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OS ARTIGOS FORAM SUBMETIDOS A ARBITRAGEM CIENTÍFICA.

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Editors' Introduction

Malcolm Coulthard & Rui Sousa-Silva

Federal University of Santa Catarina & University of Porto

We are delighted to be launching this new international bilingual bi-annual journal – *Language and Law - Linguagem e Direito*) – exactly twenty years after the launch of *Forensic Linguistics: The International Journal of Speech Language and the Law*. As is evident we have assembled a highly distinguished International Advisory Board to assist the Editorial team.

While the first few issues of *IJSSL* were set from hard-copy typed manuscripts and the journal is still circulated to most individual and library subscribers in printed form, *Language and Law - Linguagem e Direito* is completely electronic and freely available for everyone to download at http://ler.letras.up.pt. Because *Language and Law* has no printing costs it can be extremely flexible to individual author's requirements: not only can it publish quickly all the high quality articles it receives, but also it can cope with long appendices, reproduce in colour illustrations, photographs and tables, as well embed sound files and hyperlinks.

Although in submitting an article authors cede to the journal the right to publish and republish in the journal's two languages, we want to emphasise that copyright remains with the authors. Thus, if they wish to republish the article, they simply need to inform the editors; unlike with some journals no fee will be charged to either author or re-publisher.

We chose the title *Language and Law – Linguagem e Direito* to indicate that we welcome articles across the whole spectrum of the discipline and from both practitioners and academic researchers. Thus, for example, this first issue includes contributions from a chief of police, a public prosecutor, a professional translator, a professional interpreter and two expert witnesses, as well as from academic lawyers and linguists.

Until recently there has been comparatively little research activity on the interface between language and law in Brazil and Portugal, where we, the editors, currently work. However, recently an International Association for Language and Law for speakers of Portuguese (ALIDI) was founded to develop research in the area and all members will receive a copy of the journal.

The language policy of the journal is to publish articles in both English and Portuguese with abstracts in both languages. While most Portuguese speaking academics now prefer

to publish in English in order to access a larger audience, we will publish articles in Portuguese when appropriate, as for instance when an article is reporting on the analysis of Portuguese data. Of course, a bilingual journal is likely to be more interested in the legal problems of multilingualism, so it is no accident that the journal opens with an article by Larry Solan about multilingual law-making and interpretation and ends with an article by Jakob Marsalenko about multilingual court proceedings.

To illustrate the variety in this first issue: Maria Lúcia Gomes and Denise Carneiro write about Forensic Phonetics in Brazil, Alison Johnson and David Wright about authorship analysis and Rui Sousa-Silva about plagiarism by translation; Liz Carter writes about deceptive responses in police interviews, Marcos Ribeiro and Cristiane Fuzer about honour crimes, Edilson Vitorelli about the language rights of indigenous Brazilians and Gail Stygall about incomprehensible Jury Instructions; finally Débora Figueiredo examines representations of the crime of rape.

We hope you will want to become a regular reader of the journal – to do so simply send an email to llldjournal@gmail.com with the word 'SUBSCRIBE' in the Subject line. You will then receive automatically a link to each new issue of the journal as soon as it is published. We also hope you will want to share your own research with the academic community through the pages of our journal. To do so please read the notes on submitting an article available here: http://www.linguisticaforense.pt/llldjournal-en.html.

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Nota Introdutória

Rui Sousa-Silva & Malcolm Coulthard

Universidade do Porto & Universidade Federal de Santa Catarina

É com enorme satisfação que lançamos esta nova revista científica internacional semestral bilingue: *Language and Law – Linguagem e Direito* – precisamente vinte anos após o lançamento da revista *Forensic Linguistics: The International Journal of Speech Language and the Law*, até hoje uma referência nos estudos da linguística forense/linguagem e direito. Por detrás da equipa editorial, encontra-se uma Comissão Científica Internacional, composta por especialistas altamente qualificados e de renome, provenientes das várias áreas de investigação que compõem a disciplina.

Apesar de os primeiros números da revista *IJSSL* terem sido produzidos a partir de originais impressos em papel, e embora aquela revista continue a ser distribuída em versão impressa à maioria dos seus assinantes, quer individuais, quer institucionais (incluindo bibliotecas), a revista *Language and Law – Linguagem e Direito* é produzida em formato totalmente eletrónico, e encontra-se disponível para *download* gratuito pelo público em geral no endereço http://ler.letras.up.pt. Como a revista *Linguagem e Direito* não possui quaisquer custos de impressão, é extraordinariamente flexível e ajustável às necessidades específicas dos autores, permitindo, por isso, não só publicar todos os artigos de alta qualidade que recebe, rapidamente, como também incluir extensos apêndices e anexos, reproduzir materiais gráficos a cores, como ilustrações, fotografias, quadros e tabelas, bem como integrar ficheiros de som e hiperligações, se necessário.

Embora, ao submeterem um artigo, os autores cedam à revista o direito de publicar e republicar o mesmo nas duas línguas da revista, gostaríamos de realçar que os direitos de autor pertencem aos respetivos autores. Assim, se pretenderem republicar o artigo, os autores necessitam, apenas, de informar os organizadores; contrariamente a algumas revistas, não serão cobradas quaisquer taxas, nem aos autores, nem à nova editora/organizadores.

O título que escolhemos, *Language and Law – Linguagem e Direito*, é indicativo da nossa política de publicação de artigos de todas as vertentes da disciplina da Linguagem e do Direito, e de autoria de profissionais nestas áreas, como de investigadores académicos. Exemplo disso é este primeiro número, que inclui artigos de um superintendente da polícia,

de um procurador do Ministério Público, de um tradutor profissional, de um intérprete profissional e de dois peritos judiciais, para além de juristas e linguistas académicos.

Os estudos sobre a ligação entre a Linguagem e o Direito foram, até há muito pouco tempo, relativamente escassos, tanto no Brasil, como em Portugal, países onde nós, os editores, exercemos a nossa atividade. No entanto, muito recentemente foi fundada a Associação de Linguagem e Direito dos Países de Língua Portuguesa (ALIDI), cujo objetivo é incentivar a investigação/pesquisa e desenvolvimento nesta área. As cópias da revista serão, portanto, distribuídas a todos os membros da Associação.

A política linguística da revista consiste em publicar artigos em inglês e em português, sendo os resumos publicados nas duas línguas. Embora a maioria dos académicos de língua portuguesa prefira redigir e publicar artigos em língua inglesa com o objetivo de chegar a um público maior, a revista *Language and Law – Linguagem e Direito* publicará artigos em língua portuguesa sempre que adequado, como é o caso, por exemplo, de artigos que publiquem resultados da análise de dados em língua portuguesa. Mas esta revista também pretende contribuir para preencher uma lacuna existente atualmente no panorama da ciência internacional: incentivar a publicação de estudos científicos nesta área jovem da Linguagem e do Direito em língua portuguesa e sobre língua portuguesa, uma das línguas mais lidas e faladas no mundo. Naturalmente, a probabilidade de uma revista bilingue se debruçar sobre os problemas legais subjacentes ao multilinguismo é enorme. Assim, não é por acaso que a revista começa com um artigo de Larry Solan sobre legislação e interpretação multilingue e termina com um artigo de Jakob Marsalenko sobre processos judiciais multilingues.

Este primeiro número inclui, porém, um conjunto diversificado de artigos: Maria Lúcia Gomes e Denise Carneiro descrevem o estado da arte da Fonética Forense no Brasil, Alison Johnson e David Wright escrevem sobre análise de autoria e Rui Sousa-Silva aborda o plágio através da tradução; Liz Carter discute respostas dissimuladas em interrogatórios policiais, Marcos Ribeiro e Cristiane Fuzer escrevem sobre crimes de honra, Edilson Vitorelli acerca dos direitos linguísticos dos índios brasileiros e Gail Stygall aborda as instruções incompreensíveis fornecidas ao Júri nos tribunais dos Estados Unidos; finalmente, Débora Figueiredo faz uma análise de representações do crime de estupro ("violação sexual", nos termos do Código Penal português).

Contamos consigo para fazer parte do nosso corpo regular de leitores. Para isso, basta enviar um email com a palavra "SUBSCREVER" na linha de assunto para o endereço llldjournal@gmail.com. A partir de então passará a receber automaticamente um *link* para aceder aos novos números da revista imediatamente após o seu lançamento. Contamos, também, consigo para partilhar a sua própria investigação connosco, com os leitores e com a comunidade académica em geral, através desta revista. Poderá encontrar mais informações acerca da submissão de artigos em http://www.linguisticaforense.pt/llldjournal-pt.html.

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Multilingualism and morality in statutory interpretation

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Abstract. *This article discusses some of the costs and benefits of multilingual legislation, focusing largely on Canada and the European Union. Courts interpreting these laws must take into account the different language versions, since each version is equally authoritative. Fidelity to the legislature's will comes with very high stakes in this context, because multilingual legislative systems are most typically a means for recognizing the autonomy of minority groups, which, in exchange, cede some of that autonomy to a higher legal order. Thus, there is a special moral duty to ensure that the laws are construed faithfully at the same time that language barriers make it appear, at least on the surface, that it is more difficult to do so. Moreover, the risk of judges substituting their own values for those of the legislature when there is no single, definitive legal text, appears to become magnified in multilingual settings, creating the risk of decision making that would not stand up to moral scrutiny even in monolingual systems.*

This article argues that despite the apparent difficulties inherent in multilingual legislation, it actually reduces uncertainty in meaning by creating additional data points for statutory interpreters to consider. Multilingualism does, however, lead to certain additional problems of ambiguity. These, for the most part, however, are generally resolved fairly easily. It is further argued that the European approach to interpretation, which I call Augustinian Interpretation, is likely to lead to results more faithful to the legislature's intent than is the standard Canadian approach, called the Shared Meaning Rule. Arguments from case law, from linguistics and from the philosophy of language are adduced to support these conclusions.

Keywords: *European Union, Canada, Multilingualism, Legislation, Interpretation.*

Resumo. *Este artigo discute algumas das vantagens e desvantagens da legislação multilingue, baseando-se sobretudo na legislação do Canadá e da União Europeia. Os tribunais que interpretam esta legislação têm que levar em consideração as diferentes versões linguísticas, uma vez que cada uma das versões possui idêntica autoridade. A fidelidade à intenção do legislador assume, neste contexto, uma grande importância, uma vez que os sistemas jurídicos multilingues constituem, tradicionalmente, uma forma de reconhecer a autonomia de grupos minoritários, que, por sua vez, cedem alguma dessa*

autonomia a uma ordem jurídica superior. Coloca-se, assim, o dever moral especial de assegurar a construção das leis de forma fidedigna, ao mesmo tempo que as barreiras linguísticas fazem parecer, pelo menos superficialmente, que se torna mais difícil executar essa tarefa. Além disso, o risco de os juízes substituírem os seus próprios valores pelos do legislador dada a inexistência de um texto jurídico único e definitivo parece aumentar em contextos multilingues, com o perigo de uma tomada de decisão incumpridora do escrutínio moral, inclusivamente em sistemas monolingues.

Este artigo defende que, não obstante as evidentes dificuldades inerentes à legislação multilingue, esta reduz, efectivamente, a incidência das incertezas relativamente ao seu significado, criando alguns aspectos adicionais que os interpretadores jurídicos têm que considerar. O multilinguismo origina, porém, alguns problemas de ambiguidade adicionais. No entanto, geralmente estes são, na sua maioria, resolvidos de forma relativamente fácil. Defende-se, ainda, que a abordagem europeia à interpretação, que designo Interpretação Agostiniana, apresenta uma maior probabilidade de produzir resultados mais fiéis à intenção do legislador do que a abordagem canadiana comum, designada Regra do Sentido Partilhado. Estas conclusões são sustentadas por argumentos da jurisprudência, da linguística e da filosofia da linguagem.

***Palavras-chave**: União Europeia, Canadá, Multilinguismo, Legislação, Interpretação.*

Introduction

It is the business of the courts to construe and apply laws. While there is considerable debate about how courts should go about performing that task, it is widely agreed that it is the legislature's will – not the judges' will – that should determine the outcome of a dispute. When the situation at hand plainly fits within the language and the purpose of the statute – or plainly fails to fit within the language and purpose of the statute – the judge's task is typically not a difficult one.

Things change once a statute appears ambiguous, once the situation at hand seems to be at the borderline of a statute's words, or when the statute is silent about the situation. At that point, judges must resolve disputes based upon such considerations as linguistic clues within the statute, legislative history (controversial in the United States, see Scalia and Garner, 2012), and an analysis of what the legislature set out to accomplish when it enacted the statute. This exercise of discretion provides opportunity for judicial mischief. Once a judge is empowered to decide how a statute should apply, the judge is also empowered to take advantage of linguistic accident to steer the law in the direction of the judge's own values, rather than those of the legislature that enacted the law.

When a judge substitutes his or her own values for those of the legislature, legal commentators generally note that the decision constitutes a judicial usurpation of the legislative role. This is generally regarded as an institutional problem, not a moral one. U.S. legal scholars from all political stripes recognize this practice in more or less the same way. (Compare Scalia and Garner, 2012 with Solan, 2010; Eskridge and Ferejohn, 2010).

The stakes are even higher when a judge knows what the legislature would have wished to accomplish by applying a law one way or the other and uses statutory ambiguity to undermine the legislative goal. Such is the case when a judge selects an interpretation that is linguistically acceptable, but at odds with the statute's underlying goal. Thus,

whether one speaks of fidelity to the statute's purpose, as is common in European and other civil law systems that rely on a teleological approach to statutory interpretation (see Lord, 1996), or of the judge as faithful agent of the legislature in the American style (see, e.g., Gluck and Bressman, 2013: 905), a judge has more opportunity to place his or her own values above those of the legislature when more than one interpretation is linguistically available.

This article asks how proliferating the number of languages in which a law is written affects the opportunities for judges to substitute their views for those of the legislature. Many legal orders call for statutes to be enacted in more than one language, with each version considered equally authoritative. Among them are the European Union (24 languages from 28 member states), Canada (English and French), Switzerland (German, French and Italian) and Hong Kong (Chinese and English). The moral issue is especially important in this multilingual context, because the different language versions generally represent different constituencies who have agreed to be subject to the same laws, often in exchange for a linguistically-neutral legislative regime.

At first glance, one might think that adding language versions to a single body of law can only be a source of confusion. Many commentators have said as much. For example, quoting Cheung (2000: 251), Leung (2012: 10) comments: "The need to read all versions together has been described as 'an inherent vice of legal bilingualism."' Here, I take a somewhat different position. It is true that the difficulty in finding equivalence in translation causes problems for the multilingual legal system. But it is also true that adding data points (i.e., multiple versions of the same law) can assist the statutory interpreter by reducing the extent to which an ambiguity found in one language version can cause uncertainty in meaning. In earlier writing (Solan, 2009), I pointed out the interpretive benefits of this proliferation. This article tempers that enthusiasm based on a great deal of excellent work that has been published since.

The high stakes in legal interpretation

Stanley Fish (2005) begins his critique of American textualism with the following story: "Some years ago as I was driving my father back to his apartment, we approached an intersection with a stop light that had turned red. He said, 'Go through the light."' (p. 629). The statement is ambiguous: It can mean that his father told him, crazily, to risk their lives by driving through the red light into the intersection, or that his father instructed him to go straight through the intersection (turning neither left nor right) once the light turned green.

Fish's story beautifully illustrates his point: Language can be construed only in context. When the context is clear to everyone, it does not feel that it is even there. Yet it is there, and it always plays a role in the interpretation of language, including statutory language. What makes his story most compelling in this regard, I believe, is the nature of the linguistic indeterminacy. Fish's father's statement is not vague. The uncertainty in meaning is not about a borderline case in which his father's instructions lie somewhere between going through the light and not going through the light. Neither is it ambiguous. Rather, it is simply incomplete. Fish's father gave exactly the instruction he intended to give. He just didn't say when Fish should execute the order. It was up to Fish to infer that part of the instruction from the context in which it was given.

Legal theorists have created metaphors for statutory interpretation that regard statutes

as incomplete instructions. Richard Posner (1990) likens a statute to a military command from headquarters to the field general, which gets cut off before all the information can be conveyed, leaving it to the field general to fill in the gaps. Ronald Dworkin (1986) used the metaphor of a chain novel, each decision writing a new chapter that is both faithful to the story's (statute's) past and adds to it in a way that feels coherent.

Most problems of statutory interpretation are about statutory language that conveys more information than did Fish's father. The majority of statutory disputes are about vagueness. They require the judge to decide where some event in the world should be placed as a legal matter when it lies neither clearly inside nor clearly outside the language of a statute. Among the classic U.S. cases are ones that raise the following issues: Should an airplane in 1931 count as a "vehicle" for purposes of a statute that criminalizes the interstate transportation of stolen vehicles? By a 9–0 vote, the U.S. Supreme Court said it was not[1]. Is a minister a person performing "service or labor of any kind" for purposes of a law that bans payment of the transportation of such individuals into the United States? Again, the Supreme Court answered in the negative by a unanimous vote[2]. Does a person who attempts to trade an unloaded machine gun for cocaine "use a firearm during and in relation to a drug trafficking crime?" Here, the Supreme Court said "yes" by a vote of 6–3[3]. Thus, there is a permanent residue of hard cases that plague a plain language regime, and this curse – if one looks at it that way – is an inevitable part of being human.

The problem of semantic uncertainty occurs in legal systems around the world. It is not a peculiarly US phenomenon. In his excellent book, *Word Meaning and Legal Interpretation*, Christopher Hutton (2014) documents cases with similar linguistic issues from India, Hong Kong, the United Kingdom, Australia, and Canada. Basically, wherever judges write opinions about statutory application in the common law tradition, some of those opinions will resolve disputes about borderline cases of word meaning. While the solutions to this problem may differ from one legal system to another, there is no reason to believe that precisely the same issues concerning word meaning are absent from civil law jurisdictions. (See Poscher, 2012 for general discussion of the question of vagueness in legal interpretation; Zippelius, 2006: 65 for discussion in the context of German Law).

Other problems are about ambiguity, in which two quite distinct readings of a statute are linguistically possible, and the choice of reading will lead to different outcomes of a case. Fish's story resembles the cases of ambiguity. To take one classic example, if a statute makes it illegal to "knowingly sell food stamps [i.e., certificates for government entitlement to subsidized food] in violation of this statute," does the person selling the food stamps have to know that the statute prohibited the sale in order to be found guilty? Or does the word "knowingly" apply only to the sale of food stamps? The statute is ambiguous in that respect, and the Supreme Court of the U.S. resolved a case that raised this issue in favor of the defendant[4]. The court applied a well-settled rule in most legal systems that ambiguities are not to be resolved in favor of finding criminality since the accused could not know in advance that his conduct was illegal.

Whether the case involves vagueness, ambiguity, or simply not conveying enough information to lead to a single interpretation, linguistic uncertainty can lead to mischief.

[1] *McBoyle v. United States*, 283 U.S. 25 (1931).
[2] *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892).
[3] *Smith v. United States*, 508 U.S. 223 (1993).
[4] *Liparota v. United States*, 471 U.S. 419 (1985).

Assume that a person in Fish's situation (let's call him "Stanley Wish") had wanted to have his father declared incompetent in order to control his father's wealth for the ultimate purpose of increasing his own inheritance. At a hearing to determine the father's competence, Wish testifies: "My father's crazy. I was driving him home and he told me to run through a red light, knowing that this would cause an accident." His characterization of what his father said would be a plainly immoral thing to do. Yet it would not be a lie. It would not be a lie because Wish would have accurately characterized a perfectly legitimate interpretation of his father's instruction. But intentionally mischaracterizing a speaker's communicative intent in order to achieve some personal gain is an ugly thing to do. The philosopher Bernard Williams (2002: 100-110) refers to the ability to hide behind literal meaning to justify such an act as "fetishizing assertion."

For that matter, it would be only slightly better for Wish to have mischaracterized his father's intent for benevolent reasons. Assume he was concerned about his father's behavior, and wanted to have a guardian or conservator appointed solely to protect his beloved parent. It would still be wrong to accomplish this by intentionally misstating the communicative intent of his father's instruction. Language is an imperfect instrument for communication. Dishonestly taking advantage of the imperfection by misrepresenting someone's communicative effort is wrongful. Moreover, to the extent that one finds such behavior more acceptable in situations where the motives are good and a little dishonesty seems to be the lesser of two evils, dishonesty by lying and dishonesty by causing someone to believe something to be true that the speaker knows to be false are on a moral par. (See Saul, 2012 for excellent discussion).

A court acts dishonestly in this way when it intentionally mischaracterizes a speaker or writer's intent in order to justify a decision consistent with the judges' (or judge's) own values. It is not immoral for a judge to reject the intent of a legislature in favor of other considerations, such as the principle that ambiguity in criminal statutes should be resolved in favor of the accused, regardless of whether the enacting legislature would have favored a conviction in the case at hand. However, it is immoral to use language as a means to undermine intended meaning by adhering to a literal interpretation in order to pretend that one is actually deferring to the legislature's intent when one knows differently, or should know differently. Once that happens, we are in Stanley Wish territory.

Courts act in this same immoral manner when they "fetishize assertion" by construing statutory language in a manner that undermines the authors' intent. (See Solan, 2011. That happens when an ambiguity leaves open a linguistically legitimate interpretation which, if adopted, would undermine the goal of the legislature, when another linguistically legitimate interpretation would advance the purpose of the law. Legislative purpose is not the only value about which judges should care. However, when judges act opportunistically to use interpretive openings to undermine communicative intent, they have acted in real life like our fictional Stanley Wish.

Ledbetter v. Goodyear Tire & Rubber Co.[5], decided by the U.S. Supreme Court in 2007 illustrates the practice. Ledbetter claimed that she had been discriminated against based on her sex. The law set a time limit of 180 days to bring such a "discrimination" claim. Thus, Ledbetter claimed that she was entitled to damages for the most recent six months

[5] 550 U.S. 618 (2007).

of receiving a lower salary even though the discrimination had been going on for some time.

In a 5–4 decision, the Supreme Court held that the word "discrimination" is volitional in nature and should be construed as applying to the initial decision to discriminate – not to the continual payment of reduced income because of gender. As Justice Ginsberg's dissenting opinion pointed out, the result of this interpretation is that once an employer has kept discriminatory pay secret for six months, it is free to continue the practice forever, secretly or overtly. Soon after the decision, the Congress overrode the decision by clarifying the law[6]. To the extent that the justices who voted with the majority knew that they were undermining intended meaning, but took advantage of a linguistic opening to accomplish this task, they acted immorally for precisely the reasons that we saw above.

Now if language leaves openings for statutory interpreters to find a linguistic "hook" to assign a meaning to a law that is linguistically sanctioned but at odds with the outcomes that the enacting legislature would have intended, we may ask how much worse (or better) a legal system would be if the system were multilingual rather than monolingual. One possibility – perhaps the intuitively obvious one – is that multiplying the languages in which a legal system writes its laws will only serve to create more opportunity for interpretive mischief. As translators know, the ideal of precise equivalence between an original language and a target language cannot be the reality. (See, e.g., Bellos, 2011). On the other hand, it is at least possible that by presenting the interpreter with more than one authoritative text, all of which attempt to capture the same meaning, the multilingual legislature will have multiplied the data points that the judges must consider, thereby reducing the likelihood that some kind of linguistic accident – such as we've seen in the Fish/Wish story – can control the outcome of a case. If judges look at more than one version of a law and then triangulate, they may be able to sort out the intended meanings from the odd accident that occurs in one language version, but not the others. As we will see, both things happen.

Why multilingual legislation is not as difficult to interpret as we might expect

Deciding whether a borderline case fits into statutory language is the principal task of a court confronting a statutory case in a monolingual system. Because syntactic ambiguity creates only the occasional problem, we may ask how these problems manifest themselves in multilingual legal systems. For purposes of this discussion, consider a legal system to be multilingual when its laws are written in more than one language, and each language version is considered equally authoritative as a matter of law. Canada (French and English), Switzerland (German, French and Italian), Belgium (Flemish and French), Hong Kong (Chinese and English) and the European Union (24 official languages of 28 member states) are all examples of multilingual legal systems in this sense.

The greatest threat to equivalence in multilingual legal systems is that people will construe terms differently even when they appear to be equivalent at the time of translation. Quine (1960: 26) pointed out some half century ago that this kind of communicative breakdown is always a lurking possibility. He imagines a linguist doing fieldwork, trying to learn the language of a person in a distant place. His only evidence comes from matching the informant's words to events perceived in the physical world. The two see a rabbit

[6] 42 U.S.C. 2000e-(2)(a)(1) (2006).

running, and the informant says, "Gavagai." The linguist notes that "Gavagai" is the word for rabbit, or for, "look, a rabbit." Quine then asks:

> Who knows but what the objects to which this term applies are not rabbits after all, but mere stages, or brief temporal segments, of rabbits? In either event, the stimulus situations that prompt assent to "Gavagai" would be the same as for "Rabbit." Or perhaps the objects to which "Gavagai" applies are all and sundry undetached parts of rabbits; again the stimulus meaning would register no difference. When from the sameness of stimulus meanings of "Gavagai" and "Rabbit" the linguist leaps to the conclusion that a Gavagai is a whole enduring rabbit, he is just taking for granted that the native is enough like us to have a brief general term for rabbits and no brief general term for rabbit stages or parts. (29)

This obviously does not happen much in real life when it comes to rabbits. The reason is not that Quine's logic is faulty. The reason, rather, is that people tend to interpret movement in terms of whole objects. (See, e.g., Bloom, 2000; Markman, 1989). The same holds true for Quine's suggestion that we may regard the rabbit as a collection of "temporal segments." That is why the Rene Magritte's 1936 painting, "Clairvoyance," is a surrealistic commentary – not something we interpret as realistic. The painting is a self-portrait of the artist looking at a still life containing an egg, but painting onto the canvas the bird that the artist imagines the egg becoming. We do not regard an egg as equivalent to an early stage of the mature bird. Rather, we perceive the world as reflecting a particular moment in time.

Thus, Quine is right as a logical matter, despite the fact that neither the Gavagai nor the Magritte painting present us with serious interpretive problems in real life. Yet, the problem of radical translation remains a classic description of how to measure the efficacy of multilingual communication, and we shall return to a few actual Gavagai cases in the European Union. Surprisingly, such cases are not easy to find.

Why might the proliferation of languages not cause a flood of serious interpretive dilemmas? I explain the relative success in respect to two observations. The first is that we are designed to categorize things more or less the same way, depending upon our experience. The philosopher Jerry Fodor (1998) puts it this way:

> We conceptualize a doorknob as "the property that our kinds of minds lock to from experience with good examples of doorknobs," "by virtue of the properties that they have as typical doorknobs." (137)

The second observation is that doorknobs do not differ that much from culture to culture. If Canadian doorknobs are more or less the same whether one lives in Anglophone Canada or Francophone Canada, then everyone will lock to more or less the same properties of doorknobs regardless of which language they speak. That is because all Canadians are human – they have "our kinds of minds" to use Fodor's term.

Not all cultures have the same folk taxonomy for animals, but they all have folk taxonomies, and those of Europe or of Canada or of Hong Kong are not likely to differ sufficiently from culture to culture to create much of a "Gavagai" problem. Just as we all lock to doorknobs the same way as each other, we lock to rabbits, eggs, and birds the same way as each other. This does not mean that Quine was wrong in his claim that the relationship between the characterization of an event in one language and the characterization of that same event in another is a one-to-many relationship. What it does mean, however, is that the problem does not occur as often as we might expect because we see the world in fairly similar terms, notwithstanding cultural and linguistic differences that result in disparate interpretations.

Two approaches to interpreting multilingual legislation

Let us continue with Fodor's doorknob example. Consider a regulation that either taxes doorknobs or creates tax-free commerce in doorknobs. In either event, it will be important to separate door knobs from non-door knobs. The word for door knob in Portuguese is "maçaneta." But maçaneta is a broader term than door knob. Many doors in Brazil have handles, rather than knobs. Portuguese uses the same word to describe both, illustrated below. The reason English has a narrower interpretation, it seems, is that we use a compound noun, and the word "knob" is part of it. This impedes the expression's expansion into door opening devices that are not knobs. German works like English with Knopf (knob), Griff (immovable handle) and Klinke (moveable handle) all in play, and without the compounding[7].

Thus, the addition of Portuguese to a statute written originally only in English is likely to cause a Gavagai problem. A law that regulates maçanetas in Portuguese would almost certainly be translated into English as applying to doorknobs and into German as applying to Knöpfe, creating a discrepancy in meaning if the law were to come under examination in the context of a case involving handles. Yet at the time of translation, no one would be likely to notice the problem. Roderick MacDonald (1997: 1234) put it right, speaking of Canada's bilingual legal system: "The fact that we can communicate despite differences in language points to the possibility of a shared human knowledge beyond language."

In Portuguese, the regulation would apply to both of the devices pictured above. In English and German, one could argue either way. Either "door knob" (Knopf) can be understood as generic for all door-opening devices, or more narrowly to include only proper knobs. If one can argue either way, a gap is left open. A court may adopt an innocently unfaithful interpretation, one that the enacting legislature would not have wanted, but which seemed the better interpretation to the judge who later had to construe the statute without adequate additional information about the legislature's intention. Even worse, the law is now open to a court's intentionally undermining the legislature's intention while staying within the limits that the language imposes.

[7] Thanks to Silvia Dahmen for this data.

Significantly, we cannot tell from our hypothetical maçaneta case whether adding languages helps or hurts the interpretation of laws as a general matter. If we begin with Portuguese, and intend to regulate both kinds of devices, then adding an English version that uses the word "door knob" complicates matters. What was clear in Portuguese is not clear in English, and if both are equally authoritative, a judge will be faced with interpretive work as a result of the bilingualism. If the regulation has a clear purpose, no harm will be done. But if it does not, the proliferation of languages has created room for error and mischief.

In contrast, if we start with English and then add the Portuguese, the opposite occurs. It becomes easier for a litigant seeking broad interpretation of the regulation to include both knobs and handles to argue that such an interpretation was exactly what the legislature had in mind. So whether adding additional language versions to a legislative scheme aids interpretation or makes it more difficult depends on which language came first, and must be considered on a case-by-case basis.

Courts do not, however, look at multilingual legislation that way. Rather, they engage in the fiction that no version is a translation of another, but rather, that they are all originals that share both equal authoritative status and the same drafting history. (See Leung, 2012 for discussion of legal fictions in multilingual legal systems.) This leaves interpretation rather uncertain when legislation is written in two languages, each version being given equal status. There is more than one way for a court taking this stance to resolve conflicts between the different language versions of the same law. Here I will compare two: The Canadian "shared meaning" approach, and the European "Augustinian" approach. Canadian courts employ a "shared meaning rule," tempered by subsequent inquiry as to whether the shared meaning furthers the purpose of the statute. If not, purpose can trump shared meaning. The Court of Justice of the European Union (formerly the European Court of Justice) employs a somewhat different approach. It looks at the various language versions and triangulates in an effort to capture the legislative intent. As does the Canadian approach, it uses the purpose of the law as a safety valve when the linguistic analysis produces uncertainty or produces a result at odds with furthering the law's goals.

Not many cases would turn out differently in the two systems because both methods ultimately concern themselves with purpose (sometimes called the "teleological approach" to statutory interpretation). Nonetheless, I will attempt to demonstrate here that there is a significant conceptual difference between the two approaches. The EU approach better addresses Quine's Problem. I will further argue that the proliferation of languages, contrary to what is typically assumed, actually reduces the interpretive uncertainty of Quine's Problem, although it cannot eliminate the problem entirely. There is a price to pay, however. Multilingual legal systems create syntactic ambiguity where there was none, and suggests a lack of ambiguity where there might have been some intent to permit broader interpretation.

Canada's shared meaning rule

The Supreme Court of Canada has stated the rule thusly:

> First, the English and French versions may be irreconcilable. . . . Second, one version may be ambiguous while the other is plain and unequivocal. The shared meaning will then be that of the version that is plain and unambiguous. Third, one version may have a broader meaning than the other. . . . "[W]here one of the

> two versions is broader than the other, the common meaning would favour the more restricted or limited meaning"[8].

Once this analysis takes place, it must be determined whether the shared meaning is consistent with Parliament's intent. If so, the shared meaning – which is the narrower meaning – prevails. Thus, the shared meaning rule is a defeasible rule. A number of scholars have pointed out the inadequacies of mechanical application of the shared meaning approach (Beaupré, 1988; Macdonald, 1997; Sullivan, 2004).

To see how the rule applies, consider the following case that construed a law that permits the incarceration of a minor only in limited circumstances. In *R. v. S.A.C.*[9], the issue was whether a child whose conduct in the case before the court was seriously criminal in nature may be incarcerated under a statute, the English version of which reads: "[Incarceration is permitted if] the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years *and has a history that indicates a pattern of findings of guilt*." (emphasis added). If the child's behavior in the current case counts toward determining the pattern, then the statute would permit incarceration in this case. If not, then the earlier history of the child's conduct would not justify imprisonment. The French version reads in relevant part: "il [l'adolescent] a commis un acte criminel pour lequel un adulte est passible d'une peine d'emprisonnement de plus de deux ans *après avoir fait l'objet de plusieurs déclarations de culpabilité*." The word "après" (after) clearly means that only criminal conduct that occurred earlier than the case at hand should count toward determining the youngster's criminal history. Applying the shared meaning rule, the French version trumps the English version and the child may not be sent to prison.

The problem with the shared meaning rule occurs when it is relatively clear that the purpose of a law would be undermined by imposing a narrow interpretation. Consider *R. v. Sinclair*[10], a 2010 decision of the Canadian Supreme Court. The English version of the Canadian Charter of Rights and Freedoms contains the following provision:

> Everyone has the right on arrest or detention: . . .
> b) to retain and instruct counsel without delay and to be informed of that right.

In *Sinclair*, the question was how long this right lasts. The preposition "on" in English suggests that it expires shortly after the arrest or detention begins. But the French version is broader. It begins: "Chacun a le droit, en cas d'arrestation ou de detention:" "En cas de" is not limited to the time immediately upon the arrest. The Supreme Court of Canada decided that the French version better reflected the legislative goal and adopted it, even though its meaning is broader than the English version.

Once one determines that fulfilling the law's purpose is more important than the shared meaning rule, it may turn out that the purpose is better furthered by some kind of compromise that fits somewhere between the French and English versions. That is what happened in the 1985 case, *Aeric, Inc. v. Canada Post Corporation*[11]. The English version of a regulation allowing for second-class postal rates referred to the "principal business" of an organization, suggesting that the rates apply only to profit-making enterprises. The

[8] *R. v. Caisse Popular*, 2009 S.C.C. 29 at paragraph 84 (internal citations omitted).
[9] 2008 S.C.C. 47.
[10] [2010] 2 S.C.R. 310.
[11] *Aeric Inc. v. Chairman of the Bd. of Dir., Canada Post Corp.*, [1985] 1 F.C. 127.

French version, in contrast, applied to "l'activité principale," which could be just about anything. The court held that the rates are available only to businesses, but the businesses need not be for-profit in nature. Neither version actually carries this understanding as its literal meaning.

What all of this suggests is that the critics of the shared meaning approach make a good point: The courts care only about the shared meaning when they believe that the coincidence of meanings best reflects the purpose of the statute and the will of the legislature. Thus, the approach does little work in its own right. As Sullivan (2004: 1014) notes:

> Let us suppose that the primary duty of interpreters is to give effect to the law that the legislature intended to enact insofar as that intention can be known. The legislature's intention is necessarily an inference. Let us suppose that the primary duty of interpreters is to give effect to the law that is drawn from reading the text (whether unilingual or bilingual) in context, having regard to the purpose of the legislation, the consequences of adopting a proposed interpretation, and admissible extrinsic aids.

Of course, the examination of the different language versions in Canada does something to reduce uncertainty in its own right: When the different versions would lead to different results, it forces the statutory interpreter to come up with justifications that go beyond the plain language of the text, since there is no single text and the language is not plain when the two are compared. This forces an analysis of purpose when there may have been none had there been only one version. As we have seen, though, it is entirely possible that one or the other version fails to capture the intent of the drafters. We can take this argument much further when we expand the number of language versions from two to 24, which is the number of versions in which legislation is written in the E.U.

Augustinian interpretation in the European Union

The Court of Justice of the European Union, with its obligation to give effect to all 24 versions of every act of legislation, takes a somewhat different approach. Like its Canadian sister, the CJEU is willing to forgo the application of formal interpretive procedure when doing so appears necessary to effectuate the purpose of the statute. Unlike, the Canadian courts, however, the CJEU does not presume that the narrowest interpretation is the presumptive one. Rather, the European Court looks at a number of language versions and then triangulates, using the various versions to come up with an essential sense of what communicative act was intended. The method relies crucially on the fiction that the language versions were all drafted independently, so that none is a translation of another. This fiction will hide distortions that result from a particular language version propagating similar versions when they are the source language for translation in actual practice. Nonetheless, with 24 languages available to compare, it is likely that the range of expressions will provide at least some useful information as to what the European Commission intended to accomplish by enacting a directive.

I have called the process "Augustinian Interpretation," after the procedure for reading multiple translations of the scripture that Augustine developed in late antiquity. In *On Christian Doctrine*, he noted:

> For either a word or an idiom, of which the reader is ignorant, brings him to a stop. Now if these belong to foreign tongues, we must either make inquiry about

> them from men who speak those tongues, or if we have leisure we must learn the tongues ourselves, *or we must consult and compare several translators.*

According to Augustine, ambiguity in a text may remain unnoticed, especially if it results from bad translation. Even worse, incorrect translation can lead to mistakes as to the actual content of the Divine Scripture. The surest way to discover such problems is to place competing versions (both in Latin and in predecessor languages) side by side and look for differences. Ambiguity should be resolved in favor of promoting core religious values, such as charity.

The Augustinian method of the CJEU largely adopts this methodology, although it diverges from it in some interesting ways. First, the EU does not recognize that the various language versions emanated from multiple translations of an original text. Acknowledging the translation history in which one version was the source of another violates the principle of equal authenticity that is so much a part of EU legislative culture. Thus, examining multiple texts and then triangulating is more or less a necessity. When there are discrepancies, the court has no choice but to compare language versions and to examine extra-textual material. (See Lachacz and Mańko, 2013).

Second, while Augustine resolved discrepancies in favor of the interpretation that best promoted the value of charity, the CJEU resolves discrepancies in favor of the interpretation that best furthers the law's legislative goals. Both, then, apply what is called a substantive canon of interpretation in current legal parlance. (See, e.g., Eskridge and Ferejohn, 2010: 1253 ("There are more substantive canons of statutory construction than you can shake a stick at;")).

The Augustinian method works best when the question is one of word meaning. For example, in *E.C. Commission v. Italy*[12], the European Court of Justice was asked to interpret an EU directive that requires member states to exempt from VAT "the provision of medical care in the exercise of medical and paramedical professions . . . " The Italian law implementing this directive was worded in such a way to allow for the exemption of veterinarians. A look at other versions showed that the Italian one was an outlier[13]. After making the comparison, the Court held that the directive does not apply to veterinary services.

I will not provide additional examples here, since this practice is well-documented in the literature. (see Baaij, 2012, forthcoming; Cao, 2007; Leung, 2012; Solan, 2009 and references cited in these works). Instead, I wish to focus on the issue of how well this method works. By this standard, I mean to say that the method works when, after comparing the various language versions, it becomes relatively clear which version (or versions or hybrid interpretation) best reflects the intent of the enacting body and thus best furthers the legislative purpose.

The best indication of how well Augustinian interpretation has worked comes from the excellent work of C.W.J. Baaij (2012; forthcoming). In a study of 50 years of ECJ opinions (1960-2010), Baaij found that 246 of them involved a comparison of language versions (Baaij, forthcoming: 5.2.2). Of these, only twenty involved disputes over the meanings of ordinary words. Of those, the Court resolved thirteen by choosing the majority of the

[12]Case 122/87, *E.C. Comm'n v. Italy*, 1988 E.C.R. 2685.

[13]The Italian version read in relevant part: "le prestazioni mediche effecttuate nell'esercizio delle professioni mediche e paramediche quali sono definiti dagli Stati membri interessati."

versions, and seven by resorting to the purpose of the law by means of external evidence. Let us accept the proposition that all of the seven cases in which the Court considered, but rejected an interpretation based upon the meanings of the provision in a majority of languages are, indeed, Gavagai problems, that is, examples of cases in which the non-equivalence of similar terms in different languages creates a failure of communication. (See Leung, 2012; Cao, 2007).

