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Review

Dimensions of Forensic Linguistics. John Gibbons and M. Teresa Turell (eds) (2008)

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Reviewed by Karen Tracy

Did you know?

- In Hong Kong, a Chinese plaintiff does not have a right to have a Chinese-speaking judge.
- Legal translators may suffer from 'paronymous temptation', in which they incorrectly translate words in one language into cognate words in another.
- Until the eighteenth century in England, the language of the legal profession was primarily French.
- Jury selection in the United States is part of the adversarial process, but in England and Wales, this is not the case.
- 'You are what you read.' By analyzing linguistic tokens and themes, it is possible to construct a profile of the person crafting an anonymous note (e.g. UNABOMBER Manifesto).
- Policespeak is used by professionals who are not police officers.
- Plagiarism laws exist everywhere, but the perceived seriousness of the crime, and likelihood of enforcing it, differ markedly across societies.

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- Israeli courts use adversarial procedures, but they are ones in which there are no juries.
- In Malaysian high courts, more English than Malay is used for speaking and writing.

Dimensions of Forensic Linguistics, a 14-chapter volume edited by John Gibbons and M. Teresa Turell, is full of interesting facts, such as illustrated above, about the workings of language and the law. The purpose of the volume is 'to provide a guide to the multidisciplinary nature of Forensic Linguistics … that could be of interest for scholars, graduate students, and professionals working in Applied Linguistics' (p. 1). As I am not a member of the focal audience, let me begin with a few words about myself. I am a US-based communication scholar, a discourse analyst who studies talk in justice and local governance institutions. In reading this volume, I found myself reflecting about differences between applied linguistics and communication, as well as the particular law and language issues raised in the chapters. As my outsider status was one reason I was asked to do this review, I return at the review's end to share the discipline-reflective thoughts that this book set in motion. First, though, a description of the volume's contents.

The volume is divided into three roughly equal sections, with the first one focusing on the language of the law; the second, on the language of the court; and the third, on issues about forensic linguistic evidence. Authors hail from different countries, with the vast majority being from countries in which English is the main or a preferred institutional language, and the country's legal system is a common law one.

The volume opens with an engaging essay by Peter Tiersma describing the character of legal language and tracing the influences on it brought about by the waves of visitors and invaders to the English shores, including Anglo-Saxon mercenaries, Latin-speaking missionaries, and the Norman invaders. Many of the peculiarities of legal language, such as the use of doublets (e.g. 'to have and hold') and the French language ordering of terms that puts adjectives after nouns (e.g. 'attorney general') can be explained in terms of these larger societal happenings. When the colonies in the new world developed legal systems, they also adopted the idiosyncratic ways of speaking and writing law that had grown up within the common law.

English is now well-established as the lingua franca of international legal activities. In the second chapter, Jill Northcott considers the challenges facing language educators preparing law students and law-related professionals to be able to speak and write English for legal purposes. As students may be coming from civil law traditions where they need to learn common-law thinking, as

well as the language of law, whether the courses should be taught by language teachers or law specialists is, in fact, a matter of debate.

In the third chapter, Chris Heffer examines the language of jury instructions from judges, comparing English and Welsh courts to those in the United States. Judges face the task of reconciling the legal necessities with the need to make what they say comprehensible to the jurors. To insure adherence with the law, courts use pattern instructions. US judges, however, adhere to the template much more closely than their UK counterparts. Heffer sketches out the distinctive linguistic features of judges' communication during their instructions that make them so difficult to understand. He concludes by arguing that more than tinkering with the linguistic form is needed if jury instructions are to function as they should.

Chapter 4 by Phil Hall sketches out the discursive features of policespeak based on study of several Australian states doing interrogations. In policespeak, cars are 'vehicles', police speakers 'put it to you' and ask witnesses 'do you agree that…' Much of the distinctiveness of the formulations, Hall shows, can be related to the rules of evidence. A recent study by Stokoe and Edwards (2008) in the UK complements Hall's work, showing how police speakers also frame their questions as 'silly' as a self-deprecating strategy in order to get suspects to specifically state what would usually be inferred, thereby gaining clear evidence of intentionality.

