interactions for access to justice, the study of communication in the legal process bears direct pedagogical implications for teaching English as a second language as well as secondary school curriculum on citizenship education, for instance. Whether lay people are communicating in their first language or not, they need to be aware of the role language plays in the legal process, how to communicate effectively and ensure their voice is heard, when to require a legal representative and/or interpreter, what consequences different wordings can have, what the aim of the police interview is and how it is used in court, how to present your story during examination-in-chief and resist coercive questioning during cross-examination. In order to include these essential aspects on the curriculum, the teaching staff need to be aware of the recent research on police interviewing and courtroom discourse (both presented below).

**Police interviewing discourse**

The previously mentioned Police and Criminal Evidence Act 1984 has set the tone for ethical and fair police interviewing and prompted the move from a confession-seeking objective of police interviewing to a more balanced information-elicitation and search-for-the truth approach; the UK model of ethical police interviewing is now being adapted in other jurisdictions (Grant, 2010: 219). The task of the interviewer is to be a neutral participant fulfilling an “inquisitorial role rather than the traditional prosecutor one” (Williamson, 1994 qtd. in Milne and Bull, 1999: 158). The understanding of the police interviewing process as a complex activity involving several interlocutors (Milne and Bull, 1999: 55) has given rise to the PEACE framework in the early 1990s (Dando *et al*., 2016: 80). PEACE is the mnemonic acronym for the five stages of the interview process: Planning and preparation; Engaging and explanation; Account, clarification and challenge; Closure; and Evaluation. While the first and the last stages involve the police interviewers only, the three stages in between concern the interviewing process itself. The interview thus progresses in the following stages:

1. eliciting an open account through open topic-initiation questions (Grant *et al*., 2016: 22), including TED questions (Tell, Explain, Describe);
2. challenging the account through presenting conflicting evidence and asking topic facilitation questions (Grant *et al*., 2016: 22), such as close ended and clarification questions;
3. summarising the evidence elicited and giving an opportunity to the interviewee to add anything else.

There are several approaches stemming from the PEACE model depending on the types of interviewees: cooperative witnesses/victims, reluctant witnesses/victims, and suspects. A witness/victim centred interview, the Cognitive Interview (CI) approach, is most appropriate for cooperative witnesses/victims; the aim is to build rapport and help witnesses/victims trigger recollection by asking open-ended questions and helping them recreate relevant cognitive contexts linked to the events (Dando *et al*., 2016: 82). With uncooperative or reluctant witnesses/victims, it is important to employ conversational skills to gradually encourage the disclosure of information, hence the Conversation Management (CM) approach; an important part of the approach is explanation of the process as well as active listening and effective questioning techniques (Dando *et al*., 2016: 93). When interviewing suspects it is equally important to start with open-ended questions to build rapport and gain their trust and only then move on to account clarification and challenge, i.e. to follow the PEACE model (Oxburgh *et al*., 2016b: 144). Despite the differences in approaches taken depending on the type of an interviewee, the prevailing aspect is the ethical considerations behind the interviewing techniques in order to eliminate cases of miscarriages of justice and raise the public’s confidence in the work of the police.