One such case is a real-life multilingual version of the "No Vehicles in the Park" hypothetical law that has been part of Anglo-American legal lore for half a century (see Hart, 1961 for original discussion). In the actual case[14], an EU directive regulated "the letting of premises and sites for parking vehicles." A Danish company, which was letting a site for boats, claimed that it was not covered by the regulation since the word "vehicles" is best understood as referring to land vehicles. Reviewing various language versions, the ECJ found no consensus. In some languages (French, English, Italian, Spanish, German and Finnish) the word seemed to apply to all modes of transport. In others (Danish, Swedish, Dutch and Greek), its most common meaning is limited to vehicles that run on land. Thus, the court resorted to the teleological approach and decided that the purpose behind the directive would be better served if boats were included within the scope of the directive. (See Cao, 2007: 74–75).

In another such case, *Commission of the E.U. v. United Kingdom*[15], the question was the essence of fishing. The English version of a regulation exempting EU products from VAT in the member countries referred to "products taken from the sea in vessels registered or recorded in that country and flying its flag." Before Poland became a member of the EU, Poland and the United Kingdom engaged in a venture whereby Polish ships would catch fish in Polish waters in nets, then turn the nets over to the British fishing fleet, which would, in turn, drag them into EU waters before removing the nets from under the sea. The UK claimed that it had not "taken products from the sea" other than within the EU. So the question became whether the English version properly captured the intended meaning of the regulation. The court looked at many language versions, and was unable to find adequate consensus. It then applied the teleological approach and held against the UK on the theory that the purpose behind the regulation was not furthered by permitting fish to be brought into the EU under water, but not in vessels above the water. (See Cao, 2007; Engberg, 2004; Solan, 2009).

Something must be going right when over a 50-year period, there have been only 20 cases in the Court of Justice of the European Union in which the dispute was over the meaning of an ordinary language term. What goes right is exactly what Fodor (1998) says should go right: most of the ordinary words that are subject to dispute denote concepts about which Europeans have relatively common experiences. Since our cognition is designed to form similar concepts from similar experiences, words used in ordinary language are not likely to create many legal problems. But sometimes they do cause problems of interpretation. And when they do, the proliferation of language versions increases the likelihood that an Augustinian solution can be successfully found by determining whether the problem exists at all in a significant number of language versions.

I do not mean to paint too rosy a picture, however. For one thing, the Danish com-

[14]Case C-428/02, *Fonden Marselisbord Lystbådehavn v. Skatteministeriet*, 2005 ECR I-1527.
[15]Case 100/84, *Comm'n of the E.U. v. United Kingdom*, 1985 E.C.R. 1169.

pany that lost its case over the facility for parking boats may well have acted in good faith based upon its understanding of Danish law and the Danish version of the EU directive. This, as Leung (2012) points out, creates a legal paradox. The multiplicity of languages enables each state to maintain its identity by having all European laws written in the official language of each state. A French person need not worry about not reading Swedish to have access to European law. It is right there in the French. In doing so, however, each state forfeits the ability to predict the outcome of disputes decided by comparing various language versions in the Augustinian manner. For that requires not only familiarity with the relevant languages in a nuanced way, but also access to the laws in these languages, and the time to study and compare them. For the most part, financial players will be left in the dark and simply take their chances. The fact that Baaij found only twenty cases in which the meanings of ordinary words across languages was the issue at hand suggests that while the problem is real, and while it is likely to result in periodic injustice (unless the court begins to engage in prospective rulings), it is only occasional. Moreover, translation decisions are not always clear, and there cannot ever be a methodological consensus capable of producing uniform results (Kjaer, 2007).

In addition as multilingualism reduces legal uncertainty resulting from vagueness, it appears to increase legal uncertainty resulting from syntactic ambiguity. Recall my earlier observation that syntactic ambiguity is a far less frequent problem for monolingual courts than is vagueness. Yet Baaij's analysis appears to demonstrate that the opposite happens when it comes to syntax: Fully 25 percent of the cases in which the ECJ analyzes multiple versions of a law involve syntactic ambiguity. On reflection, this should not be surprising. While individual words may be subject to literal translation, languages often differ in their syntax, making literal translation impossible. Thus, ambiguities are likely to "spring up" in the course of translating documents by virtue of differences in such things as word order and phrasal structure. (See Cao, 2007 for additional examples of syntactic ambiguity in multilingual legislation).

Consider the following case[16]. A Directive regulates transportation by truck. It contains exceptions. The English version of the relevant exception is ambiguous: "transport of animal carcasses or waste not intended for human consumption." It is not clear whether "not intended for human consumption" modifies both "carcasses" and "waste" or only the latter. But in Dutch, as Baaij points out, there is no ambiguity – it modifies both, meaning that the transportation of animal carcasses is not exempt unless the carcasses being transported are not intended for human consumption[17].

This leads to an awkward problem for those evaluating the consequences of multilingual legislation. If we start with the English version, the Dutch version helps because it disambiguates – two languages are better than one. If, however, we start with the Dutch version, adding the English version serves only to muddy the waters. But it would not muddy them much, because we would still have to ask which of the English readings should be applied. Whether we rely on the teleological approach or the shared meaning

[16]Case 90/83, *Paterson v. W. Weddel & Co.*, 1984 E.C.R. 1567.

[17]The Dutch version says, in relevant part: "…vervoer van niet voor menselijke consumptie bestemde geslachte dieren of slachtafvallen." Both the language of the Dutch version and the data concerning the proportion of EU cases involving syntactic ambiguity come from Baaij's power point presentation from his lecture at Princeton University, October 2013. The slides are on file with both Baaij and this author. The opinion of the Court refers to the Dutch and German versions, but does not reproduce the actual language.

rule, we are likely to be driven to the interpretation that the court accepted. Add other languages that act like Dutch with respect to this construction, and the Augustinian approach leads to the same result.

Thus, I do not see as much room for judicial mischief in the multilingual context as I do in the monolingual context. Yet, the same problem we saw in the context of vague statutes also applies to ambiguous ones. Whether the addition of language versions makes things better or worse appears to depend in part on what the starting language is. If the purpose of the law is better fulfilled with a broad interpretation, adding a language with a narrow interpretation as one possibility among several does nothing to help and creates litigation opportunities.

All of this looks a bit chaotic. No rule tells a court when it must apply one approach and when it must apply another, as writers such as Baaij (2012) and Leung (2012) aptly point out. Yet the same holds true for monolingual statutory interpretation. Let us say that a regulation were written only in English, and used the compound word "doorknob." A texualist judge may not apply it to door handles because handles are not knobs. An intentionalist would be somewhat more comfortable with the expansive interpretation, but would have to justify ignoring the "ordinary meaning rule," which says that courts are to assume that the legislature intended the words of statutes to be construed in their ordinary sense. (See Slocum, 2012; Solan, 2010; Scalia and Garner, 2012).

From the perspective of an English-speaking legal community, the choices, then, seem to be between a legal system that gives us the information about Portuguese, and a legal system that does not. If all versions of the regulation are considered authoritative and equal, then it is difficult to see how multiplying languages can make things any worse than the textualist/intentionalist dispute that might occur if only the English version were subject to interpretation. Knowledge of the Portuguese version can only serve to diffuse the apparent importance of the linguistic nuance that limits the interpretation in English, but not in Portuguese.

A final note on statutory interpretation and morality

All of this is especially important in the context of multilingual regimes. The goal in creating such regimes is in large part to balance the ceding of political power to a higher order governmental structure, while at the same time showing respect for the autonomy of the individual groups whose power has been ceded. It is bad enough in monolingual legal systems for judges to pervert the power to construe laws by pretending to be deferential while taking advantage of linguistic accident as a vehicle for promoting their own personal values surreptitiously.

When the question is a matter of respect for national sovereignty as it is in the EU, or of respect for a large minority in exchange for their remaining in the larger legal order, as it is in Canada, the stakes go up. The CJEU is known to place the opportunity to develop European legal doctrine above fidelity to language. (See Lachacz and Mańko, 2013 and references cited therein). Thus, the primacy of the teleological approach. This is not necessarily a bad thing (see, e.g., Paunio and Lindroos-Hovinheimo, 2010, but it does come at some cost, especially in times when less populated or less wealthy EU members already feel disrespected. In those situations, the Court will act with far more legitimacy than when the linguistic and teleological analyses converge. My sense is that they do converge quite often, with very few cases of indeterminacy that a comparison of language

versions does little to resolve. And they are more likely to converge in a multilingual regime employing the Augustinian approach than they are in a bilingual regime employing the shared meaning rule, because there will be cases in which the narrower meaning is not the one that furthers the legislative goals.

Nothing is perfect. Quine's problem is the reality at least some of the time. Moreover, when multilingualism increases the likelihood of syntactic ambiguity, cases of uncertainty give rise to interpretive opportunism. This challenges rule of law values and subjects the CJEU to concerns about its moral fiber. Fortunately, for reasons I have attempted to describe, these opportunities are surprisingly few even in the scheme of as complex a multilingual legal order as the European Union.

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A fonética forense no Brasil: cenários e atores

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Abstract. *Forensic phonetics is a very recent area, especially in Brazil, which, like any other field that makes use of technological resources, is always in need of consistent research projects. Multidisciplinary par excellence forensic phonetics is a discipline that uses knowledge from many other disciplines and utilizes professionals from different specialties. The purpose of this article, though, is not to present any research results or theoretical argumentation. Rather the paper aims to present an overview of forensic phonetics in Brazil. It starts with a discussion of the terminology adopted by researchers and experts, followed by a presentation of the main places where research in forensic phonetics is being undertaken. After that, it presents the state of the art in Brazil, including the forensic expertise available to the Brazilian judicial system, the institutions that provide the expertise, and the associations and publications in the area. Finally, the need for greater involvement by universities in discussion about and research into forensic phonetics will be discussed, focusing always on multidisciplinarity.*

Keywords: *Forensic Phonetics, Forensic expertise in Brazil, Forensic speaker comparison, Speaker verification, Speaker identification.*

Resumo. *A fonética forense é uma área recente, principalmente no Brasil e, como qualquer outro campo que faz uso de recursos tecnológicos, é sempre muito carente de trabalhos consistentes de pesquisa. Multidisciplinar por excelência, essa é uma disciplina que utiliza conhecimentos de diversas áreas e profissionais de diferentes especialidades. O propósito deste artigo, no entanto, não é apresentar resultados de pesquisas ou argumentações teóricas sobre o tema. Este trabalho tem como objetivo apresentar uma visão geral da fonética forense no Brasil. Começa com uma discussão sobre a terminologia adotada por pesquisadores e peritos, seguida de uma apresentação dos principais locais em que se desenvolvem pesquisas em fonética forense em diversos países. Na sequência apresenta-se o estado da arte no Brasil, a partir de como a perícia se localiza no sistema judicial brasileiro, seguido pelos órgãos que realizam perícia, as associações de classe, e ainda os principais eventos e publicações na área. Ao final parte-se para uma defesa de um envolvimento maior das universidades nas discussões e pesquisas em fonética forense, sempre com foco na multidisciplinaridade.*

Palavras-chave: *Fonética forense, Perícia no Brasil, Comparação forense de locutor, Verificação de locutor, Identificação de locutor.*

Introdução

É incrível pensar que faz menos de dez anos que eu, primeira autora deste artigo, ouvi pela primeira vez o termo fonética forense, mesmo já lidando com fonética há um bom tempo. Foi durante o IX Congresso Nacional de Fonética e Fonologia na UFMG em Belo Horizonte no ano de 2006. Assistimos a uma palestra proferida por Ricardo Molina de Figueiredo intitulada *Fonética e Acústica Forense: O Estado da Arte*. O tema me impressionou bastante, mas como meu foco na época era a aquisição de pronúncia de segunda língua, o meu interesse pela identificação de falantes ficou lá naquele congresso. Seis anos depois, já professora de fonética e fonologia na Universidade Tecnológica Federal do Paraná – UTFPR, participando da ABRALIN 2011 em Curitiba com um grupo de alunos, assisti a nova palestra do Professor Molina sobre o tema, dessa vez sobre a importância da interdisciplinaridade na fonética forense. Embora eu estivesse ainda envolvida com pesquisa na área de fonética e fonologia da língua inglesa, dessa vez, não pude mais fugir dessa área de estudos. Agora eu tinha a pressão dos alunos que praticamente me intimaram a iniciar um grupo de estudos em fonética forense na UTFPR. Mas ainda demorei um ano a dar início ao grupo que, apenas em março de 2012 se formou, com professores e alunos do curso de Letras da UTFPR e peritos criminais do Instituto de Criminalística do Paraná. Ao longo de dois anos, tivemos o privilégio de contar também com professores e estudantes de outras áreas, como a engenharia e a música, e também com colegas professores e alunos da Universidade Federal do Paraná – UFPR, nas discussões sobre textos lidos, no treinamento no uso de software para análise acústica, no treinamento em estatística.

Embora nossas pesquisas sejam bem recentes, já tivemos a chance de apresentar trabalhos em importantes eventos. Primeiro, em Tampa, tive a honra de apresentar resultados preliminares de nossa pesquisa sobre vogais em disfarce de voz para uma plateia composta pelas pessoas mais importantes na área, durante um dos principais eventos da fonética forense – o *IAFPA's*[1] *2013 Annual Conference*. Segundo, em Florianópolis no evento *Linguagem e Direito: Construindo Pontes*, praticamente todo o grupo esteve apresentando resultados das diversas pesquisas em andamento e discutindo sobre a importância da interdisciplinaridade na fonética forense. Durante esse evento, o Professor Malcolm Coulthard, organizador do evento, gentilmente me fez o convite a escrever este artigo sobre a fonética forense no Brasil.

Faço todo esse preâmbulo muito pessoal, e talvez inadequado para uma publicação científica, por sentir a necessidade de demonstrar minha trajetória na fonética e de admitir que escrever este artigo é uma grande responsabilidade, considerando que a área forense é tão complexa e tão polêmica, e ao mesmo tempo, tão nova para mim. Mas, da mesma forma que não consegui escapar dos meus alunos para dar início ao grupo de estudos, também não consegui fugir desta responsabilidade. Assumo-a, no entanto, com humildade e sem grandes pretensões, pois acredito que posso oferecer minha contribuição ao conclamar a comunidade científica a discutir sobre a fonética forense. E conclamo também às pessoas que efetivamente executam os trabalhos em fonética forense a juntarem-se a nós, educadores e pesquisadores, para que nossas discussões e pesquisas sejam realmente efetivas. Por isso convidei para dividir comigo a produção deste artigo uma Perita do Instituto de Criminalística do Paraná.

Já eu, segunda autora, Perita Criminal, bacharel em Fonoaudiologia, fui impulsionada

[1] *IAFPA – International Association for Forensic Phonetics and Acoustics* – mais adiante neste artigo haverá uma seção sobre essa associação.

a participar da empreitada do grupo da UTFPR por constatar uma diferença quantitativa gritante entre as pesquisas realizadas por um perito para elucidação de um caso e as publicações científicas. A cada caso criminal (que é a esfera onde atuo), pesquisas extensas são realizadas nas mais diversas áreas de conhecimento e, geralmente por impedimentos legais, não podem ser publicadas. Da experiência em tratar concretamente com a área de análise forense da voz/fala, urgiu a necessidade de realizar e fomentar pesquisas no meio acadêmico, ponto em que minha história pessoal convergiu com a da primeira autora. Felizmente.

Este artigo, então, se inicia com uma breve discussão sobre terminologia e sobre a fonética forense em alguns países. Na sequência, para tratar da fonética forense no Brasil, vamos discorrer sobre o sistema jurídico e sobre o trabalho pericial; depois, sobre os profissionais, os órgãos e as associações. Finalmente vamos mais uma vez fazer uma defesa sobre a importância da interdisciplinaridade e sobre a necessidade de pesquisas na área.

Conceitos e termos – início das controvérsias

Afirmamos no preâmbulo que, além de importante e complexa, a fonética forense é uma área polêmica. Podemos começar com a controversa relação entre fonética e fonologia que, definidas como disciplinas autônomas dentro da linguística a partir do Círculo Linguístico de Praga[2], têm tido um conturbado relacionamento (Ohala, 1999, 2005). A fonética tem sido considerada como uma disciplina desvinculada da linguística (Vennemann, 1975), ou como parte da linguística (Ladefoged, 1987), ou ainda como uma disciplina autônoma, mas visceralmente interdisciplinar, com uma relação privilegiada com a linguística, mas que mantém relações estreitas com diversas outras áreas (Keller, 1988). Uma coisa, no entanto, é incontroversa: a fonética lida com a fala em três arenas (Kent e Read, 2002) – como ela é produzida (fonética articulatória ou fisiológica), como ela é transmitida acusticamente (fonética acústica) e como ela é percebida (fonética perceptiva). No âmbito forense, portanto, a fonética será utilizada em suas três perspectivas, com sua característica interdisciplinar, como propõe Keller (1988). Utilizada, mais popularmente, para a análise de voz registrada em algum tipo de mídia para identificação de falante, a fonética forense abrange várias outras atividades relacionadas a aspectos da fala, e dos sons em geral, em todos os misteres criminalísticos (Braid, 2003). Algumas dessas outras atividades são: análise de enunciado, caracterização de perfil vocal, transcrição, preparação de "voice line-up"[3], LADO[4]. No Brasil, no entanto, o termo "fonética forense" é bastante controverso e por vezes não adotado por órgãos oficiais, por não comportar todas as atividades de atuação do perito da área. Além da identificação de locutor (ou biometria da voz), atividades como análise de edição fraudulenta em material audiovisual, reconhecimento facial, fraudes eletrônicas, processamento digital de sinais, estudo de sistemas de comunicação, armazenamento, compactação, extensão e autenticação de registros de sinais são executados pela perícia.[5]

Na atividade mais conhecida da fonética forense, a identificação de falante, a contro-

[2]Círculo Linguístico de Praga: corrente estruturalista, liderada por Nicolai Trubetzkoi e Roman Jakobson, buscou delimitar o objeto de estudo da estrutura sonora da língua: o fonema (Cristofaro-Silva, 2003).

[3]Técnica em que uma vítima ou testemunha ouve uma série de vozes para tentar apontar a voz do criminoso.

[4]LADO – *Language Analysis for the Determination of Origin of Asylum Seekers* – Análise de linguagem para determinação de origem de requerentes de asilo (todas as traduções neste texto são efetuadas pela primeira autora).

[5]Informação obtida em http://www.voxpericias.com.br/noticias/10-csi-da-vida-real.html, acesso em 10.03.2014.

vérsia se dá na terminologia. Segundo Rose (2002), quando um perito em um processo legal é solicitado a emitir um laudo para concluir se duas ou mais gravações são de um mesmo falante, tem-se convencionado chamar de identificação forense de falante ou reconhecimento forense de falante. Hollien (2002) apresenta três termos como particularmente importantes: reconhecimento de falante, verificação de falante e identificação de falante. Reconhecimento de falante ou reconhecimento de voz, segundo o autor, trata-se de um conceito geral, que abrange os outros dois termos. A diferenciação que o autor faz entre os termos verificação e identificação de falante tem a ver com o contexto em que um e outro se realizam, e com a atitude do falante em relação à produção da linguagem. No caso de verificação, o falante é cooperativo, ou seja, quer ser reconhecido, e a verificação se faz entre membros de um corpus pré-existente para confrontação. Um exemplo poderia ser o acesso a uma conta bancária via telefone por comando de voz. O outro termo, identificação de falante, é apresentado por Hollien (2002) como um problema mais difícil, pois geralmente envolve algum tipo de distorção, seja do canal de transmissão, seja do próprio falante (nervosismo, por exemplo), ou ainda, pelo uso de algum tipo de disfarce. Em um contexto de crime, o falante certamente não terá a mesma atitude cooperativa de um cliente bancário com a intenção de ter sua voz identificada. Segundo Nolan (1999), mesmo sendo cooperativo, dificilmente o falante vai produzir um exemplar de fala equivalente ao que ocorreu durante o crime, pois a fala natural não pode ser bem imitada pela leitura, e muitos outros fatores podem influenciar, como o nível de stress, por exemplo. Esses três termos, reconhecimento, identificação e verificação aparecem no início de vários textos na literatura internacional em inglês para definição de terminologia.

No Brasil, no entanto, o termo identificação não tem sido utilizado para o contexto forense. Braid (2003), por exemplo, adota o termo verificação e não discute a terminologia. O autor afirma que "a verificação de locutor[6] é a atividade pericial dentro da Fonética forense capaz de determinar se duas falas foram produzidas por um mesmo falante" (p. 6). Quando usa o termo identificação, refere-se a "identificação automática de locutor" (p. 96). Em Gomes *et al.* (2012) explica-se que:

> Os órgãos da perícia oficial no Brasil adotam a nomenclatura "verificação de locutor" para os procedimentos forenses que visam determinar se a voz constante no material questionado foi ou não proferida pelo suspeito. [...] a natureza da fala humana e os atuais procedimentos de análise disponíveis não permitem individualizar um falante a partir de um amplo banco de dados, com a precisão que se obtém com o emprego da genética molecular e através de impressões digitais. Assim, "identificar", em termos forenses e no Brasil, significa afirmar que as características apresentadas pela evidência são encontradas apenas no autor das mesmas, com determinado grau de precisão [...] e levando-se em consideração a população humana do planeta. (Gomes *et al.*, 2012: 7)

Valente (2012) aponta que a perícia criminal oficial brasileira adota o termo "verificação de locutor" para o exame forense de determinação da fonte em que a fala é o vestígio de interesse. O autor discorre sobre as bases para essa escolha e também explica os termos em inglês, conforme acima descritos. No entanto, Valente elege o termo "comparação" e a expressão "comparação forense de locutor", ou simplesmente "comparação de locutor". Diz o autor que pesquisadores da área de fonética forense têm preferido nomenclaturas

[6]No Brasil utiliza-se o termo 'locutor' em lugar de 'falante', conforme traduzimos *speaker* dos textos citados no parágrafo anterior.

que se afastem da ideia de individualização. Também argumenta em favor da expressão "comparação de locutor" ao invés de "comparação de voz" ou "comparação de fala", como preferem outros autores.

Foulkes e French (2012) também explicam os motivos para mudança de terminologia. "Embora a análise de características vocais não determinem a identidade do falante, ela consegue oferecer informações muito ricas sobre esse falante, não obstante o variado grau de precisão e confiança. É por essa razão que agora se dá preferência ao rótulo 'comparação de locutor' ao invés de 'identificação"'[7]

Essa tendência também se verificou na Conferência Anual da IAFPA em 2013[8], em cujos resumos de apresentações se vêm os termos *FVI – Forensic Voice Identification* (Lea e Harnesberger, 2013); *FSC – Forensic Speaker Comparison* (Gold e French, 2013); *FVC – Forensic Voice Comparison* (Hughes e Foulkes, 2013); *FSD – Forensic Speaker Discrimination* (Gormley, 2013).

Voltando às ponderações de Valente (2012: 25), concordamos quando diz que "as denominações usadas tradicionalmente já estão amplamente difundidas, não sendo possível afirmar, no atual momento, se, na literatura técnica da área, elas irão perdurar ou se serão substituídas". Como se pode ver pelos termos apresentados, os conceitos de falante, fala e voz também entram na disputa, assim como as definições de identificação, verificação, discriminação, comparação, e muitas outras palavras que poderão surgir.

Encerrando aqui essas considerações a respeito de conceitos e termos, vamos fazer um breve relato sobre a fonética forense no mundo para, então, discorrer sobre a fonética forense no Brasil, objetivo maior do presente texto.

A fonética forense em diversos países

Vários órgãos internacionais podem ser citados como de grande importância para o desenvolvimento da fonética forense no mundo. Três deles são: a Rede Europeia de Institutos de Ciência Forense – ENFSI – *European Network of Forensic Science Institutes*[9], a Associação Internacional de Fonética Forense e Acústica – IAFPA – *International Association for Forensic Phonetics and Acoustics*[10], e a Sociedade de Engenharia de Áudio – AES – *Audio Engineering Society*[11].

O objetivo maior da ENFSI é assegurar a qualidade do desenvolvimento e disseminação da ciência forense por toda a Europa, através de reuniões regulares dos países membros. Criada em 1993 com 11 (onze) laboratórios, é uma organização em expansão, que acolhe novos membros, desde que atendam aos critérios estabelecidos. Hoje conta com quase 60 (sessenta) laboratórios governamentais e não governamentais espalhados por todos os países da União Europeia. A espinha dorsal da ENFSI são os 16 (dezesseis) grupos de trabalho, que abrangem uma série de disciplinas da área forense, dentre elas a análise forense de fala e áudio (*Forensic Speech and Audio Analysis Working Group*).

A IAFPA foi criada em 1991 em York na Inglaterra, no início apenas como Associ-

[7] *Although analysis of vocal features cannot determine a speaker's identity, it can provide a wealth of information about the speaker, albeit to varying degrees of precision and confidence. It is for this reason that the label speaker comparison is now preferred to identification.* (Foulkes e French, 2012).
[8] Resumos obtidos em http://www.iafpa.net/conf.htm, acesso em julho de 2013.
[9] Informação obtida em http://www.enfsi.eu/, acesso em 10.03.2014.
[10] Informação obtida em http://www.iafpa.net/index.htm, acesso em 10.03.2014.
[11] Informação obtida em http://www.aes.org/, acesso em 15.03.2014.

ação Internacional de Fonética (IAFP). Em 2003, durante a conferência anual de Viena, adicionou-se o *A* de acústica, num convite à entrada de acadêmicos da engenharia ao grupo (Lindh, 2010). A IAFPA tem como objetivos: a) fomentar a pesquisa e proporcionar um fórum para o intercâmbio de ideias e informações sobre o desenvolvimento, prática e pesquisa em fonética forense e acústica; b) definir e impor normas de conduta profissional e procedimentos para os envolvidos no tratamento de casos de fonética e acústica forense. Essa associação promove uma conferência anual para apresentações de trabalhos desenvolvidos por pesquisadores de várias partes do mundo e é uma das entidades organizadoras da revista científica *The International Journal of Speech, Language and the Law*, publicada pela Equinox Publishing[12].

Fundada em 1948, a AES é a única associação profissional que se devota exclusivamente à tecnologia de áudio e, de forma contínua, se envolve na criação e manutenção de padrões internacionais na área de engenharia de áudio, analógica e digital, tecnologia da comunicação, acústica, preservação de mídia e criação. Também serve às necessidades de desenvolvimento de seus membros e da indústria de áudio, promovendo regularmente encontros, exposições e publicações. Um grupo de engenheiros da AES realiza pesquisas na área de identificação de falantes e realiza, a cada dois anos, a conferência *Audio Forensics – Techniques, Technologies and Practice*.

As pesquisas na área forense se realizam em várias universidades ao redor do mundo, muitas vezes em conjunto com departamentos de polícia e laboratórios governamentais ou particulares. Um exemplo é a Universidade de York na Inglaterra que, através de seu Departamento de Ciências da Linguística e da Linguagem (*Department of Language and Linguistic Sciences*) desenvolve um programa de Mestrado em Ciência Forense da Fala (*Forensic Speech Science*) em conjunto com um dos mais importantes laboratórios de ciência forense da fala do mundo, o *JP French Associates*[13]. Outro exemplo, também na Inglaterra, é a Universidade de Cambridge[14] onde, através do Departamento de Linguísticas Aplicada e Teórica (*Department of Theoretical and Applied Linguistics*) têm sido desenvolvidos os projetos Variabilidade Dinâmica na Fala (*Dynamic Variability in Speech – DyViS*) e Similaridade da Voz e o Efeito do Telefone (*Voice Similarity and the Effect of the Telephone – VoiceSim*). Também de grande importância é o trabalho realizado na Alemanha, em universidades como a *University of Trier*, a *Philipps-Universität Marburg*, a *Ludwig-Maximilians-University* que, muitas vezes exemplarmente realizam pesquisas na área em conjunto com órgãos da polícia estatal, como a agência estadual de investigação alemã – a *Landeskriminalamt Brandenburg*, o *Bavarian State Criminal Office*, e a Polícia Federal Alemã – a *Bundeskriminalamt – BKA*, através de seu Departamento de Identificação de Falante e Análise de Áudio (*Department of Speaker Identification and Audio Analysis*)[15]. Podemos citar, ainda, universidades de diversos outros países que têm pesquisadores realizando trabalhos de pesquisas importantes para o desenvolvimento da fonética forense, nas mais diversas aplicações: *University of Gothenburg*, na Suécia; *University of Zurich*, na Suiça; *Jagiellonian University*, na Polônia. Em outros continentes, os destaques são a

[12]Informação obtida em http://www.equinoxpub.com/journals/index.php/IJSLL, acesso em 10.03.2014.
[13]Informação obtida em http://www.york.ac.uk/language/postgraduate/taught/forensic-speech-science/, acesso em 10.03.2014.
[14]Informação obtida em http://www.mml.cam.ac.uk/dtal/staff/fjn1/, acesso em 10.03.2014.
[15]Informação obtida em http://www.bka.de/nn_192960/EN/TheBKA/Tasks/CentralAgency/ForensicScience/forensicScience, acesso em 10.03.2014.

University of Canterbury, na Nova Zelândia; *University of Canberra*, na Austrália; *The English and Foreign Language University*, na Índia; *Peking University*, na China. Na América do Norte, destacam-se a *University of Florida*, em Gainesville, a *University of South Florida*, em Tampa, a *University of Alaska Fairbanks*, nos Estados Unidos; a *Université de Montreal*, a *Carleton University*, em Ottawa, e a *University of Alberta*, no Canadá.

Existem países em que as universidades não se envolvem na área da fonética forense e as pesquisas são realizadas por órgãos de atividades forenses estatais ou privados. Na Holanda, por exemplo, o NFI – Instituto Forense da Holanda (*Netherlands Forensic Institute*), ligado ao Ministério de Segurança e Justiça, é o órgão mais procurado pela polícia, pela promotoria e pelos tribunais, para trabalhos nas mais diversas áreas da fonética forense. Além disso, os profissionais do NFI, todos com algum tipo de formação em linguística e grau acadêmico em fonética, variação linguística, fonoaudiologia e ciência forense da fala, com a colaboração de profissionais de tecnologia da fala, analisam sistemas automáticos como BATVOX[16] e o VOCALISE[17] para verificar sua validade para análise de fala em casos criminais. Embora ofereçam análise sobre softwares para reconhecimento automático de fala – ASR (*Automatic Speech Recognition*) ou verificação automática de locutor – ASV (*Automatic Speaker Verification*) – mais uma vez a questão da terminologia! – os profissionais do NFI não utilizam nenhum método automático em seus casos. O método por eles utilizado é baseado em análise auditiva, suplementado por análise acústica com o que eles chamam de análise cega (*blind analysis*), uma análise perceptual baseada em reconhecimento Gestáltico[18].

Um exemplo de laboratório não estatal de destaque é o *JP French Associates Forensic Speech and Acoustics Laboratory*, sediado na cidade de York, no Reino Unido. Em casos criminais, esse laboratório oferece seus serviços tanto para promotoria como defesa, elaborando laudos periciais em análise de voz, transcrição, autenticação e realce de áudio, e uma série de outros serviços de áudio e fala em contexto forense[19]. A metodologia de trabalho da JP French Associates envolve avançada tecnologia, não apenas no uso para os casos forenses, mas também no desenvolvimento e teste de sistemas de análise de áudio e fala[20].

Em relação a procedimentos e métodos de análise, Gold e French (2011) realizaram uma pesquisa sobre práticas forenses de comparação de locutor em 13 (treze) países, em 5 (cinco) continentes. Trinta e quatro peritos, representantes de universidades, institutos de pesquisa, laboratórios ou agências governamentais e não governamentais, e peritos independentes, responderam a uma série de perguntas sobre suas práticas. As respostas

[16]O BATVOX é um software que modela o conjunto de sons produzidos por um ser humano, atribuindo-lhe uma identificação única, baseada nas suas características corporais, para permitir posterior identificação face a um modelo apresentado. (Revista Phoenix Magazine, do Sindicato dos Delegados da Polícia Federal – SINDIPOL Brasil, http://www.sindepolbrasil.com.br/Sindepol10/tecnologia.htm, acesso em 09.03.2014).

[17]O VOCALISE – Voice Comparison and Analysis of the Likelihood of Speech Evidence – é um sistema de reconhecimento automático de falante, para Windows, baseado em parâmetros fonéticos e espectrais. Compara um arquivo de audio teste com uma série de arquivos de audio de suspeitos e produz uma lista ordenada dos arquivos, de acordo com a proximidade com a voz do áudio teste, assim como uma lista de escores de similaridade que quantifica a proximidade. (informação obtida de http://www.oxfordwaveresearch.com/j2/products/vocalise, acesso em 14.03.2013).

[18]Informações fornecidas em comunicação pessoal por Joseph F. M. Vermeulen e em http://www.forensicinstitute.nl/about_nfi/, acesso em 10.03.2014.

[19]Informações obtidas em http://www.jpfrench.com/, acesso em 10.03.2014.

[20]Informações obtidas em http://www.jpfrench.com/about/technology/, em 10.03.02014.

revelaram grande variação na metodologia de trabalho, no formato das conclusões expressas nos laudos e na importância atribuída a determinadas características da fala. Os autores entendem que a falta de consenso em questões tão fundamentais pode surpreender especialistas de áreas afins, mas não relacionadas a questões forenses, que certamente devem discordar entre si em algumas questões, mas não com tanta disparidade. Defendem, então, que os resultados dessa pesquisa apontam para a necessidade de maiores debates e cooperação entre peritos, instituições e nações.

Entre os países participantes da pesquisa está o Brasil, que revelou como metodologia de trabalho a análise auditiva combinada com a análise acústica. As outras opções para resposta eram: análise auditiva somente, análise acústica somente, análise com sistemas de reconhecimento automático, e análise com reconhecimento automático aliada a análise por humanos. Quanto à estrutura de conclusão dos laudos, os participantes brasileiros adotam a decisão binária (escolha de duas vias: ou criminoso e suspeito são a mesma pessoa, ou pessoas diferentes) e a escala clássica de probabilidade (estima-se a probabilidade de identidade entre o criminoso e o suspeito). As outras opções de resposta eram: razão de verossimilhança LR – *Likelihood Ratio* (ver Kinoshita, 2002 e Valente, 2012, e Declaração de Posição do Reino Unido – *UK Position Statement* (consultar Rose e Morrison, 2009)). Quanto às características importantes em comparação de locutor, Gold e French (2011) computaram as porcentagens das escolhas de aspectos segmentais, suprassegmentais e não linguísticos, sem discriminar os países.

Após discorrer um pouco sobre as pesquisas e práticas de fonética forense no contexto internacional, e constatar sobre a existência de mais pontos controversos, a metodologia de trabalho, os formatos de conclusão em laudos e o que se considera importante no exame de comparação de locutor, vamos discorrer um pouco sobre a área no Brasil.

A fonética forense no Brasil

Segundo Caldas Netto (2003), "o caso Magri foi o primeiro em que houve a necessidade de realizar exames de Verificação de Locutor no Departamento de Polícia Federal" (p. 18). Em 1992, na época ministro de Trabalho e Previdência Social do governo Collor, Antonio Rogerio Magri foi gravado em conversa com Volnei Abreu Ávila, diretor de Arrecadação e Fiscalização do INSS, admitindo "ter recebido uma propina de 30 mil dólares para facilitar a liberação de recursos do FGTS de uma empresa para uma obra no Acre". Brandão relata que, por falta de peritos especializados, o INC – Instituto Nacional de Criminalística teve que recorrer aos conhecimentos dos doutores da UNICAMP – Universidade Estadual de Campinas, para verificar se as vozes contidas na gravação eram ou não do Ministro e do Diretor do INSS. A partir de então, o INC investiu em equipamentos e em capacitação de peritos e passou a realizar análises de Verificação de Locutor, por solicitação de autoridades de diversas esferas criminais. De acordo com Mattos (2008), o marco inicial dos trabalhos de identificação de voz no Brasil foi o ano de 1994, quando se realizou o primeiro Seminário de Fonética Forense organizado pelo INC.

A perícia

A partir dessa constatação, pode-se dizer que o trabalho oficial de perícia criminal em fonética forense no Brasil se realiza há duas décadas. Mas o que vem a ser o trabalho do perito criminal[21] no Brasil? Para se ter uma resposta a essa pergunta, é necessário

[21] Aqui apenas a perícia criminal está sendo considerada. No entanto a abrangência do trabalho de um perito é bem maior.

localizar a perícia dentro do sistema judiciário. Segundo Paes Leme (2010), a estrutura do aparelho estatal para a manutenção da ordem entre as pessoas se forma a partir do Poder Legislativo, que estabelece as leis que regem a convivência e impõe sanções aos infratores, e do Poder Judiciário, que julga e pune os transgressores. O Judiciário, no entanto, não exerce o papel investigativo para a definição da materialidade e autoria de um crime. O Ministério Público é o órgão que vai promover a coleta de evidências da prática da infração e oferecer denúncia ao judiciário. A investigação sobre a ocorrência ou não da infração vai estar por conta da Polícia Civil que abre inquérito para apuração do ato penal e da sua autoria. Muitos dos processos investigativos, porém, vão demandar conhecimentos específicos em diversos campos de especialidades. Aí entra a figura do perito que, no caso de existência de vestígio, com sua competência técnica, vai apurar a existência ou não do delito (Paes Leme, 2010). O art. 158 do Código de Processo Penal brasileiro estabelece que:

> *Art. 158. Quando a infração deixar vestígios será indispensável o exame de corpo de delito, direto ou indireto, não podendo supri-lo a confissão do acusado.*

Cabe, então, ao perito executar essa tarefa. "A perícia é o início de todo o processo apurativo da infração, nos casos em que existam seus vestígios, sendo necessário, por meio dela, demonstrá-los. Esta tarefa não pode ser transferida a outra instituição, ela é exclusiva da perícia", explica Paes Leme (2010). A solicitação para uma perícia pode ser feita por qualquer das instâncias acima mencionadas, Delegado de Polícia, Procurador, Promotor de Justiça, Juiz, para inquéritos policiais ou processos penais[22]. Voltando ao Código de Processo Penal – CCP, o seu Art. 159 estabelece que:

> *O exame de corpo de delito e outras perícias serão realizados por perito oficial, portador de diploma de curso superior.*

Os peritos oficiais, então, podem atuar na esfera federal e estadual sempre com ingresso através de concurso. No âmbito federal, existe o Instituto Nacional de Criminalística, órgão da Polícia Federal responsável pela coordenação técnico-científica de todo Sistema de Criminalística federal. Ao Serviço de Perícias em Audiovisual e Eletrônico cabem análises que envolvam registros de áudio e imagem, equipamentos e sistemas eletroeletrônicos. Nesse rol de atividades está o exame de comparação de locutor, cujo objetivo é determinar se há convergência entre as falas perquiridas (material questionado) e as oriundas de um indivíduo suspeito (material padrão). Nas capitais dos Estados, no Distrito Federal e em algumas cidades do interior existe um Setor Técnico-Científico que representa uma unidade descentralizada da Criminalística Federal, vinculado tecnicamente ao Instituto Nacional de Criminalística. O quantitativo de peritos criminais federais, atuantes nas áreas de registro de áudio e imagem, no Instituto Nacional de Criminalística e nas unidades descentralizadas é superior a 100 (cem) profissionais, com formação em engenharia elétrica, eletrônica, de telecomunicações e de redes de comunicação[23].

Nos Estados da União, existem órgãos, geralmente ligados às Secretarias de Segurança Pública, que realizam perícias no âmbito estadual, vários desses órgãos executam principalmente trabalhos de tratamento em material de áudio e vídeo. Alguns desses órgãos são: o Departamento de Polícia Técnica – DPT, na Bahia[24], o Centro de Perícias Renato Chaves,

[22]Informações obtidas em http://www.apcf.org.br/periciacriminal/oqueepericia.aspx, em 10.03.2014.
[23]Informações obtidas por comunicação pessoal com André L. C. Morisson, Chefe do SEPAEL – Serviços de Perícias Audiovisual e Eletrônicos.
[24]Informações obtidas em www.dpt.ba.gov.br, em 11.03.2014.

no Pará[25], o Instituto Geral de Perícias – IGP, no Rio Grande do Sul[26], também o Instituto Geral de Perícias – IGP, em Santa Catarina[27], a Polícia Científica do Estado de Goiás[28]. No Paraná, por exemplo, o Instituto de Criminalística realiza perícias oficiais atendendo solicitações de Delegacias de Polícia, do Ministério Público e do Poder Judiciário. O Setor de Perícias Audiovisuais conta com Engenheiros Eletricistas (ênfase em telecomunicações e eletrônica), Fonoaudiólogos e um Fisioterapeuta[29].