The last chapter of Part I, written by Enrique Alcaraz Varó, examines the challenges in doing legal translation. Pointing to some of the same linguistic features that Tiersma and Heffer explored in their chapters, Varó also considers whether translation should be conceived as a science, an art, or a skill. He shows that it is not just technical vocabulary words that are sources of trouble. Rather, the everyday words that have acquired particular meanings in the law (e.g. 'discharge') and the amount of repetition that is part of English legal language are as well.

Part II, focusing on the language in the courts, opens with a chapter by John Gibbons analyzing questioning in common law criminal courts. This chapter offers a useful introduction to many of the major kinds of question types (e.g. declaratives, modal tags). Multiple examples are provided of all question types. The chapter's usefulness for more advanced scholars could have been strengthened, however, by relating his list of question types to discourse work on courtroom questioning seen in other traditions such as conversation analysis (Drew 1992), and corpus linguistics (Heffer 2005), or communication (Penman 1990).

The second chapter in Part II, an essay by Richard Powell, raises the question of whether bilingual courtrooms are serving the interests of justice. Inspection of courtrooms around the world finds many kinds of bilingual practices. In

Malaysia most of the courtroom talk is in Malay but a judge can be found to reprimand counsel in English. In Botswana, a question may be put in English and responded to in Setwan. Powell narrates the complexities, noting that many courts where bilingual discourse occurs do not permit taping. Hence the task of making a careful assessment of what is actually occurring in courtroom bilingual exchanges is a difficult one.

In the next chapter Dennis Kurzon examines the meaning of silent witnesses through analysis of a case that occurred in an Israeli Appeals Court in the 1990s. The case (Haj Yehai) concerned whether the Court should accept prior police testimony if the witness refuses to testify. Kurzon develops the legal dispute in terms of pragmatic versus literal interpretive differences between the majority court opinion and the minority one. He argues that it may be reasonable to allow judges to make decisions based on hearsay whereas a legal system that relied on 'lay' jury members might not want to. I don't think I agree with his argument, but it's an interesting position that merits reflection.

Diana Eades's chapter examines the politics of disadvantage as it applies to the expression and interpretation of the communication of the intellectually disabled, deaf speakers, second dialect speakers, and other minority groups. Deaf silence, for instance, is often treated as a sign of noncooperation. Furthermore, sign language does not possess many legal terms. In translating English into sign language, there is no word for assault; 'assault' must be translated as 'fight', 'punch', or 'slap'. Eades's chapter makes visible the multiple ways the courts can be unfair to persons with linguistic differences.

The final chapter in Part II, an essay by Ester Leung, examines how the processes of interpreting work in Hong Kong courts. She argues that interpreters are in a difficult position, often finding themselves scapegoated for other difficulties occurring during trials. Until 1997, when Hong Kong returned to the mainland, English was the language of the law and government institutions. Although the Cantonese language has become more prominent in other professional contexts, it is still not much used in the law. Three of the Hong King universities continue to train lawyers only in English. Chinese defendants regularly have judges who speak no Cantonese, and all too often, defendants are tried using the services of an interpreter who has had limited training.

The chapters in Part III focus on different issues regarding forensic linguistic evidence. Tim Grant's chapter, the first in the section, overviews the kinds of debates surrounding authorship analyses of written texts. Grant explains Love's distinction between four kinds of authorship, initially developed for literary works, and then he applies them to the kind of texts a linguist might be asked to examine in court. Of interest was his discussion of the difficulty in persuasively portraying self in a written note to be less educated than one actually is. Writers seeking to disguise their education level often use inappropriately simple forms.

