

***Communication in Investigative and Legal Contexts:
Integrated Approaches from Forensic Psychology,
Linguistics, and Law Enforcement***

**Gavin Oxburgh, Trond Myklebust, Tim Grant and Rebecca
Milne (eds) (2016)**

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Reviewed by Janet Ainsworth

Interactional communication is at the very heart of the criminal justice system. Whether the focus is on the investigative phase, where police interviewing and interrogation play a key role in shaping the evidence to be used at trial, or on the adjudicative phase, where witness examination and lawyer argumentation constitute the officially sanctioned version of the events giving rise to the criminal process, an appropriate consideration of communication issues is paramount in having a fair and effective justice system. Particularly in recent years, cognitive and social psychologists have conducted important research with direct bearing on communication issues in the legal process. Research grounded in sociolinguistics and forensic linguistics has likewise made great strides in advancing our understanding of how linguistic issues impact the functioning of the justice system. Unfortunately, because of the ways in which disciplines train researchers, with ever deeper but narrower concentration on the methodologies and perspectives that characterise the discipline, researchers labour in disciplinary silos, frequently unaware of parallel and complementary work done by scholars

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outside their own discipline. And if psychologists and linguists often lack familiarity with the research done in each other's fields, it is even more the case that lawyers, judges and law enforcement personnel are often ignorant of the research in both fields, even when that research is directly pertinent to their professional work. This book represents an important attempt to bridge the gap between the disciplinary silos of psychology and linguistics with respect to the study of communication in the legal process, and to do so in such a way as to be valuable to all of those constituencies – both the social scientists and the professionals working in the legal system. Specifically, the contributing chapters provide a rich resource through their extensive in-text citations to the pertinent literature in the field, enabling linguists, psychologists, lawyers and law enforcement officers to benefit from this treasure-trove of empirically grounded research.

This edited volume includes contributions by 42 authors and co-authors, and comprises six sections, each addressing specific communicative settings within the criminal justice system. The book begins with an overview of the agenda of the editors of the volume, namely, to provide in-depth coverage incorporating up-to-date research in psychology and linguistics to analyse practices and problems in communication in the criminal process.

This introduction is followed by Section 1, examining problems in investigative interviewing and memory retrieval by witnesses. Grant, Taylor, Oxburgh and Myklebust's chapter, 'Exploring Types and Functions of Questions in Police Interviews', adds methodologies taken from linguistic Conversational Analysis to more traditional psychologically oriented analysis of police interviewing, and demonstrates the value of a fine-grained CA approach to categorising question types based on their communicative function in addition to their linguistic form. 'Recall, Verbatim Memory and Remembered Narratives', by Ost, Scoboria, Grant and Pankhurst, incorporates current research into episodic memory recall into a framework designed to advise interviewers about interviewing practices that have been shown to enhance both detail and accuracy in memory retrieval. While the authors acknowledge that interviewer training sometimes fails to be optimally effective, they are optimistic that awareness by interviewers of empirically tested procedures can improve the quality of interview-derived data from witnesses.

Section 2 addresses specific challenges and concerns involved in interviewing witnesses and victims of crime. For example, La Rooy, Heydon, Korkman and Myklebust's chapter, 'Interviewing Child Witnesses', explores special considerations in interviewing children, ranging from their linguistic competence to their potential suggestibility, and concludes with suggestions for interviewers to enhance the reliability of information obtained from children. Dando, Geiselman, MacLeod and Griffiths's chapter, 'Interviewing Adult Witnesses and Victims', is a nice complement to the chapter on child witnesses; it describes the role of rapport

building in the context of the cognitive interview, with the goal of increasing the amount of information provided by witnesses without sacrificing the accuracy of that information. The final chapter in the section, 'The Role of Initial Witness Accounts with the Investigative Process', by Gabbert, Hope, Carter, Boon and Fisher, acknowledges the many challenges associated with collecting information from witnesses in the early stages of investigation, when witness trauma, possible intoxication, and safety concerns may impede the interviewing process. The chapter goes on to highlight the research done on the relationship between those initial witness statements and later recall of events, noting where the research appears contradictory and where the research has consistent findings, and makes suggestions to interviewers about the implications of that research for practice.