Outro órgão que também pode atuar com perícias na área é o Ministério Público, instituição autônoma e independente, não subordinada aos Poderes Executivo, Legislativo ou Judiciário. O Ministério Público do Rio de Janeiro, por exemplo, possui a DEDIT – Divisão de Evidências Digitais e Tecnologia, dentro da Coordenadoria de Segurança e Inteligência, que atua na análise de vozes com uma equipe de 11 (onze) fonoaudiólogos[30].

Em casos em que não há disponibilidade de um perito oficial, pode ser nomeado um perito ad hoc, conforme prevê o Art. 159 da CCP:

> *§1. Na falta de perito oficial, o exame será realizado por 2 (duas) pessoas idôneas, portadoras de diploma de curso superior preferencialmente na área específica, dentre as que tiverem habilitação técnica relacionada com a natureza do exame.*

Além da figura do perito não oficial, o Art. 159 também define que as partes em um processo, o Ministério Público, o assistente de acusação, o ofendido, o querelante ou o acusado podem formular quesitos e indicar um assistente técnico. O assistente técnico será um profissional especializado, contratado por uma das partes para realizar o exame do material já periciado. Com isso, empresas particulares oferecem serviços especializados para atuação em assistência técnica em som e imagem e fonética forense. Nessas empresas, profissionais de diversas áreas de conhecimento atuam como peritos assistentes técnicos.

Aqui, portanto, encontramos mais um ponto de controvérsia, que profissionais devem exercer o papel de perito na área de fonética forense? Pelos relatos obtidos, na Polícia Federal há uma maioria de engenheiros, no Ministério Público do Rio de Janeiro, um contingente exclusivo de fonoaudiólogos, no Instituto de Criminalística do Paraná, um grupo um pouco mais multidisciplinar, com engenheiros, fonoaudiólogos, profissionais de informática, mas ainda sem contar com um foneticista. Seja qual for a formação do perito, no entanto, para o desenvolvimento de sua profissão, seja ele perito oficial, não oficial ou assistente técnico, existem associações de classe, que promovem eventos, incentivam pesquisa e produzem publicações.

Associações e eventos

Existem diversas entidades de classe que desempenham funções de caráter assistencial, social, cultural, científico e outros. Vamos aqui, no entanto, citar três a título de exemplo.

[25]Informações obtidas em http://www.cpc.pa.gov.br/index.php/imp/noticias/118-peritos-criminais-do-para-aperfeicoam-tecnica-na-area-de-fonetica-forense, em 11.03.2014.
[26]Informações obtidas em http://www.igp.rs.gov.br/index.php?option=com_content&task=view&id=22&Itemid=35, em 11.03.2014.
[27]Informações obtidas em http://www.igp.sc.gov.br/index.php?option=com_content&view=article&id=87&Itemid=113, em 11.03.2014.
[28]Informações obtidas em http://www.policiacientifica.go.gov.br/entrevistas/a-fonetica-forense-pelo-mundo.html, em 11.03.2014.
[29]Informações obtidas por comunicação pessoal com Joice Malakoski, Diretora Técnica da Capital, do Instituto de Criminalística do Paraná.
[30]Informações obtidas por comunicação pessoal com Mônica Azzariti, Técnica Pericial do MPRJ.

A Associação Brasileira de Criminalística – ABC, fundada em 1977, congrega as entidades dos Peritos Oficiais ativos e inativos dos Estados e do Distrito Federal. A ABC realiza diversos eventos científicos especializados em áreas específicas da perícia oficial, entre eles o Seminário Nacional de Fonética Forense[31].

Fundada em 1989, a Associação Nacional dos Peritos Criminais Federais – APCF é uma entidade de classe que tem como principal missão defender "a atividade criminalística no âmbito federal, resguardando sua isenção e qualidade com fins de obtenção de justiça"[32]. Desde 2010, a APCF realiza o Congresso Nacional de Peritos Criminais Federais, que substituiu o Encontro Nacional de Peritos Criminais, promovido durante seis anos pela entidade. O objetivo do Congresso é o intercâmbio técnico-científico entre peritos e outros profissionais para o fomento da atividade pericial na sociedade.

Outra entidade de classe é a Academia Brasileira de Fonoaudiologia Forense – ACADEFFOR, fundada em 2008, "que tem como objetivo o desenvolvimento científico da atividade pericial com base no conhecimento fonoaudiológico nas áreas relacionadas com a comunicação humana – voz, fala e linguagem"[33]. A ACADEFFOR vem promovendo desde 2010 o Congresso Nacional de Fonoaudiologia Forense.

Mais recentemente, em setembro de 2012, foi fundada a ALIDI – Associação de Linguagem & Direito com o objetivo de promover a pesquisa acadêmica e aplicada pela interface entre Linguística e Direito. A partir dessa interface, desdobram-se, entre outras, as seguintes linhas de pesquisas: Linguagem do Direito, Linguística Forense, Direitos Autorais e Plágio, Análise Crítica do Discurso Jurídico, Análises dos textos e da interação na instância jurídica, Direitos linguísticos, Hermenêutica e interpretação jurídicas, Filosofia da Linguagem e Filosofia do Direito[34].

Uma das funções dessas agremiações, como observado acima, possui caráter científico e, para isso, incentivam pesquisas e produzem publicações.

Pesquisa e publicações

É consenso entre as pessoas que de alguma forma se relacionam com a fonética forense que essa é uma área ainda bastante carente de publicação científica. No Brasil o marco inicial da pesquisa em identificação de falantes foi o trabalho de Figueiredo (1994). A partir de então, a primeira publicação importante foi a de Braid (1999), com segunda edição em 2003. Braid também publicou vários artigos (Braid, 2003, 2004b,a, 2005) e participou do Conselho Editorial da *Revista Prova Material*, editada entre os anos 2003 e 2010[35] pelo Departamento da Polícia Técnica, vinculado à Secretaria de Segurança Pública do Estado da Bahia, com distribuição gratuita. A APCF publica a *Revista Perícia Federal*[36], desde 1999, estando agora em seu número 32. A ABC edita a *Revista Brasileira de Criminalística* e Revistas dos Eventos da ABC, disponíveis no Portal de Revistas da ABC[37]. Esses periódicos não

[31]Informações obtidas em http://abcperitosoficiais.org.br/, em 11.03.2014.
[32]Informações obtidas em http://www.apcf.org.br/aassociacao/Quemsomos.aspx, em 11.03.2014.
[33]Informações obtidas em http://www.acadeffor.com.br/Default.aspx, em 11.03.2014.
[34]Informações obtidas do site ainda em construção da associação, http://alidilinguagemedir.wix.com/alidi, em 01.05.2014.
[35]Informações obtidas em http://periciacriminal.com/novosite/revistas/revista-prova-material/, em 12.03.2014.
[36]Informações obtidas em http://www.apcf.org.br/areadoassociado/revistapericiafederal.aspxa, em 12.03.2014.
[37]Informações obtidas em http://www.rbc.org.br/ojs/, em 12.03.2014.

são exclusivos da fonética forense, mas sempre trazem artigos importantes com relatos de pesquisa na área. A outra associação mencionada no item anterior, a ACADEFFOR também publica artigos científicos em sua página na Internet[38], mas são apenas acessíveis a associados.

No ambiente acadêmico, felizmente já se vêm alguns trabalhos de Conclusão de Curso realizados nesse campo de conhecimento – a fonética aplicada às questões forenses (Scatena, 2010; Machado, 2011). Isso significa que em algumas universidades brasileiras existe a preocupação com a pesquisa, mesmo que por manifestações isoladas de alunos e/ou professores. Nosso grupo de estudos na UTFPR, cadastrado no CNPq no grupo de pesquisa Estudos dos Sons da Fala[39], embora bem recente, já conta com alunos em Iniciação Científica e desenvolvendo TCC, e possui algumas publicações (Gomes *et al.*, 2012; Guilherme, 2013; Kremer, 2013). O grande objetivo do grupo é desenvolver pesquisas em fonética forense com perspectiva multidisciplinar.

E para concluir, não podemos deixar de mencionar esta publicação, *Language and Law/Linguagem e Direito*, aqui lançando sua primeira edição. Organizada e editada pela Faculdade de Letras da Universidade do Porto e pela Universidade Federal de Santa Catarina – UFSC, a revista será publicada duas vezes por ano. Disponível online na Biblioteca Digital da Faculdade de Letras da Universidade do Porto, terá textos em português e em inglês (com resumos nas duas línguas) de artigos científicos, críticas literárias, resumos de teses, cobrindo temas relativos a Linguagem Legal, Interação em Contextos Legais e Língua como Evidência. Contando com um conselho editorial composto por pesquisadores de universidades de vários estados do Brasil e vários países do mundo, a revista pretende ser referência na área e, além de suas edições regulares se propõe a lançar edições especiais com frequência. O segundo volume, por exemplo, versará sobre fonética forense com artigos produzidos por pesquisadores e profissionais da área de todas as partes do mundo, em língua portuguesa e em língua inglesa. Também em edições regulares futuras, artigos de alta qualidade acadêmica sobre fonética forense serão muito bem vindos.

Considerações finais

Este trabalho teve como primeiro objetivo apresentar, de forma bastante geral, a fonética forense no Brasil, mas embutido nele vem um chamado a pessoas de todas as áreas interessadas e/ou envolvidas com fonética forense, peritos, professores, estudantes; das engenharias, da fonoaudiologia, da linguística, que se unam para o aprimoramento da pesquisa e para o desenvolvimento efetivo da área. Conforme afirmam Fachone e Velho (2007: 157), "questões a serem respondidas em ciência forense são abundantes, sendo necessário, para aprimorá-la no Brasil, o desenvolvimento tecnológico e científico focado e o crédito conferido pelo rigor acadêmico na formação dos recursos humanos". Por isso a universidade deve ser um local para discussões e buscas de novos recursos para a solução dos problemas na sociedade.

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Agradecemos, em primeiro lugar, a todas as pessoas que fazem ou fizeram parte do nosso Grupo de Estudos em Fonética Forense na UTFPR durante esses dois anos de existência

[38]Informações obtidas em http://www.acadeffor.com.br/Webforms/frm_artigos.aspx, em 12.03.2014.
[39]Informações obtidas em http://dgp.cnpq.br/buscaoperacional/detalhelinha.jsp?grupo=1981802Z6FAJR0&seqlinha=2, em 12.03.2014.

do grupo. Não citamos nomes aqui para não correrrmos o risco de esquecer alguém, pois cada pessoa que, em algum momento, participou de algum de nossos encontros, contribuiu de alguma forma para o conteúdo deste trabalho. Agradecemos também, agora sim, nominalmente, Joice Malakoski, do Instituto de Criminalística do Paraná, Mônica Azzariti, do Ministério Público do Rio de Janeiro, André Morisson, da Polícia Federal, e Joseph F. M. Vermeulen, do NFI – Netherlands Forensic Institute, pelas valiosas informações sobre o trabalho de perícia em suas Instituições; Ana Paula Sanches, do Ministério Público de São Paulo, e Paul Foulkes, da Universidade de York, pelas recomendações de leitura; e finalmente, Malcolm Coulthard, pelo convite e confiança.

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Identifying idiolect in forensic authorship attribution: an n-gram textbite approach

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Abstract. *Forensic authorship attribution is concerned with identifying authors of disputed or anonymous documents, which are potentially evidential in legal cases, through the analysis of linguistic clues left behind by writers. The forensic linguist "approaches this problem of questioned authorship from the theoretical position that every native speaker has their own distinct and individual version of the language [. . .], their own idiolect" (Coulthard, 2004: 31). However, given the difficulty in empirically substantiating a theory of idiolect, there is growing concern in the field that it remains too abstract to be of practical use (Kredens, 2002; Grant, 2010; Turell, 2010). Stylistic, corpus, and computational approaches to text, however, are able to identify repeated collocational patterns, or n-grams, two to six word chunks of language, similar to the popular notion of soundbites: small segments of no more than a few seconds of speech that journalists are able to recognise as having news value and which characterise the important moments of talk. The soundbite offers an intriguing parallel for authorship attribution studies, with the following question arising: looking at any set of texts by any author, is it possible to identify 'n-gram textbites', small textual segments that characterise that author's writing, providing DNA-like chunks of identifying material? Drawing on a corpus of 63,000 emails and 2.5 million words written by 176 employees of the former American energy corporation Enron, a case study approach is adopted, first showing through stylistic analysis that one Enron employee repeatedly produces the same stylistic patterns of politely encoded directives in a way that may be considered habitual. Then a statistical experiment with the same case study author finds that word n-grams can assign anonymised email samples to him with success rates as high as 100%. This paper argues that, if sufficiently distinctive, these textbites are able to identify authors by reducing a mass of data to key segments that move us closer to the elusive concept of idiolect.*

Keywords: *Authorship attribution, email, Enron, idiolect, Jaccard, n-grams, style, textbites.*

Resumo. *A atribuição de autoria forense consiste em identificar os autores de documentos anónimos ou cuja autoria é contestada, e potencialmente elemento de prova em casos jurídicos, através da análise de pistas linguísticas deixadas pelos escritores. O linguista forense "aborda o problema da autoria questionada*

a partir do pressuposto teórico de que cada falante nativo de determinada língua possui a sua própria versão distinta e individualizada da língua [...], o seu próprio idiolecto" (Coulthard, 2004: 31). No entanto, considerando a dificuldade em sustentar empiricamente uma teoria do idiolecto, existe uma preocupação crescente nesta área relativamente ao facto de ser um conceito demasiado abstracto para ter utilidade prática (Kredens, 2002; Grant, 2010; Turell, 2010). As abordagens estilísticas, de corpora e computacionais ao texto, no entanto, permitem identificar padrões colocacionais repetidos, ou n-gramas, fragmentos linguísticos entre duas e seis palavras, semelhantes à conhecida noção de soundbites – pequenos segmentos de apenas alguns segundos de fala que os jornalistas conseguem identificar como possuindo valor noticioso, e que caracterizam momentos importantes da fala. O soundbite proporciona um fascinante paralelo para os estudos de atribuição de autoria, colocando-se a seguinte questão: observando um qualquer conjunto de textos de determinado autor, é possível identificar "textbites de n-gramas", pequenos segmentos de texto que caracterizam a escrita do autor, fornecendo segmentos de material identificativo semelhantes ao DNA? Partindo de um corpus de 63.000 emails e 2,5 milhões de palavras escritas por 176 funcionários da antiga empresa de energia americana Enron, realizamos um estudo de caso, que mostra, em primeiro lugar, recorrendo a uma análise estilística, que um funcionário da Enron produz repetidamente os mesmos padrões estilísticos de pedidos educadamente codificados, de uma forma que pode ser considerada habitual. De seguida, uma experiência estatística utilizando o mesmo autor do estudo de caso revela que os n-gramas de palavras permitem atribuir amostras de email anonimizadas a esse autor com taxas de sucesso da ordem dos 100%. Este artigo defende que, quando suficientemente distintivos, estes textbites têm capacidade para identificar os autores reduzindo um volume de dados massivo a segmentos-chave que nos aproximam do esquivo conceito de idiolecto.

***Palavras-chave**: Atribuição de autoria, email, Enron, idiolecto, Jaccard, n-gramas, estilo, textbites.*

Introduction

Journalists listening to live speech are able to single out soundbites, small segments of no more than a few seconds of speech that they recognise as having news value and which characterise the important moments of talk. Though 'soundbite syndrome' (Mazzoleni and Schulz, 1999: 251) is seen as a reductionist trend representing a "tendency towards shorter and more sensational texts or 'soundbite news"' (Knox, 2007: 28), it offers an intriguing parallel, thinking laterally, for authorship attribution studies. The following question arises: looking at any set of texts by any author, is it possible to identify 'n-gram textbites', small two to six word portions of text that characterise the writing of that author, providing DNA-like chunks of identifying material? Using the DNA metaphor, if textual chunks or 'textbites' (Ancu, 2011) are sufficiently distinctive, they may be able to identify authors by reducing the mass of words to meaningful and key segments that move us closer to the abstract and elusive concept of a 'linguistic fingerprint', which Coulthard (2004: 432) describes as "the linguistic 'impressions' created by a given speaker/writer [which] should be usable, just like a signature, to identify them". Coulthard (2004: 432) eschews the DNA metaphor as "unhelpful" and "impractical" because of the need for "massive databanks

consisting of representative linguistic samples". The Enron email corpus (Cohen, 2009), however, consisting of a large population of authors (we use a 176-author corpus) and their 63,369 emails spanning several years (1998-2002), provides a real opportunity to search for distinctive and individuating small text segments that can be manually identified or computationally extracted for authorship attribution and author profiling in emails, adding to our knowledge of the generic lexical features of that text type and to writing characteristics of some of the employees who inhabit it. This "specialised corpus" (Flowerdew, 2004) therefore enables us to focus on identifying features which represent small sections of the individual genetic code, and allows us to evaluate their usefulness in authorship attribution against a background of a population-level reference corpus; thus, attempting to identify DNA-like textbites becomes a manageable undertaking.

Solan (2013) in his paper on intuition versus algorithm, details the current trends in forensic authorship analysis and the divergence between qualitative and stylistic approaches on the one hand and computational and statistical approaches on the other. Earlier, Solan and Tiersma (2004: 463) highlighted the importance for admissibility of expert evidence of methods which "employ linguistically motivated analyses in combination with quantitative tools", and the usefulness of corpora in combining such methods for the purposes of authorship analysis has been noted elsewhere (Cotterill, 2010; Kredens and Coulthard, 2012; Solan, 2013). There have been a number of recent studies which combine stylistic (Turell, 2010; Queralt and Turell, 2012), grammatical and multidimensional (Nini and Grant, 2013) approaches with quantitative methods. Turell (2010: 212), not only demonstrates the usefulness of a combined qualitative and quantitative approach in a real case where authorship is disputed, but also points out the benefits of empirical research for "expert witness performance", especially, noting Coulthard's (1994) contribution to the study of corpus-based evaluation of markers of authorship. Drawing on the benefits afforded to researchers by using corpora, and combining corpus analysis with stylistic and computational methods, we focus on word n-grams (groups of one, two, or more words) as features for analysis, arguing that these can be considered 'textbites' that are evidence of distinctive text-encoding by authors. This paper reports a case study of one Enron employee, James Derrick, in which both corpus stylistic and computational approaches are used to investigate and identify an individual's distinctive language use. This case study has three research aims:

1. Using a corpus linguistic, stylistic, and computational approach that employs both qualitative and quantitative methods, we investigate whether n-grams are distinctive and characteristic of an individual author's style, in this case their professional business email style.
2. Focusing on an individual's distinctive linguistic behaviour within a specific type of speech act—*please*-mitigated directives—we highlight the distinctive ways in which individual authors express this particular speech act, and how this speech act gives rise to author-distinct collocational preferences and identifiable word n-grams or n-gram textbites.
3. Using computational and statistical tests, we assess and evaluate the effectiveness of word n-grams of between one and six words in the successful attribution of large and small samples of emails to their actual author.

Using a combination of computational tools (*Wordsmith Tools*, (Scott, 2008); *Jangle*, (Woolls, 2013)) this case study utilises the Enron corpus in two ways; the first research

aim relies on the corpus as a large-scale reference corpus representing a population of writers against which an individual's style can be compared, while the computational attribution experiment in the third research aim uses the Enron corpus as a large pool of 176 candidate authors. As a result of the triangulated approach, we are able to compare the results of the different methods to see whether they are complementary and confirmatory, to evaluate the accuracy and reliability of both approaches and underline the effectiveness of n-grams as important markers of authorship. Finally, we can consider the implications for authorship studies and methods for use in evidential cases.

N-grams, idiolect and email

The co-occurrence of lexical items within a short space of each other is known in corpus linguistics as 'collocation', and was first introduced by Firth (1957), later developed by Sinclair (1991), Stubbs (2001) and Hoey (2005) amongst others, and continues to be at the forefront of corpus linguistic research (Gries, 2013). The associations that people build between words and the ways in which they produce them in combinations is a psycholinguistic phenomenon, and has been analysed in terms of 'lexical phrases' (Nattinger and DeCarrico, 1992), 'formulaic sequences' (Wray, 2002, 2008), 'lexical priming' (Hoey, 2005; Pace-Sigge, 2013), and usage-based theories of lexico-grammar such as exemplar theory (Barlow, 2013). One factor which these different approaches have in common is that they all emphasise the personal or 'idiolectal' nature of preferences for certain word combinations and collocational patterns. Schmitt *et al.* (2004: 138), discussing formulaic sequences, argue that "it seems reasonable to assume that they [people] will also have their own unique store of formulaic sequences based on their own experience and language exposure". Similarly, Hoey (2005: 8–15), in his argument that collocation can only be accounted for if we assume that every word is primed for co-occurrence with other words, grammatical categories or pragmatic functions, claims that "an inherent quality of lexical priming is that it is personal" and that "words are never primed *per se*; they are only primed for someone". He goes on to explain that:

> Everybody's language is unique, because all our lexical items are inevitably primed differently as a result of different encounters, spoken and written. We have different parents and different friends, live in different places, read different books, get into different arguments and have different colleagues. (Hoey, 2005: 181)

Collocations and sequential strings of lexical words are referred to in linguistics by a wide range of different names, such as 'concgrams', 'flexigrams', 'lexical bundles', 'multi-word expressions', 'prefabricated phrases', 'skipgrams' (Nerlich *et al.*, 2012: 50). In authorship attribution, Juola (2008: 265) refers to them simply as word n-grams—lexical strings of n words—and describes them as a means by which to take advantage of vocabulary and syntactic information in texts and an effective way of capturing words in context. Collocations and lexical strings in this study are referred to as n-grams and we also consider the extent to which they can be called 'n-gram textbites', small portions of text that characterise the writing of a particular author.

The idiolectal nature of collocations has been investigated, to a limited extent, in corpus linguistics. Mollin (2009) used a corpus-based statistical approach to analysing idiolectal collocations in the text of former UK Prime Minister, Tony Blair, and Barlow (2010, 2013) examined the relative frequencies of two- and three-word sequences used by

five White House Press secretaries. Distinctive lexical choices and sequences have also been used as evidence of idiolect in authorship identification (Coulthard, 2004, 2013) and plagiarism detection (Johnson and Woolls, 2009; Culwin and Child, 2010) and the usefulness of formulaic sequences as style markers in forensic authorship attribution has been evaluated (Larner, 2014). In addition, word n-grams have been used as input features for automated techniques of distinguishing and identifying authors with both encouraging (Hoover, 2002, 2003; Coyotl-Morales *et al.*, 2006; Juola, 2013) and poor (Grieve, 2007; Sanderson and Guenter, 2006) results.

Frequencies of function words (Mosteller and Wallace, 1964; Burrows, 2002; Argamon and Levitan, 2005), and increasingly character n-grams (Chaski, 2007; Stamatatos, 2008, 2013; Luyckx and Daelemans, 2011; Koppel *et al.*, 2011, 2013) have been preferred over content words in authorship research, as it is argued that the latter are too heavily dependent on topic, context and writing situation (Stamatatos, 2009: 540; Koppel *et al.*, 2009: 11). However, as Coulthard (2013: 447–8) argues, although the occurrence of lexical items shared between topically related texts is significant in authorship attribution, "much more significant is the shared occurrence of co-selected items or what linguists call collocates". In other words, although different writers may write about the same topics or with the same purpose, the way in which they write about these things can quickly become linguistically unique. Moreover, computational authorship analysts (Argamon and Koppel, 2013: 300; Stamatatos, 2013: 428) are increasingly acknowledging that the feature sets used and results obtained from automated techniques are difficult, if not impossible, to explain and interpret in linguistic and stylistic terms. In contrast, building on the research of Nattinger and DeCarrico (1992), Wray (2002), and Hoey (2005) outlined above, theoretical explanations can be offered for variation observed between authors in their production of n-grams. They are identifiable and computationally accessible manifestations of individuals' idiolectal, primed and perhaps prefabricated collocational and phraseological preferences, resulting from a lifetime of unique linguistic exposure and experience. As such, word n-grams are linguistic features that may serve to bridge the gaps between cognitive, computational, and stylistic approaches to authorship analysis, an increasingly important aim of current research in the field (Nini and Grant, 2013; Argamon and Koppel, 2010, 2013).

The particular focus of this paper is on individuals' distinctive linguistic behaviour within a specific type of 'speech act' (Austin, 1962; Searle, 1969): *please*-mitigated directives. Linguistic research into email as a text type has continually identified the making of commands and requests for action as major communicative functions of emails (Sherblom, 1988; Baron, 1998; Gimenez, 2000). By extension, there has been a wave of research into politeness and requests in emails of various languages, particularly in institutional settings such as academia and commerce (Duthler, 2006; Lampert *et al.*, 2008; Merrison *et al.*, 2012; Chejnová, 2014). Variation has been a central component of much of this research, with comparisons being made in email behaviour across different contexts (organisational/educational) (Gains, 1999; Waldvogel, 2007), different languages, varieties and cultures (Lan, 2000; Bou-Franch and Lorenzo-Dus, 2008; Merrison *et al.*, 2012), genders (Van Den Eynden, 2012), within specific communities of practice (Luchjenbroers and Aldridge-Waddon, 2011) and different social and hierarchical participant relationships and roles (Bou-Franch, 2011; Economidou-Kogetsidis, 2011; Najeeb *et al.*, 2012). This paper aims to add to this list the idiolectal nature of directives, highlighting the distinctive ways

in which individual authors express this particular speech act, and how this speech act gives rise to author-unique collocational preferences and identifiable n-grams or n-gram textbites. Since requests and orders are difficult to differentiate, given that both have the function of getting someone to do something, we follow Bax's (1986: 676) distinction, where in a request "the requesting person benefits from the future act" and there is a "reciprocal social relation" between the interactants, whereas in a directive "the person does not necessarily have to benefit from [the act]" and the addressee is in an "inferior social relation".

Data and method

This section introduces the Enron email corpus, the particular version we created as appropriate for authorship research, and the case study of one employee, James Derrick. We evaluate the combined case study, corpus comparison, and experimental evaluation approach and we introduce the statistical (Jaccard) and computational (*Jangle*) tools used and created for this research.

The Enron email corpus

The corpus used for this study is a dataset of 63,369 emails and 2,462,151 tokens written and sent between 1998 and 2002 by 176 employees of the former American energy company Enron. The Enron email data was first made publicly available online as part of the Federal Energy Regulatory Commission's legal investigation into the company's accounting malpractices (FERC, 2013), which led to the ultimate bankruptcy and demise of the company in the early 2000s. Many versions of the data have emerged across the web. The source of the database used in this study is the version collected and prepared by Carnegie Mellon University (CMU) (Cohen, 2009), as part of its 'Cognitive Assistant that Learns and Organises' (CALO) project. The data have subsequently been extracted, cleaned-up, and prepared specifically for the purposes of authorship attribution by Woolls (2012). The extraction process mined all of the sent emails from all of the various 'sent' folders for each of the authors, retaining only the newest email material in each thread, and removing any previous email conversation, to ensure that only the material written by the sender was included and available for analysis. This process was vital, to create a corpus suitable for authorship research, because, as it stands, the Enron corpus (Cohen, 2009) is unsuitable for this purpose. Each email in the corpus is accompanied by a range of metadata: the date and time the email was sent, along with the 'From:', 'To:', 'Subject:', 'Cc:' and 'Bcc:' fields, and the subject line (Example 1). In the cleaned-up corpus metadata is contained in angle brackets so that it is not considered by the computational tools used to analyse the authors' textual choices in this study.

```
(1)
<C:\EnronAuthorRef\derrick-j\sent\16>
<Message-ID: 764619.1075842926074.JavaMail.evans@thyme>
<Date: Fri, 1 Dec 2000 06:31:00 -0800 (PST)>
<From: james.derrick@enron.com>
<To: john.belew@enron.com>
<Subject: Re: Deferral Enrollment 2001>
John, I believe your message was sent to me by mistake.  I
am returning it to you.  Jim
```

The data were further cleaned by Wright, in particular where the authors' sent folders contained emails sent by their assistants or secretaries. Such emails were relatively easy

to identify and remove and, in cases in which there was more than one email sent from the same assistant, these emails were extracted and saved as belonging to this assistant, creating a separate set of files for this individual and treating them as an additional author. Finally, blank emails and emails containing only forwarded or copied and pasted material were also removed. The resulting 176 author, 63,369 email and 2,462,151 word corpus is a gold-standard corpus, making it particularly useful for authorship studies. It contains only naturally occurring email language data about which we can be sure of the 'executive author' (Love, 2002: 43), that is, the individual responsible for "formulating the expression of ideas and ma[king] word selections to produce the text" (Grant, 2008: 218). Since digital texts such as text messages, instant messages, and emails are becoming increasingly prominent in forensic casework, including email cases containing threatening, abusive, or defamatory material (e.g. Coulthard *et al.*, 2011: 538), this corpus represents a unique opportunity for empirical research with implications for authorship attribution casework.

James Derrick

The analyses focus on a case study of one Enron employee, James Derrick. Case studies are a beneficial method when "'how' or 'why' questions are being posed" and when particular "phenomena" are being studied (Yin, 2009: 2) and, in this case, we want to know how an individual makes directives. The case study approach is complemented by a corpus linguistic approach, which allows us to examine the uniqueness of his choices against the larger Enron population. Derrick was an in-house lawyer at Enron (Creamer *et al.*, 2009; Priebe *et al.*, 2005), in fact Enron's chief lawyer and General Counsel, or chief legal officer, with a staff of "200 in-house lawyers" and able to call on "more than 100 outside law firms from around the world" between 1991 and 2002 (Ahrens, 2006). He is a former Adjunct Professor of Law at the University of Texas Law School between 1984 and 1990, and is currently a managing partner in a US law firm.

He is represented in the corpus by 470 emails, a total of 5,902 tokens and 911 types. He was chosen as a case study because of the relatively small amount of data in his sent box. Although he has slightly more emails than the mean per author for the corpus (mean = 360), he has far fewer than the mean tokens per author (mean = 13,989). Derrick is therefore a curious case in that his emails are much shorter than average, but this is perhaps unsurprising given his status as chief lawyer and awareness of legal discovery[1]. He has a mean of 12.9 words per email, while the mean for the corpus is 41.74. Further, 155 of his 470 emails (32.9%) contain only one word. These single-word emails contain two types: *FYI (for your information* 22.5%) and *FYR (for your reference/review/records* 10.4%). These most minimal of messages are sent chiefly to one addressee for each type. 67% of the *FYI* emails are to j.harris@enron, one of the lawyers in Derrick's team, and all of the *FYR* single-word messages are sent to c.williams@enron. The relatively small amount of data available for Derrick, in theory, makes any analysis of style and any subsequent attribution tasks more difficult than it would be with an author with more data (Grant, 2007; Koppel *et al.*, 2013; Luyckx and Daelemans, 2011). The advantage of using a case study for authorship research is twofold. First, the small amount of data presents a similar challenge to that in real cases where data is often limited. And second, while a case study allows

[1]Legal *discovery* (called *disclosure* in the UK) requires the defendant (in a criminal case) or adverse party (in a civil case) to disclose anything that is asked for by the other side, which is needed in the preparation of the case prior to trial. This can include electronic documents such as email.

us to identify an individual authorial style with a high degree of detail, it also allows for comparison with the larger population of Enron employees. As Hoover (2010: 250) says, "style is [...] essentially, if not always explicitly, comparative. Any remark on a stylistic characteristic implies a comparison, even if it does not state one".

In the corpus stylistic analysis, Derrick's style is compared with that of the other 175 authors in the Enron corpus, which serves as a reference corpus against which the rarity or expectancy of particular n-grams are found in Derrick's emails. In the attribution experiment, the corpus represents a large pool of 176 candidate authors (including Derrick) from which to attempt to correctly attribute samples of Derrick's emails.

Computational tools

Two computational tools are used: *Wordsmith Tools* (Scott, 2008) and the specially-designed *Jangle* (Woolls, 2013). *Wordsmith Tools* is used to generate word lists and key-word lists from the data, as well as concordance results for any given search word or phrase. *CFL Jaccard N-gram Lexical Evaluator (Jangle)* is a Java-based program which is used to run the attribution experiments. The program automatically generates random samples of emails for any one author, of any proportion the user requires, and separates these samples from the remainder of that author's emails. The program then runs a series of pair-wise comparisons, with the sample file being compared with one other set of emails at any one time (either the entire set of remaining emails of the author in question, or the entire email set of another Enron employee). Finally, *Jangle* then produces Jaccard results measuring how similar this pair of files is in terms of the word n-grams shared between them.

Jaccard's similarity coefficient

Jaccard's coefficient, (or 'Jaccard Index', 'Jaccard', or 'intersection distance') measures the fraction of the data that is shared between any two sets (A∩B) compared to all data available in the union of these two sets (A∪B) (Naumann and Herschel, 2010: 24). Jaccard is widely used as a similarity metric across a range of scientific disciplines such as ecology (Jaccard, 1912; Izsak and Price, 2001; Pottier *et al.*, 2013; Tang *et al.*, 2013) forensic psychology and crime linkage (Bennell and Jones, 2005; Woodhams *et al.*, 2008; Markson *et al.*, 2010) and document comparison (Rajaraman and Ullman, 2011; Deng *et al.*, 2012; Manasse, 2012). Drawing on these various different uses of the coefficient, Jaccard has been introduced into forensic authorship analysis as a way of measuring the similarity or distance between questioned and known documents based on a range of different linguistic features (Grant, 2010, 2013; Wright, 2012; Larner, 2014; Juola, 2013). In this study, Jaccard is used to measure the similarity between any two sets of emails based on the number of items—in this case word n-grams—found in both sets, divided by the number of total number of items in the two sets combined:

$$J(A,B) = \frac{A \cap B}{A \cup B}$$

or

$$\frac{shared\ items}{shared\ items + items\ unique\ to\ sample + items\ unique\ to\ comparison\ file} \times 100$$

Jaccard normally produces results between zero and 1, with zero indicating complete dissimilarity and 1 indicating that the two datasets are identical (Grant, 2010: 518). However, in the interests of clarity, the results in this study have been multiplied by 100 and are expressed as percentages, so that 0% indicates that any two sets are completely different and 100% indicates that the datasets are identical. Jaccard is a binary correlation analysis in that it hinges on the appearance or non-appearance of a particular word n-gram in the two samples compared, rather than how frequently this feature appears.

Experimental set up

The second part of the Derrick case study involves running an attribution experiment to evaluate how accurate and reliable n-grams are in successfully identifying Derrick as the author of a random sample of his emails. Ten different random samples of 20%, 15%, 10%, 5% and 2% of his emails were extracted from his 470 email set, resulting in a total of 50 test samples (Table 1).

Emails (n)	**20% (93)**	**15% (70)**	**10% (46)**	**5% (23)**	**2% (9)**
1	1,018	537	350	281	94
2	901	679	555	192	88
3	776	672	606	288	82
4	831	666	411	229	84
5	762	746	622	229	74
6	1,116	875	479	174	109
7	1,220	836	404	398	78
8	1,034	767	419	200	145
9	980	692	525	156	55
10	876	654	478	358	77
Mean	951	712	485	251	87
SD	141.7	92.4	86.4	79.8	24.2

Table 1. Details of Derrick's sample sizes in terms of total tokens in the attribution task, including mean tokens and Standard Deviation (SD).

Previous stylometric studies have used test and sample datasets between 1,000 and 39,000 tokens in size (e.g. Hoover, 2004; Argamon and Levitan, 2005; Burrows, 2005; Labbé, 2007; Savoy, 2012). The sample sizes in this study range from the largest 20% samples at 1,220 and the smallest 2% sample at 55 tokens, and so are relatively small when compared with such stylometric research. They are more similar in size to those used in studies which have tested with smaller samples of between 140 and 1,300 tokens (van Halteren *et al.*, 2005; Koppel *et al.*, 2011, 2013; Hirst and Feiguina, 2007; Luyckx and Daelemans, 2011), and those in a forensic context that have used exceptionally small test sets of between 105 and 341 tokens (Chaski, 2001; Grant, 2007; Rico-Sulayes, 2011).

Using *Jangle*, in each of the tests in this experiment, the extracted sample (2%, 5%, 10%, 15% or 20%) is compared against Derrick's remaining emails (either 98%, 95%, 90%, 85% or 80%) and the entire email sets of the other 175 Enron employees, in order to measure how similar the sample is to these other groups of texts. These comparisons are based on

word n-grams ranging from single words through to six words in length. In a way which captures semantic as well as lexical and grammatical information, the n-grams used are sequential strings of words which co-occur within punctuated sentence boundaries, as opposed to a 'bag-of-words' approach, which does not take into account word order or punctuation. Whereas Derrick's samples are controlled for size, the comparison sets of the other Enron employees are not, and they range from as small as two emails and twenty tokens (Gretel Smith) to as large as 3,465 emails (Sara Shackleton) and 170,316 tokens (Jeff Dasovich). There is a total pool of 176 candidate authors used in this experiment (including Derrick), and this is relatively large in stylometric terms, with others using three (Grant, 2007), six (Juola, 2013), 10 (Rico-Sulayes, 2011: 58–9), 20 (Zheng *et al.*, 2006: 387), 40 (Grieve, 2007: 258) and 145 (Luyckx and Daelemans, 2011: 42). There are exceptions such as Koppel *et al.* (2006, 2011), however, which use open candidate sets of thousands of potential authors. Overall though, the combination of small sample sizes and a large number of candidate authors makes the attribution task in this study a relatively difficult one.

Case study of James Derrick

This case study employs two different approaches to analysing James Derrick's use of n-grams. The first approach (in the subsection *Identifying Derrick's professional authorial style*) is a corpus stylistic one, which examines Derrick's professional authorial style, in particular through the distinctive ways in which he constructs directives (Example 2 below). He habitually uses email-initial please as well as a final thank you in appreciation of anticipated compliance, making these mitigated directives.

(2)
<C:\EnronAuthorRef\derrick-j\sent_items\100>
<Message-ID: <10329234.1075845094637.JavaMail.evans@thyme>>
<Date: Mon, 21 May 2001 11:29:47 -0700 (PDT)>
<From: james.derrick@enron.com>
<To: rob.walls@enron.com, bruce.lundstrom@enron.com>
<Subject: FW: India Case Involving Banks>
Please respond to Steve re the status of this matter. **Thank you.** Jim

The second part of the case study (in the *Attribution task* subsection) uses a statistical and quantitative approach in the form of an attribution experiment using the Jaccard measure described above (in the *Experimental set up* section). Finally, the section on 'Derrick's discriminating n-grams' compares the results of these two approaches in terms of their reliability, complementarity, and compatibility.

Identifying Derrick's professional authorial style

A starting point for any corpus analysis of authorial style is to create a frequency word list and then a keyword list (Hoover, 2009), to identify those words "whose frequency is unusually high [in a particular dataset] in comparison with some norm", because "keywords provide a useful way to characterise a text or genre" (Scott, 2010: 156). First, the Enron dataset is compared with the 450-million-word Corpus of Contemporary American English (COCA) (Davies, 2012), to identify which words are key in the Enron corpus. Second, Derrick's data are then compared with the whole Enron corpus, to identify which words are key in his emails, when tested against the Enron population from which he is

drawn. *Wordsmith Tools* (Scott, 2008) was used to create a word list. In any wordlist, function words are the most common, and that is the case in the Enron corpus, as we see in Table 2, column 1 (*the*, *to*, *I*, *and*, *a*, *you*, *of*, *for*, *is*, and *in* make up the top 10). The most common lexical words, therefore, more usefully characterise a text than function words. In the Enron corpus the top two lexical words are *thanks* and *please* (Table 2, column 1), giving a clear indication that the Enron dataset is representative of a community of practice in which interlocutors are generally linguistically polite to one another, and also suggesting that requests or mitigated directives are this community's principal speech act. Indeed, *please* and *thanks* are found in 165 and 164 of the 176 employees' emails respectively. This is made even clearer by a keyword analysis, which finds that *thanks* and *please* are the top two key words in the entire Enron corpus (Table 2, column 2). In turn, a second keyword analysis comparing Derrick's emails with the emails of the other 175 authors (Table 2, column 3), finds that *thank (you)* is the most significant key word and *please* is the seventh most important in his emails. More importantly, in terms of the proportion of Derrick's vocabulary, *thank* accounts for 2.24% of his vocabulary, whereas it accounts for 0.05% of the Enron vocabulary, and please accounts for 1.85% against 0.46%. These two words, therefore, account for a total of 4.1% of Derrick's vocabulary, compared to 0.5% for the Enron authors in general, indicating that even within this corpus, which is generally indicative of very polite discourse, Derrick appears exceptionally linguistically polite.