Research on investigative interviewing lies at the intersection of forensic psychology and forensic linguistics. Forensic linguistics draws upon Conversation Analysis, Discourse Analysis, Corpus Linguistics and Pragmatics when researching topics which have traditionally been dominated by forensic psychology (e.g. investigative interviewing techniques, suggestibility of interviewing questions, strategies for building rapport, deception detection techniques, interviewing vulnerable witnesses/victims). Applied linguistic research has thus brought a better understanding of different types of interviewing questions and the fact that the function of questions is as important as their grammatical structure (Oxburgh *et al*., 2010; Grant *et al*., 2016). Patterns of cooperation between two interviewers were also found to have an impact on the interviewing process, which means that the training materials need to bring more clarity on the roles two interviewers have during the process (Tkacukova and Oxburgh, forthcoming). The journey of police interviews from the police station to court has brought the linguists’ attention to the analysis of intertextuality (Rock, 2013) and audience design (Haworth, 2013). This leads to two points which need to be further explored: the interviewees need to be aware of the fact that police interviews are not a single event conversations, but they can potentially be used in court (see section on pedagogical implications); legal professionals need to be aware of the dangers related to the current use of interviews (i.e. audio recordings are transcribed and can then be read out in court) with several transformations between spoken and written form and the susceptibility of the process to re-interpretations and (un)conscious changes in meaning (Haworth, 2010). A further research strand is on vulnerable witnesses/victims (e.g. children, rape victims, non-native speakers of the target language, people with visual or auditory impairments, learning difficulties or mental health problems) which aims to improve the process of communication. The introduction of regulated intermediaries to assist vulnerable victims is a very good example of effective involvement of professionals in legal proceedings to ensure unimpeded communication (for more information, please see http://www.theadvocatesgateway.org). What links the above-mentioned research topics is pursuit for effective communication under fair and transparent conditions during the stages of police interviewing. The communication process during adversarial court proceedings (i.e. Anglo-American common law legal system), however, presupposes imbalances in power and can be even more difficult for lay people to participate in.

**Courtroom discourse**

An essential principle of the adversarial legal system is witness examination, which consists of examination-in-chief, cross-examination and sometimes re-examination. Through examining witnesses, the two parties present their versions of events to the judge and/or jury. While examination-in-chief is conducted by a friendly counsel, cross-examination can often turn into a very intimidating experience as it is conducted by an opposing counsel. The main aim of a cross-examiner is to discredit the testimonies of witnesses by casting doubt on their credibility or their presentation of events (Gibbons, 2003: 112). This is achieved by controlling witness responses and limiting their interactional space through coercive questioning. Cross-examination questioning turns (e.g. leading questions, questions with an embedded message implying alternative interpretations) present an opportunity for counsels to communicate their interpretation of evidence to the judge and/or jurors (Hobbs, 2002: 416). The right to ask questions is a discursive tool (Thornborrow, 2002) that provides cross-examiners with an opportunity to control not only witness replies and formulation of facts, but also turn-taking management, topics and their sequence as well as (re)interpretation of facts (Tkacukova, 2016). This makes it difficult for witnesses to resist pressure put on them or gain a more powerful position in order to tell the court their side of the story. Even the physical arrangements of courtrooms (e.g. the positioning of the judge on a dais, a symbolic display of emblazoned arms, ceremonial dress code of robes and wigs worn by legal professionals, long distances between the participants) put emphasis on the power of the judge and the authoritativeness of the judicial process.

Given the constant imbalance in power relations between legal and lay participants as well as the gravity of court cases, courtroom discourse presents an impactful topic for researchers. For instance, research on court interpreting highlights the role language plays in court proceedings: pragmatics and implied meanings are an essential part of communication in court, but can be difficult to relay in constrained and stressful situations in which court interpreters work (Hale, 1999). Providing interpreters with evidence-based training opportunities will help them overcome cross-linguistic challenges between languages as well as better understand court discourse and their role in it (Hale, 2010). Although training interpreters is a long-term goal, some achievements have been made in other areas. Studies on vulnerable victims/witnesses have led to the implementation of several changes when dealing with children or vulnerable adults, such as conducting witness examination via video-link to a friendlier environment, asking grammatically, syntactically and lexically simple questions, modifying the procedure, and using the services of an intermediary (Gibbons, 2003: 231, O’Mahony *et al*., 2016). Another change was introduced to the process of cross-examining sexual assault victims; the defence in the UK, for instance, can no longer ask the victim about their previous sexual experience without a court-approved application to do so (Henderson *et al*., 2016: 194). To protect rape victims further, defendants representing themselves without a lawyer are not allowed to cross-examine the victims directly (Henderson *et al*., 2016: 194). Behind these changes lies the recognition of the fact that the principle of cross-examination can easily turn into a tool for distorting the truth instead of revealing it (Riding, 1999: 415–418). To rectify this, Henderson *et al*. (2016: 194-200) advocate for such reforms as pre-recorded cross-examination and wider witness education programmes.