In the second chapter, Ronald Butters explicates how a linguist would go about analyzing the degree of similarity between two trademarks, illustrating the three dimensions of comparison using a pharmaceutical trademark case between 'Aventis' and 'Advancis'. Butters' chapter is full of interesting nuggets, such as his description of the practice of genericide by which a brand name comes to be treated as a generic term, (e.g. to 'google' means to search), and his discussion of the issues in deciding whether a particular group label (Redskins or Dykes on Bikes) is derogatory.

In the next chapter, William Eggington considers how deceit and fraud are understood in lay terms versus linguistic and legal ones. To illustrate fraud features, he uses as a central example a Nigerian Bank scam email. This letter looked strikingly similar to ones I, and I imagine many readers, will have received. After explicating the textual and contextual features that mark the email as a likely fraud, Eggington points to the difficulty in detecting deception in real time situations.

In the final chapter, M. Teresa Turell unpacks the complexities involved in judgments of plagiarism, particularly in cases of translation. After discussing some of the common plagiarism detection systems, usually geared to university student cheating, she identifies how a criterion based on quantitative markers of overlapping vocabulary shifts from 50% similar vocabulary up to 70% in cases involving two translations.

Dimensions of Forensic Linguistics is a collection of interesting, well-written essays. Just about all of the chapters are ones I can imagine recommending to a graduate student who had a particular interest. How suitable the volume would be for a forensic linguistics class, I leave to those in the area to judge. As a communication professor teaching a senior-level undergraduate class about communication in the justice system, I can imagine using 3 or 4 of the chapters in my course. The others, as I might say to a colleague, are 'too linguistic' or 'not communicative enough'. This brings me back to my disciplinary ruminations.

Academic disciplines do considerable work to police their boundaries. The commonplace way such boundary-drawing is accomplished is through decisions that journals and academic conferences make regarding whether a topic (or the way a topic is studied) will count as 'in' or outside the field, expertise area, etc. Although the study of law and discourse is a multidisciplinary enterprise, some topical issues tend to be associated with scholars from one discipline (linguistics) rather than a particular other (communication) or truly with multiple disciplines. From a communication point of view, studies of translation, interpretation, language education, and linguistic evidence are likely to seem not sufficiently communication-focused to interest most communication scholars.

Communication is an incredibly broad field in which the field's parameters vary across regions of the world. If I, a US-based communication scholar, were asked what characteristics forensic linguistic studies possess that are likely to engage communication scholars interested in the discourse of the law, I would identify two: (1) attention to matters of strategy and design rather than questions about structure, and (2) raising questions about the effects of particular audiences and contexts in a law-language process. Some forensic linguistic issues – witness testifying, interpreting of witness testifying, questioning by police or attorneys, instructing juries – typically engage with these questions; others do not.

I mean to imply no quality evaluation in distinguishing among research topics that address scholars primarily in one discipline versus those that speak to groups across several disciplines. The audience(s) for books of these two types, though, will differ. *Dimensions of Forensic Linguistics* accomplished what it proposed to do. It provides linguists a sense of topics and issues that are lively in this increasingly demarcated area of scholarship within applied linguistics. In addition, the volume offers communication, sociological, anthropological, and psychological scholars interested in the discourse of law a sense of some of the important issues that are being investigated in areas where they typically do not travel.

References

Drew, P. (1992) Contested evidence in courtroom cross-examination: the case of a trial for rape. In P. Drew and J. Heritage (eds) *Talk at Work*: *interaction in institutional settings* 470–520. Cambridge: Cambridge University Press.

Heffer, C. (2005) *The Language of Jury Trial: a corpus-aided analysis of legal-lay discourse*. Bakingstoke: Palgrave Macmillan.

Penman, R. (1990) Facework and politeness: multiple goals in courtroom discourse. *Journal of Language and Social Psychology* 9: 15–38.

Stokoe, E. and Edwards, D. (2008) 'Did you have permission to smash your neighbour's door?' Silly questions and their answers in police-suspect interrogations. *Discourse Studies* 10: 89–111.