Enron top 25 words			**Enron top 25 keywords**		**Derrick top 25 keywords**	
N	Word	Freq. (%)	Keyword	Freq. (%)	Keyword	Freq. (%)
1	the	98,666 (4.07)	**thanks**	14,856 (0.61)	**thank**	**132 (2.24)**
2	to	74,436 (3.07)	**please**	11,061 (0.46)	FYR	50 (0.85)
3	I	50,140 (2.07)	I'm	4,233 (0.17)	FYI	134 (2.27)
4	and	42,837 (1.77)	don't	3,681 (0.15)	subject	75 (1.27)
5	a	36,964 (1.52)	I'll	2,824 (0.12)	attachment	36 (0.61)
6	you	36,886 (1.52)	FYI	2,891 (0.12)	print	45 (0.76)
7	of	33,267 (1.37)	attached	3,113 (0.13)	**please**	**109 (1.85)**
8	for	29,602 (1.22)	fax	2,417 (0.1)	you	210 (3.56)
9	is	28,624 (1.18)	counterparty	1,372 (0.06)	lunches	9 (0.15)
10	in	28,012 (1.16)	me	15,365 (0.63)	club	12 (0.2)
11	that	24,671 (1.02)	I	50,140 (2.07)	your	65 (1.1)
12	this	22,900 (0.94)	am	5,376 (0.22)	attachments	9 (0.15)
13	on	22,061 (0.91)	gas	3,577 (0.15)	ting	5 (0.08)
14	we	22,027 (0.91)	agreement	3,339 (0.14)	dong	5 (0.08)
15	have	20,510 (0.85)	will	15,354 (0.63)	attend	19 (0.32)
16	with	18,854 (0.78)	I've	1,219 (0.05)	best	29 (0.49)
17	be	18,559 (0.77)	it's	1,483 (0.06)	matter	12 (0.2)
18	it	17,582 (0.73)	email	1,752 (0.07)	proposed	12 (0.2)
19	me	15,365 (0.63)	trading	2,311 (0.1)	litigation	8 (0.14)
20	will	15,354 (0.63)	didn't	1,093 (0.05)	below	16 (0.27)
21	**thanks**	14,856 (0.61)	deal	4,134 (0.17)	format	9 (0.15)
22	are	13,887 (0.57)	need	6,677 (0.28)	lunch	13 (0.22)
23	if	13,514 (0.56)	you	36,886 (1.52)	congratulations	8 (0.14)
24	**please**	11,061 (0.46)	send	2,827 (0.12)	clerk	4 (0.07)
25	at	10,753 (0.44)	call	5,089 (0.21)	June	10 (0.17)

Table 2. Enron top 25 words and keywords, compared with Derrick's top 25 key words.

N	File	Words	Hits	per 1,000	Dispersion
1	mcculloch-a-Dedup [Edited].txt	104	3	28.85	0.478
2	akin-l-Dedup [Edited].txt	312	9	28.85	0.785
3	sauseda-s-Dedup [Edited].txt	37	1	27.03	-0.069
4	wells-t-Dedup [Edited].txt	74	2	27.03	0.300
5	derrick-j-Dedup [Edited].txt	5,547	109	19.65	0.844

Figure 1. Rate per 1,000 words of please in the Enron corpus (top 5 users), along with dispersion.

This is further supported by Figure 1, which shows the top five users of *please* in the corpus. Derrick is the fifth most frequent user of *please* among the 176 employees, but looking at the dispersion rates in Figure 1 (the rate at which *please* is dispersed across the author's text) (Figure 1, column 6), and the number of words in each file (column 3), we can see that employees one to four do not really count, since their file size is well below 500 words and dispersion across their emails is generally low (apart from in the file for Akin: Akin-l-Dedup [Edited].txt). This makes Derrick arguably the most polite employee in the corpus, or at least the person who makes most politely mitigated directives.

Furthermore, the keyword analysis of the whole Enron corpus shows that *thanks* (top ranked keyword in Table 2, column 2) is far more popular than *thank* (ranked 444th keyword, with Derrick alone accounting for 10% of its frequency). In contrast, Derrick's usage is entirely the reverse of this; his first keyword is *thank* (which occurs with *you* in all 132 instances), while *thanks* is used only ten times and is a negative keyword in his dataset, meaning that he uses it significantly less than all of the other authors in the Enron corpus. To put this another way, in the Enron corpus *thanks* is more than 11 times more frequent than *thank you*, whereas for Derrick *thank you* is 15 times more frequent than *thanks*. Examples 3 and 4 are typical of the way that Derrick uses *please* and *thank you*, using pre-posed *please* to serve a politeness function and mitigate the face threat in the directive (Bax, 1986: 688). He follows up with *thank you*, assuming compliance, punctuated with a full stop and followed by his name. As such, not only is Derrick a linguistically polite communicant, but these quantitative and preliminary qualitative results indicate that he is polite in such a way that is very distinctive in this large population of Enron writers. In addition, his use of *Thank you*+full stop, to follow up his directive, indicates his status and authority to make these orders.

(3)
<C:\EnronAuthorRef\derrick-j\sent_items\405>
<From: james.derrick@enron.com>
<To: rob.walls@enron.com>
<Subject: Fw: Corporate Legal Allocations to EEL>
RW, **please** respond as you deem appropriate. **Thank you.** Jim

Given the obvious frequency, saliency and significance of linguistic politeness in the use of *please* and *thank(s)* in the Enron corpus, and in particular in Derrick's emails, we might say that this marks the construction of politeness and politeness strategies as an important aspect of his professional authorial style within the Enron corporation, a phenomenon which we deal with in detail below.

```
(4)
<C:\EnronAuthorRef\derrick-j\sent_items\376>
<From: james.derrick@enron.com>
<To:john.ale@enron.com,drew.fossum@enron.com,e..haedicke@enron
.com,>
<Subject: Jones, Day>
Andy Edison has notified me that Jones, Day is representing a
party in a litigation matter adverse to Enron. Please notify
me if you are aware of any work that Jones, Day is performing
for any Enron entity or for any lender or underwriter on an
Enron matter.  Thank you. Jim
```

Please and other politeness phenomena

The most effective way of analysing Derrick's distinctive construction of politely mitigated directives is through taking a collocational approach. *Wordsmith Tools* was used to identify the collocates that Derrick co-selects with *please* (Figure 2). The first point to note is that of Derrick's 109 *please* occurrences, 69 (63%) appear in message-initial position (after the greeting or no greeting). This is a marked use of *please* in relation to the Enron corpus; of the 10,952 instances of *please* that are found in the emails of the other 175 authors, only 2,092 (19%) are message-initial across 118 of the authors (e.g. Example 5), though this pattern is apparent in Table 3.

```
(5)
<C:\EnronAuthorRef\dasovich-j\sent\4502>
<Message-ID: <16191888.1075843889453.JavaMail.evans@thyme>>
<Date: Thu, 10 May 2001 06:20:00 -0700 (PDT)>
<From: jeff.dasovich@enron.com>
<To: joseph.alamo@enron.com>
<Subject:>
Hi:
please add $4 of tolls for each day that I went to Sac this
week.
Thanks,
Jeff
```

N	Concordance	File
1	or both serving as Co-Chairs. Thank you. Jim <Message-ID: > I would appreciate your looking into this issue. Thank you. Jim	derrick-j-Dedup [Edited].txt
2	: > I will be pleased to meet with Kersten and his partners. I would appreciate your coordinating schedules with him.	derrick-j-Dedup [Edited].txt
3	you. Jim <Message-ID: > Please see the message below. I would appreciate your responding to Mark no later than this	derrick-j-Dedup [Edited].txt
4	on the great result! Jim <Message-ID: > Mary Nell, I would appreciate your following up on this. Thank you. Jim	derrick-j-Dedup [Edited].txt
5	<Message-ID: > FYR <Message-ID: > Lisa, I would appreciate your asking the appropriate attorney to	derrick-j-Dedup [Edited].txt
6	San Franciso area. If you become aware of any opportunites, I would appreciate your letting Jim or Reagan know. Thank you.	derrick-j-Dedup [Edited].txt
7	Rob, thank you for the information. Jim <Message-ID: > Andy, I would appreciate your including Rex Rogers on the	derrick-j-Dedup [Edited].txt
8	it will be important to track ALL EQUITY CONFIRMATIONS. I would appreciate your advising me whenever Enron Corp.	shackleton-s-Dedup [Edited].txt
9	Lunch> FYI <Message-ID: > Please see the message below. I would appreciate your responding directly to John Keffer.	derrick-j-Dedup [Edited].txt
10	issues involving personnel or labor involved in this deal? If so, I would appreciate your getting me in the loop as early as	cash-m-Dedup [Edited].txt

Figure 2. Concordance of *I would appreciate your* verb-*ing* in the Enron corpus.

Instead, as well as using *please* within the body of the email, the other authors in the Enron corpus often modalise the directive with *can*, *could*, *would*, or *will* (See the L2 collocates in Table 3 – *can you please call*; *could you please send*; *will you please review*.). Derrick never uses *can*, *could*, or *will* to modalise directives, though he once uses *would* (Example 6). In this case, though, he grammatically marks the sentence as a question, signalling his lack of confidence that it can be carried out. Therefore, the use of unmodalised *please* directives

and the use of *please* in email-initial position can be considered highly distinctive of Derrick. When message-initial *please* is combined with his choice of greeting form, Derrick's style stands out; he never uses *Hi* or *Hi:* (as in Dasovich, Example 5) and he consistently uses comma after the addressee's name, tending to follow up with *thank you* (Example 6). *Thank you* is discussed further below.

(6)
<C:\EnronAuthorRef\derrick-j\sent_items\353>
<Message-ID: <30711573.1075852464064.JavaMail.evans@thyme>>
<Date: Thu, 11 Oct 2001 11:19:35 -0700 (PDT)>
<From: james.derrick@enron.com>
<To: j.harris@enron.com>
<Subject: Fw: pray for me>
Steph, I have tried unsuccessfully to send an e-mail to Mark Dodson telling him that I have talked to Marcus Wood. **Would** you attempt to forward this message to him? **Thank you.**
Jim Derrick

On eight occasions he constructs indirect directives with *would* (Figure 2), in all cases with *your*+present participle, using the subjunctive mood with a gerund, producing the collocational string: *I would appreciate your* verb-*ing*. This grammatical choice is extremely rare in the wider corpus, with only three other examples, one each for Cash and Shackleton (lines 8 and 10 in Figure 2) and one for Beck (*I would appreciate your not sharing this plan*). The highly distinctive indirect directive *I would appreciate your* verb+*ing* is an important variation from the *please*+directive form, but, significantly, it is not a choice for 172 of the Enron authors. The Enron corpus shows the other authors' grammatical choices with *I would appreciate* as containing the following six patterns and choices (in decreasing order of frequency):

1. *I would appreciate* +NP (e.g. *a quick call*; *discretion*; *it.*) 56 occurrences
2. *I would appreciate your* +noun (e.g. *I would appreciate your assistance*) 24
3. *I would appreciate it if you could* +verb (e.g. *I would appreciate it if you could join us*) 10
4. *I would appreciate* +verb-*ing* (e.g. *I would appreciate hearing about*) 8
5. *I would appreciate if you could* +verb (e.g. *I would appreciate if you could call him*) 7
6. *I would appreciate you* +verb-*ing* (e.g. *I would appreciate you coordinating*) 2

In terms of similar grammatical constructions to Derrick's subjunctive + gerund, we can see that the most frequent is to nominalise (pattern 1 or 2): *I would appreciate a quick call*, or *I would appreciate your assistance/feedback/help/input/views*, rather than *I would appreciate your calling/assisting*. After that patterns 3 and 5 use the conditional *if* and patterns 4 and 6 use the present participle with or without *you*, but not *your*. The corpus norms therefore seem to be a grammatical choice of nominalising, using the conditional, or using the present participle, with Derrick's pattern being almost unique to him and shared with only three other authors (Shackleton, Cash and Beck). However, these authors, do not use the subjunctive plus gerund pattern exclusively with *I would appreciate*, as Derrick does. Instead they vary across the other six patterns (Shackleton uses 1, 2, and 5; Cash uses 1, 2, 3, and 4; Beck uses 1 and 2). The exclusive use of the subjunctive plus gerund is therefore a unique marker of Derrick's style, and importantly, as Turell (2010:

213) notes in relation to other grammatical markers, it is a grammatical marker that is "sociolinguistically constrained". She notes that "there are authorship markers, which apart from carrying grammatical substance, may contain sociolinguistic information about the author" (Turell, 2010: 214–215). In Derrick's case it identifies him as the most grammatically distinct (some might say most grammatically correct) user of this string. *I would appreciate your* verb-*ing* becomes a 5-gram textbite for him. We return to this below.

L4	L3	L2	L1	Node	R1	R2	R3	R4
ID	Message	Message	ID	*please*	**let**	**me**	**know**	**if**
the	the	ID	you		call	the	a	to
Message	ID	**could**	questions		review	this	to	and
you	to	the	**Shirley**		send	a	the	the
to	for	**can**	also		see	to	ID	Message
thanks	have	**would**	so		print	and	Message	call
Vince	of	to	this		give	Message	attached	me
for	you	this	attached		forward	with	and	for
is	in	any	agreement		take	up	with	ID
in	and	for	yes		add	that	on	thanks
of	77002	and	FYI		advise	on	you	of
Texas	on	your	and		make	my	if	you

Table 3. Enron authors' collocation patterns to the left (L1 to L4) and right (R1 to R4) of the node: *please* (Greyed out cells point to the message-initial placement of *please*).

It would not be possible to deal with please-mitigated directives in email without referring to the most frequent string of collocates with *please*: *please let me know* (Table 3). The top line of the R1 to R4 collocates in Table 3 shows this string; in the Enron corpus 110 of 176 authors use this, including Derrick. Taking the top verbs to the right of please, the R1 collocates show those which are most frequent for the Enron authors: *let*, *call*, *review*, *send*. Comparing the Enron top 10 lexical verb collocates with Derrick's in Table 4 (*print*, *see*, *format*, *handle*, *let*, *respond*, *proceed*, *call*, *notify*, *advise*), we find that only *let*, *see* and *print* are in the top 10 for the other Enron authors and we also see that *print* and *see* are Derrick's most frequent lexical verbs, rather than *let* and *call* for the other Enron employees, pointing to Derrick's reduced use of this phrase. *Please let me know* is found in Derrick's emails three times less frequently than it is across the corpus generally. At this point it is worth raising a problem with this use of the reference population to make comparisons. While *please let me know*, is three times more frequent in the wider Enron corpus than in Derrick's emails, Derrick is not the least common user. Taking the normalised frequency of rate per thousand words (using *Wordsmith*), Derrick appears 67th out of 110 in terms of frequency, so there are 43 authors who use it less than him and 66 who do not use it at all. In terms of dispersion (the extent to which the phrase is distributed across all his emails) he is 60th out of 110 authors who use it. So while comparing Derrick's use with the reference corpus as a whole shows his use to be distinctive, when we compare him with the individual authors in the Enron corpus, the population shows a wide variation in use from 7.30 uses per thousand words for Shapiro to 0.03 for Kean, with Derrick using it 0.54 times per 1,000 words. Nevertheless Derrick's twelve verb collocates account for 93 (85.3%) instances of all his *please* occurrences and the fact that many of Derrick's recurrent collocates are far more common in his emails than in the Enron corpus generally (Table 4), indicates that these are likely to be important bigrams in the experimental approach (*Attribution task* section). When looking at the percentage use of these collocates, Derrick uses *please see* three times more often than it

appears in the emails of the other 175 authors (11.01/3.77), *please print* nine times more often, *please handle* and *please respond* ten times more, *please notify* 30 times more, *please proceed* 46 times more and *please format* as much as 413 times more often. Given that the raw frequencies are low in some cases (e.g. *please format*: 9 to 2 occurrences), some of the collocates are evidence of more consistent collocational differences, and, as we note above, the comparison with the Enron reference corpus masks some of the individual differences. Most of these collocations are used by a good number of authors, from 10 with *please notify* to 57 with *please see*.

	Derrick (n=109)		**Enron (n =10,952)**		
	n	**%**	**n**	**%**	**authors**
please print	36	33.03	404	3.69	30
please see	12	11.01	413	3.77	57
please format	9	8.26	2	0.02	2
please handle	7	6.42	70	0.64	18
please let	6	5.50	1,524	13.92	110
please respond	6	5.50	62	0.57	27
please proceed	5	4.59	11	0.10	11
please call	3	2.75	688	6.28	99
please notify	3	2.75	10	0.09	10
please advise	2	1.83	227	2.07	40
please contact	2	1.83	171	1.56	52
please note	2	1.83	166	1.52	37

Table 4. Derrick's lexical verb collocates of *please*.

As noted above, *please format* is not found frequently elsewhere and *please handle* is a particularly important bigram (two-word n-gram) for Derrick. All of the seven instances of *please handle* in Derrick's emails are message initial and intransitive (Example 8). Of the 70 instances in the rest of the Enron corpus, used by 18 authors, 12 are transitive (e.g. *TK, Would you please handle this. Thanks, Kim*) and a further 32 are non-message initial (e.g. *Ray and Rob: Can you 3 help her out on 1 & 2? Tracy: Please handle.*) This leaves 29 instances of *please handle* in the Enron corpus that are intransitive and message initial, and these instances are shared by eight of the other 175 authors. However, all of Derrick's instances of *please handle* are consistently followed by *Thank you* and a sign-off using his name (Example 8). None of the 29 instances elsewhere in the Enron corpus shares this pattern; instead, they co-occur with the far more common *thanks*, just the author's name, *for me*, or by nothing at all (Examples 9-12). As such, message-initial, intransitive *please handle* followed by *thank you* and the author's name is only used by Derrick in the Enron corpus, and so is entirely unique and individuating of his email style.

(8) Please handle. Thank you. Jim
(9) Please handle. Thanks [email by Kevin Presto]
(10) Please handle. Mark [email by Mark Haedicke]
(11) Please handle. [email by Richard Sanders]
(12) please handle for me. thanks. mhc [by Michelle Cash]

Table 5 shows the recurring three and four word n-grams with *please* in Derrick's

emails, as a proportion of all 109 instances of *please* in his dataset. The greyed out cells in the Enron column show that, in addition to '*please handle. Thank you.*', six additional tri- and four-grams are unique to Derrick: *please print the message(s)*, *please see the proposed*, *please format and (print)*, *please format the attachment*, and *please proceed with your*. All the rest are distinctive of him, apart from *please let me* and *please let me know* (discussed above), having much higher frequencies for Derrick that the reference corpus generally. To illustrate Derrick's distinctiveness, for example, in the case of *please print the*, which he uses more than 100 times more than the other authors (32.11% versus 0.29%), other authors use *this*, *and*, and *attachment* more as collocates of *please print*.

	Derrick (n=109)		**Enron (n= 10,952)**		
	n	**%**	**n**	**%**	**authors**
please print the	35	32.11	32	0.29	11
please print the message(s)	3	2.75			
please print the attachment(s)	32	29.36	7	0.06	3
please see the	12	11.01	157	1.43	33
please see the proposed	2	1.83			
please see the message(s)	7	6.42	4	0.04	3
please see the attachment	2	1.83	2	0.02	2
please format and	7	6.42			
please format and print	7	6.42			
please format the attachment	2	1.83			
please handle. Thank	7	6.42			
please handle. Thank you	7	6.42			
please let me	5	4.59	1,345	12.28	108
please let me know	3	2.75	1,290	11.78	108
please let me have	2	1.83	6	0.05	4
please respond to	5	4.59	28	0.26	15
please proceed with	4	3.67	7	0.06	6
please proceed with your	2	1.83			
please format the	2	1.83	1	0.01	1

Table 5. Derrick's recurring three and four word n-grams starting with *please*.

Although the stylistic analysis has clearly highlighted distinctive patterns of encoding polite directives in Derrick's emails, a further examination is even more revealing. For example, in 29 of the 32 instances of *please print the attachment(s)*, he is entirely consistent in following this with *thank you* (Example 13). In contrast, none of the seven instances in the rest of the Enron data is followed by *thank you* or indeed any sign-off at all, with *for me* and *thanks* being the most recurrent patterns (Examples 14 and 15). As such, as with *please handle* above, *please print the attachment(s)* + *thank you* is a pattern unique to Derrick in this corpus.

(13) Please print the attachment. Thank you.
(14) Please print the attachment for me in color
(15) Please print the attachments for me. Thanks,

Similarly, all seven of his uses of *please see the message(s)* are followed by *below* (Examples 16 and 17). However, although this four-gram appears four times in the remaining Enron data, only three of them are followed by *below*, each in a different author (Example 18).

```
(16) Lisa, please see the message below from Gardere. Thank
you. Jim
(17) Please see the message below. I would appreciate [...]
(18) Kristina, please see the messages below and let me [...]
```

Furthermore, as Grant and Baker (2001) and others have explained, when style markers are aggregated, they quickly make a style unique. Taking together *please respond to*, *please print the attachment*, and *please see the* (from Table 5), and *I would appreciate your* (discussed above), Derrick is the only author out of all 176 to use these four n-grams, making these highly identifiable textbites for Derrick in relation to his use of mitigated directives.

Finally, apart from the linguistic politeness of Derrick's *please*-mitigated directives, he is additionally polite in thanking his addressees. He follows up with *Thank you*+full stop (See Figure 3.). This co-selection is very frequent in Derrick's dataset; of his 109 pleases, 93 (85.3%) co-occur with *thank you*. *Thank you*, co-occurring with *please*, is therefore distinctive of Derrick's emails. However, in the wider Enron corpus, although far less common than *thanks* (14,856) *thank you* is still used 1,144 times by 125 of the other 175 authors. However, the way in which Derrick uses *thank you* is still distinctive, as he consistently uses it as a sign-off (Wright, 2013 also found that Enron sign-offs can be remarkably distinctive.). Of the 132 instances of *thank you* in his emails, 109 (82.6%) are used as part of the email farewell or sign-off formula, either as a standalone *thank you*, or followed by his name, as seen in Figure 3. In the rest of the Enron corpus, 539 (47.1%) of the 1,114 instances of *thank you* are used either as standalone farewells or followed by the author's name, far fewer than in Derrick's data. The predominant pattern in Derrick's emails is to use *thank you* followed by only his first name (e.g. lines 81-83 in Figure 3), and he does this 40 times in 132 instances of *thank you* (30.3%), compared with only 172 out of 1,114 occurrences of *thank you* in the rest of the Enron corpus (15.4%). Overall, not only is Derrick's preference for *thank you* over *thanks* distinctive when compared with the other Enron authors, but his use of it is distinctive when compared with how those other 125 authors use it, most notably the ways in which he uses it as part of a sign-off, in particular as a standalone sign-off in combination with his first name only, and, most distinctively, as a follow-up to a mitigated directive.

Summary of findings

Overall, this stylistic analysis has focused on one particularly important aspect of Derrick's professional authorial style, the distinctive ways in which he lexico-grammatically frames politeness in directives mitigated with *please*. In the first instance, proportional frequency results show that the frequency with which Derrick uses *please* and *thank you* is marked when compared with the rest of the Enron data. Moreover, qualitative examination of the position in which Derrick uses these words, in terms of message-initial or final, and the combination of them, has revealed further distinctive patterns. Most importantly, though, a collocational n-gram approach has identified the ways in which lexical strings beginning with *please* can quickly become distinctive of Derrick, and several strings are unique. By combining as few as 4 distinctive strings, though individually these are shared across authors in the corpus, this combination becomes unique to Derrick. Even within a corpus in which politeness is a very frequent and salient linguistic strategy and directives are a common speech act, n-gram textbites can be found for an author. This can be ex-

N	Concordance
58	RW, please respond to the message below. Thank you. Jim <Message-ID: > FYI Jim
59	best. Please note that date on the calendar. Thank you. <Message-ID: > Tom, thank you
60	: > Robert, please advise Vance re this. Thank you. Jim <Message-ID: > FYR
61	<Message-ID: > RW, please call me re this. Thank you. Jim <Message-ID: > RW,
62	: > Please print the message below. Thank you. <Message-ID: > Please let me
63	: > Please format and print the attachment. Thank you. <Message-ID: > RW, I agree.
64	Please let me know what Michelle finds out. Thank you. <Message-ID: > Bob,
65	: > Please print the attachment. Thank you. <Message-ID: > Yes. The
66	: > Please print the attachment. Thank you. <Message-ID: > Steph, I will not
67	: > Please print the attachments. Thank you. <Message-ID: > Jim, thanks for
68	: > Please format and print the attachment. Thank you. <Message-ID: > <Subject: FW:
69	please discuss the proposal with Rob Walls. Thank you. Jim <Message-ID: > Vanessa, I
70	: > Please print the attachment. Thank you. <Message-ID: > <Subject: FW:
71	: > Please print the attachment. Thank you. <Message-ID: > Please print the
72	: > Please respond to this next week. Thank you. <Message-ID: > FYI
73	<Message-ID: > Please note for calendar. Thank you. <Message-ID: > John, you have
74	: > Please print the attachment. Thank you. <Message-ID: > I have no
75	: > Please print the attachment. Thank you. <Message-ID: > <Subject: FW:
76	: > Please print the attachment. Thank you. <Message-ID: > Marc, I met this
77	: > Please print the attachment. Thank you. <Message-ID: > Has this
78	: > Please print the attachment. Thank you. <Message-ID: > Please print the
79	: > Please print the attachment. Thank you. <Message-ID: > <Subject: FW:
80	: > Please print the attachment. Thank you. <Message-ID: > Please print the
81	. Please work with him on the responses. Thank you. Jim <Message-ID: > <Subject:
82	you. Jim <Message-ID: > Please handle. Thank you. Jim <Message-ID: > Please
83	best. Jim <Message-ID: > Please handle. Thank you. Jim <Message-ID: > Please

Figure 3. Screenshot of *Wordsmith Tools* concordances showing Derrick's use of *Thank you*.

plained with reference to the relationship between cognition and linguistic output central to lexical priming and formulaic sequences (Hoey, 2005; Wray, 2002). It may be that the repetitive nature with which Derrick constructs these sequences has 'primed' and stored these collocation patterns in his mind, and he reproduces these in distinctive ways. Or it may be that because he repeatedly finds himself within the relevant communicative context with regard to making the same directives, with the same purpose and recipient(s), the expression of these directives has become formulaic.

Beyond this speculation, this section has shown that as the number of n-grams in the textbite increases, so too does both the rarity and the distinctiveness of the lexical strings in question. This aligns with the findings of others (Coulthard, 2004; Johnson and Woolls, 2009; Culwin and Child, 2010). However, there are a number of ways in which this particular set of results for Derrick is exceptionally noteworthy. First, all of the n-grams presented here have been used at least twice by Derrick in his emails. Thus, as well as displaying inter-author differences in the corpus, and being distinctive of or even unique to his style, there is also a degree of intra-author consistency, rather than being strings used only once, which we might expect to be rarer generally, when tested against a population. Second, many of the n-grams identified as being distinctive of Derrick refer to things to do with emails and emailing; words such as *print*, *format*, *attachment*, and *message* are all related to computer-mediated communication and emails in particular.

The significance of this is that although all 176 authors in the Enron corpus share the same email mode of communication, the explicit references to such shared features that Derrick makes are framed in such a way that is distinctive of his style. However, most importantly, the Enron corpus is a very polite one; *please* was the second most common keyword in the corpus (Table 2), being used 11,061 times by 165 of the 176 employees. Despite this, the collocational analysis has found politeness structures that are particularly distinctive of Derrick's style, such as the indirect directive with the gerund (*I would appreciate your* verb+*ing*), when compared against this very polite corpus, a population of writers whom one may assume would be most stylistically similar to him.

Moreover, Derrick's choices become individuating very quickly; even some bigrams are distinctive of his emails, and, by the time the lexical string is three or four words long, most of the patterns are unique to him. This is considerably shorter than the required ten word strings postulated by Coulthard (2004) to be unique, and even shorter than the six reported by Culwin and Child (2010). Although these two studies used the web as corpus—a far larger comparison corpus—it can be argued that the specificity and relevance of the Enron corpus used here makes the comparison equally valid. Regardless, using a stylistic approach, and using the Enron corpus as a reference dataset, these results provide evidence to suggest that bigrams, trigrams, and four-grams have strong discriminatory potential for authorship analysis, particularly when focused on a particular function of language use, in this case the polite encoding of directives. The implication of this is that n-grams may offer a powerful means of attributing the authorship of disputed texts, even when applied in a pool of candidate writers writing within the same mode of communication and within the same community of practice. The remainder of the case study which follows sets out to test this hypothesis in an authorship attribution task.

Attribution task

This section reports the results of the attribution experiment outlined in the *Experimental set up* section. Ten random samples of 20%, 15%, 10%, 5% and 2% of Derrick's emails—ranging between 1,220 and 55 tokens in size—were extracted from his set and compared with the remainder of his emails and all of the emails of the other 175 authors in the corpus, giving a total of 176 candidate authors. Similarity between the sample sets and the comparison sets is measured by Jaccard's similarity coefficient and in terms of all of the unigrams, bigrams, trigrams, four-grams, five-grams and six-grams that are found in both the sample and comparison texts, as a proportion of all n-grams of that size in the two sets combined. The expectation is that because Derrick authored the samples, the remainder of his emails should be most similar to them, and should therefore obtain the highest Jaccard similarity score of all 176 comparison sets and candidate authors in every test. In the analyses that follow, the accuracy, success and reliability of the different n-grams in attributing the various sample sets to Derrick are evaluated in two ways:

i. 'Raw attribution accuracy'. The most straightforward way of assessing success is by the number of correct attributions each n-gram achieves when applied to the different sample sizes. In any given test, if Derrick's remaining emails achieve the highest Jaccard score as compared to the samples of the other 175 authors, then attribution has been successful; if they do not, attribution has been unsuccessful.
ii. 'Mean Jaccard score'. The second way involves considering the mean Jaccard scores obtained by all 176 candidate authors over the ten tests for each sample size using the different n-gram types. This is an important measure given that, although Derrick

may not always achieve the highest Jaccard score in a given individual test, he may achieve Jaccard scores consistently high enough in each sample size so that he has the highest mean Jaccard score over the ten tests. In such a case, attribution is considered successful.

Results

Figure 4 compares the raw attribution accuracy of the different n-grams in identifying Derrick as the author of each of the ten samples for each size. First, with the smallest samples of 2% (9 emails, 55–145 tokens), performance is generally poor, with the best results being obtained by four-grams and five-grams which each have a success rate of 30%, attributing three of the ten samples to Derrick. Trigrams and six-grams only successfully attribute one sample each, while the shortest n-grams of unigrams and bigrams have no success at all. Whereas unigrams and bigrams continue to misattribute all ten 5% samples (23 emails, 156–398 tokens), n-grams from three to six words in length achieve a 60% success rate. When the samples reach 10% of Derrick's emails in size (46 emails, 350–622 tokens) trigrams and four-grams achieve 90% success rate, outperforming bigrams and five-grams which both achieve 80% success rates and six-grams and unigrams lagging behind at 40% and 30% success rates respectively. With the 15% sample sizes (70 emails, 537–875 tokens) bigrams, trigrams and four-grams perform perfectly, attributing all ten samples accurately to Derrick, while unigrams and six-grams also perform well with 90% accuracy and five-grams with 80%. Finally, by the time the samples to be attributed comprise 20% of Derrick's emails (93 emails, 763–1018 tokens), unigrams through to five-grams all achieve 100% accuracy, and six-grams follow closely behind with identifying Derrick as the author of nine of the ten samples.

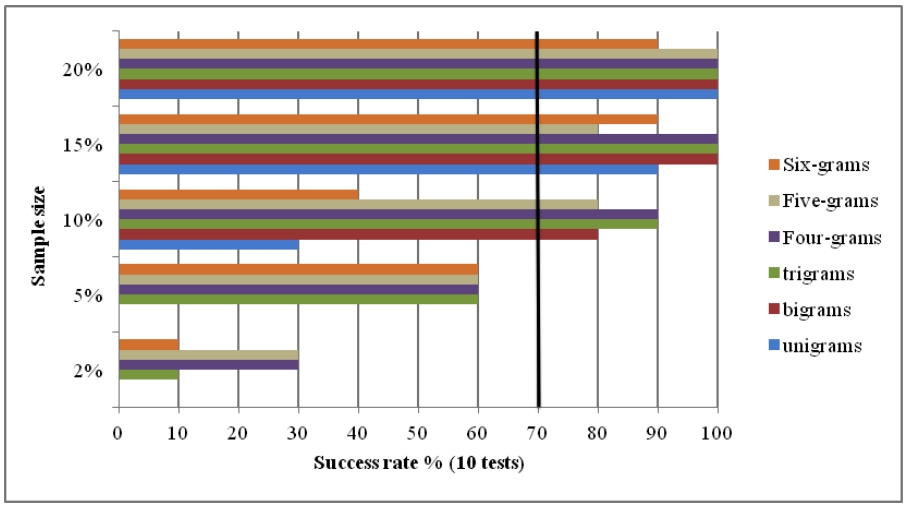

Figure 4. Accuracy rate of n-grams in successfully attributing samples of Derrick's emails.

Overall, these results are encouraging. Although there is not yet a consensus as to 'how good is good enough' when it comes to success and error rates in authorship research, a number of studies (Zheng *et al.*, 2006; Grieve, 2007; Koppel *et al.*, 2011) consider 70%-75% accuracy in an attribution task to be 'successful', 'satisfactory', or 'passable'. If the less conservative 70% end of this threshold is applied, then everything to the right of the bold black line in Figure 4 can be considered 'successful'. This includes the results for

bigrams, trigrams, four-grams and five-grams when applied to 10% samples, and the results for all of the six n-gram measures when tested on the 15% and 20% samples. What is most encouraging about the results in Figure 4 is that the number of accurate attributions beyond the 70% mark is not inconsiderable for the larger sample sizes. Despite not reaching the 70% threshold for the 2% and 5% samples, accuracy rates of 30% and 60% can be considered successful to some extent, particularly when the small sample sizes are taken into consideration (55–398 tokens). In fact, the three 2% samples successfully attributed by trigrams and four-grams are only 77, 84 and 109 tokens in size (see Table 1), which is remarkably small for computational authorship techniques. In a forensic case involving email, the analyst may have a very small number of disputed emails which they are asked to attribute, a few emails or maybe even only one. These small samples of between 77 and 109 tokens that have been successfully attributed to Derrick represent around nine of his emails. However, as noted above, he has a much lower words-per-email mean (12.9 tokens) than the rest of the authors in the corpus (41.74 tokens). Samples of these sizes would therefore comprise around two to three emails for the average Enron employee, which goes some way towards demonstrating the potential effectiveness of this method in forensic applications, especially as there are likely to be fewer candidate authors in any given case.

Based on the evidence provided by these results, the most accurate and reliable n-gram measure in identifying Derrick as the author of the samples is four-grams. Each n-gram measure underwent 50 tests, one for each sample (five sample sizes, ten samples each). Out of their 50 tests, four-grams correctly attributed 38 samples to Derrick (76%), closely followed by trigrams which successfully attributed 36 of the 50 samples (72%) and five-grams which attributed 35 (70%). On the other hand, unigrams and bigrams are the worst performers, successfully identifying Derrick as the author of only 22 (44%) and 28 (56%) samples respectively. While longer n-grams generally perform better than shorter ones, accuracy does not continue to rise with the length of the n-gram, with four-grams outperforming five- and six-grams. Although longer word strings are more likely to be distinctive of individual authors, it may be that these strings are less likely to be repeated by authors, while four-grams and even trigrams are more pervasive and consistent in a person's authorial style.

What these results do not take into account, though, is how closely Derrick comes to being identified as the author of the samples when he does not achieve the highest Jaccard score. Although he may not rank as being most similar to the sample in any one test, he may be the second or third most similar, or he may be in one-hundred-and-third place. Considering mean Jaccard scores of all 176 candidate authors across all ten tests of each sample size helps to circumvent this issue (Table 6). The table presents the authors with the three highest mean Jaccard scores for all ten tests for every sample size, for all six n-gram measures. With the 2% samples, Derrick does not achieve the highest mean Jaccard score over the ten samples using any of the six measures. He does, however, rank second using six-grams, and while unigrams perform very badly, ranking him at 60th of all 176 candidates, bigrams through to five-grams rank him between 15th and 18th. In a pool of 176 possible authors, n-grams between two and six words in length consistently rank Derrick as being in the top 10% (18/176) of authors. Given the very small size of these 2% samples, this is a promising result, and indicative of a better performance of the method than the raw attribution results (Figure 4) would suggest. With the 5%

samples, Derrick is successfully identified as the author of the ten samples using bigrams and trigrams, while four-, five- and six-grams rank him as 5th, 6th and 8th most similar respectively, or in other words within the top 5% of authors (8/176). While bigrams did not attribute a single 5% sample to Derrick (Figure 4) across the ten tests, the Jaccard scores obtained using bigrams were consistently high enough for him to score the highest mean of all the candidate authors. When the 10% samples were tested, Derrick achieved the highest mean Jaccard score using unigrams through to five-grams, with six-grams ranking him second. However, by the time the samples are 15% and 20% all six n-gram measures successfully identify Derrick as being most similar to the samples. Overall, with these mean Jaccard score results, if the performance of unigrams is disregarded, Derrick is never ranked outside the top 10% of the 176 candidate authors, and amongst these results bigrams and trigrams outperform the others as they are the only measures to successfully attribute the 5% samples to Derrick.

	Unigrams	Bigrams	Trigrams	four-grams	five-grams	six-grams
20%	**derrick-j (24.13%)** phillips-c (18.70%) fleming-r (18.08%)	**derrick-j (8.15%)** phillips-c (5.39%) hillis-k (4.54%)	**derrick-j (3.24%)** phillips-c (1.24%) ellis-k (1.18%)	**derrick-j (1.76%)** ellis-k (0.61%) skilling-j (0.50%)	**derrick-j (1.05%)** ellis-k (0.46%) pimenov-v (0.32%)	**derrick-j (0.64%)** pimenov-v (0.56%) ellis-k (0.24%)
15%	**derrick-j (21.12%)** phillips-c (17.34%) skilling-j (17.07%)	**derrick-j (6.72%)** phillips-c (4.39%) ellis-k (4.28%)	**derrick-j (2.71%)** ellis-k (1.14%) phillips-c (0.88%)	**derrick-j (1.50%)** ellis-k (0.64%) dean-clint (0.38%)	**derrick-j (0.87%)** ellis-k (0.41%) lay-k (0.36%)	**derrick-j (0.51%)** lay-k (0.26%) ellis-k (0.22%)
10%	**derrick-j (16.36%)** williamson-j (16.05%) may-l (15.98%)	**derrick-j (5.13%)** ellis-k (3.83%) phillips-c (3.66%)	**derrick-j (2.06%)** ellis-k (0.95%) williamson-j (0.92%)	**derrick-j (1.12%)** ellis-k (0.68%) dean-clint (0.59%)	**derrick-j (0.65%)** pimenov-v (0.60%) dean-clint (0.59%)	pimenov-v (0.77%) derrick-j (0.36%) dean-clint (0.34%)
5%	brown-kath 15.76% williamson-j 15.69% dean-craig (15.34%) derrick-j (11.93%) (36th)	**derrick-j (3.13%)** dean-craig (3.08%) ellis-k (3.05%)	**derrick-j (1.18%)** williamson-j (0.82%) dean-clint (0.76%)	williamson-j (0.95%) dean-clint (0.87%) ellis-k (0.77%) derrick-j (0.62%) (5th)	pimenov-v (0.96%) williamson-j (0.68%) dean-clint (0.65%) derrick-j (0.34%) (6th)	pimenov-v (0.91%) williamson-j (0.40%) dean-clint (0.36%) derrick-j (0.18%) (8th)
2%	brown-kath (16.17%) akin-l (14.80%) brown-kim (14.58%) derrick-j (5.38%) (60th)	williamson-j (2.14%) brown-kim (2.03%) smith-g (1.92%) derrick-j (1.26%) (15th)	smith-g (1.45%) linder-e (1.07%) wells-t (0.89%) derrick-j (0.44%) (15th)	saibi-e (1.00%) williamson-j (0.91%) linder-e(0.91%) derrick-j (0.23%) (18th)	saibi-e (0.57% williamson-j (0.51% ellis-k (0.48%) derrick-j (0.17%) (16th)	ellis-k (0.28% derrick-j (0.16%) griffith-j (0.14%)

Table 6. Authors with the highest mean Jaccard scores across all ten samples of each size.