Legal-lay communication is at the heart of courtroom discourse as lay people do not only come to court as witnesses, victims or defendants, but also jury or litigants in person (self-represented litigants acting on their own behalf without a lawyer). A common problem for lay people is the way narratives unfold in legal settings. Narrativisation happens on several levels: witnesses come to court to tell their stories, i.e. satellite narratives, which are then utilised by counsels into master narratives by combining satellite narratives with opening statements and closing arguments (Snedaker, 1991 qtd. in Gibbons, 2003: 155). While master narratives form a general frame, satellite narratives complete the gaps in master narratives. Master narratives are thus formed gradually; it is only at the final stage of closing arguments that all narratives are integrated into one master narrative.

The challenge for lay people lies in the fact that master narratives are nonlinear and multi-perspectival (Cotterill, 2003: 25). Coulthard and Johnson (2007: 111) emphasise that in courtroom discourse, narrative construction is linked to “narrative disjunction”. Narrative fragmentation is caused by several factors: witness testimonies on related issues do not necessarily follow each other because “legal coherence” is preferred to “narrative coherence” for planning the order of hearings (Harris, 2005: 216); witness testimonies are elicited through the question/answer interaction pattern; counsels control witness testimonies and can either elicit a coherent narration or inconsistent details that disrupt the coherence of the opposing party’s narrative (Gibbons, 2003: 158; Coulthard and Johnson, 2007: 111). The last two aspects are problematic for witnesses as they cannot present their evidence in their own words and they are limited in the type of turns they are allowed to contribute, i.e. responses to questions. Another important aspect is narrative evolution (Cotterill, 2003: 149). Before witnesses come to court to give their evidence, they repeat and re-tell their narratives several times during police interviews because of the necessity to check for inconsistencies. In court, witnesses repeat their testimonies several times during examination-in-chief, cross-examination, and possibly further re-examinations. In addition, all interviews and testimonies are recorded for later hearings or appeals. In this way, multiple courtroom narratives become open-ended for further interpretations.

Narrative fragmentation also presents a challenge for the jury who have to make a mental reconstruction of the events alongside discerning facts from fiction. While witness testimonies are factual narratives since witnesses are called to court to present facts, opening statements and closing arguments are fictional narratives since they provide an opportunity for counsels to present their interpretation of events (Coulthard and Johnson, 2007: 99). Jury instructions discussed above thus present an opportunity to clarify legal aspects to the jury, but the challenge is that the clarity of instructions depends on the way the judge manages to communicate the crucial information.

Fragmentation of narratives is equally problematic for litigants in person (also referred to as self-represented litigants, i.e. people who act on their own behalf without a lawyer in legal proceedings) who find themselves in the position of having to construct master narratives without the experience or skills in eliciting satellite narratives through the question/answer interaction pattern. For instance, instead of asking closed coercive questions during cross-examination, litigants in person were found to ask more open-ended questions, which is counter-productive for their narrativisation techniques (Tkacukova, 2010). In addition, their limited knowledge of court processes and procedures means that they are not always clear on the narrative evolution and cannot plan their court strategy in advance, resulting in incoherent master narratives (Tkacukova, 2016). On the other hand, litigants in person with previous court experience claim that experiencing court processes and procedures is beneficial for any consequential court cases. Wider educational programmes for lay people would undoubtedly help witnesses, victims, defendants, members of the jury and litigants in person and have therefore a positive effect on access to justice.

**Pedagogical Implications**

This chapter has illustrated how forensic linguistics raises legal professionals’ awareness of best practices for effective communication. Raising the awareness of the general public is equally important, especially as part of the secondary school curriculum and foreign language teaching programmes (classes on General English and English for Specific Purposes). Without the basic understanding of the role language, power and narrativisation play in legal settings, lay people may find the system alienating and discouraging. It is therefore extremely important to support young people and adults in developing not only general language competence but also discursive competence, i.e. the ability to communicate effectively in legal settings. Irrespective of whether the person is communicating in their mother tongue or foreign language, they need to understand legal processes and procedures as well as have linguistic and discursive skills to ensure their version of the narrative is heard and they can follow the process (be it in the role of a victim, witness, defendant, litigant in person, a litigation friend, or the jury).

