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Book review

Chris Heffer (2005) *The Language of Jury Trial: A Corpus-Aided Analysis of Legal-Lay Discourse*

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The latest book in Palgrave's recent titles on language in the legal process is Chris Heffer's (2005) *The Language of Jury Trial*: *A Corpus-Aided Analysis of Legal-Lay Discourse*. Unlike most studies of trial discourse to date, which have focused on interaction between lawyers and witnesses, this book examines 'unidirectional communication', namely the language used by judges and lawyers in criminal trials, particularly language that is 'received by' the jury.

Heffer's basic concern is 'how legal professionals "make" cases: how barristers manage to construct and deconstruct narratives of the case and how they manage to persuade the jury of their view of the case; how judges attempt to put across to the jury the legal framework within which they should view the case, and how they manage to convey their own view of the evidence in that case' (p. xx).

Following the lead set by Cotterill (2003) in using corpus linguistics in her analysis of the O. J. Simpson trial, this book is also written by a British linguist who uses 'corpus-aided analysis'. Heffer's study of what he terms 'legal-lay discourse' is based on the analysis of official transcripts from 229 British criminal

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trials (from a large transcript database made available by Janet Cotterill). In addition to this corpus, Heffer draws for comparison on three well-known reference corpora: the British National Corpus (100 million words of British English), the Cobuild Direct Online Corpus (56 million word international corpus of English), and Early Modern Trial texts in the Helsinki Corpus of Historical English. Further, he makes occasional comparisons with a small corpus of famous US trials. This book is the first large-scale study of the language of the English jury trial, but its theoretical approach and findings will be of considerable interest to scholars and legal professionals interested in jury trials in any country.

This book makes an important and original contribution to the central question of what it is that makes legal language different. Notwithstanding the seminal initial work on this question by Mellinkoff (1963), who examined morpho-syntactic and lexical features of legal language (see also Tiersma 1999), Heffer tackles an aspect of language which has received less attention, namely discourse structure. Indeed, much of the complexity of the legal register analysed by Mellinkoff and Tiersma belongs to *written* legal language. And while popular notions may suggest that lawyers use 'big words' or complex grammar in the courtroom, one of Heffer's major contributions in this book is to 'help to clarify [the] difference between lay perceptions of 'lawyer talk' and how lawyers actually talk in court' (p. 11).

Heffer's central argument is 'that legal-lay discourse [in the courtroom] is characterised by a strategic tension between two markedly different ways of viewing the trial: as crime narrative or legal argument' (p. xv). The first approach, termed by Heffer the 'narrative approach', is based on subjective reconstruction of personal experience; while the second approach, the 'paradigmatic approach', is based on detached analysis following logical principles (p. 3). While this 'strategic tension' between the two approaches is convincingly shown to be at the basis for much of the strangeness of language practices in the courtroom trial, Heffer presents it as a continuum rather than a dichotomy.

The book comprises eight chapters organised into three parts. Part 1 'Communication in Jury Trial' starts with a chapter ('Legal-Lay Discourse') which defines legal-lay discourse as 'verbal communication which is produced by legal professionals and received by lay participants – primarily the lay jury in the context of jury trial' (p. 35). It also introduces the cultural-cognitive approach which underlies the book's narrative-paradigmatic continuum, of which a major theorist is the social psychologist Jerome Bruner. The two modes of reasoning are clearly outlined, summarised and exemplified in this first chapter. Heffer discusses the relationship between this narrative/paradigmatic distinction and several 'stylistic dichotomies' found in other studies of discourse

(several of which are also presented as a continuum between the two named points). These dichotomies, which will be well-known to many readers of this journal, include Conley and O'Barr's (1990) 'rule-oriented' and 'relationship-oriented' approaches of litigants and judges in small claims tribunals, Philips' (1998) 'record-oriented' and 'procedure-oriented' judicial approaches to taking the guilty plea, Lakoff's (1975) 'powerful' and 'powerless' speech, and Bernstein's (1971) 'elaborate' and 'restricted' codes. As Heffer points out, all of these studies 'confirm the [societal] privileging of a decontextualised paradigmatic mode of reasoning over a context-dependent narrative mode' (p. 35). But, while Heffer notes the tendency for researchers to negatively evaluate the mode which is generally societally privileged, he argues that in the criminal jury trial, at least, 'both cultural-cognitive modes are indispensable: criminal trials are about stories of human vicissitudes which can only be fully understood through the narrative mode, but they are also necessarily about applying legal categories and about viewing events dispassionately, both of which are better tackled through the paradigmatic mode' (p. 35).

Chapter 2 ('Coming into Court') introduces the criminal trial process, participants and genres, as well as the details of the data used in the book's analysis. In Chapter 3 ('The Trial as Complex Genre'), Heffer takes us through the stages of a criminal trial, from the perspectives that frame each of the phases in this 'complex genre'. The initial genres of jury selection, swearing-in and indictment are procedural in nature, and their discourse orientation is ritualistic. These genres are followed by the opening speech, witness examinations and closing argument, which are adversarial in nature, while the discourse orientation is correspondingly strategic. Finally, the summing-up, deliberation and sentencing are adjudicative in nature with a correspondingly deliberative discourse orientation.