Using this approach, we can also identify which of the other 175 Enron authors appear to be most similar to Derrick. Kaye Ellis appears in the top three authors 18 times in Table 6. Similarly, Joannie Williamson (10), Dean Clint (8), Cathy Phillips (7) and Vladi Pimenov (6) all repeatedly appear in the top three ranked authors, with samples being misattributed to Williamson and Pimenov on five occasions. The repeated appearance of these authors in the results attests to the consistency of the method; rather than the samples being misattributed to different authors each time, or dozens of different authors being scored as similar to Derrick, this way the method consistently identifies these authors as being the closest to him in stylistic terms. Combined with Derrick's consistent ranking in the top 10% of authors, these results provide evidence to suggest that besides being an effective method of attributing authorship of samples of varying sizes, the word n-gram approach may also be used to dramatically reduce the number of candidate authors in cases where the number of suspect writers is very large.

The first part of this case study (*Identifying Derrick's professional authorial style*) used

a corpus-based stylistic approach to demonstrate how distinctive Derrick's collocation patterns are. Following from this, the results of this attribution experiment complement and confirm the findings of the stylistic analysis, in that they have shown word n-grams between one and six-words in length to be accurate and reliable in identifying Derrick as the author of the samples. In order to fully bridge the gap between the stylistic and computational approaches, the third and final part of the case study examines the actual n-grams that are responsible for the accurate attribution of authorship in these experiments.

Derrick's discriminating n-grams

One of the main advantages of *Jangle* is that, as well as running comparisons and calculating Jaccard scores, the program also displays the actual n-grams operating behind the statistics and accounting for the Jaccard scores. This kind of information about which specific linguistic choices were most important in attribution tasks is often not made available in stylometric studies. In this particular attribution case, this facility allows us to pinpoint the n-grams that were most useful in identifying Derrick as the author of the disputed samples, and to observe any recurrent patterns (textbites), and compare these with those identified in the corpus stylistic analysis. The examination here focuses on the bigrams, trigrams, four-grams and five-grams which contributed to the accurate attribution of the 5% sample sets. Although bigrams were not successful in attributing the individual 5% samples, they were successful in scoring Derrick the highest mean Jaccard score across all ten tests with this sample size, and for this reason the shared bigrams in all ten 5% samples are examined here. In contrast, the trigrams, four-grams and five-grams were successful in attributing six of the ten individual 5% samples, and the n-grams considered here are those shared between the samples and the remainder of Derrick's emails in these successful tests.

In total there were 311 different bigrams that were found in both the sample set and the remainder of Derrick's emails across the ten 5% sample tests, and there were 122 trigrams, 64 four-grams and 28 five-grams that were found in both sets of emails in the six or seven successful tests. One major criticism of using content words or combinations of content words in authorship analysis is that they are indicative of topic rather than of authorship. Indeed, there is a risk that Derrick's samples have been attributed to him on the basis that the emails in the two different sets made reference to the same topics, such as people, place or company names. However, only 57 (18%) of the 311 bigrams could be considered to refer to topic specific entities, for example *jim derrick*, *steph please*, *enron letterhead*, *southwestern legal*, and *the litigation*. Similarly, 24 of the 122 trigrams (19.7%), 19 of the 64 four-grams (29.7%) and 11 of the 28 five-grams (39.3%) can be considered as being topic-dependent in this way. Such n-grams have been removed from the analysis that follows. Thus, although the proportion of topic-dependent n-grams gradually increases as the length of the n-gram is extended, the majority (61%-82%) of the useful n-grams are topic independent; that is, they are not shared between the samples and the remainder of Derrick's emails simply because Derrick is talking about the same things or about/to the same people.

Table 7 presents bigrams which appeared in both the sample sets and Derrick's remaining emails in five or more tests, and the tri-, four-, and five-grams which were shared between Derrick's sample and his remaining emails in three or more successful tests. The n-grams displayed in the table collectively represent a pool of the most characteristic and discriminatory n-gram textbites repeatedly used by Derrick. They have all contributed to the successful attribution of his 5% sample sets which, varying between 156 and 398 words

in length, are the smallest sample sets accurately attributed in the experiment besides three 2% samples (*Results* section).

Bigrams	Trigrams	Four-grams	Five-grams
all_the	all_the_best	am_ok_with_your	am_ok_with_your_proposal
and_print	am_ok_with	and_print_the_attachment	format_and_print_the_attachment
format_and	and_print_the	be_able_to_attend	i_am_ok_with_your
i_am	for_the_message	format_and_print_the	i_will_support_your_recommendation
i_assume	format_and_print	i_am_ok_with	please_format_and_print_the
i_do	i_am_ok	i_assume_you_will	please_see_the_message_below
i_have	i_will_attend	i_have_no_objection	see_the_message_below_from
i_will	i_will_be	i_have_talked_to	thank_you_for_the_message
if_you	mail_to_you	i_will_not_be	
message_below	ok_with_your	i_will_support_your	
of_the	please_format_and	i_would_appreciate_your	
please_format	please_print_the	not_be_able_to	
please_handle	please_see_the	please_format_and_print	
please_print	print_the_attachment	please_print_the_attachment	
please_proceed	see_the_message	please_print_the_attachments	
please_see	thank_you_for	please_proceed_with_your	
print_the	the_message_below	please_see_the_message	
see_the		see_the_message_below	
thank_you		thank_you_for_the	

Table 7. Useful n-grams in the successful attribution of Derrick's 5% email samples (green highlights unique to Derrick; yellow indicate Derrick is top frequency author among shared n-grams).

One recurring n-gram pattern that emerges from these results is strings which begin with *I*, for example the trigram *I have talked*, the four-grams *I assume you will*, *I would appreciate your*, and the five-grams *I am ok with your*, *I have no objection to*, and *I will support your recommendation* (Note the appearance of *I would appreciate your* in Example 7 and in Figure 2 in the stylistic analysis). All of these n-grams are productive in discriminating Derrick's email style from that of the other candidate authors, and useful in correctly attributing his samples.

However, the most obvious pattern in these results is the recurrence of *please* and *thank you* initial n-grams. These appear from bigrams such as *please print*, *please see* and *thank you* to four-grams such as *please print the attachment* and five-grams such as *please see the message below* and *thank you for the message*. What the stylistic analysis identifies that the computational analysis does not, is the co-selection of *please* with *Thank you*. This is a limitation of the search for n-grams within punctuated sentences. However, the corpus analysis complements this and the within-sentence rule ensures that meaningful strings are preserved. Other distinctive patterns are the word n-grams which are contained within the longer politeness strings, for example bigrams such as *format and* and *the message* to four-grams and five-grams such as *see the message below* and *format and print the attachment*. These results complement and confirm what was found in the corpus stylistic analysis in the section *Identifying Derrick's professional authorial style*. The qualitative stylistic analysis in the first instance found that Derrick was remarkably formulaic in his use of politeness structures, and that there are a number of n-grams that are distinctive of

him in the Enron corpus. In turn, this section has found that it is exactly these n-grams that are most influential in the statistical attribution experiment.

Using these results, we can return again to a corpus approach to identify how common or rare these textbites are in the rest of the Enron corpus. In other words, are these n-grams found in the emails of the other 175 Enron authors? Those highlighted in green in Table 7 are those that are unique to Derrick; when searched for using *Wordsmith Tools*, the only results returned are from his emails. Taking results from across the four lengths of n-gram we can identify five n-gram textbites that are unique to him: *please format and print the attachment*, *I will support your recommendation*, *please proceed with your*, *am OK with your proposal* and *see the message below from*. In addition, those in yellow are those that are shared with other authors in the corpus, but Derrick is the top frequency user per 1,000 words of text. For example, *please print the* is used by twelve authors in the corpus, but Derrick uses it with a greater relative frequently than the other eleven. With the green and yellow n-grams combined, we have a pool of textbites that are distinctive of Derrick and characterise his authorial style when compared with the other authors in the Enron population. These findings show the value of returning to the corpus approach in validating the n-grams further, and provide an explanation for why these particular n-grams were useful in the successful attribution of Derrick's samples.

The methodological implications of this successful triangulation of approaches are considerable. On the one hand, the statistical attribution task confirms and supports the reliability of the stylistic results in terms of the distinctiveness and usefulness of Derrick's *please*-initial n-grams. At the same time, the stylistic analyses in the first half of the case study offers a clear linguistic explanation for the statistical and computational results in terms of why n-grams are an accurate and useful linguistic feature for distinguishing an individual's writing style and attributing authorship. Throughout his life, Derrick has amassed a unique series of linguistic and professional experiences culminating in being a legal educator and practitioner, and word collocations and patterns are stored and primed in his mind based on these unique experiences. As such, when Derrick finds himself within the relevant communicative context with regard to purpose and recipient of the email, he accesses and produces stored and frequently used collocation patterns which, in turn, prove to be distinctive of his email style. Moreover, he produces such patterns regularly and repeatedly, reinforcing the priming and making them increasingly habitual. The result is that a word n-gram approach can be used not only to identify and isolate a number of n-gram textbites that distinguish his professional email style from that of other employees in the same company, but also to successfully identify him as the author of text samples, including some as small as 77, 84 and 109 tokens.

Conclusion

Turell (2010) notes the important role that research studies in authorship attribution play in benefiting the performance of expert witnesses in cases of disputed authorship. In the 21st century forensic linguistic casework increasingly involves texts created in online modes, including email. This research, therefore, provides much-needed empirical results that might provide knowledge for expert witness reports in the future. We now know that focusing on one style-marker, *please*, and one speech act, politely encoded directives, can produce both stylistically and statistically revealing results, even though we know that *please* is one of the most frequent lexical items in email and that directives are one of the most important speech acts in emails. Even so, it is possible to find distinctive uses of these

items and habitual behaviours within a large pool of authors. In most authorship casework reports focus on a whole range of different linguistic style markers (lexical, syntactic, orthographical, etc.), but this research has shown that this is not necessary, when stylistic analysis is combined with statistical Jaccard similarity testing. This reinforces the benefits of a triangulation of approaches: corpus stylistic, statistical, computational, and case study, following the call by Solan and Tiersma (2004: 463) to test and validate methods "with proven reliability in determining authorship" in order that the legal system finds the expert evidence of forensic linguists acceptable.

The statistical attribution method illustrated and tested in the *Attribution task* section has an accuracy rate of 100% for larger samples, and promising results for very small samples. It allows us to reduce a mass of data to meaningful "textbites" that can characterise and identify authors, in this study one author: James Derrick. The combination of corpus stylistic, computational, and statistical methods, then coming back to the corpus to verify results, produces a set of unique and highly distinctive textbites for Derrick. This also shows us what a corpus like the Enron corpus can enable researchers to do in the forensic linguistic field. Having a dataset of authors as large as 176, allows us to explore author email style, understanding more fully how writers who are (socio)linguistically close in many ways, writing within the same text type, in the same company, at the same time, can do so in ways that are distinctive. Even though they are selecting the same word (*please*), the collocations and co-selections they make vary to form recurrently different n-grams that are both stylistically and statistically observable and quantifiable. The identification of these n-gram textbites moves us closer to the elusive concept of idiolect.

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Detecting translingual plagiarism and the backlash against translation plagiarists

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Abstract. *Plagiarism detection methods have improved significantly over the last decades, and as a result of the advanced research conducted by computational and mostly forensic linguists, simple and sophisticated textual borrowing strategies can now be identified more easily. In particular, simple text comparison algorithms developed by computational linguists allow literal, word-for-word plagiarism (i.e. where identical strings of text are reused across different documents) to be easily detected (semi-)automatically (e.g. Turnitin or SafeAssign), although these methods tend to perform less well when the borrowing is obfuscated by introducing edits to the original text. In this case, more sophisticated linguistic techniques, such as an analysis of lexical overlap (Johnson, 1997), are required to detect the borrowing. However, these have limited applicability in cases of 'translingual' plagiarism, where a text is translated and borrowed without acknowledgment from an original in another language. Considering that (a) traditionally non-professional translation (e.g. literal or free machine translation) is the method used to plagiarise; (b) the plagiarist usually edits the text for grammar and syntax, especially when machine-translated; and (c) lexical items are those that tend to be translated more correctly, and carried over to the derivative text, this paper proposes a method for 'translingual' plagiarism detection that is grounded on translation and interlanguage theories (Selinker, 1972; Bassnett and Lefevere, 1998), as well as on the principle of 'linguistic uniqueness' (Coulthard, 2004). Empirical evidence from the CorRUPT corpus (Corpus of Reused and Plagiarised Texts), a corpus of real academic and non-academic texts that were investigated and accused of plagiarising originals in other languages, is used to illustrate the applicability of the methodology proposed for 'translingual' plagiarism detection. Finally, applications of the method as an investigative tool in forensic contexts are discussed.*

Keywords: *Translingual, plagiarism, translation, detection, forensic linguistics, computational.*

Resumo. *Os métodos de detecção de plágio registaram melhorias significativas ao longo das últimas décadas e, decorrente da investigação avançada realizada por linguistas computacionais e, sobretudo, por linguistas forenses, é, agora, mais fácil identificar estratégias de reutilização de texto simples e sofisticadas. Especificamente, simples algoritmos de comparação de texto criados por linguistas*

computacionais permitem detectar fácil e (semi-)automaticamente plágio literal, "ipsis verbis" (i.e. que consiste na reutilização de trechos de texto idênticos em diferentes documentos) – como é o caso do Turnitin ou o SafeAssign –, embora o desempenho destes métodos tenha tendência a piorar quando a reutilização é disfarçada através da introdução de alterações ao texto original. Neste caso, são necessárias técnicas linguísticas mais sofisticadas, como a análise de sobreposição lexical (Johnson, 1997), para detectar a reutilização. Contudo, estas técnicas são de aplicação muito limitada em casos de plágio 'translingue', em que determinado texto é traduzido e reutilizado sem atribuição da autoria ao texto original, proveniente de outra língua. Considerando que (a) normalmente, a tradução amadora (e.g. tradução literal ou tradução automática gratuita) é o método utilizado para plagiar; (b) é comum os plagiadores fazerem alterações ao texto, nomeadamente gramaticais e sintácticas, sobretudo após a tradução automática; e (c) os elementos lexicais são aqueles que a tradução automática processa mais correctamente, antes da sua reutilização no texto derivado, este artigo propõe um método de detecção de plágio 'translingue' informado pelas teorias da tradução e da interlíngua (Selinker, 1972; Bassnett and Lefevere, 1998), bem como pelo princípio de 'singularidade linguística' (Coulthard, 2004). Recorrendo a dados empíricos do corpus CorRUPT ("Corpus of Reused and Plagiarised Texts"), um corpus de textos académicos e não académicos reais, que foram investigados e acusados de plagiar textos originais noutras línguas, demonstra-se a utilidade da metodologia proposta para a detecção de plágio 'translingue'. Finalmente, discute-se possíveis aplicações deste método como ferramenta de investigação em contextos forenses.

***Palavras-chave**: Plágio, translingue, tradução, detecção, linguística forense, computacional.*

Plagiarism, translation and lifting

Plagiarism has been on the agenda of national and international organisations for decades. Even if for different reasons and driven by distinct motives, publishers, the media, and, especially, higher education institutions from all over the world and in different contexts (e.g. Western/Eastern cultures, industry/education, etc.), across different genres (e.g. academic, literary, etc.) and disciplines (e.g. engineering, business, linguistics, etc), attempt to effectively address the improper reuse of someone else's words. Whereas organisations, publishers and the media are mainly concerned with the possible implications and consequences of the copyright violations underlying instances of plagiarism in published works, educational institutions are driven, simultaneously, by the need to develop student skills and teach them how to write academically, to promote academic integrity, and enforce tight controls that discourage, prevent and punish cheating (Anderson, 1998; Angèlil-Carter, 2000; Bennett, 2005; Bertram Gallant, 2014; Howard, 1995; Jameson, 1993; Pecorari, 2008). Although some reports suggest that plagiarism is on the rise (Caroll, 2004), this has not yet been proven.

However, there has certainly been an increase in the perceptions of plagiarism, in part due to the media attention attracted by high profile cases, such as those of the journalist Johann Hari of *The Independent*, or those involving politicians, such as the German Defence Minister Karl-Theodor zu Guttenberg (2011), the Romanian Prime Minister Victor Ponta (2012), and the German Education Minister Annette Schavan (2013). As a result of this per-

ceived increase, a considerably high number of organisations are now equipped with anti-plagiarism and integrity policies, as well as plagiarism and text reuse detection software programmes (such as Turnitin, CopyCatch and WCopyFind, among others). In parallel, these technological developments have been matched by developments in research that not only found new linguistic methods of plagiarism detection (Johnson, 1997), but also provided a level of linguistic description that suits the forensic context (Turell, 2004, 2007). These build upon two assumptions. The first is the proven principle of *idiolect* (Coulthard, 2004), i.e. that each speaker or writer of a language makes their own, individual use of that language, thus making it very unlikely that two speakers or writers of a language independently produce identical utterances/phrases. The other assumption is that, as the most common form of plagiarism is textual plagiarism, this can be demonstrated via linguistic analysis (Coulthard and Johnson, 2007).

Plagiarism, however, is not limited to the type of plagiarism that linguists are able to detect, i.e. textual plagiarism. Other forms of plagiarism have been on the agenda in recent years, which involve the improper reuse of works and ideas, rather than words. Instances of plagiarism of this type include plagiarism of computer source code (Chester, 2001; Culwin *et al.*, 2001), visual and multimodal plagiarism (Anderson and Mill, 2014; Porter, 2014), or even music plagiarism (Dittmar *et al.*, 2012). These are instances of plagiarism of works and ideas whose detection is usually beyond the skills of linguists, but linguists are able to detect some instances of plagiarism of works and ideas. One of these is where one translation lifts from another translation of the same original.

Previous research has demonstrated that plagiarism of ideas, like linguistic plagiarism, can be investigated, described, explained and proved by resorting to linguistic analysis. This has been shown in particular by Turell (2004), who compared four translations of Shakespeare's *Julius Caesar* that were published in Spain to show that the use of quantitative linguistic evidence can help determine plagiarism between translations. Interestingly, Turell's study did not compare one text in one given target language (TL) to an original in another, source language (SL). Instead, Turell compared the four TL texts translated from the same SL text to determine the extent of plagiarism, by explaining how much overlap could be expected among the TL texts. She concluded, not that the ideas that were lifted were not those of the original English text, but on the contrary those of another translation into Spanish. This is an illustrative example of plagiarism analysis that used a textual comparison to demonstrate an instance of plagiarism of ideas, where some ideas were translated using the same TL words, even when such wording is unexpected. Where translation and plagiarism have been researched (e.g. Turell (2004, 2007)), the analysis has therefore focused mainly on comparing the translations of the same original to find instances of plagiarism among the translated texts, by using a method that is strikingly similar to monolingual plagiarism detection. In other words, the suspect translation is not checked for identity and similarity to the other language original, but against another translation of the same original. This may imply using the original for reference, but the main task consists of analysing same-language texts.

Another case of plagiarism of ideas that linguists are able to detect is where the plagiarists lift the text from one language, have it translated into another language, and subsequently reuse it as their own. This type of plagiarism, to which I called *translingual plagiarism* (Sousa-Silva, 2013), is distinct from the previous one, and has been hardly discussed until recently. Several reasons may explain why this area remains relatively under-

researched. The first may be the fact that the concept of plagiarism adopted may consider that translating from another language is not *stricto sensu* textual plagiarism since the text (re)used is neither textually identical, nor similar to the original. Indeed, an investigation of texts suspected to have plagiarised an original in another language challenges linguistic concepts such as the ones proposed by Johnson (1997), as the instances of plagiarism cannot be detected using (common) text comparison techniques. Since the original and the suspect instance of plagiarism are in different languages, the identity and/or similarity between words, strings and grammar becomes significantly more difficult to demonstrate, and the computational detection task can hardly obtain satisfactory results. Additionally, plagiarism of this type, where 'a language A text written by author A is translated into language B and the translator appears as the author of the original translated text' (Turell, 2004: 7) – and which Turell (2008: 271) calls 'plagiarism in translation' – does not reuse the 'linguistic text' from the original. The text that is lifted from the original could be roughly considered to be a *semiotic text*, more than a linguistic text, thus being often considered either *plagiarism of ideas* or *plagiarism of works*, rather than *linguistic plagiarism*. Unsurprisingly, therefore, most investigations into linguistic plagiarism until this date have been limited to monolingual plagiarism, where a text borrows from another original in the same language, and relatively little research attention has been paid to plagiarism across different languages, by means of translation.

The use of translation as a plagiarism strategy is nevertheless a known issue, in academic as well as non-academic contexts. In non-academic contexts, two reporters of the Portuguese quality newspaper *Público* were recently found to have plagiarised from other news pieces. In 2007, one of the journalists was accused of having plagiarised *Wikipedia* and the *NewScientist* in her piece on sunscreens, published in the newspaper's Sunday supplement. The case received considerable attention. A webpage was dedicated to it, including the original and the derived texts, and the newspaper used it as an example of malpractice. In the academy students, too, have been reported to have translated from other languages and passed off the text as their own. In this context, translation has been a concern of institutions worldwide (especially in non-English speaking countries), which include a reference to translation in their plagiarism definitions – and how to cite properly – in order to avoid student plagiarism. However, translation has been rarely approached as a plagiarism strategy, and research into this area has been very limited, or has demonstrated disappointing results.

Jones (2009), arguing that students have the creativity to devise new methods to plagiarise on a regular basis, reported that, among native speakers of English, it is becoming increasingly common to back-translate a text originally written in English into another language, and then translate it again into English (using a MT tool) to change the wording of the original, effortlessly. Translation, in this case, is used more as an obfuscation technique, than a plagiarism strategy. Unsurprisingly, then, he concluded that detecting plagiarism in this case is very difficult, if not impossible, and advised lecturers/tutors to devise assessment tasks that avoid this type of strategy.

On the computational side, research into detection of plagiarism across texts in different languages has demonstrated a limited success. Ceska *et al.* (2008) proposed an approach that consists of pre-processing the two texts, in order to transform them into a language-independent form and subsequently compare the two. The performance of this method depends, however, on the availability of a parallel thesaurus of the two languages

involved, as well as on the size of that thesaurus, which limits the number of words that the system is able to successfully index. Additionally, since the suspect and potential original texts need to be pre-processed before making the comparison, the suspect original needs to be known in advance. Similarly, Corezola Pereira *et al.* (2010) offered a method that consists of a 5-phase complex procedure that includes language normalisation, retrieval of candidate documents, classifier training, plagiarism analysis, and post-processing. The results reported are admittedly poorer than those achieved over the monolingual plagiarism detection procedure, even using an artificial plagiarism corpus. Limited results have also been reported by Barrón-Cedeño *et al.* (2010), who compared a new detection method consisting of a combination of machine translation and monolingual similarity analysis against two previous methods devised by Potthast *et al.* (2008). Although they reported good results with their two methods, with one performing better with syntactically identical language pairs, and the other showing a good performance with 'exact' translations, Barrón-Cedeño *et al.* (2010) concluded that both methods presented poor results with their corpus. Their analysis confirmed that these methods were largely dependent on the syntactic identity between the suspect text and the original, on the size of the resources available and on the computational capacity (with better results demanding extremely high processing capabilities). On the other hand, their machine translation and monolingual similarity comparison method was demonstrated to perform better than those offered by Potthast *et al.* (2011), but it requires previous translation of all documents, which may become expensive and is unrealistic. More recently, Pataki (2012) offered a translated plagiarism detection method that is based on a distant function search, in order to search for 'all possible translations'. The method, again returning poor results, is based on sentence chunking, so that the comparison between the suspect text and the possible translations is made on a sentence-by-sentence basis.

The limited success of these computational approaches could potentially be improved by approaching the instances of plagiarism as a linguistic problem, rather than a computational one. A method that is grounded in forensic linguistics, as described in the following sections, can certainly help in this respect.

The case for translingual plagiarism

Detecting translingual plagiarism is hampered by the limitations imposed on the linguistic analyses, since the type of plagiarism that linguists are mostly competent to deal with, as was so clearly argued by Coulthard and Johnson (2007), is *linguistic plagiarism*. Therefore, a very strong effort is required to detect surreptitious lifting from other languages, owing to the fact that although the ideas are the same, the wording is necessarily different. On the other hand, given the distinct wording, finding duplicates and near-duplicates, which is an ordinary procedure in computational plagiarism detection, as discussed elsewhere (Sousa-Silva, 2013), is limited by the (technical) ability to cope with it. It adds to this that most research into plagiarism is *English-centred*, not only being conducted mostly in English-speaking countries, but more importantly focusing on texts written in English. If we take the Internet in general as an example, according to the World-wide Internet Usage Facts and Statistics – 2013, a large percentage of texts are nowadays written in English: the English language accounted for 62% of the Internet contents, followed by Russian (7%), German (5%) and Chinese (4%). Although the percentages are not consistent across different websites and reports, English always comes first, so the demand for texts in other languages is comparatively much smaller.

The absence of research motivation in this area is very likely to change in the future, especially as even English universities are growingly acknowledging the need for approaches to plagiarism detection across texts in different languages. A post to the Plagiarism mailing list (PlagiarismAdvice.Org), on 15/11/2011, raised the question of whether a bibliography of foreign-language texts should be accepted, on the grounds that the lecturer would be unable to 'translate the material', and that this might make it impossible 'to verify the source'. More recently, Elsmore and Hampton (2014) discussed the problem currently faced by British universities of students using proofreading and translation services for producing their academic assignments, and whether this runs against academic integrity. Cases of (this type of) academic plagiarism rarely attract media attention, but several educators stated, via personal communication, that the phenomenon is either on the rise, or more attention is being paid to it – or both. Text reuse from originals in another language is admittedly a problem in non-academic contexts as well, as the case of the *Público* journalists described above demonstrates.

Owing to the technological developments of the last decades, as was argued by Coulthard and Johnson (2007), the Internet eased the access to more information more readily, making that information particularly susceptible to plagiarism. But the problem is not limited to monolingual texts. As Maurer *et al.* argued, these technological developments facilitated the access to 'global and multilingual contents' (2006: 1079), and current machine detection systems, even those that work well with monolingual textual material, tend to break down '[w]hen plagiarism crosses language boundaries' (2006: 1080). This, they anticipated, will remain a challenge for many years. Indeed, the textual comparison of two texts in different languages presents additional problems. Firstly, the text is not duplicated or nearly duplicated from another translation in the same language, but it is an 'interpretation' of the original in another language. This challenges the textual analysis since, as was argued by Johnson (1997), a case of plagiarism cannot be proved unless 'clear lexical parallels' and 'identical lexical strings' can be found between the texts. The effectiveness of this detection and investigative method is limited by the fact that textual analysis cannot be used at this stage to help confirm or discard the hypothesis that there has been plagiarism of ideas, as much as it is by the fact that the possibilities of translation of one textual string are almost endless. The relationship between one SL and another TL string is one-to-many, so that one string in one source language text may have numerous translation possibilities into a target language text.

Notwithstanding, if plagiarism is considered to be any surreptitious theft of words, works and ideas, 'translingual plagiarism' cannot be put aside as a lesser plagiarism strategy.

Translingual plagiarism was found to be more precise terminologically than other alternatives to refer to this type of plagiarism, such as 'cross-lingual plagiarism' and 'translated plagiarism'. 'Translated plagiarism' is imprecise, since it may be used to refer both to cases where one TL text was translated and lifted without acknowledgement from another source language text, as well as to cases where one translated text lifts from another translation in the same target language. 'Cross-lingual plagiarism', on the other hand, is closer to the analysis of texts that are derivative from an original in another language, but as the prefix 'cross' indicates, it focuses on the particular *intersection*, rather than on the *transection* of the texts. Hence, it may include all languages considered, avoiding any concepts of directionality. 'Translingual plagiarism' therefore suggests that the interaction

between the two texts is transversal, crossing each other, one being active and the other one being passive, rather than the two texts being equal, contrary to what the prefix 'cross' might suggest. In terms of directionality, it suggests that the analysis is conducted from one language to another.

In this paper, a method is proposed to detect and investigate *translingual plagiarism*. However, first it is important to consider translation historically and conceptually, in order to define translation and understand how this can impact translingual plagiarism description and detection. The impact of interlanguage on both human and machine translation is discussed subsequently.

Translation: from human to machine-assisted

How translation is envisaged, how it is briefed, and its purpose largely determine the extent to which a translated text may or may not be considered plagiarism. Firstly, the brief helps contextualise the translation task; it allows the translator to learn more about the project, to understand their customer's requirements, and to perform the job. Secondly, a translation is also impacted by the translator's and the customer's purposes, as much as it is by its own purpose. In this sense, a translation performed by a professional translator for a company is bound to be different from an amateur translation, done for one's own personal use. In parallel, a translation is dependent on a translator's and/or customer's agenda, i.e. the matters to which the translation seeks to attend. These might be selling a company's goods or services, in the case of a professional translator working on a marketing document for a company, or translating the text from another language and passing it off as one's own, in the case of a student plagiarising an essay. In the former, the translator would be expected to provide a text that targets the product or service, and that is aimed at selling; in the latter, the student could be expected to produce a translation that is literal, word-for-word, but not necessarily so. These aspects, as translation studies have demonstrated over the last decades, not only influence how translation is approached, but at the same time are also influenced by the translation procedure.

Traditional translation theories and human translation

Translation has been studied from several different, often contradictory perspectives over time, usually based on the concepts of transfer and equivalence from one language to another – whether that transfer operates at the level of semantics, (surface) structure or other elements of the source language text – and, consequently, faithfulness. The translator is frequently seen as a traitor who is not faithful to the original text (Bassnett, 2002). Traditionally, three translation models have dominated translation studies: the *Horace* model, the *Jerome* model, and the *Schleiermacher* model.

Faithfulness lies at the heart of the *Horace* model of translation, which is historically and chronologically the first major translation model, dating from a few centuries BC. The model is based on the simple premise of *fidus interpres*, i.e. the premise of faithfulness, not to the text, but rather to the customers, for the satisfaction of both parties involved in an act of interpreting. According to this model, the concept of equivalence relies on elements such as the function, the design and even the target audience of the text, which are still recognised by contemporary theories of translation. For centuries, however, the Horatian model was overshadowed by the subsequent model of translation, the *Jerome* model (Lefevere and Bassnett, 1998). The *Jerome* model, which dominated the West from around the 4th until the 18th Century, is named after Saint Jerome, a Christian church father

who translated the Bible into Latin. Saint Jerome believed that translating such a sacred text, which embodied the word of God, demanded being faithful to the source language text, with as little interference as possible. Ideally, the text should be transposed linearly and mechanically into the target language, i.e. by matching each word in the original with the corresponding word in the target text, in such a way that anyone with access to a dictionary or word list would be able to perform it.

Although syntactically this strategy could cause serious problems that rendered a text unintelligible, as argued by Lefevere and Bassnett (1998), it remained the ideal model of translation (including of texts other than biblical) until recent centuries. In practice, this is still one of the strategies used by underskilled translators. The linguistic text thus occupied the central place, which owing to its sacred nature was unchangeable, demanding absolute faithfulness. The influence of the Bible then ceased to be as powerful as it had once been, so the debate over faithfulness in translation moved on to a perspective where equivalence no longer operated as an imposition, but rather as a strategy freely adopted by translators to 'ensure ... that a given text is received by the target audience in optimal conditions' (Lefevere and Bassnett, 1998: 3).

Schleiermacher, however, was worried that having a translation read as a 'natural' text in the target language would lead to a loss of the translated text. He thus argued for a 'qualitative distinction between a 'true' and a 'mechanical' translation' (Gentzler, 2011: 62). The principle behind the *Schleiermacher* model is that translation should be performed in such a way that the reader is able to grasp the language behind the original text. Ultimately, a translation should read like a translation in order not to 'trick' the reader into believing that they were reading an original text.

The argument for the combination of different translation strategies and theories gained strength, to a great extent as a result of Derrida's post-structuralist theories, and paved the way to more recent, 'post-colonial' research on translation (Bassnett, 2002). The work of Bassnett and Lefevere on cultural interaction is a good example of this post-structuralist approach. Rather than arguing for 'faithfulness' to the original, these theories approach translation as a process of making meaning in a new language, and consequently not as 'the transfer of texts from one language into another' (Bassnett, 2002: 6), but as meaning negotiation between two different languages.

Notwithstanding, (linguistic) texts are made of language material – grammar, semantics, pragmatics, discourse – and the translator's work consists of disassembling and unpacking this material and reassembling the signs of the original to compose a new text (rather than copying the original), in a new language. As a consequence, the translated text remains bizarrely tied to the source text, with features of two different syntactic structures. And although Toury (1995) argues that such bizarreness is not necessarily indicative of a poorly translated text, but rather as a conscious postmodern attempt to produce an original as if it were a translation (a *pseudotranslation*), this argument loses weight when, on the contrary, the aim is to produce an obfuscated translation as it if were an original. The relevance of Toury's theory to research into translation and plagiarism lies, not so much with the reasons why authors choose pseudotranslations, but rather with its potential to help understand and explain the linguistic devices – i.e. the non-standard linguistic forms at the basis of any (written) (linguistic) text – that can be expected from a translation. A good translation that can be passed off as one's own raises questions of authority and power, as the translation becomes the original in the eyes of the reader, when the

reader does not speak the language in which that original was written (Lefevere, 1998). But this also means that the translation is sufficiently obfuscated to disguise its authorship. Conversely, it is (also) the linguistic forms that reflect non-standard language, and as a consequence they have the potential to operate as the giveaway that a text is an unacknowledged translation.

The translator is the one who holds the power, who knows to whom the original belongs, where it came from, and, ultimately, the one who chooses the strategy (most probably, in a subconscious manner) to obfuscate it. The issues of power and the translator's agenda therefore hold for amateur translators working for personal use, as they do for professional translators, especially because the diversity of translation strategies, and their influence on someone's writing, prevents someone from being accused of plagiarism simply because the text is written in a certain way that 'reads like a translation'.

Translation theories and machine translation

Translation theories have been applied, more or less indirectly, to machine translation (MT) systems. These systems, which are intended to translate text to optimal quality with the minimum possible human intervention, have evolved over the last decades, now achieving results that are immeasurably better than those of the ideal systems of the 1960s, when machines were expected to perform translation in a way that is similar to humans. The need for human pre- and post-processing of machine translated texts has been acknowledged in the meantime (Slocum, 1984), but the main principle of MT remains the same: being able to perform a complete translation independently, with no human intervention, using specific software, grammars, and sets of rules (Seneff, 1992).

Feeding a set of rules into the system to 'teach' it how to translate is the basis of rule-based approaches. However, after several years of experiments it was demonstrated that using just rule-based methods proved to be inflexible, and raised problems of reusability. Once the system was used in domains other than those for which it was trained, results were of poor quality and rules had to be re-written (Macherey *et al.*, 2001). Research into the field of rule-based translation was not dropped altogether, but the focus shifted to data-driven methods, in particular statistical MT approaches (Koehn, 2010). Contrary to rule-based systems, statistical MT approaches consist of computing text statistics and integrating them into MT systems, usually aligning naturally-occurring text by matching source and target texts, to make 'intelligent guesses'. These methods may vary, depending on the linguistic units that they aim to process, such as words, phrases or sentences; they can also build upon 'language models,' which consider for example n-grams, or even lexical models, that consider lexical translation and, when more sophisticated, can also take into account alterations (e.g. deletions, additions, duplications). This alignment information is then retrieved based on probabilistic models, which consider the relative, rather than absolute position of the words. In other words, these MT systems tend to compute, not only the words, but also the differences in word positions (Vogel *et al.*, 1996). But they can also take into account standard distributions to model the system, or even collect statistical information e.g. on the word co-selection and calculate the probability distributions accordingly (Koehn, 2010).

Different statistical machine translation methods have been developed over the last decades, but not all of them offered promising results. The system proposed by Vogel *et al.* (1996), for example, consisted of aligning the source and target texts on a word-to-word basis. The model was found to be limited in that it established a correspondence

of each word in the source to one word in the target text, failing to identify and process groups of words (Och *et al.*, 1999). Additionally, this posed the risk that words be taken as a grammatical unit in translation, with one single function, and hence invariable. In an attempt to address this problem, later research proposed methods to align source and target texts above word level; in this respect, Och *et al.* (1999) demonstrated that the text could be aligned at phrase level, first, and then at word level. Statistical machine translation systems then evolved to working on a many-to-many basis (Macherey *et al.*, 2001), where many word combinations in one source could possibly correspond to many word combinations in the target. This provided results considered significantly better than the ones of rule-based systems.

One example of the application of statistical machine translation is *Google Translate*. The tool was developed to translate words, sentences and pages instantly – and for free – from and to 80 different languages. As described in the project's page, it uses previous human translations to align the source and the target, and thus collect a set of patterns. *Google*'s translation tool gained a popularity that other systems missed. (According to the 'Google Translate Usage Statistics Website' (http://trends.builtwith.com/widgets/Google-Translate-Widget), on 01/05/2014 over 400,000 websites used *Google Translate Widget* alone, including more than 11,000 of the top million visited websites in the World.) *Google*, however, recognises a limitation that not all users of their translation system seem to be aware of: that the translation is generated by machines, and hence is not perfect. These machines use *web crawling* to crawl webpages in order to find source and target texts, translated by humans. Consequently, the higher the number of human translated texts available, the higher the likelihood that the translation has been evaluated by humans, and consequently that it is good – or, at least, closer to human translation. *Google*'s solution to this quality assurance lies with post-processing and assessment of the quality of the translation that, it can be speculated, is hardly ever performed by skilled professionals. Conversely, using the method of web crawling increases the risk that machine-translated, non-processed texts are fed into the system, thus increasing the amount of poor translations, which are replicated as the usage of the system increases.

Interlanguage: the giveaway?

The assessment of the quality of a translation has traditionally considered only judgements of the results, and it is common to judge a translation as literal or word-for-word based on the use of non-standard linguistic forms, while neglecting the possibility that such forms might result from other constraints (such as subconscious, non-standard linguistic forms). Frequently, however, these forms occupy a 'middle ground' between the source and the target language, which Selinker (1972) calls *interlanguage*, and are not necessarily indicative of a poor translation.

Studies on bilingualism and second language acquisition have tried, for several decades, to describe the use of non-standard forms by non-native speakers of a language. Such non-standard forms have been attributed to a phenomenon that Weinreich (1953) called 'interference'. Interference consists of a deviation from a standard language norm, and reflects the introduction of foreign elements at various linguistic levels, such as morphology, syntax and vocabulary. It results in the rearrangement of patterns which are attributed to the fact that a bilingual speaker is the one who is familiar with more than one language, and can alternately use two languages, with such an alternation giving rise

to a language contact situation. Selinker (1972), partly in response to the belief that Weinreich's theory left some unanswered questions, built on Weinreich's practical assumption of *interlingual identifications* to argue that second language learning involves three linguistic systems; the system of the mother tongue; the system of a target language; and the competence of a speaker in a second language – the 'interlanguage' (IL). Interlanguage is 'a separate linguistic system based on the observable output which results from a learner's attempted production of a TL norm' (Selinker, 1972: 214). He argued that speaking a second language involves an attempt to achieve a 'meaningful performance' in the system of the target language, i.e. 'an attempt to express meanings which he may already have, in a language which he is in a process of learning' (Selinker, 1972: 210). Selinker's argument that those 'interlingual identifications' exist within a latent psychological structure that is 'activated when one attempts to learn a second language' (1972: 211) are at the basis of his interlanguage theory.

The *Interlanguage* theory builds upon the principle that the same meanings are not expressed identically, i.e. using identical sets of utterances, by a native speaker and a learner of that language. Based on the analysis of (a) utterances in the learner's native language (NL) produced by the learner, (b) interlanguage (IL) utterances produced by the learner, and (c) target language (TL) utterances produced by the native speakers of that TL, Selinker compared the competent native-speaker, who acquires the language and its principles of organisation without being explicitly taught, to the incompetent learner, who focuses on one norm of the language s/he is attempting to perform, and overgeneralises TL linguistic material, to claim that speakers of a particular NL tend to keep, in their IL relative to a particular TL, 'fossilizable linguistic phenomena' (Selinker, 1972: 215), i.e. rules, subsystems and linguistic items of that NL. Fossilisation, as Finegan explains, 'underlies the nonnative speech characteristics of someone who may have spoken the target language for some time but has stopped the process of learning'; once the learning process stops, interlanguage stabilises, and additional language acquisition ceases, except for vocabulary (2012: 522). An 'interlingual situation' arises when a particular combination of NL, TL and IL elements is obtained, often resulting from a speaker or writer's conscious or subconscious realisation that they lack 'linguistic competence with regard to some aspect of the TL' (Selinker, 1972: 219), and which reflects more on certain linguistic aspects than others. Therefore, he concluded, second-language learners tend to 'backslide' from a TL norm toward an IL norm, and not actually toward the speaker's NL or randomly.