Section 3 examines interviews by law enforcement personnel with suspects. Oxburgh, Fahsing, Haworth and Blair's contribution, 'Interviewing Suspected Offenders', compares the approaches of interviewing based on the Reid system predominating in the United States with the PEACE approach currently used in the United Kingdom. These contrasting methods of police interaction with criminal suspects are based on very different assumptions about the purpose of police questioning, and consequently result in very different interactional styles in what American police call interrogation and British police call interviews. The authors' analysis of the psychological and linguistic literature dealing with this kind of interaction shows that the PEACE method is likely far more effective in getting reliable information from suspects than is the more confrontational and psychologically manipulative Reid method. Narchet, Russano, Kleinman and Meissner's chapter, 'A (Nearly) 360 Degree Perspective of the Interrogation Process: Communicating with High-Value Targets', continues the analysis of suspect interrogation by looking at the practices of intelligence officers assigned to interrogate terrorism suspects. This chapter, based on self-reports of interviews by agents who have interrogated these 'high-value' suspects, suggests that they believe that rapport building is superior to more confrontational methods of interrogation in obtaining useful information from terrorist suspects.

Section 4 of the book examines courtroom discourse in the criminal process. In their chapter 'Courtroom Questioning and Discourse', Henderson, Heffer and Kebell argue that cross-examination practices in particular are problematic because of excessive lawyer control over witness testimony in court. While they acknowledge that testing witness credibility is important to expose mistaken or even deceitful testimony, they urge what they call a rebalancing of the system to become one of enhanced judicial control over the development of testimony in place of current lawyer-controlled witness examination, suggesting the desirability of pre-recording of witness testimony out of court, and recommending the elimination of partisan cross-examination of expert witnesses in favour of

a ‘hot-tubbing’ process in which expert witnesses would be examined together under judicial auspices. This chapter is followed by Fadden and Solan’s chapter, ‘Expert Witness Communication’, which looks at the tensions in the legal system in the use of expert witnesses. This chapter, unique in the book, addresses expert testimony in the legal system generally, rather than confining their examination to experts in the criminal process, and their observations are grounded both in the scholarly literature and in their own experiences. The authors are linguists who have been expert witnesses themselves; one author, Solan, has been an experienced litigator who himself examined expert witnesses. Fadden and Solan explore the tensions for expert witnesses between being objective and neutral in their testimony while at the same time unavoidably viewing the evidence through the lens of the lawyer who has framed the context for their testimony in retaining them.

Section 5 addresses several highly particular communicative tasks that can occur in the criminal process. Braten, St. Yves, Royce and Laforest’s chapter, ‘Hostage and Crisis Negotiation: Perspectives on an Interactive Process’, examines the dynamics of hostage negotiation, considering current practice models in law enforcement for dealing with these situations and analysing ways in which more sophisticated discourse analytic considerations could improve outcomes in these delicate and high-stress negotiations. Vrij, Taylor and Picornell’s chapter, ‘Verbal Lie Detection’, surveys the many different, and often contradictory, approaches that researchers and practitioners are taking to developing methods to detect lying. The chapter both describes these approaches and also points out the strengths and weaknesses of each. The authors suggest that cross-cultural communicative patterns must be taken into account, since there is evidence that hearers are biased to believe that native speakers are telling the truth and that second-language speakers are not. The authors persuasively make the case that successful deception detection will require an interdisciplinary approach incorporating cognitive load theory from psychology and discursive stylistic and pragmatic analysis from linguistics. O’Mahony, Marchant and Fadden’s contribution to this section, ‘Vulnerable Individuals, Intermediaries and Justice’, looks at the communication problems in the legal process suffered by vulnerable persons – the cognitively impaired, the intellectually disabled and children – and considers the experiences of a number of jurisdictions in using communication intermediaries to assist them. To date, most of the experimental programmes to assist these vulnerable legal participants have focused on children, perhaps because recognising and classifying other vulnerable persons is more challenging for law enforcement and court personnel. The authors note that similar communication challenges exist in cross-cultural interactions, but only Australia has attempted to use an intermediary system for such persons, in some cases providing intermediaries for

Aboriginal English speakers whose communicative conventions often differ from those of non-Aboriginal Australian speakers. The final chapter in the section, by Fowler, Vaughan and Wheatcroft, is 'The Interpreter-Mediated Police Interview'. This chapter notes that police officers seldom have adequate training in when interpreters are needed, in how to assess the adequacy of interpreting as it occurs, and in how to manage interpreter-mediated interactions. The authors note that the nature of dyadic communication – the typical police interview context – is inherently different from triadic communication with a third-party interpreter as a key party to the communication. The chapter discusses problems that suspects often have in understanding mandated information about their rights as given by interpreters. The authors also provide an analysis of the strengths and weaknesses in the legal context of chuchotage, simultaneous whispered interpreting, versus consecutive interpreted stretches with pauses.