In Part 2 ('Witness Examination'), Heffer turns the spotlight on lawyers' talk. The two chapters in this part focus on counsel as narrator – in examination-in-chief (Chapter 4) – and as subject – in cross-examination (Chapter 5). Chapter 4 addresses an important question, addressed to some extent in earlier studies, about the extent to which witnesses in examination-in-chief are the authors of their own narratives, or merely the mouthpieces for their lawyers' version of their narrative, as well as the actual linguistic mechanisms through which this narration takes place. But, while most earlier studies limit themselves to syntactic analysis, Heffer uses, in addition to syntactic analysis, discourse and lexical analysis in his examination of the 'delicate balance between narrative and paradigmatic concerns' (p. 125). In Chapter 5, Heffer shows how 'the linguistic expression of subjectivity in cross-examination [can] assist counsel in the dual persuasive task of establishing solidarity with the jury and alienating

the witness or defendant' (p. 127). Heffer's analysis of subjectivity includes a corpus-based analysis of the 'keyness' of words used ('keyness' of a word is defined by comparing its frequency in the data base being studied with its frequency in a reference corpus.) Thus, for example, the cross-examinations in his corpus differ from the examinations-in-chief with the former's keywords list dominated by 'present tense verb forms realising verbal (*suggest*, *suggesting*), verbal-mental (*agree*, *accept*) and relational (*is*, *am*) processes' (p. 130). This analysis of keywords is one aspect of the evidence which leads the author to conclude that although cross-examination does not take the form of a narrative, 'it is far from paradigmatic in nature' (p. 153). The dominant expression of subjectivity, as well as the focus on the courtroom context (rather than the event which is the topic of the trial), make cross-examination discourse strategies much more within the 'narrative mode discoursal strategies' (p. 157) than the paradigmatic mode.

Part 3 ('The Judge's Summing-up') examines judges' direct communication with jury members in Chapters 6 ('Directing the Jury') and 7 ('(Re)Viewing the Case), followed by the conclusion to the book (Chapter 8, which would structurally have been better in a different Part from the judge's summing up). In Chapter 6, Heffer examines a topic which has received a good deal of attention from linguistic researchers in the USA, namely the language of jury instructions. Since Charrow and Charrow's seminal (1979) work, which drew attention to problems with the comprehensibility of US pattern jury instructions, other researchers, including Tiersma (e.g. 1999) and Dumas (e.g. 2000), have examined lexical, semantic and syntactic features of jury instructions in that country. Heffer's approach is quite different – he is primarily interested in the extent to which judges' delivery of jury instructions in his corpus (of UK trials) shows 'convergence with and divergence from the jury's narrative mode sensibilities' (p. 158). Indeed, Heffer's analysis sheds new light on the problem of the comprehensibility of jury instructions, suggesting that difficult jury instructions may result when a judge delivers a text 'which is simply too highly paradigmatic with respect to its mode (oral), function (instruction), and audience (lay)' (p. 160). Given that the English summing-up, which incorporates jury instructions, provides for judicial discretion, there is the chance for narrative accommodation in the English courts. Indeed, Heffer's detailed analysis of 100 summings-up in his corpus found that while all were 'highly paradigmatic in comparison to an oral narrative' (p. 174), there were a number of judges who also used narrativising strategies to greater and lesser degrees.

Chapter 7 examines judges' reviewing of the case in their summary of evidence, focusing on the tension between 'the paradigmatic need to appear

neutral and the narrative desire to express one's point of view' (p. 207). This chapter includes an analysis of strategies used by judges in balancing this tension, which include intensification, normalisation, hedging, attribution, and disclamation. Heffer's analysis suggests that this review of evidence genre involves 'degrees of perspectival modification which are probably unique to it' (p. 207), and he points to the need for much more work on this topic.

The book's final chapter (Chapter 8) summarises important findings from the study about the nature of legal-lay discourse in jury trials, concluding that 'Jury trial works by bringing together the paradigmatic skills of the legal professionals with the narrative skills of the jury' (p. 214). For Heffer, this is not a contradiction, but a necessary combination in the deliberations required in criminal trials. Thus, in turning to consider implications of his study, Heffer argues against an English trend to call for abolition of jury trials, or for professionalisation of juries. Rather, he is concerned to explore ways in which the understanding of the narrative-paradigmatic discourse mode distinction provided by his study might help in addressing central issues in jury reform. Thus, for example, he suggests that the entire summing-up process could be structured around 'a number of key issues or questions rather than giving all the legal directions and then a summary of the evidence' (p. 217). In this approach, the summing-up would begin with a narrative case summary, followed by general directions, before moving on to the legal issues involved. Jurors would be given a copy of written questions which relate the legal issues to the review of the evidence, and the summing-up process would integrate paradigmatic and narrative modes. The discussion in this 'Implications' section builds positively from Heffer's conviction that the 'communicative success' of 'legal-professional discourse before juries' depends on successfully balancing the 'cognitive and discoursal tendencies of the narrative and paradigmatic modes' (pp. xx-xxi).

In concluding this review, I note that the book is very nicely produced, as we have come to expect from Palgrave's forensic linguistic monographs. It is written in a clear and authoritative style, with good use of text examples and explanatory figures and tables. In the Introduction, we read that the book is 'intended primarily for social scientists and legal professionals with an interest in understanding and improving the communicative mechanisms of jury trial' (p. xix). I thoroughly recommend it for these audiences, and hope that it is widely read by legal practitioners, as well as scholars and students in the disciplines of law, sociolegal studies, language and law/forensic linguistics, and social science more generally.

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