In his earlier studies, in particular, Selinker considers that the influence of interlanguage operates unidirectionally, rather than bidirectionally, so that consequently the impact of interlanguage is studied only on the second language, and not on the native language of the speaker or writer; hence, his focus on investigating second-language acquisition, which has typically considered the native-language interference in second language learning. However, the hypothesis that IL can also influence the native language has been considered by studies of bilingualism as a scenario of 'two coexistent systems', rather than a 'merged single system' (Weinreich, 1953: 9). Although it has been argued, as discussed by Pavlenko (2000), that, once 'mature', language systems are not subject to change, and that the weaker linguistic system is attached to that of the stronger language and is dominated by it (Weinreich, 1953), more recent research has demonstrated that the IL can also influence the NL of the speaker or writer. In his study with adults, Major (1992) documented that native language loss can occur even in cases where there is language contact,

or where a subject is learning a second language. Likewise, Pavlenko (2000) later argued that adults' 'matured', native language systems are unstable and permeable.

This interpretation of Selinker's interlanguage theory, and in particular of the process of IL influence on another language, as a bidirectional process, is a possibility that Selinker later seemed to accept (Selinker and Lakshmanan, 1992). This is consistent with other studies. Fillmore (1991), for example, described how children who were non-native speakers of English had both the process of learning English and the retention and use of their primary language affected, after a massive exposure to English. Similarly, Pavlenko (2000) later demonstrated that, not only can the interference (i.e. involuntary influence) of the native language (L1) be noticeable in a second language (L2), but also L2 is taken to influence L1. She found that L2 can impact the competence, performance, processing and conceptual representations based on L1, including aspects of phonology, morphosyntax, lexis, semantics, pragmatics, and rhetoric, thus challenging Selinker's argument that the lack of 'native-speaker'-like competence reflects mainly in syntax. Additionally, she suggested that such influence is greater as a result of a longer exposure to L2 or of a high level of L2 proficiency, although other extralinguistic factors have also been found by previous studies (e.g. Seliger and Vago (1991)) to account for that influence – including language prestige, social status and the desire to integrate and assimilate the L2 environment. As these latter approaches to interlanguage – which consider language loss and language transfer – indicate, IL may be taken to impact the native language, as much as it does the second language, especially as native speakers of nearly any language are heavily exposed to existing multilingual contexts (Major, 1992).

These theories are also inevitably bound to influence the translation process, and even more so when this translation is not performed by a skilled, trained translator, who is conscious about the preventive measures to adopt in order to produce a version of the original document that is – or attempts to be – free from non-standard linguistic forms. Regardless of whether translation is seen as transfer or as equivalence between two different cultural and linguistic systems, it necessarily implies an interaction between two languages, one being influenced by the other, either owing to the existence of one intermediary language (the interlanguage), or owing to language transfer influencing both native languages (in the case of bilingual speakers/writers), or the native and second language. The concept of the bilingual translator, who has an impermeable native-language competence in at least two languages, is thus a rare and sometimes 'idealised' version of reality, since to a certain extent, every speaker or writer is exposed to one language more prominently than to another, and this prominence, if we consider previous research on interlanguage, tends to overtake the other (Fillmore, 1991; Pavlenko, 2000). The 'overtaking language' would then play the role of dominant language (i.e. the language to which a speaker or writer is more prominently exposed at a certain time, and not necessarily his/her native language, or the language they are more comfortable with), and be expected to operate at different levels, depending on the speaker. Speculatively, the effect of the dominant language would be greater if the speaker or writer is not bilingual, or a professional, trained translator, owing to the fact that the individual speaker or writer focuses mainly on trying to reproduce the source language text. This is the most likely scenario in cases of translingual plagiarism, and consequently the use of non-standard forms and 'indices of foreignness' can be a giveaway to plagiarism.

Translingual plagiarism: an analytical framework

Translingual plagiarism can involve mainly two scenarios. The first is where a plagiarist takes an original work published in another language, translates it into his/her language and publishes it. A second scenario is where the plagiarist takes an original work published in another language, translates it into his/her own language, or the language in which the derivative text is expected to be written, and passes it off as their own. Contrary to the first scenario, which is aimed for wider audiences, the second scenario describes a case where plagiarism is for personal use, and is usually intended to be read by smaller audiences. Consequently, the first scenario usually has legal implications, involving publishing issues and copyright violation, whereas the second scenario is often judged morally. The translation job is also expected to be performed differently in the two scenarios; in the first scenario, a professional, careful translation would be expected; conversely, in the second scenario a less proficient translation is more likely to be the result. As lack of time, pressure, mental fatigue or even lack of academic writing skills, or simply laziness, are often identified as the most likely reasons why students plagiarise (Dias and Bastos, 2014), when resorting to translation the plagiarist could hardly be expected to produce a high quality text. Under these circumstances, it is very likely that the student would make a minimal effort, and spend the least possible amount of time on the task; speculatively, his/her main concern would be translating the meanings, by doing their own interpretation of the text and rewriting it in another language. Another way to perform this task quickly – and for free – would be to copy the original text into a publicly available machine translation system and instantaneously obtain the translated text. The latter suits the plagiarist intentions well, since it permits translating the main ideas in a short space of time (Slocum, 1984), while allowing the reader to have a gist of the text even when the translation produced is rough (Koehn, 2010). More careful plagiarism could then be completed by editing and revising the text for the surface structure.

However, as discussed above, translating consists of more than simply transferring text from one language into another; it involves a complex process of meaning negotiation, which accordingly requires negotiating lexico-grammar, both at sentence- and discourse-level. Moreover, given the mutual language transfer and influence of two linguistic systems, it is not always easy, even for trained translators, to (re-)write a text in another language that conveys the meaning(s) of the original without 'compromising' the translation, by avoiding hints to the fact that the text originated in a foreign language. As a consequence, translated texts are often permeated with linguistic forms of the original, source language text, i.e. non-standard linguistic elements and 'indices of foreignness', and hence are said to 'read like a translation'. One such example is the case of passivisation in Portuguese and French, on the one hand, and in English on the other; Portuguese and French use passive structures differently from English because they have an 'impersonal' grammatical strategy to convey information that can only be conveyed in English using passive structures. Likewise, the traditional SVO order in English, albeit allowing a slight degree of flexibility, can be reordered diversely in Portuguese, and accomplish more indirect realisations than English. The mismatches resulting from uncommon reorganisations of the words, especially when in large volumes, can lead a native speaker of the target language into intuitively evaluating the text as a 'poor translation' – i.e. unnatural, prone to errors, and often indicative of the original source language. In this sense, a poor translation can be easily identified as not being an original text, and raise suspicion that

the text may have been plagiarised.

This is the type of plagiarism involving texts translated from other languages that is easiest to detect, despite the skills required to distinguish a poorly translated text from a poorly written one. On the contrary, a good translation (one that 'reads like an original', and seems to have been produced independently of any other source text) is less prone to raise that type of suspicion, unless, of course, the reader has previously read the original text. Good translations tend to mediate meanings impeccably between a source and a target language, in such a way that the original text tends to lose its original surface structure, which is then replaced with that of the target language. Therefore, a poor translation could mean violating the target language standards at all levels of language, including morphology, morphosyntax, semantics, pragmatics and/or discourse, for example by combining short sentences into longer ones, making different use of personal pronouns, using passives when impersonal structures are more common, translating multi-word units, phrases and idioms literally when their use is not common in the target language, etc.

Interlingual transfer and influence

In order to describe and explain the changes operated by means of the interlingual transfer and influence of a source language on a target language, a systematic approach is necessary. Among the scarce research conducted in the field – and usually as part of studies on bilingualism and second language acquisition (SLA) – the work of Pavlenko (2000) in particular was found to be highly relevant, since it proposes a 5-class – yet, admittedly open – classificatory framework, which she named 'unitary classificatory framework' (Pavlenko, 2000), to describe the linguistic processes that operate at the level of language transfer and language influence, namely L2 influence on L1 phonology, morphosyntax, lexicon and semantics, concepts, pragmatics and rhetoric.

The framework used in this article is an adaptation of Pavlenko's framework, since not all categories and linguistic processes used by her original model are applicable to the analysis of linguistic plagiarism. Firstly, this framework will be used for a purpose other than the one used by bilingualism, multilingualism or SLA theories: to describe the linguistic systems used, and not to assess the linguistic competence of speakers and writers. Secondly, in order to avoid the identification of L1 with native language and L2 (and possibly L3, L4, L5, ...) with target language(s), L1 will be renamed TL (target language) and L2 will be renamed SL (source language). This is because translingual plagiarism detection builds on the assumption that the plagiarising text derives from a *source* in another language, so the latter is the SL text, whereas the derivative text, being translated into another *target* language, is the TL text. This shall also facilitate the description of the directionality of the text reuse. Additionally, the focus shifts from the writer to the text, so that rather than concentrating on the L1 (native language) writer, the analysis can focus on a SL text and on one or more TL texts.

Considerations of which language is the writer's native language and which one is the writer's second language are not as relevant at this stage as those involved in the identification of the source and target language texts. Conceptually, this also permits categorising cases where a plagiarist uses texts from more than one source language. Moreover, the linguistic devices required by translingual plagiarism detection do not exactly match the ones used by the unitary classificatory framework to analyse language transfer and influence in bilingualism theories. Influence on morphosyntax, lexicon and semantics, concepts and pragmatics – and, possibly, rhetoric – remains relevant, whereas influence on phonology

can be discarded. At the same time, new devices need to be considered, such as punctuation, spelling, and discourse grammar. Influence on morphosyntax will consider, for example: sentence structure (word order rules that are missed or restructured); extension of SL rules for agreement, prepositions, adverbs, adjectives, pronouns, pre-/post-positioning; paradigmatic TL conjugations; and verb usage. SL influence on lexicon and semantics can operate at the levels of the lexicon, semantic networks or lexical processing, and will therefore consider especially forms of lexical lifting, such as loanwords (these are lexical borrowings *per se*, i.e. lexical items from one language adapted phonologically or morphologically for use in another); loan blends (hybrid forms which combine elements of both languages); loan shifts (which are often referred to as 'semantic extension', i.e. TL words which acquire the SL meaning); and loan translations (also known as calques, i.e. literal translations of SL words, phrases, or expressions). The influence of SL on TL concepts will focus on the linguistic, rather than the psycholinguistic aspect, and includes cases where concepts of the source language are transposed linguistically (but not necessarily coherently) to the target language. Other instances that need consideration are punctuation and spelling (e.g. to describe cases where the source language punctuation conventions and particular spelling are brought to the target language text), as well as discourse grammar and informational organisation and packaging, to enable issues of coherence and cohesion, and aspects of theme and rheme, to be addressed.

The following are the five categories proposed, adapted from Pavlenko's 'unitary classificatory framework':

- *borrowing transfer*: consists of adding new SL elements to the TL text;
- *convergence*: consists of creating a unitary system that includes elements that belong neither to the SL, nor to the TL;
- *shift*: departs from structures or values of the TL, by approximating to those of the SL;
- *restructuring transfer*: consists of incorporating SL elements into the TL, originating changes, substitutions, or partial shifts;
- *attrition*: loss of some TL elements as a result of the SL influence.

This classificatory framework is mostly relevant to linguistically explain the strategies and the moves used by the plagiarist when lifting from an original in another language. However, as the next section will demonstrate, cases of translingual plagiarism can also be demonstrated by simple comparison, after the source is identified. A method aimed at this identification is discussed in the next section.

Detecting translingual plagiarism

The distinction between *linguistic plagiarism* and *plagiarism of ideas* – or copying ideas – is key to investigating cases of plagiarism in translation, since the detection of linguistic plagiarism can lead to the detection of the plagiarism of ideas. The lifting of ideas is often considered in cases of copyright infringement, which applies for instance when someone gets copyrighted material translated into another language and published without the consent of the copyright holder, i.e. the person(s) holding 'the exclusive right to reproduce, adapt, distribute, perform and display the work' (Garner, 2009: 386); that is, usually the author or the publisher. In several countries, 'copyright' is referred to in law as 'author's rights', but it has been argued (Ascensão, 1992) that the law should change to protect more the non-transferable moral rights of the authors, and less the financial rights of the publishers. In any case, a copyrighted work can be plagiarised if someone else uses it and

passes it off as their own – in which case the copyright is also infringed. However, given a hypothetical case where the original author gives someone else permission to use their own work without acknowledgement, this may not represent copyright infringement, but is still plagiarism.

Cases of translingual plagiarism are among those that are the most complex to detect. Nevertheless, taking Selinker's concept of interlanguage, its influence on the surface structure of a text, and the principle that interlanguage may influence both the native and the second language, together with Pavlenko's claims that such influence reflects on both the second and the native language (whenever they act as the target language), it is hypothesised that instances of plagiarism can be detected by means of an analysis that reverses the translation process. This process works by back-translating a suspect text into the suspected original language, or using a software package to 'guess' the most probable language of the original. The linguistic markers and discursive devices described below can then be used to find empirical evidence that contributes to a theory aimed at describing translingual plagiarism, using different language pair combinations (e.g. Portuguese/English, English/Portuguese, Portuguese/Spanish). These criteria are used to provide investigative, descriptive and analytical clues to plagiarism. Subsequently, a computational approach is proposed to detect this type of plagiarism that suits forensic linguistic research into plagiarism.

Translingual plagiarism can result from (a) a professional translation of an original into another language; (b) an 'amateur' translation produced by an untrained person; or (c) a work performed using machine translation (possibly more common in the current IT era). Contrary to professional translation, the results of 'amateur' translation and MT are often considered to be poor in that they tend to be (too) literal, word-for-word, and reflect the surface structure of the original, often impacting syntax, semantics and lexico-grammar. As I discussed elsewhere (Sousa-Silva *et al.*, 2009), news texts written in one language (*Language A*), based on newspaper articles/newswires originally written in another language (*Language B*), tend to retain a structure that is more similar to texts written in the language of the original source (i.e. *Language B*) than to other texts (regardless of their genre), written in the target language in which they are published (i.e. *Language A*). Hence, a news report on national politics would be written in a style that is different from another report on international politics, despite the possibility that both might be signed by native speakers of the same language, and the (more or less) tight editorial decisions made nowadays by newsrooms.

This supports, for the most part, the arguments for language transfer and language influence of the source language on the target language, confirming Selinker's assumption that interlanguage acts mainly at the level of the surface structure of the text (1972). And particularly in translation, it is relatively easy to fail to meet language standards, for instance at the level of syntax, lexico-grammar, morphology and informational organisation, as well as of cohesion and coherence. These, together with considerations of misinterpretation of the source text, terminology and named entities and punctuation, are some of the linguistic markers and discursive strategies that can hypothetically contribute to the detection of translingual plagiarism, while at the same time providing clues of directionality, i.e. in order to determine which text is the original and which one is the derivative. Determination of directionality is particularly relevant in cases where text production is proven to be contemporary (Turell, 2008), or where the likelihood that one person had access to

the other person's text is not evident.

Consequently, by translating the suspect texts back to the probable language of the original, linguists may trigger potential cases of plagiarism for investigation, as this procedure allows one first to find the putative original, and then to compare the two texts for lexical parallels and identical lexical strings that are said to prove the instances of plagiarism. A few empirical experiments have been conducted. These results indicate that free machine translation, e.g. *Google Translate* (which is used in this research for its degree of popularity, and for the continuing, daily updates to the system), performs well in finding the potential source. For the purposes of these experiments, a machine translation system is preferred to human translation because it returns the results instantaneously, and avoids any possible human translator bias. In practice, it involves:

1. Taking a (suspect) text written in *Language A* (in this case, Portuguese);
2. Translating it into *Language B* (in this case, English) using *Google Translate*;
3. Checking the translated text for non-standard linguistic forms;
4. 'Googling' the translated strings.

The third step, checking the translated text for non-standard linguistic forms, is not absolutely necessary, but allows narrowing down the search strings in more fuzzy cases, and hence increases search efficiency.

As a result of the procedure above, the more fluent the machine-translated text (i.e. the less it violates the surface structure, as well as the discourse structure of the target language, *Language B*), the greater the likelihood that the text has been produced using a discursive strategy that is close to the one of the target language. This can be explained by the fact that machine translation has now reached a stage where lexical items and even terminology and named entities are frequently replaced with a considerable degree of correctness, but the surface structures are often missed or transferred incorrectly. Conversely, if the machine-translated text is *odd*–and assuming that the right TL has been chosen–, then the more likely it is that it has been originally produced in a language other than the selected target language, and consequently may indicate that the text is original. The following example of a headline posted on *The Guardian* website on 11th June 2009 illustrates this point:

`Three guilty of Ben Kinsella murder`.

Google Translate returned the following translation to Portuguese:

`Três acusados de homicídio Ben Kinsella`.

The headline in Portuguese is grammatically correct–despite the lack of the preposition 'de' before 'Ben'–and could be found in a Portuguese newspaper, but any newspaper reader would easily notice that the headline shows indices of foreignness; if the news had been originally written in Portuguese, a different headline would be expected. To confirm this assumption, a media professional was asked to rewrite the headline in Portuguese based on the information conveyed by the English headline. The version that she suggested was:

`Três assassinos de Ben Kinsella condenados`.

Syntactically, this sentence sounds more 'natural' in Portuguese than the translated version above; semantically, the original headline provides information that the translated

headline misses, but the rewritten headline emphasises: the adjective 'guilty' indicates that the murderers were convicted, but the machine translated headline only indicates that they were 'accused'; the rewritten headline ('Three convicted for murder of Ben Kinsela') is semantically similar to the original headline, and conveys the core information. But machine-translating the sentence

`Três acusados de homicídio Ben Kinsella.`

back to English returned the headline

`Three charged with Ben Kinsella murder.`

The following examples, in tables 1 and 2, also illustrate this method.

PT	Faz com que a melanina se combine com o oxigénio, o que produz o escurecimento da pele.
PT-EN	**Causes the melanin to combine with oxygen**, **which** causes darkening of **the skin**.
EN	**causes the melanin to combine with oxygen** (oxidize), **which** creates the actual tan color in **the skin**.

Table 1. Example of translingual plagiarism.

PT	Pode ser quase completamente bloqueada pelos protectores solares.
PT-EN	It can be **almost completely blocked by sunscreen**
EN	is **almost completely blocked by** virtually all **sunscreen**s

Table 2. Example of translingual plagiarism.

The sentences used are from a case of newspaper plagiarism, involving the Portuguese quality newspaper *Público* described above, and are part of the CorRUPT corpus (my personal Corpus of ReUsed and Plagiarised Texts). For each table, the alleged instance of plagiarism is indicated in the first row ('PT'), followed by the corresponding machine-translated version ('PT-EN') in the second line; the English original is provided in the third line ('EN') for comparison. The identical, overlapping text is highlighted in **bold** typeface. Only the exact matches are highlighted in bold; consequently, the amount of overlapping text would increase if synonyms and words with the same lemma were also considered. These examples demonstrate that most instances of the machine-translated text (row 'PT-EN') are identical to the English original (in row 'EN'). Therefore, although the translation sometimes shows some errors (which derive mainly from the edits introduced in the suspect translated text, or by MT issues), they could easily be read and understood by a native speaker of English. More importantly, an analysis of the overlapping vocabulary, such as the one described by Johnson (1997), is particularly useful for translingual plagiarism detection, as lexis tends to be translated accurately by MT systems. This method is also illustrated by tables 3 to 5:

PT	A chave deste novo autobronzeador está num extracto de plantas chamado forskolina que, nas experiências da equipa, protegeu ratinhos sem pêlo de radiação ultravioleta e permitiu-lhes desenvolver um bronzeado natural, estimulando os seus melanócitos.
PT-EN	**The key** to this new self-tanning is **a plant extract called forskolin** that the experience of the team, **protected** hairless **mice** to ultraviolet radiation **and allowed them to develop a natural tan by stimulating** their **melanocytes**.
EN	**The key** chemical, **a plant extract called forskolin**, **protected mice** against UV rays **and allowed them to develop a natural tan by stimulating** pigment-producing cells called **melanocytes**.

Table 3. Example of translingual plagiarism.

PT	A capacidade de se bronzear - (...) - é controlada pela hormona de estimulação dos melanócitos, que se liga a uma proteína que existe no exterior destas células. Esta proteína, que se chama receptor de melanocortina 1, funciona mal em muitas pessoas que têm a pele clara e o cabelo ruivo. É por isso que não se conseguem bronzear, e ainda por cima correm maiores riscos de desenvolver cancro de pele.
PT-EN	**The ability to tan** - (...) - **is controlled by hormone** stimulation of melanocytes, **which binds to** a protein that exists outside these cells. This protein, called **the melanocortin 1 receptor**, malfunctions in **many people** who have **fair skin and red hair**. That is why we can not **tan**, and on top of a higher risk of developing **skin cancer**.
EN	**The ability to tan is** largely **controlled by** a **hormone** called melanocyte-stimulating hormone, **which binds to the melanocortin 1 receptor** (MC1R) on the outside of melanocytes. **Many people** with **red hair and fair skin** have a defect in this receptor, meaning they find it almost impossible to **tan** and are prone to **skin cancer**.

Table 4. Example of translingual plagiarism.

PT	Numa segunda série de experiências os cientistas usaram ratinhos susceptíveis ao cancro, expondo-os ao equivalente a uma a duas horas de Sol na altura do meio-dia solar, diariamente, durante 20 semanas.
PT-EN	**In a second** series of **experiment**s the scientists used **mice** susceptible to cancer, exposing them **to the equivalent of one to two hours of** sunshine at the time of solar noon **each day for 20 weeks**.
EN	**In a second experiment**, a particularly cancer-prone strain of **mice**, also bred to lack effective MC1Rs, were exposed **to the equivalent of 1 to 2 hours of** midday Florida sunlight **each day for 20 weeks**.

Table 5. Example of translingual plagiarism.

These results demonstrate a high degree of lexical overlap, besides the identity in surface structure, indicating that machine translation is able to handle lexical items efficiently.

Figure 1 proposes a method for describing a procedure of translingual plagiarism detection:

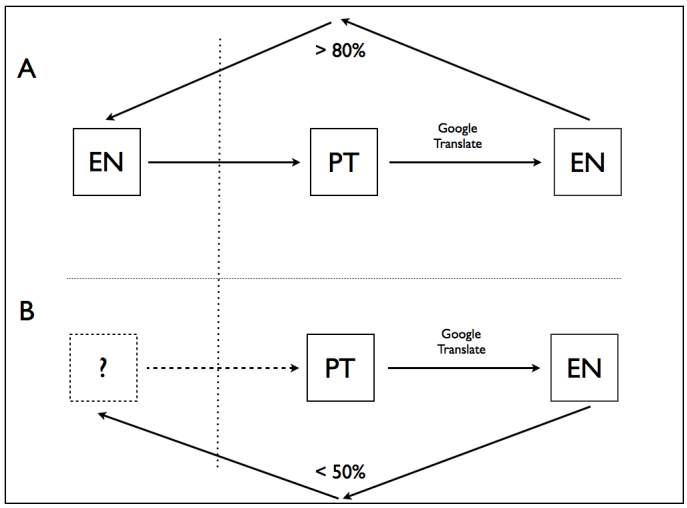

Figure 1. Diagram of translingual plagiarism.

Section 'A' of the diagram describes a suspect text written in Portuguese that was machine-translated into English. Although the text shows some (mainly) grammatical errors, it is sufficiently fluent to be easily understood by a native speaker of English. However, an Internet search using the machine-translated string confirms that the text is almost identical to a previous text, with a lexical overlap of (say) 80%. This percentage of overlap should be seen as a relative, rather than an absolute value on the grounds that it is not possible at this stage to determine the threshold of overlap at which a text would be considered plagiarism.

Section 'B' of the diagram shows a case where the same procedure described in 'A' is applied, but where the machine translation returns a text with a higher index of foreignness. This text is prone to be less fluent than the one described in 'A', and presents a higher degree of difficulty to native speakers of English. Searching the Internet for the translated text returns hits with some degree of overlap, but this is equal to or lower than 50%. 'A' therefore shows a higher likelihood than 'B' to be plagiarism, demonstrating that error checking has a strong discriminatory power to help identify texts that derive from originals in other languages. By this token, a higher index of foreignness is a good indicator that the text derives from literal translation or from wrong language transfer.

In cases of suspected translingual plagiarism, it is necessary to compare the source and target texts. From a linguistic perspective, especially if it is considered that linguistics should deal only with textual comparison, leaving aside all instances of plagiarism of ideas (including translation), the only way to compare two texts is having them in the same language. Therefore, based on Selinker's concept of surface structure, it seems plausible to machine-translate a suspect text to the language of the original and then compare the two texts. This method offers several advantages, when compared to the sophisticated MT procedures previously described. Firstly, contrary to the methods above, it is very simple and uses tools publicly available, with the advantage of using the same tools as the plagiarists. Secondly, it does not require specific computational resources, such as thesauri and dictionaries, that are costly and of limited availability. Thirdly, since this system works based on crowdsourcing techniques, it remains updated over time, with no additional invest-

ment required. Additionally, although a comparison of the plagiarising (i.e. derivative) text against the plagiarised (i.e. the original) version is ultimately necessary to explain and justify the reuse, a known source is not necessary to initiate the detection procedure, since the machine-translated version of the suspect text is used to search the Internet for similar or identical texts.

This method demonstrates the potential to provide good results, mostly from an investigative, but also evidential perspective. The analysis of the comparison of the two texts (the original and the derivative) using plagiarism detection software (in this case, *CopyCatch Gold*) showed a word overlap of almost 70%. These results assist the detection procedure, but may be impacted by differences e.g. in lexical density; cases of translated texts that are heavily edited can represent an additional challenge. Based on a small study with collected texts which showed that handwritten texts tend to be less dense than wordprocessed texts, Grant (2005) strongly argued that, as texts are reworked, they tend to become lexically denser (per thousand words). Supporting his claims with the work of Laviosa (1998), he contends that this density is particularly increased by translation. Laviosa (1998) concluded that, although the percentage of content words in translated narratives is lower than that of grammatical words, the lexical density in translated narratives tends to be higher than in their original versions. Consequently, in these cases, derivative texts tend to distance themselves from the original. However, since: (a) Laviosa's findings resulted from the analysis of professionally, carefully, commercially translated narratives, rather than amateur or machine translation; (b) the likelihood that a text is heavily edited lexically is very low, especially in a case of student plagiarism where the best results are sought with the minimum effort; and (c) although the amount of lexical overlap can decrease as the lexical density increases, that overlap can still provide clues to the lifting; then the performance of the method should not be impacted significantly. This approach therefore supports previous claims by Coulthard and Johnson (2007) that the tools that help plagiarise also help detect plagiarism.

Final remarks

The use of translation as a plagiarism strategy is a growing concern in academic and non-academic contexts alike. By resorting to *translingual plagiarism*, i.e. by translating an original into another language and using it as their own, plagiarists can pass unnoticed, since it is very difficult to detect, for various reasons. Firstly, not all translated texts are intuitively identified as such. Secondly, it is not possible to establish a linguistic comparison of two texts in two different languages. Thirdly, the translation can be diametrically opposed to the original, on the basis that the translator is free to make their own choices, both syntactically and lexically. Therefore, even plagiarism detection or text-matching software is unable to detect texts in two different languages. This type of plagiarism, which is sometimes equated with plagiarism of ideas, is a challenge that computer scientists and computational linguists have tried to address. But taking into account the considerable effort that has been made, and the large volume of research that has been conducted into detecting this type of plagiarism, the results have been disappointing. Most approaches tend to perform well when addressing a small part of the problem, but fail when addressing the issue as a whole.

This article argued for a linguistic solution to resolving *translingual plagiarism*, and proposed a method of analysis that was empirically demonstrated. It was shown that an understanding of translation theories, in general, and of human and machine translation,

in particular, is able to identify the operations behind the use of translation as a plagiarism strategy. This article argued that it is necessary to rely on 'sentence-based grammars', as well as on the 'discourse grammar', as these impact the informational packaging of the text, as well as the use of cohesion and coherence, and concluded that several linguistic elements (such as morphosyntax, lexis, semantics, pragmatics, informational packaging, discourse grammar and conceptual representations) are part of a speaker's or writer's interlanguage, and get transferred from the source to the target text. This type of plagiarism can then be investigated by reversing the operations performed by the plagiarist, which is also able to provide evidence of the lifting. This operation can be reversed manually or by machine translation to allow for a comparison between the derivative and the original texts, manually or by using any plagiarism detection or text-matching software. However, the results of the analysis showed that machine translation does not perform equally well with all aspects of lexico-grammar, and this determines the success of the detection procedure. It was argued that, since machine translation handles lexis relatively well, but tends to break down when translating syntax, the detection needs to focus on the lexical elements, rather than on syntax. Since the plagiarism detection and text-matching procedure performs better when comparing lexical items, rather than identical strings, an analysis and subsequent comparison of lexical overlap is particularly relevant.

Despite the success of the empirical analysis presented, linguistic analysis is crucial, in addition to the automatic/machine-assisted detection procedure, to investigate, analyse, describe, explain and demonstrate textual reuse. This is especially the case in forensic contexts, where theoretical explanations are required.

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Death penalty instructions to jurors: still not comprehensible after all these years

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Abstract. *This paper describes and analyzes the unrevised, current state of death penalty pattern jury instructions in the state of Washington. With comparisons to the findings of the Capital Jury Project, this study examines why the death penalty instructions are even more difficult than the ordinary, difficult to understand US pattern jury instructions. The concept of mitigation presents particular problems, with jurors misunderstanding the instruction, misapplying it or ignoring it. As mitigation is the alternative to aggravation and a death penalty verdict, this problem is critical. In addition, as Judith Levi (1993) found in the Illinois death penalty pattern jury instructions, the instructions in general point to a default position for death. Washington's pattern jury instructions for death penalty cases are as difficult to comprehend as both pattern jury instructions in general and death penalty instructions in particular.*

Keywords: *Jury instructions, juror comprehension, death penalty, mitigation, United States, Washington State.*

Resumo. *Este artigo descreve e analisa o estado atual, e não revisado, de modelos de instrução do Júri, em casos de pena de morte, no Estado de Washington. Estabelecendo uma comparação com os resultados do "Capital Jury Project", este estudo analisa porque as instruções fornecidas ao Júri, em casos envolvendo pena de morte, nos Estados Unidos, são ainda mais difíceis de se entender que as normais, que já são difíceis. O conceito de mitigação apresenta problemas específicos, sendo as instruções fornecidas a este respeito mal interpretadas, não aplicadas ou ignoradas. Considerando que a mitigação seja a alternativa ao agravamento e um veredito de pena de morte, este problema é crucial. Além disso, de acordo com os resultados encontrados por Judith Levi (1993), com base nos modelos de instruções fornecidos ao Júri em casos de pena de morte em Illinois, as instruções, de um modo geral, apontam para um posicionamento pré-definido à favor da morte. Os modelos de instruções fornecidas ao Júri em Washington, em casos de pena de morte, são tão difíceis de se compreender quanto as instruções fornecidas ao Júri, em geral, e as instruções relativas à pena de morte, em particular.*

Palavras-chave: *Jury instructions, juror comprehension, death penalty, mitigation, United States, Washington State.*

Introduction

Although linguists have known that jury instructions are difficult if not impossible for most jurors to understand since the publication of the Charrows' (1979) formative and influential article on the comprehension of U.S. jury instructions, most of the judiciary has not been listening. And of all the instructions that ought to be comprehensible to jurors, one would think that those addressing jurors' deciding whether to put a defendant to death should be the easiest to understand[1]. Instead, the "death penalty" instructions in the U.S. remain some of the most difficult. Worldwide, the death penalty is disappearing, although Amnesty International reports that the death penalty is still legal in 54 countries. Another 35 countries have not legally banned the death penalty but have had a de facto ban. Eight other countries outlaw the death penalty for "ordinary crimes," Brazil being one of these countries. Ordinary crimes usually means statutory or common law crimes, such as murder. Brazil has not actually executed anyone since 1855. In 2012, the most recent year for which Amnesty International has prepared a report, there were 682 people executed in 21 countries. In this same report, Amnesty International indicated that the United States was the only country in the Americas to carry out executions, and then only in nine states[2]. Most of those U.S. executions were decided by a jury trial and by jurors who heard and perhaps read instructions on the death penalty.

This article focuses on the death penalty instructions in Washington State and finds that the death penalty instructions are extremely difficult, if not impossible, for jurors to understand. In many ways, these instructions are similar to those used nationwide, so Washington can stand as a good representative of the rest. As linguists have found, there are serious problems with comprehension in jury instructions in general. Moreover, there are special problems with death penalty instructions. Lawyer-linguist Peter Tiersma notes that instructions associated with the word *mitigation* are particularly problematic, and linguist Judith Levi found that several factors contributed to the idea that the NORMAL or "default" sense of the instructions was that the death penalty was presumed. In order to display the special problems of death penalty instructions, I start with a review of the Capital Jury Project which used other social science methods to assess jury understanding, including interviews, from 14 states. I turn next to a review of previous research on both jury instructions in general and death penalty instructions in particular. Following that review, I assess the Washington state death penalty instructions and find that not only do they reflect the problems of jury instructions in general but that they also display the particular problems of death penalty instructions[3].

The Capital Jury project

In an effort to assess whether juries, post *Furman v. Georgia*, 408 U.S. 238 (1972), had avoided the arbitrariness condemned in that case, the Capital Jury Project, funded by a

[1]It should be noted that California is the only state that has completed a full revision of its civil instructions using linguistic information. California also has an alternative set of criminal instructions that have been revised but these are optional. Several other states have experimented and then decided that they would not significantly revise their instructions.

[2]Amnesty International Publications, Death Sentences and Executions, 2012, London: Publications of Amnesty International. p. 6.

[3]My work on this project was a consultation with a public defenders' group representing Christopher Monfort, who is accused of killing a police officer and was facing the death penalty in Seattle, WA. The Governor of Washington Jay Inslee has declared a moratorium on executions in Washington State. A brief description of the case is included in Appendix B.

National Science Foundation Grant, set out to evaluate that point. The team was multidisciplinary and comprised criminologists, social psychologists and law faculty. Eventually encompassing 14 separate states, the teams examined how jurors made their life or death decisions. They interviewed jurors who had served on death penalty jury panels. The states chosen for analysis had to have had enough jury trials involving the death penalty that it was possible to draw a random sample of jurors who had served. This eliminated some states, such as my own, Washington.

There were initially eight states in the project: California, Florida, Indiana, Kentucky, New Jersey, South Carolina, Texas and Virginia. The project expanded twice, once adding four states, Georgia, Louisiana, North Carolina and Tennessee, and then Alabama and New Jersey.

Although the study initially concentrated on the effects of *Furman*, "guided discretion" capital statutes and the division of trials into guilt and punishment phases, and what were the guidelines for juries to follow in making their decisions, the study also unpacked how and when jurors were making punishment decisions, and whether the jurors understood that they, not the judge, were the ones making the decision for life or death. The study authors identified three general objectives:

1. To examine and systematically describe jurors' exercise of capital sentencing discretion;
2. To identify the sources and assess the extent of arbitrariness in jurors' exercise of capital discretion; and
3. To assess the efficacy of the principal forms of capital statutes in controlling arbitrariness in capital sentencing. (1077).

Jurors were randomly selected to be interviewed and the researchers made use of additional materials such as trial transcripts and interviews with judges and attorneys. The interviews with jurors lasted three to four hours. The findings included jurors remembering the jury deliberation more accurately than they did the presentation of trial evidence. The findings also included observations that many of the jurors had started to make punishment decisions before they had even been instructed on punishment. There was also some confusion among the jurors about which specific topics were relevant to the guilt phase and which were relevant to the punishment phase. Half of the jurors in the preliminary sample had made a punishment decision before the guilt stage was concluded (1089). There was extensive misunderstanding of what factors could be considered—ideas about the death penalty being required if, for example, they thought the defendant was likely to be a danger in the future.

One serious misunderstanding emerged in later data analysis, related to the issue of mitigation. Mitigation is the other side of the life-death coin. Jurors are required to consider not only aggravation but also mitigation. But mitigation remained elusive to the jurors. One factor in mitigation is that the burden of proof for the defendant to present mitigation evidence is the civil law standard of the "preponderance of the evidence," and not the "beyond a reasonable doubt" that the prosecutor must prove in a criminal case. The difference left jurors confused and inaccurate on what they were supposed to consider[4].

[4]See William J. Bowers and Wanda D. Foglia, (2003) "Still Singularly Agonizing: Law's Failure to Purge Arbitrariness from Capital Sentencing," Criminal Law Bulletin 39: 51-86, in which the researchers found disparities of understanding and differential application of law to different defendants, including differences by the race of the defendant and race of the jurors.

The CJP data show that nearly half (44.6%) of the jurors failed to understand the constitutional mandate that they be allowed to consider mitigating evidence. Two-thirds (66.5%) failed to realize that they did not have to be unanimous on findings of mitigation. Nearly half (49.2%) of the jurors incorrectly thought they had to be convinced beyond a reasonable doubt on findings of mitigation. (71)

Taking these findings as representative of the detailed and extensive analyses published by the Capital Jury Project, some criminal defense attorneys began to take a second look at jury instructions in death penalty trials. Appellate judges finding error in a trial through a difficult-to-understand jury instruction has had little impact on the outcome of appeals of these cases. At one time, and perhaps still, every state in the United States has case law that indicates that the giving of incomprehensible jury instructions to the jury is not a reversible error. Instead, these state courts indicated in case after case, that if the instructions were an accurate statement of the law, then arguments about its comprehensibility were unwarranted. But the Capital Jury Project seemed to lend new energy to defense attorneys' challenging jury instructions on the basis of their comprehensibility.

The comprehensibility of jury instructions emerged as an issue from the Capital Jury Project for a number of reasons. First, the general results of the various state studies indicated that jurors, sometimes a majority of jurors, misunderstood the instructions themselves, thought that the instructions were a general framework for understanding the trial and not specific directions, or simply ignored what the instructions told them to do and when to do it. Second, the results indicated that there were particular problems with the concept of mitigation. The word itself seems to be very difficult to understand in the context of a trial and set against elements of aggravation of the crime. Third, jurors misunderstood who needed to prove mitigation and under what burden of proof. Collectively, these study results suggested that objections to pattern jury instructions might contribute to jurors not enacting the sentencing discretion that the U.S. Supreme Court presumed.

Some examples of the problems with instructions emerged especially from the interviews with jurors. Because these studies worked with actual jurors who had served on death penalty panels, they avoided the usual problem of jury studies—the lack of an actual trial in which the jurors would make a decision. In these cases, the jurors had made a decision in an actual death penalty case. Recall was one of the problems enumerated by researcher William J. Bowers. Bowers analyzed juror responses to questions about their memory of various stages of the trial. They had strong memories of the jury selection process (67.6% Very Well), hearing evidence about the Defendant's guilt (59.0% Very Well) and jury deliberations about the Defendant's guilt (67.7% Very Well), but the percentage drops to 55.0% answering Very Well when jurors were questioned about their memories of hearing evidence about the defendant's punishment, barely over half[5]. Consequently, juror attention differed considerably when they shifted from the guilt phase of bifurcated trials into the punishment phrase. Not as many jurors were paying attention.

The researchers also asked questions about the focus on jury deliberations on specific topics, especially future dangerousness and juror's feelings about the right punishment. It was not clear to the researchers whether this discussion was taking place in the guilt phase or the punishment phase, so there was a follow-up question: "In deciding guilt, did jurors

[5]See Bowers (1995: 1043). Further reports of findings were published for the next ten years and included both general findings as in this article, and specific state responses. These early results on juror understanding were little changed with the inclusion of additional findings.

talk about whether or not the defendant would, or should, get the death penalty?" The collected responses indicated that more than a third of the jurors (37.2%) recalled specific discussions about the death penalty during the portion of the trial to decide guilt. Bowers' conclusion is that "improper consideration of punishment" played an important role in these capital trials (Bowers, 1995: 1088-90).