Understandably though, when communication happens in a foreign language, potential complications multiply. Coulthard and Johnson (2007: 137) discuss a case when the police failed to call in an interpreter despite the fact that the detainee explicitly said he could not understand English properly and he could not express himself clearly during the interview. While in this case it is clear that the detainee needed an interpreter, some situations are less clear-cut. Eades (2002) discusses problems Aboriginal witnesses experience in Australian courts due to differences in cultural expectations during interaction: pausing before answering questions to show they are considering a response and using ‘yes’ as a gratuitous response to a question even if they do not agree or do not understand the question itself. Such interaction conventions are, however, highly unusual in mainstream Australian culture and may be perceived as an attempt to deceive the audience. Cross-cultural communication skills are therefore an additional competence for non-native speakers to acquire.

When it comes to efficient ways of acquiring the competences and skills required in legal settings, Katrnakova (forthcoming) discusses the uses of video conferencing as a collaboration between Aberystwyth University, Masaryk University and University of Helsinki. Regular video conferencing sessions are planned as part of English language teaching curriculum for undergraduate law students and visiting Erasmus students at the three universities. A combination of tasks for asynchronous and synchronous communication leading to a mock trial allows students in different locations to follow legal processes and procedures as part of the judiciary, jury, defence legal team, prosecution legal team, police officers, experts, witnesses, press representatives or defendants. The project allows students to create a community of practice, work on realistic tasks directly related to employability, use English as a Lingua Franca for goal-oriented intercultural communication, practice General English and English for Specific Purposes, develop specific discursive competences and acquire a better understanding of legal processes and procedures. A shift towards integrating discursive and professional practices (Bhatia, 2008) into the curriculum for young people and adults enables them function efficiently in pursuing access to justice if they ever find themselves in such a situation.

**Further Reading**

**Coulthard, M., Johnson, A., and Wright, D.** (2016) *An introduction to forensic linguistics: Language in evidence*. London and New York: Routledge.

The book is suitable for anyone interested in finding out more about forensic linguistics; it is helpfully divided into two parts with the first part covering the language of the legal process, including theoretical and methodological approaches, and the second part focusing on language as evidence, including authorship attribution, forensic phonetics, plagiarism investigation and the role of a forensic linguist. The book includes useful activities alongside a list of further readings at the end of each chapter.

**Coulthard, M., and Johnson, A.** (Eds.). (2010) *The Routledge handbook of forensic linguistics.* London and New York: Routledge.

This edited collections includes a comprehensive introduction to forensic linguistics by the editors and a wide range of original chapters by forensic linguists. The handbook is suitable for anyone interested in an in-depth exploration of forensic linguistics, including the language of the law and legal process as well as the applications of linguistic expertise in the legal process.

**Heffer, C., Rock, F., and Conley, J.** (Eds.). (2013) *Legal-lay communication: Textual travels in the law*. Oxford: Oxford University Press.

This edited book illustrates different aspects within the language of legal proceedings with a specific focus on legal-lay communication. The collection of studies brings together a wide range of research topics and methodological approaches to discuss current research on police interviewing, courtroom discourse and judicial discourse.

**Oxburgh, G., Myklebust, T., Grant, T., and Milne, R.** (Eds.). (2016) *Communication in investigative and legal contexts: I*ntegrated *approaches from forensic psychology, linguistics and law enforcement*. Chichester: John Wiley & Sons.

This edited collection demonstrates the importance of communication in investigative and legal settings. Individual chapters discuss existing research and practices related to language and memory, communication with victims and witnesses, communication with suspects, and communication in police and court settings.

**Tiersma, P. M., & Solan, L. M** (2012). (Eds.). *The Oxford handbook of language and law*. Oxford: Oxford University Press.

This book provides a detailed account of existing research and methodological approaches used in the interface of linguistics and law. The collection includes overview chapters, case studies and theoretical descriptions focusing on a wide range of topics: the history and structure of legal language, meaning and interpretation of legal language, multilingualism and language rights, courtroom discourse, forensic identification, intellectual property and linguistics, and legal translation and interpretation.