The concluding section of the book points the reader to areas where future interdisciplinary collaboration would pay dividends. Westera and Powell's chapter, 'Improving Communication Practice: Beyond the Cognitive Interview for Adult Eyewitnesses', first notes that Cognitive Interviewing techniques significantly increase the number of accurate details reported by eyewitnesses, with only small increases in erroneous details. However, Cognitive Interviewing has not had the positive impact that it theoretically should have in police interviewing, because officers find the techniques difficult to use in the field and time consuming. The authors suggest that these techniques can be refined by incorporating current research on enhancing accurate recall of non-recent events, and further, that police interviewing practices should be adapted depending on whether the interviews are with frontline responding officers or with officers conducting follow-up investigations. Myklebust, Oxburgh, Grant and Milne's chapter, 'Communication in Forensic Contexts: Future Directions and Conclusions', serves as an apt concluding chapter for the book. More research by both linguists and psychologists is needed to determine how to make law enforcement and legal communication practices more effective in getting accurate information to ensure that the criminal process reaches correct conclusions, they conclude. One area that the authors suggest is under-studied includes the many facets of the criminal process involving cross-cultural communication. Here, I might add, the perspectives of cultural anthropologists and anthropological linguists would be helpful as well. The authors urge future researchers to adopt a wider focus from micro-analysis on the words used in interaction to a fuller consideration of structural and functional aspects of communicative interactions in the legal process. Technological changes in investigation and adjudication practices, such as distance avatar-mediated communication, will inevitably create new issues and challenges to be studied in the future. Overall, the book concludes that interdisciplinary research

has already borne fruit in advancing our understanding of communication issues in the criminal process, with much work still to be done.

It should be noted by readers that the perspective taken by the book is almost exclusively the perspective of law enforcement and prosecutors in the criminal process. Perhaps this is inevitable, given that the expertise of the editors has been largely, or in some cases, exclusively, confined to work done on behalf of police and prosecutors. Still, the title of the book promises a more comprehensive treatment of communication issues in legal contexts, but the reader interested in that wider perspective will have to look elsewhere. The near-complete absence of consideration of communication issues from a criminal defence perspective is particularly unfortunate in the light of the increasingly documented problem of erroneous conviction of the innocent. There are now literally thousands of documented cases in which innocent people convicted of crimes were later exonerated. Studies (see Garrett 2011) examining those cases of proven erroneous convictions have documented factors that contribute to miscarriages of justice, including several communication issues as causes, such as mistaken eyewitness testimony, unreliable expert testimony (Harris 2012) and coercive police interrogation leading to false confessions (Leo 2008). Research is urgently needed by linguists and psychologists on communication issues implicated in erroneous convictions including the following: How do police interviewing and interrogation techniques sometimes cause innocent people to confess to crimes they haven't committed? How do police investigators become committed to a theory of the case that blinds them to accurate consideration of later developed information? Why do eyewitnesses sometimes misidentify suspects, and what role does the witness interview process play in those cases? Why is unreliable forensic evidence sometimes admitted into evidence and why is it so persuasive to judges and juries? How do juries understand the evidence admitted at trial and how do they make sense of the law they receive? Do current courtroom practices make it difficult, even impossible, for persons accused of crimes to effectively present their story to juries, particularly when they do not share the socially and politically dominant culture that the courtroom presumes as natural? Interdisciplinary research in linguistics and psychology has the potential to unravel the tangled discursive web that can lead to miscarriages of justice; future books will undoubtedly pursue those topics with the thoughtfulness and attention to detail that this book has brought to the investigation and prosecution functions of the justice system. Those works would do well to emulate the research-driven perspective of this volume. It is an important book that demonstrates how interdisciplinary research has the power to influence policy and reform agendas that promise to put more justice into our justice systems.

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