Although jurors had been instructed not to consider the appropriate punishment until they heard the evidence in the punishment phase of the trial, study results indicated that about half of the jurors had made a decision about punishment before the trial had reached the penalty phase (Bowers, 1995: 1089). Researchers were also concerned with their discovery that jurors thought that the guidelines "required" the death penalty to be imposed when there was a jury finding of aggravation. That information was further broken down into questions about whether the defendant's conduct was heinous, vile, or depraved required the death penalty to be imposed, and 40.9% of the jurors believed that to be true. An additional question was included about whether the defendant would be dangerous in the future. As Bowers indicates, "'[t]his misunderstanding of statutory standards obviously biases the sentencing decision in favor of death," to the extent that the jurors had already decided that the crime was heinous, vile, and depraved or that the defendant would be dangerous in the future. Even more directed toward death, 79.8% of the jurors at the end of evidence believed that the defendant's conduct was heinous, vile, or depraved, and 75.6% believed that the defendant would be dangerous in the future (Bowers, 1995: 1091). These numbers suggest that a significant number of jurors mistakenly believed that they were required to vote for the death penalty.

To a linguist, these particular problems are part of the manner in which jury instructions are presented to jurors. Upon hearing instructions that told the jurors that there was no mandatory death penalty with findings of heinousness or future dangerousness, the jurors nonetheless believed that was exactly what the instructions required them to do. The researchers in the Capital Jury Project were primarily social scientists and attorneys, so their attention did not turn to the linguistic construction of the jury instructions, at the same time that they recognized something was going wrong with these results. Another particularly troubling result was the juror's answers to this question: "Would you say the judge's sentencing instructions to the jury simply provided a framework for the decision most jurors had already made?" (Bowers, 1995: 1093). Jurors answering *yes* to this question amounted to 74.1% of the jurors in the study. While most states have instructions telling jurors not to decide until after they begin deliberations, clearly the jurors interviewed in this study began much earlier to make a decision. So once again, we see jurors who are not following the instructions.

In another report of this study, the researchers found that jurors were also confused about mitigation. As William J. Bowers and Wanda D. Foglia noted: "Jurors who believed death is the only acceptable punishment could not have given meaningful consideration of the mitigating evidence, as the law mandates." (Bowers and Foglia, 2003: 51-86). Jurors in the study answered questions about which crimes should receive the death penalty in all circumstances, with a defendant who had a previous murder conviction (71.6%, yes) and planned premeditated murder second (57.1%, yes) (Bowers and Foglia, 2003: 63). The Capital Jury Project data show that many capital jurors did not understand the instructions that were supposed to guide their deliberations, especially about mitigation. For example, nearly half of the jurors in the study did not realize that they could consider mitigation

factors other than those listed in the instruction, although most of the state instructions explicitly said that they could consider **any** mitigating factor. More than 44% of the study jurors "failed to understand that they were allowed to consider any mitigating evidence." (Bowers and Foglia, 2003: 67). These study researchers note that these findings about mitigation were "relatively uniform" across 11 of the 13 states (Bowers and Foglia, 2003: 67). Contrary then to what the jury instructions tell them to do, jurors set off on their own path unobstructed by the instructions, because they do not understand them. Jurors also failed to understand in several states "where it is explicitly articulated in the pattern jury instructions" that the standard of proof for mitigation was not "beyond a reasonable doubt," but the civil standard of "preponderance of the evidence" (Bowers and Foglia, 2003: 69). "Two-thirds of the jurors (66.5%) failed to realize they did not have to be unanimous on findings of mitigation." (Bowers and Foglia, 2003: 71). Thus, even though jurors had instructions, difficult as they may have been to understand, the jurors simply didn't apply mitigation in the cases they heard, either because they thought they couldn't, or didn't understand the burden of proof for mitigation, or thought they had to be unanimous on mitigation.

The Capital Jury Project had a hand in reopening the question of whether jurors understood the instructions they received from judges in death penalty cases. Jurors in their study not only gave evidence of confusion, but also demonstrated that even when they thought they understood, they were often wrong. Again and again, the Capital Jury Project found that jurors also ignored instructions, applied the wrong standard, or misunderstood especially what mitigation meant.

Linguistic research on jury instructions

Rather than review the extensive and thorough research on jury instructions stretching back over the past 35 years, I summarize here the features that researchers have found in examining jury instructions. I include as Appendix A the list of studies I submitted to the court in the case I described in Footnote 3. Although the Capital Jury Project findings on jury instructions would have been no surprise to the linguists familiar with the area, I list the features for review before I present the analysis of the state of Washington's pattern death penalty instructions.

Ordering effects:

- Unfamiliar terms may be used before they are defined or alternatively, other terms are used in several instructions but are not explicitly connected in any way.
- The sequence of instructions is not explained to jurors, so the instructions may seem unordered or random.
- The instructions lack explanations or examples.
- The order of the instructions is not typically a chronological first to last structure, or a most important to least important or any other scheme that an ordinary reader might recognize.
- Instead, they are ordered by what James Boyd White called the 'invisible discourse' of the law, conventions unavailable to ordinary readers (White, 1984).

Conceptual complexity:

- Often there are terms requiring greater education or familiarity with specialized areas of knowledge.
- Alternatively, jurors are asked to do impossible things such as not beginning to draw conclusions or not to draw on any knowledge not presented in the trial itself.

Technical vocabulary of the law: This issue comes in two parts.

- First, jurors are not familiar with actual legal terms and their legal meanings. This first part would include words and phrases such as *misdemeanant*, *malice aforethought*, *first-degree sexual conduct*, *manslaughter*, or *same elements test*.
- Second, jurors are often not aware that many words have both a common meaning and a specific meaning in the law. This would include words such as aggravation, arrest, search, party or serve. The second set can prove every bit as complicated as the first.

Syntactic or sentence-level issues: Three characteristics of sentences in legal language also affect jury instructions.

- One is the sheer length of sentences. When some observers respond that length alone is not a problem, they are usually discussing the difference between, say, a 10 or 12 word sentence and a twenty-two to twenty-five word sentence. Legal language, however, sometimes produces single sentences that are hundreds of words long. While jury instruction sentences rarely reach that length, instructions quoting statutory language and listing elements necessary to prove a case, can be quite lengthy.
- The other characteristic of sentences in legal language is the tendency to contain multiple embeddings of clauses in the sentences. Not only does processing time increase, but also conceptual struggles may ensure.
- An additional problem may develop with the deletion of relative pronouns and so-called WHIZ-deletions (which is, which are). Although sometime back psycholinguists concluded that these deletions did not affect comprehension, more recent research has found that the deletions most affect readers or auditors who have unfamiliar with the discourse at hand. Thus, an attorney's understanding would not be affected by the deletions, but a layperson's understanding is likely to be affected negatively.

Additional issues: Researchers have examined the effects of negatives in legal language including:

- the use of semi-negatives, such as *barely* or *scarcely*, and negative affixes such as *dis-* or *un-*. Following a series of negatives through a sentence in jury instructions may prove quite difficult.
- In addition to negatives, legal language often uses nominalizations or passivization, and even odd prepositions such as *as to*.

Washington State's death penalty instruction

The State of Washington has a set of pattern criminal jury instructions. There are nine instructions specifically made as part of the complete jury instructions. Those special instructions are listed below:

WPIC 31.01	Advance Oral Instruction
WPIC 31.02.01	Allocution
WPIC 31.03	Introductory Instruction (Capital Cases)
WPIC 31.04	Jurors' Duty To Consult with One Another (Capital Cases)
WPIC 31.05	Burden of Proof—Presumption of Leniency—Reasonable Doubt (Capital Cases)
WPIC 31.06	Question for Jury—Life Without Parole—Definition (Capital Cases)
WPIC 31.07	Mitigating Circumstances—Definition (Capital Cases)
WPIC 31.08	Concluding Instruction (Capital Cases)
WPIC 31.09	Special Verdict Form—Sentencing (Capital Cases).

I examined and analyzed each of these instructions with special attention to WPIC 31.03, WPIC 31.05, WPIC 31.06, WPIC 31.07, and WPIC 31.09. The instructions contained the same problematic features identified in earlier work on jury instruction. In addition, there are particular problems associated with how mitigation is presented and the way in which the final question is phrased, especially the phrase "not sufficient mitigating circumstances to merit leniency."

WPIC 31.03 shows the problems with **ordering effects**. Throughout this introductory instruction to the jurors about evidence, what evidence consists of, what is excluded from evidence and judgments about witnesses, the listening/reading jurors jumps from what the court considers evidence and law and the requirement that the jurors must follow the court's rules. Then there is a discussion of excluded evidence and then what credibility is. Lawyers' remarks and objections are addressed. Also noted is that order makes no difference. An instruction without ordering effects would begin with a general statement about this instruction being about evidence and the various types of evidence that are included or excluded. Jurors need a structure to follow so that they can organize the material that they are hearing/reading for the first time. The statement made in the instructions that order does not matter is simply impossible cognitively. Order matters in every sort of thinking and "ordering" order away does not change the need for order.

WPIC 31.05 provides good examples of the problems of **conceptual complexity**. First, there is the question of reasonable doubt, about which judges and juries have struggled for a considerable period of time. Added to the conceptual complexity of reasonable doubt is the next concept of "that there are not sufficient mitigating circumstances to merit leniency," a clause that repeats several times in these instructions. The instruction attempts to inform the jurors that the burden of proof is different for mitigating circumstances. But it does not say so in terms of a burden of proof. Instead, the instruction says that the "defendant is presumed to merit leniency." Here again, we also find the problem of **ordering effects**. Jurors have been given a definition of reasonable doubt in the Advance Oral Instruction (WPIC 31.01), yet this second definition is different from the first. Moreover, it offers the concept of mitigation as something which can be merited, which most people understand to be "earned," an odd association for a defendant facing sentencing for a capital offense.

Sentence length is not a significant factor here in interfering with juror comprehension. It appears that sometime in the past that these instructions were shortened. Most of the instructions average between 18 and 20 words per sentence, the level of a high-end public newspaper. Notwithstanding the lack of direct sentence length effects, the reading level of most U.S. newspapers tends toward the 8th grade, while the *New York Times* and the *Washington Post* tend toward the jury instruction averages.

The issue of **deletion of a relative pronoun**, such as *that*, is common in spoken language. So, too, is the deletion of a "which is". The problem with these deletions in jury instructions is that for lay reader, the pronoun markers are very important to understanding the coming structure. Professionals, by and large, do not notice when those items are missing. An example of a relative pronoun deletion comes in WPIC 31.07 in an optional final statement on mercy: "The appropriateness if the exercise of mercy is itself a mitigating factor **[THAT]** you may consider in determining whether the state has provide beyond a reasonable doubt that the death penalty is warranted." The emphasis lost for the lay reader in the missing *that* may make the mercy factor less important.

Technical vocabulary of the law includes a broad territory. Not only do jurors contend with words that have a specific meaning within the law, such as *burden of proof*, they must also contend with words that they know in other ordinary ways but that have special meanings in a legal setting. *Elements* is one of those words with many ordinary meanings, as in parts of something or a chemical element, but in legal texts *elements* refers to specific, statutorily listed parts necessary to prove a particular crime. Both of these terms are found in WPIC 31.01, the Advance Oral Instruction.

Negatives create many problems for jurors processing jury instructions. Worse, as indicated in the Judith Levi study under #9 above, are the words that have subtle negative effects. The question asked of jurors in Washington's Criminal Jury Instructions for Capital Cases is one that illustrates the enormous problems with negatives. It states:

> Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?

When a concept is already complicated, jurors would find it difficult to process the rest of the sentence after the not. The jurors have first been asked to "keep in mind" the defendant's crime and then asked if they are convinced "beyond a reasonable doubt" that something about "sufficient mitigating circumstances" to "merit leniency." The prosecution must prove "beyond a reasonable doubt" that the circumstances don't merit leniency. But the defense needs only to present evidence of mitigating circumstances by a "preponderance of the evidence." The instruction above gives the prosecutor's burden but makes no distinction about the defense's burden. Jurors aren't being asked if there are "sufficient mitigating circumstances" to "merit leniency." Instead, they must consider the question as a negative, NOT sufficient circumstances to merit leniency. The juror must contend with 5 concepts: the crime, being convinced, reasonable doubt, sufficient mitigating circumstances and meriting leniency and then turn the whole process into a negative. Having examined the capital trial instructions for the Capital Jury Project states, I think I can say that Washington's question about mitigation is among the worst possible presentation of the juror's duty. Moreover, it sounds as if one might somehow earn leniency and given the circumstances that phrase is quite odd. Even worse, the phrase is just plain unusual. In

the 450 million word COCA corpus, there is not a single appearance of the phrase "merit leniency."

Embeddings, or sentences within sentences, also complicate understanding of this same sentence. I list the clauses below from the sentence discussed above:

1. Having in mind the crime
2. of which the defendant has been found guilty
3. are you convinced beyond a reasonable doubt
4. that there are not sufficient mitigating circumstances
5. to merit leniency?

Embeddings, or sentences within sentences, make processing new information more difficult. Some of the reason seems to relate to George Miller's original insight that there are limits to our cognitive capacities; some of the reason may relate to changing topics within the full sentence. In this sentence hearer/readers are asked first to think about the crime of which the defendant has been found guilty. That is one topic. But the "real" topic here is mitigation, and the topic of the fourth clause of the sentence, "sufficient mitigating circumstances" to "merit leniency." First the juror needs to keep the crime in mind, also remembering that the defendant has been found guilty, then drawing in the concept of reasonable doubt, decide if there are "sufficient" mitigating circumstances, not to sentence the defendant to the death penalty, which is not even mentioned in the sentence. Given George Miller's research and the subsequent research that has confirmed the limitations of cognitive capacity, this sentence is not a reasonable presentation to ordinary jurors. Whatever the reason, readers have more difficult understanding multiply embedded sentences than they do short, simple sentences.

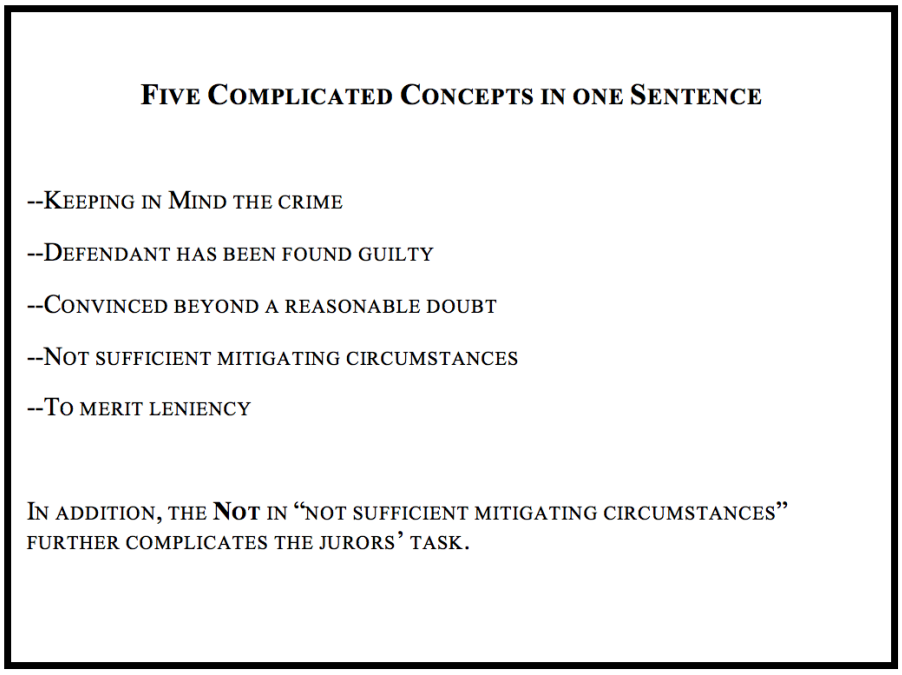

Figure 1. Conceptual Complexity.

Thus, the most critical sentence for jurors in a capital case is presented with serious psycholinguistic barriers: the negative, the semantics of *sufficient*, the five multiple embeddings of the full sentence and it ends with a phrase that cannot be found in the largest

corpus of American English. It is difficult to see the basis on which jurors would make a decision.

Two other factors play a role in complicating jurors' understanding of their task in a death penalty trial. One factor is the difficulty of the word *mitigating*. Peter Tiersma, in "Dictionaries and Death: Do Capital Jurors Understand Mitigation?", indicates that there are "Disturbing indications that jurors do not adequately understand instructions on mitigation in death penalty cases." (Tiersma, 1995: 2). One source of Tiersma's claim is the frequency with which death penalty jurors request a further explanation of the term "mitigating" or "mitigating circumstances." Jury instructions on mitigation do not supply an exhaustive list of possible mitigating factors, so as found in the Capital Jury Project, jurors may limit themselves to considering only those factors listed in the instruction. Additionally, trial judges are wary of giving instructions that go beyond the scope of the pattern instruction, so they are likely to simply reread the instruction to the jury when the jury queries the meaning of mitigation. Mitigation is often paired with aggravation, a term that further complicates the jurors' task because the common use of the word aggravation is not the same as the legal usage. As an absolute number, *mitigating* appears in the *Corpus of Contemporary American English* a little more than once every million words[6]. Its corresponding pair word, *aggravating*, appears even less frequently, less than once every million words. The term itself is not likely to be in the ordinary daily vocabulary of the jurors, so it is no surprise that jurors request further information. But as the Capital Jury Project suggested, juries mostly get it wrong without further support.

Another factor in the death penalty instructions researched first by Hans Zeisel, and expanded and elaborated by linguist Judith Levi, is the strong presumption of death running through the instructions. Her research indicated that "the syntax, semantics, pragmatics, and discourse organization of the instructions all contributed to suggest that a sentence of death was in some way NORMAL or the "default" decision." (Levi, 1993). One way of thinking about how there is a "death default" in instructions is to think of the casual and common life phrase, "life and death." Life comes first. A check in the COCA database finds that "life and death" is commonly associated with words such as "between," "matter of," and "difference of." Entries for "death and life" were almost exclusively associated with Jane Jacobs' book, *The Death and Life of Great American Cities* or some sort of imitation of that title. Thus, when a juror hears or reads "death or life imprisonment," he or she is being told that the usual preference for life is reversed; death is emphasized. In a count on the Washington capital instructions, the "death penalty" was mentioned 11 times, always first when paired with life imprisonment. Some examples from the actual Washington jury instructions may help illustrate below:

WPIC 31.01 whether or not the death penalty should be imposed
[no life imprisonment alternative given]
the sentence will be death
[2 clauses precede] the sentence will be life imprisonment

WPIC 31.02 repetition of above

WPIC 31.02.01 should be sentenced to death
or which justifies a sentence of less than death

[6]COCA is the widely used, free, 450 million word corpus developed by Mark Davies, Professor at Brigham Young University. http://http://corpus.byu.edu/coca/, accessed 09/04/12.

WPIC 31.05 the death penalty will be imposed
leniency . . . which would result in a sentence of life in prison

In each of the above examples, death appears before life. In two contexts above, death is separated from life imprisonment by two interruptive clauses, making the alternative less attached to "option one" death. Even when the instruction allows for life in prison, the instruction is presented in terms of death: "which justifies a sentence of less than death." Additionally, two other expressions emphasize death first: "other than death" and "sentence less than death." Thus, jurors are subtly informed that death takes precedence over life.

Conclusion

It is hard to imagine any more important time for jurors to understand their instructions than when they are considering life imprisonment or the death penalty. Yet as with jury instructions in general, there is clear evidence that jurors do not, perhaps cannot, understand how to manage the complexities of capital punishment. With jurors making their decisions on punishment during the guilt portion of the bifurcated trial, or jurors ignoring or misunderstanding what they are being told to do by the instructions, we might think that this would be a priority issue for courts. But clearly it has not been a priority issue. As Peter Tiersma concludes his article on mitigation, he says: "And nowhere is this [communication with the jury] more critical than when a person's life hangs in the balance." (Tiersma, 1995: 49). As linguists it may also be time to join forces with other organizations criticizing the death penalty process, so that those organizations also become aware that the instructions are most likely working against the defendant.

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Appendix B: summary of *State v. Montfort*

Christopher Montfort, the defendant in this case, was a graduate of the University of Washington's Law, Society and Justice Program, considered a rigorous political science program. Mr. Montfort wrote his senior thesis on what he considered a battle between police departments and citizens of African American heritage.

Mr. Montfort was accused of killing Seattle Police officer Timothy Brenton, who was ambushed allegedly by Montfort, shooting both Officer Brenton and the trainee he was working with that evening, Brit Sweeney. Sweeney was wounded but not killed.

Some observers speculated that Montfort was extending the conclusions of his senior thesis into action, as Montfort was also accused of vandalism against the police. After graduation, Mr. Montfort had been unable to find a job commensurate with his training and had worked in a collection of jobs, including being a security guard, since graduation.

The Seattle Police Department, upon finding Mr. Montfort's location, attempted to arrest him. An exchange of gunfire ensued and Mr. Montfort became a paraplegic after suffering wounds to his legs and spine.

At this time, the Governor of the State of Washington has put a hold on all executions in Washington State while he is governor.

A atitude em boletins de ocorrência de crimes de linguagem contra a honra: um estudo da ofensa verbal na perspectiva do sistema de avaliatividade

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Abstract. *This paper presents an analysis of occurrences of evaluation within the subsystem of Attitude in the Appraisal System, taken from narrative sections of police reports (PRs) about language crimes against honor. The study was based on the principles of Systemic Functional Grammar (Halliday e Hasan, 1989; Halliday e Matthiessen, 2004) and the System of Appraisal (Martin e White, 2005). The narrative sections of six Police Reports (PRs) about crimes against honor were analyzed, two concerning calumny, two defamation and two injury. These extracts were randomly chosen from a corpus of 2,343 PRs which had been filed by the Civil Police, in September, 2011, across the whole of the State of Rio Grande do Sul. The quali-quantitative analysis using the three subsystems of Attitude identified explicit negative attitudinal evaluation in all the samples, with a predominance of judgment of social sanction in the PRs concerned with calumny and judgment of social esteem and social sanction in PRs concerned with defamation and injury. In crimes of calumny and defamation, the derogatory evaluation of victims is realized in reported projected clauses, which describe the facts with the offensive content, whereas in crimes of injury, the attitudinal pejorative evaluation is not described in facts, but is realized by epithets functioning as Attributes in projected relational clauses and as Verbiage in projected verbal clauses.*

Keywords: *Language crimes, honor, police report, attitudinal evaluation.*

Resumo. *Este artigo tem como objetivo apresentar uma análise de ocorrências de avaliações no subsistema de Atitude, integrante do sistema de Avaliatividade, em históricos de boletins de ocorrência (BO) de crimes de linguagem contra a honra. O estudo baseou-se em princípios da Gramática Sistêmico-Funcional (Halliday e Hasan, 1989; Halliday e Matthiessen, 2004) e do Sistema de Avaliatividade (Martin e White, 2005). Foram analisados históricos de seis BOs que reportam crimes contra a honra, sendo dois BOs de calúnia, dois de difamação e dois de injúria, selecionados aleatoriamente em um corpus de 2.343 BOs registrados pela Polícia Civil, em setembro de 2011, em todo o território do Estado do Rio Grande do Sul, Brasil. A análise qualiquantitativa dos três subsistemas da Atitude indicou a frequência em todas as amostras da avaliação atitudinal explícita de polaridade*

negativa, com predominância de julgamentos de sanção social em BOs de calúnia e julgamentos de estima social e sanção social nos BOs de difamação e injúria. Nos crimes de calúnia e difamação, a valoração depreciativa das vítimas é realizada por orações projetadas do tipo Relato que descrevem fatos com o conteúdo ofensivo, ao passo que, no crime de injúria, a avaliação atitudinal pejorativa não é descrita em fatos, mas sim por epítetos com função de Atributos em orações relacionais projetadas e de Verbiagem em oração verbal projetada.

***Palavras-chave**: Crimes de linguagem, honra, boletim de ocorrência, avaliação atitudinal.*

Introdução

Boletins de ocorrência policial (doravante BO) sobre crimes contra a honra contêm o relato[1] de comportamentos linguísticos ofensivos que, na esfera jurídica, caracterizam as infrações penais denominadas de calúnia, difamação e injúria. Nesses crimes, a conduta linguística ofensiva, passível de ser submetida a um processo criminal seguido de punição penal, possui conteúdo de avaliação negativa relativamente à honra do ofendido. Eles estão incluídos entre as infrações penais cometidas pelo uso da linguagem e, em razão disso, são denominadas de crimes de linguagem[2], os quais consistem em um comportamento linguístico que se torna alvo da ação legal (Gibbons, 2003: 261).

No âmbito jurídico, os crimes de linguagem contra a honra têm suas definições previstas no Código Penal Brasileiro, o qual prescreve:

> **artigo 138**, **CALÚNIA**: caluniar alguém, imputando-lhe falsamente fato definido como crime. **Pena**: seis meses a dois anos de detenção e multa.
> **artigo 139**, **DIFAMAÇÃO**: difamar alguém, imputando-lhe fato ofensivo contra a sua reputação. **Pena**: três meses a um ano de detenção e multa.
> **artigo 140**, **INJÚRIA**: insultar alguém, ofendendo-lhe a dignidade ou decoro. **Pena**: um mês a seis meses de detenção ou multa. ...§3: Se a Injúria consistir no uso de elementos referentes à raça, cor, idade, etnicidade, religião, origem ou condição de deficiência física. **Pena**: um ano a três anos de reclusão e multa (grifos nossos) (Brasil, 1940).

Ocorrências desses crimes são comunicadas ao Estado por meio do BO, gênero integrante do sistema de gêneros da Polícia Judiciária[3] cuja finalidade principal consiste em registrar a ocorrência de um crime ou contravenção penal (Ribeiro, 2010) e servir como ponto de partida para a instauração formal da investigação criminal, a qual se destina a esclarecer a autoria e a materialidade da infração penal.

Dentre os estudos prévios sobre a linguagem no contexto jurídico, seguindo distintas linhas teóricas, estão os trabalhos de Shuy (1998, 2005, 2006, 2007), que estuda a linguagem

[1]Utilizamos "relato" com inicial minúscula para nos referirmos ao gênero textual (nos termos da Escola de Sidney, conforme Rose e Martin (2012)) predominante no histórico do BO. Utilizamos "Relato" com inicial maiúscula para nos referirmos a um dos tipos de oração projetada da Gramática Sistêmico-Funcional, conforme convenções trazidas por Halliday e Matthiessen (2014) para a grafia das funções léxico-gramaticais nos componentes da oração.

[2]Os crimes de linguagem podem abranger uma gama maior de infrações penais, como, por exemplo, a ameaça e a extorsão; neste estudo, entretanto, ocupamo-nos da calúnia, da difamação e da injúria.

[3]O artigo 144, §4, da Constituição Federal preceitua que às polícias civis, dirigidas por delegados de polícia de carreira, incumbem, ressalvada a competência da União, as funções de polícia judiciária e a apuração de infrações penais, exceto as militares.

usada no contexto jurídico e policial; Coulthard (1992, 2005a,b) e Gibbons (2003), que realizam pesquisas em linguística forense; Guimarães (2003), que estudou insultos raciais em BOs à luz da Sociologia, e Stokoe e Edwards (2007), que analisam o discurso indireto em insultos e abusos raciais relatados em telefonemas para centros de mediação de conflitos de vizinhança e em interrogatórios policiais (gravados) de suspeitos de crimes de vizinhança no Reino Unido.

No campo teórico da Linguística Sistêmico-Funcional e da Análise Crítica do Discurso, têm sido realizados estudos como o de Figueiredo (2002, 2004a,b) – e neste volume, páginas xx - yy –, que investiga a reprodução da violência de gênero nas estruturas linguísticas e discursivas das decisões de apelação em casos de estupro; Fuzer (2008) e Fuzer e Barros (2010a,b), que analisam representações de atores sociais nos autos de um processo penal sobre um crime contra a vida no contexto brasileiro; Bortoluzzi (2008), que analisa representações da justiça em acórdãos de habeas corpus e cartas do leitor, dentre outros.

Especificamente no contexto da polícia judiciária, destacamos as pesquisas de Alkimin (2004), que apresenta reflexões sobre o gênero BO na perspectiva da Análise do Discurso Francesa; Tristao (2007), que aborda a deixis espacial em BOs registrados pela PM mineira, e Costa (2009), que faz um estudo sobre a terminologia utilizada em BOs do Rio Grande do Sul. Nenhum desses estudos voltados para o contexto da polícia judiciária, porém, realiza uma análise do Boletim de Ocorrência à luz da Linguística Sistêmico-Funcional, particularmente ao Sistema de Avaliatividade, foco do presente artigo.

Nesse sentido, o objetivo deste trabalho consiste em demonstrar como avaliações atitudinais se realizam linguisticamente nos históricos[4] de BOs sobre crimes de linguagem contra a honra. Para isso, é apresentada uma breve revisão de pressupostos teóricos da Linguística Sistêmico-Funcional, focalizando categorias do subsistema Atitude do sistema de Avaliatividade (Martin e White, 2005), bem como orações verbais e projeção oracional da Gramática Sistêmico-Funcional (Halliday e Matthiessen, 2004). Na sequência, são descritas as diretrizes metodológicas utilizadas para o tratamento dos dados, seguidas pela apresentação dos resultados das análises e algumas considerações finais.

Pressupostos teóricos

Para a Linguística Sistêmico-Funcional (doravante LSF), a linguagem é um sistema sócio-semiótico que leva em consideração a relação dialética existente entre texto e contexto, na qual as escolhas linguísticas influenciam a construção do contexto, e vice-versa.

Nessa vertente teórica, em correspondência com as variáveis do contexto de situação (campo, relações e modo), a linguagem exerce três metafunções: ideacional (lógica e experiencial), interpessoal e textual (Halliday e Hasan, 1989). Para alcançarmos o objetivo de análise aqui proposto, utilizamos categorias relativas às metafunções ideacional e interpessoal.

Da metafunção ideacional experiencial, interessa-nos a configuração de orações com processos verbais, que têm potencial para projetar outras orações, nas quais se realizam as ofensas nos BOs.

[4]Em trabalho anterior, Ribeiro (2010), com base na análise de gênero de Swales (1990) e nas categorias discutidas em Hendges (2008), identificou, além do histórico (narrando os fatos), outros cinco movimentos que constituem o BO: identificando e situando o órgão, o BO, e suas circunstâncias; classificando o fato e suas circunstâncias; indicando o órgão destinatário do BO; identificando os participantes (vítimas e/ou comunicante, testemunhas, autores, suspeitos), e identificando os policiais responsáveis pelo BO.

Da metafunção ideacional lógica, que abrange o nível do complexo oracional, nosso foco está na projeção oracional, a qual consiste em uma relação lógico-semântica na qual uma oração secundária é projetada pela oração primária na forma de: a) locução (de orações projetantes verbais) e b) ideia (de orações projetantes mentais). Neste estudo, daremos ênfase para a projeção de locução e as categorias relativas à projeção dos tipos Relato e Citação, recorrentes nos BOs em estudo.

Relacionadas à metafunção interpessoal, são utilizadas categorias do sistema de Avaliatividade, proposto por Martin e White (2005). Esse sistema semântico-discursivo se refere às escolhas do sistema linguístico que o falante/escritor faz para expressar pensamentos, sentimentos, opiniões e atitudes sobre pessoas, objetos, fenômenos, fatos, etc. (Martin e White, 2005), em diferentes graus de intensidade e formas de engajamento.

Devido à natureza do corpus de pesquisa, partimos da hipótese de que as marcas avaliativas que poderiam aparecer com mais recorrência no histórico de BOs de crimes de linguagem contra a honra são de Julgamento, categoria que diz respeito à avaliação do comportamento das pessoas, tipicamente realizada por epítetos e qualificativos com funções léxico-gramaticais de Atributo ou Verbiagem, por processos materiais ou mentais e circunstâncias. A aprovação ou reprovação da atitude de alguém (julgamento) pode ser do tipo sanção social ou estima social.

O julgamento de sanção social diz respeito às normas e aos padrões sociais rígidos estabelecidos nos grupos, geralmente previstos em legislação, e preceitos de ordem moral ou religiosa. Abrange a veracidade (até que ponto uma pessoa é verdadeira, honesta ou confiável) e a propriedade (até que ponto uma pessoa é ética) (Martin e White, 2005).

O julgamento de estima social diz respeito à avaliação baseada na admiração ou crítica pessoais e abrange comportamentos de normalidade (até que ponto um comportamento é tido como normal ou frequente) capacidade (até que ponto uma pessoa é capaz, competente) e tenacidade (até que ponto uma pessoa é persistente ou resoluta).

Feitas as considerações básicas relativas aos pressupostos teóricos que servem de esteio a este estudo, passamos a discorrer sobre a metodologia de constituição do corpus e procedimentos de análise.

Metodologia

Para a análise quantitativa dos processos verbais foi utilizado o *corpus* coletado, por meio de *download*, no Sistema de Consultas Integradas da Polícia Civil gaúcha. Tal corpus é constituído de 566 BOs sobre crimes de calúnia, 236 BOs sobre crimes de difamação e 1.541 BOs sobre crimes de injúria, totalizando 2.343 BOs, registrados no período de 01/09/2011 a 30/09/2011, abrangendo todo o território do Estado do Rio Grande do Sul. Esse corpus foi submetido ao exame da ferramenta computacional *Wordsmith Tools 6.0* (Scott, 2012), a fim de serem levantados os processos verbais mais frequentes e a sua ambiência, por meio dos seus aplicativos *Wordlist* e *Concord*.

Para a análise das avaliações atitudinais, foram aleatoriamente selecionadas duas amostras do histórico de BOs de cada um dos três crimes de linguagem contra a honra totalizando seis textos, com o propósito de analisar, qualiquantitativamente, ocorrências de avaliações atitudinais encontradas em complexos oracionais (projeção de locuções).

Os textos selecionados foram identificados pelos números 1 e 2 antecedidos do símbolo #, para cada grupo de dois BOs. Os nomes dos atores sociais envolvidos nos relatos foram substituídos pelas expressões *Fulano(a)* no lugar do nome da vítima, *Beltrano(a)* no lugar

do nome do(a) ofensor(a), *Sicrano(a)* no lugar do nome da testemunha, e *Tetrano(a)* no lugar do nome de outros participantes, a fim de preservar-lhes a privacidade. As orações são dispostas em quadros, sendo numeradas as que são objeto de análise. Os elementos linguísticos relevantes para a análise e discussão dos resultados são destacados em negrito.

Resultados

O levantamento quantitativo dos elementos lexicais mais recorrentes no corpus, por intermédio do aplicativo *wordlist* disponível na ferramenta computacional *Wordsmith Tools* (Scott, 2012), permitiu-nos constatar a ampla variedade e quantidade de processos verbais, conforme Figura 1.

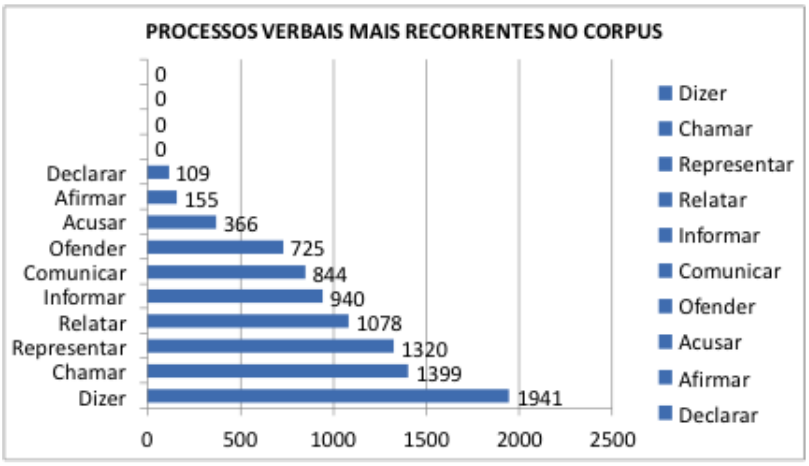

Figura 1. Frequência de processos verbais na amostra de BOs sobre calúnia, difamação e injúria.

Esses dados motivaram-nos a centrar as análises nos elementos linguísticos em torno dos processos verbais. As análises evidenciaram alta incidência de orações projetadas de processos verbais, revelando um padrão de realização léxico-gramatical do gênero relato nos BOs de crimes de linguagem em questão: uma oração verbal funciona simultaneamente como oração projetada de uma oração verbal que a antecede e como oração projetante da oração que a sucede. Dessa forma, caracteriza-se uma dupla projeção que denominamos de "metaprojeção", pois se refere à projeção do dizer da ofendida (na voz que lhe é atribuída pelo policial redator do BO), que, por sua vez, projeta o dizer, atribuído ao ofensor, contendo as escolhas avaliativas ofensivas que caracterizam a ofensa. A análise do BO–C#1 exemplifica esse padrão.

<table>
<tr><td>"(1) Relata a comunicante [Fulana],</td><td colspan="2">(2) que foi acusada de ter furtado a quantia de R$ 50,00 em dinheiro de uma tal de (Beltrana) residente na Rua Machado de Assis,</td></tr>
<tr><td>Oração verbal projetante</td><td colspan="2">Oração verbal projetada de (1) do tipo Relato</td></tr>
<tr><td>(3) [a comunicante] não sabe o número, apt. 203, Partenon,</td><td>(4) que ainda a acusada também falou</td><td>(5) que a comunicante tinha furtado R$ 50,00 em dinheiro há 15 dias atrás, e por isso [a acusada] não iria pagar pelo serviço de faxina [[que a comunicante realizava na casa dela]].</td></tr>
<tr><td>Oração mental projetada de (1) do tipo Relato</td><td>Oração verbal projetada de (1) e projetante de (5)</td><td>Orações projetadas de (4) do tipo Relato</td></tr>
</table>

Excerto 1: BO–C#1

O BO–C#1 inicia com a oração projetante (1), *relata a comunicante (Fulana)*, a qual desencadeia o relato dos fatos e indica a voz[5] atribuída à vítima pelo policial atendente da ocorrência com o conteúdo do que lhe é por ela narrado. No caso dos BOs em análise, são trazidas tipicamente vozes não autorais, especialmente dos ofendidos, que, por sua vez, atribuem a outras vozes a responsabilidade pela calúnia.

Nesse relato, ocorre uma avaliação atitudinal negativa explícita em dois momentos: no primeiro momento, nas orações projetadas (2) *foi acusada de ter furtado* (oração material) e, em seguida, na (5) *tinha furtado* R$ 50,00 (oração material), ambas antecedidas pelas orações projetantes (1) e (4), nucleadas pelos processos verbais *relata* e *falou*.

Note-se que, nas orações materiais *de ter furtado a quantia de R$ 50,00 em dinheiro de uma tal de (Beltrana)* e *tinha furtado R$ 50,00*, as quais descrevem a calúnia, quem participa como Ator do comportamento criminoso é *a comunicante*, vítima da ofensa. Na oração (2), *que foi acusada*, há a omissão da Dizente, cuja voz, porém, aparece posteriormente na oração (4), *que ainda a acusada também falou*, apontando a responsabilidade pela ofensa.

Assim, a oração verbal (4) funciona simultaneamente como oração projetada da oração verbal (1) e como oração projetante da oração (5), caracterizando a dupla projeção antes referida.

Com relação às marcas avaliativas, nos dois momentos antes mencionados, há a incidência de julgamento de sanção social, pois é atribuído falsamente à comunicante um comportamento reprovável socialmente e ofensivo à sua reputação social, que é subtrair para si coisa alheia móvel, conduta descrita como crime de furto no artigo 155 do Código Penal Brasileiro (Brasil, 1940). Esse julgamento enquadra-se na subcategoria de veracidade, uma vez que a acusação de prática de furto atenta contra a honestidade e confiabilidade da ofendida. Note-se que aqui a avaliação negativa não é feita por meio de epítetos ofensivos, mas por meio de uma imputação falsa (de uma conduta ou comportamento criminoso) realizada por duas orações materiais.