**Hands-on Activity**

Police interviewing

Police interviewers often cover several topics within the interview related to one or more incidents. Analyse the following extract of one of the topics from a police interview with a suspect interviewed in relation to a sexual assault on his daughter. Analyse the types of questions asked and their function and identify the PEACE stages in the interview (adapted from Tkacukova and Oxburgh, forthcoming). Identify and explain the role of *so*-prefaced questions and third turns (third turns follow Q/A exchanges and offer an acknowledging/ironic/sympathetic/etc reaction to the response):

Int: Ok. This incident that you remember. That you’ve just described about 1 o’clock in the morning. Erm..tell me a bit more about that incident. So it was about one o’clock in the morning and she woke you up?

Sus: She woke us both up yeah.

Int: And…yeah…and you said that…

Sus: It probably happened like once or twice when she was ill.

Int: Right.

Sus: She’s yeah very….I mean once or twice it happened but erm…she woke me…she woke me and (mothers name) up, said she’d been sick and I’d just go in there and clear it all up.

Int: Ok. So you would go in there and sort of clear it all up?

Sus: Yeah, yeah.

Int: Ermm..And what would that entail? Clearing up that..?

Sus: well I’d go on…id go in there with some disinfectant and a cloth and emm mop the floor and dry the floor and change her bedding, get some new bedding and clean it out...put it on the duvet…and maybe the pillows had gone now and it’s on her pyjamas so I put her in new pyjamas on her and erm literally she’s lifted up back into bed and I say, ‘Are you ok?’ ‘Yeah, I feel better now daddy.’ I just lay on top of the bed and put my arm round her and make sure she’s comfy and make sure she’s fine. Until she went off.

Int: Ok. So what you’ve described there is sort of.. after cleaning up you’d lay on the bed with her until she’s gone off?

Sus: Yeah, yeah.

Int: Does that mean going to.. gone to sleep?

Sus: Gone to sleep, yeah.

Int: And then once she was asleep what would you do?

Sus: Well normally I’d, like I did then, I’d just get up and go back to my own bedroom.

Int: Right.

Sus: Or in some cases I’d just fall asleep for a few hours and just woke up like 4 or 5 in the morning or something. About there…occasionally.

Int: Ok. So when you lay on the bed where would she be?

Sus: She’d be.. She’d be facing me.

Int: Right. And where abouts were you..would you be?

Sus: I would just be laid there…id move her over.

Int: Right. And how…how would…what would the arrangement sort of be in the bed. I mean..i take it she was sort of…

Sus: She was under the covers, I’d lay on top of the covers yeah.

Int: Right.

Sus: Yeah.

Int: And what kind of age would (victims name) have been when this was…when these incidents occurred?

Sus: Maybe 5-6.

Int: Right.

Sus: They happened more than once. Maybe two or three times when she was bad.

Int: Yeah.

Sus: and just basically over a couple of years…I just dealt with it all. (mothers name) didn’t get involved with it.

Int: Ok.

Sus: She couldn’t deal with the smell and stuff like that you know?

Int: Right.

Sus: Had a weak stomach.

Int: Ok. Ok. Ok so during….during that time was there any instan…was there anything that you wo..that you would do other than what you’ve described?

Sus: No.

It: Anything that..no?

Sus: No.

For further examples of audio/video recordings and transcripts of police interviews and court hearings, explore such databases as Famous Trials (<http://www.famous-trials.com/>) with materials from the Enron Company trial or O. J. Simpson trial. You could also search archives of public inquiries into specific cases, such as Harold Shipman’s murders of his patients, including trial transcripts:

<http://webarchive.nationalarchives.gov.uk/20090808154959/http://www.the-shipman-inquiry.org.uk/trialtrans.asp>

and audio recordings of police interviews:

<http://news.bbc.co.uk/1/hi/in_depth/uk/2000/the_shipman_murders/the_shipman_files/613286.stm>.

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