A realização da ofensa por orações materiais também se verifica em relação ao BO–C#2, cujo histórico contém o seguinte conteúdo:

Comunica *que durante um tempo deteve procuração para receber por sua irmã, Tetrana, mas declinou da obrigação, devolvendo-a para sua irmã, tendo recebido apenas uma vez.*	
(1) Desde então, sua sobrinha, filha de Tetrana, ***tem comentado*** *pela cidade, com diversas pessoas,*	*(2) que a comunicante* ***apropriou-se*** *dos vecimentos da irmã. [sic]*
Oração verbal projetante	***Oração material projetada de (1) do tipo Relato***
Diante disso, representa criminalmente contra a acusada, ficando agendada audiência para o dia 06/10/2011, às 15h no JEC desta comarca	

Excerto 2: BO–C#2

No BO–C#2, a oração verbal projetante (1), nucleada pelo complexo verbal *tem comentado*, tem a participante *sua sobrinha, filha de Tetrana*, que exerce a função de Dizente da conduta depreciativa que caracteriza a calúnia. Essa conduta está realizada na oração projetada (2), *que a comunicante apropriou-se dos vecimentos da irmã [sic].* Nesse caso, a ofensora, por meio de um processo verbal, imputa à ofendida, sua tia, um fato ofensivo

[5]Neste trabalho, o termo "voz" refere-se à terminologia de vozes "autoral" e "não autoral", conforme Martin e White (2005).

a sua honra, realizado em uma oração material projetada do tipo Relato, na qual ela é falsamente acusada de apropriar-se dos vencimentos destinados à sua irmã. A vítima da ofensa, assim como no BO–C#1, é representada novamente na função de Ator em uma oração material que descreve um comportamento criminoso.

A falsa atribuição à ofendida da conduta criminosa constitui uma avaliação atitudinal explícita de julgamento de sanção social do tipo veracidade, pois a acusação de prática de apropriação atenta contra a honestidade e confiabilidade da vítima da ofensa. Vale destacar que o comportamento imputado à ofendida configura o crime de apropriação indébita, previsto no artigo 168 do Código Penal Brasileiro (Brasil, 1940).

Na amostra de BOs de calúnia, portanto, as ofensas são linguisticamente realizadas em orações projetadas materiais do tipo Relato, nas quais as vítimas ofendidas desempenham a função de Ator da conduta criminosa que atenta contra a sua honra. Essas orações projetadas são antecedidas de orações projetantes verbais que indicam o ofensor como autor da dicção ofensiva, na medida em que ele exerce a função de Dizente da calúnia. Nos BOs de calúnia analisados, a voz da vítima ofendida que narra o fato, atribuída pelo policial atendente redator da ocorrência, aparece no início do histórico nas orações projetantes, *[a comunicante] comunica que* e *relata a comunicante (fulana)*, as quais desencadeiam todo o relato do BO.

Enquanto nos BOs de calúnia analisados a avaliação atitudinal contém a violação de normas penais, nos BOs de difamação a avaliação diz respeito à quebra de um preceito contido em um regulamento civil ou escritura religiosa, como se verifica no BO-D#1.

Compareceu nesta delegacia, a comunicante abaixo qualificada,	
(1)** para [a comunicante]* ***informar	***(2)** que em data, hora e local acima mencionados,* ***o seu marido** qualificado abaixo, o qual* ***saiu** de casa na sexta-feira próxima passada, a mando da comunicante,* ***voltou** e* ***passou** a lhe* ***ofender** na frente dos filhos do casal.*
Oração verbal projetante	***Orações materiais projetadas de (1)***
(3)** Ele* ***disse	***(4)** que a comunicante* ***quer separar-se** dele porque* ***tem outro macho**.*
Oração verbal projetada de (1) e projetante de (7)	***Orações projetadas de (6) do tipo Relato***
A vitima deseja representar contra o acusado.	

Excerto 3: BO–D#1

No BO–D#1, há mais uma ocorrência de avaliação atitudinal negativa que inicia com a voz atribuída ao ofensor, *o seu marido* [da comunicante do BO], participante que desempenha a função de Dizente da oração verbal *passou a lhe ofender*. O processo *ofender* prenuncia a avaliação depreciativa contida no complexo oracional seguinte, no qual a ofensa à honra da comunicante é realizada linguisticamente pela oração relacional possessiva atributiva *porque tem outro macho*. Nessa oração, é atribuído à comunicante o fato depreciativo de ela estar se relacionando com outro homem como motivação de seu desejo de separar-se de seu marido, o ofensor, o que está realizado no complexo oracional constituído do processo mental desiderativo *quer*, que projeta a oração material *separar-se dele*.

Convém ainda salientar que a escolha da palavra *macho* pode estar ancorada na noção de animal reprodutor e, portanto, a mulher *que tem outro macho* manteria relações sexuais, ou conjunção carnal, com outro homem na constância do casamento. Essa con-

duta violaria, por exemplo, o dever de fidelidade recíproca da união matrimonial prevista no artigo 1.566 do Código Civil Brasileiro (Brasil, 2002) e em preceitos religiosos, como o mandamento previsto no livro do Êxodo na bíblia judaico-cristã. Dessa forma, no referido histórico do BO, há um julgamento de sanção social do tipo veracidade, porquanto são colocadas em dúvida a honestidade e a fidelidade da comunicante como esposa, conforme preceitos legais[6] e religiosos compartilhados socialmente.

Outro exemplo de julgamento de sanção social como marca de difamação verifica-se no BO–D#2.

(1)** [a comunicante] **Comunica	***(2)** que no dia de ontem, por volta das 18 horas, na casa da mãe, [a comunicante] **acabou entrando em vias de fato** com sua sobrinha referida no part.2,*
Oração verbal projetante	***Oração material projetada de (1) do tipo Relato***
(3)** em virtude de que esta **anda dizendo	***(4)** que a comunicante **anda se agarrando com os homens nos bomeiros** [sic], local em que **trabalha** como voluntária.*
Oração verbal projetada de (1) e projetante de (4) do tipo Relato	***Orações materiais projetadas de (3) do tipo Relato***
Pede providências, manifestando inequívoca vontade em dar prosseguimento no presente feito policial. Que não chegou a sofrer ferimentos. Nada mais	

Excerto 4: BO–D#2

O comportamento ofensivo à reputação da ofendida descrito em (4) constitui uma avaliação atitudinal negativa explícita. Nesse caso, ao ser questionada a conduta ética da vítima da avaliação negativa, vemos um julgamento de sanção social, porquanto a ofensora lhe atribui um fato ofensivo (*anda se agarrando com os homens*) que consiste em um comportamento sexual tido socialmente como devasso e promíscuo. Essa conduta imoral, embora não esteja prevista expressamente em códigos e preceitos, caracteriza julgamentos de sanção social de propriedade e veracidade. Martin e White (2005: 53) trazem exemplos de epítetos como desonesto, manipulador, dissimulado, mentiroso, categorizados como julgamento de sanção social do tipo veracidade; e malvado, arrogante, injusto, ambicioso, avarento, imoral, como julgamento de sanção social do tipo propriedade.

Dessa forma, as condutas que refletem esses epítetos nem sempre estão associadas a alguma punição decorrente de crime ou violação de preceito de ordem religiosa. Logo, a existência ou não de "punição" e a distinção (linguística) entre julgamento de sanção social e de estima social parece-nos que não podem servir de critério para diferenciar, no campo jurídico, calúnia de difamação, como chegamos a cogitar no início da pesquisa, pois tanto na calúnia quanto na difamação pode haver julgamento de sanção social. No caso da ofensa de adultério, por exemplo, antes da mudança na lei penal caracterizaria calúnia, depois da mudança, quando o adultério deixou de ser crime, passou a caracterizar difamação. Do ponto de vista linguístico, porém, não houve a mesma alteração porque o adultério continua sendo reprovado socialmente como pecado (dez mandamentos) com

[6]Salientamos que o adultério não é mais crime no Brasil desde 2005, mas continua sendo um dever legal, pois está previsto no artigo 1566 do Código Civil como um dos deveres que devem ser observados pelos cônjuges na constância do casamento. Caso o adultério ainda continuasse sendo crime, o ofensor estaria praticando calúnia e não difamação. O preceito supostamente violado pela ofendida é jurídico (além de religioso e ético), porém não é mais de natureza penal e sim de natureza cível. De qualquer modo, tal mudança, no aspecto linguístico, não altera a natureza da análise da avaliação atitudinal, que continua sendo um julgamento de sanção social do tipo veracidade.

base nas bíblias judaico-cristãs e no Código Civil. Logo, a ofensa de adultério continuaria sendo um julgamento de sanção social do tipo propriedade.

Enquanto a calúnia e a difamação são realizadas tipicamente por orações materiais que representam fatos ofensivos indicando julgamentos negativos, a injúria se realiza tipicamente por orações relacionais atributivas e orações verbais indicando ora julgamentos de sanção social e de estima social, como se verificam no BO–I#1, ora julgamentos de sanção social e apreciações negativas, como se verifica no BO–I#2.

(1)** A vítima **informa	***(2)** que Fulana, [[que era sua vizinha, enquanto estava fazendo a mudanda/[sic] para vir morar na cidade,]] **lhe chamou de negra suja sem vergonha puta.***
Oração verbal projetante	***Oração projetada de (1) do tipo Relato***
O ocorrido se deve ao fato da vitima ter descoberto uma traição conjugal de Fulana. Seu primo Beltrano, de aproximadamente 35 anos de idade, morador do local é testemunha do fato. Manifesta interesse em representar criminalmente contra a autora. Não autoriza a publicação na imprensa.	

Excerto 5: BO–I#1

No BO–I#1, a participante *Fulana* exerce a função de Dizente na oração verbal, nucleada pelo processo *chamar*, do conteúdo ofensivo realizado na Verbiagem (*de negra suja sem vergonha puta*). A avaliação atitudinal negativa é realizada em (2) pelos epítetos depreciativos *negra suja*, *sem vergonha* e *puta*, que constituem o conteúdo do dizer ofensivo.

Enquanto o epíteto *sem vergonha* enquadra-se na categoria de sanção social de propriedade, ao se referir ao comportamento ético da vítima, os epítetos *negra suja* enquadram-se na categoria de estima social de tenacidade, porquanto imputam à vítima condutas negativas que evocam o estigma da sujeira, que revelariam a sua falta de asseio pessoal. Convém explicitar que o epíteto *suja* poderia ser enquadrado na categoria de apreciação se considerássemos como alvo da avaliação, por exemplo, o corpo da vítima. Entretanto, entendemos que o epíteto *suja*, no caso em análise, tem como alvo avaliativo os hábitos de higiene da ofendida e, portanto, tem como intuito avaliar o seu comportamento negligente, desleixado, desidioso, quanto ao asseio pessoal.

Além disso, o epíteto *negra*, que representa a origem étnica da ofendida, traz um sentido que historicamente adquiriu uma carga semântica negativa em vários contextos socioculturais, sobretudo por estar associado ao passado escravocrata da sociedade em nosso continente, no qual se inclui a sociedade brasileira, e sua substituição pela manutenção dos ex-escravos e seus descendentes em uma condição social subalterna.

Ressalte-se, por fim, que o uso do qualificativo *puta* evoca a ideia de um comportamento sexual promíscuo e devasso, caso em que a avaliação atitudinal estaria utilizando um recurso avaliativo de julgamento de sanção social de propriedade, ao valorar a suposta conduta ética da ofendida, questionando a sua moralidade sexual, igualmente ancorada na concepção idealizada, compartilhada socialmente, da mulher como casta, recatada, pudica.

Além de julgamentos, a apreciação, embora com menor frequência, também se fez presente no crime de injúria, como se verifica no BO–I#2.

Nesse exemplo, o participante *Beltrano*, em elipse, exerce a função de Dizente na oração verbal (1), nucleada pelo processo verbal *dizendo*, que projeta duas orações relacionais do tipo Relato, as quais realizam o conteúdo ofensivo. Na primeira oração relacional, nucleada pelo processo *é*, o pronome *Ela*, referindo-se à mulher ofendida, exerce a função

de Portador dos Atributos *vaca*, *baleia*, *desgraçada*, *diaba*. Na segunda oração relacional, nucleada pelo processo *vale*, com polaridade negativa, novamente *Ela* (referindo-se à ofendida), em elipse, exerce a função de Portador do Atributo *nada*. Nesse sentido, a comunicante é ofendida por meio de Atributos depreciativos em duas orações relacionais projetadas das quais o *Dizente*, na oração projetante, é *Beltrano*, seu marido.

*Comparece neste órgão a Sr. Fulana para **informar** que está separando-se de seu marido Beltrano. E que todos os dias Beltrano chega bêbado em casa e começa a ofendê-la com palavras de baixo calão*	
(1)** [Beltrano] **dizendo	***(2)** que ela **é uma vaca, baleia, desgraçada, diaba**, **(3)** que [ela] **não vale nada***
Oração projetante	*Orações projetadas relacionais de (1) do tipo Relato*
e diz para pegar suas coisas e ir embora. Salienta que o acusado já vem ofendendo-a a algum tempo. Deseja representar e requer as medidas protetivas da Lei Maria da Penha.	

Excerto 6: BO–I#2

Os Atributos *vaca* e *baleia* revelam apreciações, uma vez que valoram a aparência física da ofendida. O epíteto *baleia* configura uma apreciação do tipo composição, ao remeter a uma pessoa de "dimensões avultadas" ou obesa (conforme Michaelis, 2004). De modo semelhante, *vaca* sinaliza uma apreciação negativa ao remeter a uma "mulher disforme ou muito gorda" (conforme Priberam, 2013). Por outro lado, *vaca* também pode remeter a uma pessoa que apresenta um comportamento insuportável, intratável ou, ainda, devasso (Priberam, 2013). Sob esse significado, *vaca* pode ser considerado também um julgamento de estima social.

Ambos os epítetos configuram um recurso de animalização que, do ponto de vista linguístico, caracteriza uma metáfora zoomórfica[7], pois a ofendida é equiparada a um animal e, por conseguinte, destituída de sua natureza humana, com relação tanto a um padrão de beleza estabelecido e compartilhado socialmente (*baleia*) quanto a determinado comportamento sexual.

O comportamento da comunicante também é avaliado negativamente por meio dos epítetos *desgraçada* e *diaba* e da oração relacional com polaridade negativa *não vale nada*. O item *desgraçada* caracteriza uma pessoa infeliz, deplorável, que anuncia desgraça (Michaelis, 2004), indicando julgamento de estima social do tipo normalidade, já que é colocada em dúvida a usualidade de seu comportamento. Indicando esse mesmo tipo de julgamento, *diaba* está ancorado na personificação do mal da tradição judaico-cristã, equivalente ao diabo, lúcifer, satanás, dentre outras denominações e, por isso, quando utilizado para qualificar negativamente uma pessoa, evoca a noção de perversidade. Por fim, a oração *não vale nada* representa a comunicante como uma pessoa que não tem valor algum, intensificando a avaliação negativa de seu comportamento.

Considerações finais

Neste estudo, foi possível demonstrar a realização léxico-gramatical e semântico-discursiva de avaliações atitudinais usadas para representar crimes de linguagem contra a honra numa amostra de BOs. Em razão da própria natureza do gênero, a avaliação atitudinal explícita de polaridade negativa, com o uso de léxico avaliativo explícito, está presente

[7] A metáfora zoomórfica consiste na utilização de analogias implícitas com animais (Araújo, 2004).

em todos os exemplares da amostra analisada. Essa constatação, em um estudo mais amplo, pode vir a evidenciar-se como uma propriedade típica dos crimes de linguagem contra a honra representados em BOs.

A análise evidenciou o uso de recursos avaliativos atitudinais que corroboram a diferença entre o crime de calúnia e os outros dois tipos de crime de linguagem contra a honra. Nos BOs de calúnia da amostra analisada, são usados julgamentos por sanção social, ao passo que, nos BOs de difamação e de injúria, são usados também julgamentos de estima social. Além disso, ocorrências de apreciação como recurso avaliativo do perfil estético da vítima revelam que BOs de injúria não estão limitados ao uso do julgamento como recurso avaliativo.

Nos crimes de calúnia e difamação, a valoração depreciativa das vítimas é realizada por orações projetadas que descrevem fatos de conteúdo ofensivo. No crime de injúria, porém, a avaliação atitudinal não é descrita em fatos, mas sim está consubstanciada em epítetos na função de Atributos em orações relacionais projetadas e de Verbiagem em oração verbal projetada.

Na relação lógico-semântica de projeção, foram encontradas incidências do que denominamos de "dupla projeção", situação em que uma oração verbal funciona simultaneamente como oração projetada da oração verbal que a antecede e como oração projetante das que a sucedem. Nesse caso, ocorrem projeções múltiplas de processos em que a segunda oração projetada é realizada por um Dizente diferente da primeira oração. Dessa forma, "tem-se uma figura de 'diz-que-diz-que', ou seja, o enunciador cita o dizer de um Dizente citado por outro Dizente" (Fuzer, 2008: 121). No contexto do BO, essa dupla projeção tem o policial como enunciador que cita o dizer do ofensor que lhe foi citado pelo ofendido. Destacamos, por último, que o relato do BO é desencadeado, no início do histórico, por orações projetantes que, nas amostras analisadas, são nucleadas pelos processos verbais *relatar*, *comunicar* e *informar*, pelos quais o policial atendente redator do BO atribui a responsabilidade acerca do que é relatado à voz do comunicante, geralmente o ator social ofendido.

As evidências linguísticas encontradas nas amostras sugerem que a análise linguística pode contribuir para a compreensão da distinção jurídica entre os três tipos de crime de linguagem contra a honra, nem sempre clara entre os profissionais do direito. A partir das hipóteses levantadas nesta análise-piloto, é possível um estudo qualiquantitativo mais abrangente em um corpus maior.

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When is a lie not a lie? When it's divergent: Examining lies and deceptive responses in a police interview

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Abstract. *Using UK police interviews as data, this empirical work seeks to explore and explain the interactional phenomena that accompany, distinguish, and are drawn upon by suspects in performing deceptive talk. It explores the effects of the myriad and often conflicting interactional requirements of turntaking, preference organisation and conversational maxims on the suspect's talk, alongside the practical interactional choices of a suspect attempting to avoid revealing his guilt. This paper reveals a close link between the officer's and suspect's interaction and the patterned organisation of an assortment of divergent utterances produced in response to probing questions that follow a lie. The findings expose a hierarchical interactional order that explains the diverse and conflicting accounts of cues to deception in this field, suggesting that interactional phenomena are systematically enlisted in the orientating to, and the violation of interactional organisation which enables the suspect to produce utterances that protect his position, and can also be directed towards the performance of wider objectives such as reinforcing a claim of innocence or supporting a version of events.*

Keywords: *Police interview, interactional phenomena, turntaking.*

Resumo. *Recorrendo a interrogatórios policiais do Reino Unido como corpus de pesquisa, este trabalho empírico procura explorar e explicar os fenômenos interacionais que acompanham, distinguem e que são utilizados por suspeitos na realização de comunicações falsas. O estudo explora os efeitos das inúmeras, e muitas vezes conflitantes, exigências de interação dos turnos de vez (turntaking), organização de preferência e máximas de conversação na conversa de suspeitos, juntamente com as opções práticas de interação de um suspeito na tentativa de evitar a revelação de sua culpa. Este trabalho revela uma estreita ligação entre a interação oficial-suspeito e a organização padronizada de uma variedade de enunciações divergentes, produzidas em resposta a perguntas de sondagem que sucedem a uma mentira. Os resultados expõem uma ordem hierárquica interacional que explica os diversos e conflitantes relatos de pistas que levam à fraude neste campo, sugerindo que os fenômenos interacionais integram sistematicamente a orientação, bem como a violação da organização interacional, que permite ao suspeito produzir enunciados que protejam sua posição, e que podem*

também ser direcionados à realização de objetivos mais abrangentes, como o reforço da alegação de inocência ou à sustentação de uma determinada versão dos acontecimentos.

***Palavras-chave**: Interrogatório policial, fenómenos interaccionais, turno conversacional.*

Introduction

Lying and deception are understandably of interest to police officers and those involved in the criminal justice system; predominantly manifesting as a desire to establish means for identifying when a suspect is lying, or used to reverse-engineer a lie in order to reveal the truth. Indeed, this would constitute an extremely useful element of any investigative interviewer's toolkit, and research in this area heavily favours explorations relating to deception detection, using or establishing cues produced by lie-tellers. These include analysing the ability of officers (Vrij and Mann, 2001), and non-officers (often college students, Roach, 2010) to detect lies, the differences between amateurs and experts in doing so (Miller and Stiff, 1993; Kassin and Fong, 1999; Meissner and Kassin, 2002), and increasing the accuracy of this practice.

Moving away from an 'end user' or deception detection perspective, the present research explores and explains the interactional manifestation of lies and deceptive interaction in this setting, focusing on both the lie and the subsequent responses produced by the suspect when the lie is explored by the police officer in the immediately following turns. It uses the terms *lie* and *deception* to describe these two respective elements, although these terms are often used interchangeably in the literature (Vrij and Mann, 2004). Examining lies and deception in-situ can be harnessed by practitioners in a more holistic approach to investigative interviewing, rather than being used to identify cues to deception as a tool to determine the veracity of future talk. This reflects the principle underlying Vrij and Granhag's (2012: 115) call for researchers to "not just be outcome-oriented by focusing on deception detection accuracy only. Instead they should *pay attention also to the processes that explain the outcome*" (emphasis added).

Research on deception often draws data from experimental contexts and uses student participants as subjects (DePaulo *et al.*, 2003). Pollina, Dollins, Senter, Krapohl and Ryan's (2004) research compared data from 'mock crime' and field data and suggests that the differences between the two reinforce the need for real-world data when examining deception in interaction. It is understood that interaction in contexts where there are high stakes, or significant consequences of one's talk being believed, is an important area requiring further research (DePaulo *et al.*, 2003; Frank and Feeley, 2003) where differing levels of motivation can yield findings different from research in contexts where the motivation for deception is less critical. Producing a lie leaves suspects vulnerable to the prospect of being 'caught out', whereas a truthful utterance, or one that avoids a lie does not. When someone engaging in lying is faced with a suspicious recipient, the stresses of producing deceptive utterances are intensified (Van Swol *et al.*, 2012) and the need to appear truthful increases (Buller and Burgoon, 1996).

Due to the attendant particularities of the context, lies in police interviews are likely to be produced by suspects in order to avoid exposure or punishment and are most taxing to produce; 'negative conditioning' tells us to avoid telling these lies wherever possible in order to "avoid the negative effect associated with them" (Battista, 2009: 320). It is reasonable to suggest that in a police interview setting, lies may take on a particular form both

structurally (in conforming to the institutional framework of the interaction) and conceptually (they are most likely to not be produced lightly, but enlisted by the suspect in an effort to distort the criminal justice process or evade potentially serious or life-changing legal ramifications). This is reinforced by the coining of 'high stakes deception' as a concept that has become a discrete area of research in itself (Vrij and Mann, 2001). Lies in police interviews remain under-explored from a conversation analytic perspective, which is in all probability due to the methodological requirement for naturally-occurring rather than laboratory-generated data. It is rarely possible to access interaction as data from contexts such as the UK police interview, a difficulty which is compounded by the need for police interviews which contain demonstrable lies. Conversation analytic research most directly related to the area of deception and police interview interaction appears to be limited to Reynolds and Rendle-Short's (2010) research into lies in investigative interviews broadcast on television in non-judicial interactional settings where interactions involving relatives-in-conflict are mediated by a television host, and also in police-public encounters broadcast on television.

Lies in interaction

A large body of work focuses on examining linguistic cues, or phenomena, that accompany the act of deception, such as increased pitch (Ekman *et al.*, 1991; Villar *et al.*, 2013), the use of negative emotion words (DePaulo *et al.*, 2003), blinking (Leal and Vrij, 2008), pausing (Reynolds and Rendle-Short, 2010) nervousness, gaze aversion and self-grooming (Inbau *et al.*, 2004) and body language (Ekman *et al.*, 1991). However, a discussion of the range of literature relating to cues to deception is outside of the scope of this paper. The phenomena of interest in this paper are divergent or tangential responses; terms used here to represent all types of responses whereby the suspect does not answer directly, fully, or relevantly given the question asked by the officer in his prior turn(s). This departs from traditional approaches to researching deception, which examine the performance of the lie itself; the present research examines the lie-in-situ and also the deceptive talk (not necessarily a direct lie) that closely follows, produced when the suspect is questioned further by the officer about that lie.

There is a cluster of research that points to self-awareness and self-monitoring of utterances by those engaging in deception, which manifests in deceivers' responses being geared towards modelling words and behaviours they believe to be characteristic of a truthful response (Buller and Burgoon, 1996; Dunbar *et al.*, 2003; Hall and Watts, 2011). Wilson and Sperber (2002) talk about deceivers' linguistic style across entire statements are adaptable to this end. Sip *et al.* (2013) talk about changes in deception activities when the speaker believes their lies can be detected. This manifests in those intending or aiming to successfully and effectively deceive the listener by hiding lies amongst truthful utterances and irrelevant information (Anolli *et al.*, 2002). Picornell (2011, 2013) examined deception in written witness statements, finding that distancing phenomena are used in the performance of deception; manifesting in ambiguity and vagueness, displayed as part of wordy responses (which afford the impression of co-operation and avoid implicating oneself) (also see Buller and Burgoon, 1996 and Hancock *et al.*, 2005), or short, dissociative responses (which give the impression of the criminal as the 'other'). Liars produce shorter responses, and use less exclusive words (DePaulo *et al.*, 2003; Hartwig *et al.*, 2006; Leal and Vrij, 2008), than those telling the truth. Vagueness is widely reported as more frequently seen in deceptive responses than their truthful counterparts (Burgoon *et al.*, 2003; DePaulo

et al., 2003; Vrij, 2000). Schober and Glick (2011) also found deceivers refer to themselves less often in order to 'linguistically distance' themselves from the act they are accounting for, or to deny the harm it may do. These distancing behaviours are reminiscent of an implicit and interactionally-embedded equivalent of Sykes and Matza's (1957) 'techniques of neutralisation'.

In addition to deceivers' conscious efforts to manipulate their responses in order to adapt to, replicate or model their talk on their perceptions of the officers' expectations of what a truthful utterance looks like, the sequential organisation and turn-type pre-allocation (of questioning to the officer and answering to the suspect (Drew and Heritage, 1992; Heydon, 2005)) have an underlying effect on suspects' talk. Interaction is also intuitively shaped by 'preference organisation', "a structural notion that relates to the linguistic concept of markedness" (Levinson, 1983: 307) and refers to the interactional rather than psychological preference for particular types of response, for instance a summons requires an answer; an offer requires an acceptance and so on (Levinson, 1983). The features of *dispreferred* responses reveal their underlying organisation; "preferred actions are characteristically performed straightforwardly and without delay, while dispreferred actions are delayed, qualified and accounted for" (Hutchby and Wooffitt, 2008: 47).

'Trouble' is another conversation analytic concept relevant to this research as it relates to producing responses that do not align with the content of the prior turn (Levinson, 1983), and can result in non-cooperation or vagueness. Grice's Maxims of conversation are also relevant as they concern the interactional structures guiding the cooperative use of language; the ways in which flouts of these in police interview data (outlined below) resonate with the literature relating to cooperation and vagueness. Flouts of the *maxim of quantity* manifest as the suspect not providing enough information, of *manner* as ambiguous or overly wordy responses, and of *quality* as prosodic distortions of responses or the production of lies in response to questions. Flouts of the *maxim of relation (relevance)* manifest as answers that run contrary to a question's intended meaning, by attending only to part, or not answering the question at all, or providing irrelevant information. This is a particularly useful type of response for guilty suspects attempting to avoid self-incrimination, as they can appear to answer a question, and provide a truthful response whilst avoiding lying or providing information that may incriminate them. The present research identifies the influence of the sequential turn-type pre-allocation, preference structure and maxims of conversation on the interaction of a guilty suspect attempting to protect his 'innocence'. It examines suspects' attempts to balance the often competing requirements of these interactional structures and reveals the impact on the receipt of talk and responses to it.

Establishing the presence of lies

The presence of lies in interaction data is determined through a variety of routes. A customary method is first ensuring that lies are produced, by for example offering monetary incentives to participants to lie convincingly, sometimes coupled with the threat of 'punishments' for not succeeding (Ruffman *et al.*, 2012; Vrij *et al.*, 2004; Hall and Watts, 2011). Willén and Strömwall (2011) generated deception data by asking prisoners to truthfully recall details about their crime and also create a fictional account. External methods of verification are also used; Sanaullah and Gopalan (2012) used interaction in police interviews tested by a polygraph machine, and Vrij and Mann's (2001) research relied on corroborating evidence that the statements made by the accused were lies. A conversation analytic approach requires the lies to occur within and as part of interaction, rather than

being created as part of an experiment or validated through an external mechanism or source. Conversation analytic and ethnomethodological frameworks require the analyst to explore the *participants*' production, understanding and receipt of interaction, rather than the researcher doing so as an *observer*. Reynolds (2011: 6) explores this in depth and suggests that identifying lies within an ethnomethodological and conversation analytical framework is possible when they occur with the:

i. explicit confirmation by the lie teller that a lie has occurred;
ii. the explicit labelling of talk as lies by other participants; and
iii. the 'revision' of a prior turn by a lie teller, thereby changing the course of action, during a disjuncture

In the present study, lies were categorised in line with point i), with the acknowledgement by the suspect at the end of the interview that he had committed the crime (this is presented in extract 8 as the final in the sequence) and therefore his previous denials are retroactively reconstructed as lies. This retroactive labelling still satisfies the requirement of analysing data from the participants', not the analysts' perspective (Schegloff, 1997).

Methodology

The extracts presented as data in this research are drawn from a single police interview of a suspect arrested under suspicion of having stolen a video game and a computer game from a video rental shop; the games were hired using the suspect's name and identification and not returned some weeks after they were due. This paper presents 7 episodes in which the suspect produces lie(s) and engages in episodes of talk to avoid discovery. The analysis follows the suspect through the interview, examining his lies, situating them in the surrounding talk and attempting to explain the interactional processes at work at these and at subsequent moments of deception-avoidance following probing by the officer. It draws on understandings of deception and interactional organisation from across the literature and examines these in the high stakes interaction of the police interview, using conversation analysis and empirical data.

A criticism that could be directed at this study is narrowness in using a single police interview. However, tracking a suspect's deceptions and lying behaviour throughout the course of one interview enables us to examine in detail the performance of multiple lies within the same context, related to the same crime and in response to the same interviewing officer. The suspect's use of interactional phenomena can therefore be contextually-located rather than compared with other suspects' interactional styles. Also variations in deceptive utterances resulting from the difference in the age of the deceivers, including degradations in areas key in deception performance such as memory, social acuity and neurological function (Ruffman *et al.*, 2012) are eliminated. A case-study approach also mitigates other interpersonal variance such as differences in the ease of recall (Leal and Vrij, 2008), the level of heightened stress response (Vrij, 2000) or 'tenseness' (DePaulo *et al.*, 2003) that physiologically changes the deceivers' voice. This approach also enables the examination of deception as a sequence of acts progressing over time (White and Burgoon, 2001), addressing an underexplored area and offering an in-depth analysis of sequential lies within the same interview. Using this method is aligned with Reynolds and Rendle-Short's (2010: 15) conclusion that deception needs to be "examined more closely in the context in which it occurs", and provides evidence for a patterned interactional organisation of deceptive utterances that contributes towards the development of an *interactional* theory of deception which can be used as a framework to analyse other interaction.

Analysis

Extract 1

In Extract 1 the officer tries to ascertain the link between the suspect and the crime by exploring the suspect's knowledge of the videos and the computer game that were hired. The officer lists the items and the date on which they were hired, followed by the question 'do you know anything about this at all' (lines 142-143). The suspect's later confession to the crime retroactively renders his response 'no I don't' (line 144) as a lie.

Extract 1 – Someone tall

139.	Pl		>wh↑at it i:s< (0.4) >↑i've had a< repo:rt from monolo vid↓eo, (2.9)
140.			that two: videos, namely <sa:dfilm and funnyfilm,> (0.6) >↓and a<
141.			computer g console ga:me (.) fungame two? (0.6) were hired (1.3) on
142.			the twe:nty si:xth of ma:rch nineteen ninety four. (0.4) do you know
143.			anything about thi:s at ↓a[ll
144.	S	→	[no i d↓on't
145.			(0.5)
146.	Pl		r[i::ght
147.	S	→	[except fo:r what edwa::rd (0.3) h↓owes the owner of the sh↓ops told
148.			me alr↓*eady=
149.	Pl		=right wha:t has he told yo:u
150.			(0.3)
151.	S	→	e:rm so:meone t↓all (1.3) *er (0.7) re:nted out these vide↓os
152.			(1.4)
153.	Pl		mhm:
154.			(0.3)
155.	S	→	e::rm (0.7) °and hasn't retu:rned ↓em°

Although the suspect's lie 'no I don't' (line 144) overlaps the officer's question, its placement after the substantive element of the question means it would not appear to distort the suspect's receipt of the officer's turn. The immediacy of the production of suspect's response could be indicative of the officer's long and multi-stage question enabling him to anticipate the question before its completion. His 'except for' (line 147) qualifies his original response; modifying it from 'no I don't' (know anything about this at all) to an account he produces across lines 147-148, 151 and 155. The suspect's provision of this information shows his retroactive attendance to the literal meaning of the officer's question. The tag element of the question 'at all' (line 143) facilitates a broader interpretation of the question than intended by the officer; taken literally, the officer's question is transformed into a request for any knowledge 'at all' about the event described. The suspect's subsequent accounts do not attend to the more likely gloss given the context: 'do you know who committed the crime about which you're being interviewed? Was it you?'

However, as the suspect was responsible for the crime, responding to the gloss would require him to incriminate himself. Therefore, attending to a more literal interpretation of the officer's question, although violating the maxim of relevance, enables him to preserve his position of innocence. The suspect's answer also powerfully supports this position of

innocence. By producing information given to him by the victim (whom he knows by name), the suspect is being a source of information about the culprit to the officer and is aligning himself as someone with whom the victim has discussed the culprit; therefore positioning the culprit as someone else. Additionally, although the suspect does not reveal that he is in fact the 'someone tall' (line 151) he describes, his statement is technically truthful, which means that, in addition to realigning himself as a cooperative and informative participant in the investigation, rather than a perpetrator refuting knowledge of the crime, the suspect is also able to produce a truthful utterance, avoid implicating himself and avoid lying.

In addition to attending to a literal rather than intended meaning of the question, the suspect is also likely to be offering information already known by the officer. However, in his next turn (line 149) the officer's probe question signals the suspect's response as potentially relevant rather than troublesome. This is also evidenced by the officer's minimal response (line 153), which prompts the suspect to continue his account, and the officer's later orientation to the suspect's description (line 290, Extract 3). The unhelpful nature of the response is revealed later, where, after producing a similar tag question, the officer makes an explicit attempt to divert the suspect from producing this type of response again (lines 637/639, Extract 7).

Extract 2

The officer produces two statements, to which the suspect produces minimal responses, and a question that takes an explicit approach to establishing whether the suspect had committed the crime (line 260). Although the statement-statement-question format is similar to Extract 1, the question directly addresses whether the suspect had produced the identification required to hire the videos, whereas his question in Extract 1 (lines 142-143) had asked whether the suspect had any knowledge of them being hired. The suspect lies on line 261, which, after a pause on line 262, prompts the officer to seek an alternative construction of events that could explain the evidence to the contrary.

As the suspect is responding to a hypothetical question, his response 'no idea' (line 266) is technically not a lie. Unlike Extract 1, the suspect doesn't produce suggestions, although any he produces here as to who it 'would be' would constitute a lie. This suggests that tangential information might only be produced as an opportunity to produce truthful talk, perhaps as a respite from lying, and also used to perform second order objectives which support the position of innocence. The suspect does not produce any further information, so after a pause on line 267 the officer supplements his earlier turn by drawing on evidence that challenges the suspect's denial; making reference to the fact that it is only the suspect who has that identification (line 268), and again on line 271, although this is overlapped by the suspect's response. The knowledge claim on line 268 makes it harder for the suspect to continue his denial (Carter, 2013). The pause on line 269 indicates the dispreferred nature of the next turn, supported by the suspect's use of 'well' and its stuttering production (Carter, 2008) (line 270). The suspect draws on divergent but supporting information which could have been usefully produced earlier in response to the question on line 260. Although violating the maxims of quantity, manner and relevance as he produces a wordy and ambiguous response that doesn't provide enough information to answer the question, it enables him to adhere to the sequential order of the interview, and also direct the discussion towards a discussion point where he can provide truthful

information, appear cooperative and avoid implicating himself.

Extract 2 – Who would it be

252.	P1		on the f↑irst of (.) <a:pril nineteen ninety f↓our> the vi:deos that i
253.			earlier stated were hired,
254.			(0.3)
255.	S		mhm
256.			(0.8)
257.	P1		°↓erm° (0.2) and <someone> produced ide:ntificati:on (0.9) for <three
258.			e:lm ro↓ad>
259.			(1.7)
260.	P1		wa:s that yours↓elf
261.	S	→	no
262.			(0.6)
263.	P1		who: would it be: (0.2) who: would have identification for three elm
264.			roa:d if it wasn't (.) yo:u
265.			(0.5)
266.	S		no ide:a
267.			(0.4)
268.	P1		be:aring in m↓ind >its just< yourself
269.			(1.1)
270.	S	→	°yeah we[ll i've had >i would- i would< i wouldn't have no:ne (.)=
271.	P1		[and you are the one who lives th↓ere
272.	S	→	=>coz i haven't (0.4) l↑ived at me mu:ms f↓or (0.9) six ye:ars,

Extract 3

The officer continues his attempts to establish the identity of the culprit, and Extract 3 opens with his summing up of the information ascertained in the interview so far – a tall man used identification from the suspect's parent's home address when hiring the items. After several turns the officer arrives at the question 'are you denying that it's yourself' (line 312).

There is a long pause on line 313 prior to the suspect's lie, despite there being a long lead-in to the officer's question as in Extract 1 and Extract 2, where the officer's direct question yielded a lie that was not delayed. The pause could be indicative of the dispreferred nature of the turn-to-come, similar to the pause on line 269 (Extract 2). In this extract it is not a knowledge claim that makes it difficult for the suspect to respond, but a question about his stance of denial, which is different from the more straightforward and easily anticipated question of whether he is the culprit (line 260, extract 2), and the implicit question in Extract 1 (lines 142-143). The suspect's response on line 314 is an affirmation of his denial, incorporating a close repeat of parts of the officer's prior turn; minimising the use of 'exclusive words' (DePaulo *et al.*, 2003) enables the suspect to avoid creating a lie with his own words and making himself vulnerable to self contradiction (Hancock *et al.*,

2008).

[ht]

Extract 3 – I've got a brother

290.	P1		[s- <so:meone who you said was quite tall,>
291.			(0.6)
.			
299.	S		=ye:ah
300.			(0.3)
.			
302.	P1		hi:red the:se videos and ga:me
303.			(0.2)
304.	S		yeah
305.			(0.4)
306.	P1		for the address of thr↑ee e:lm ro↓ad (0.2) which y↑ou >were living at<
.			
312.	P1		°a-° and >you are< (.) denyi:ng that its yourse:lf
313.			(1.0)
314.	S	→	ye:s >i am< °deny:ing ↓it°
315.			(0.3)
316.	P1		°r↓i:ght >i jus:°< (1.1) wanna know who: else it could be: >have you
317.			got any bro:thers< or anthing like that
318.	S	→	y↑eah >i've go:t a brother,<
319.			(0.2)
320.	P1		°r↓ight° >wo:uld it be hi:m<
321.	S		°no,°
322.	P1		why: >wo[uldn't h↓e<
323.	S		[°he lives ↓over downto:wn<°
324.	P1		°ri:ght°

The officer's next turn (lines 316-317) is posed in the context of querying who else could have hired the goods, similar to lines 263-264 in extract 2. The suspect responds with an answer that reveals a literal interpretation and selective answering of one part of the question ('have you got any brothers', lines 316-317). Although this violates the maxim of relevance, it enables the suspect to adhere to the turntaking structure of the interview and not only respond without lying and without implicating himself, but also to appear cooperative (albeit temporarily) whilst producing a truthful response. The officer is then compelled to draw out the relevance of the suspect's tangential response (lines 320/322) in order to satisfy the objective of his original question (line 316-317); the suspect's responses then reveal his earlier answer 'yeah I've got a brother' (line 318) as contextually irrelevant.

Extract 4

The officer starts to explore the suspect's possession of one of the stolen items. After establishing the identity of the nephew, the officer asks the suspect 'have you ever brought

him a fungame two' (line 397) in the knowledge that he has evidence that the suspect has indeed done so. The suspect's 'no' (line 399) is a lie (verified by line 896, Extract 8), which is then probed by the officer who uses a knowledge claim, in the form of a statement from the suspect's son, to challenge his denial. Rather than provide literal interpretations of the question (as in Extract 1 and Extract 3) or redirect the talk towards a different topic (as in Extract 2), the suspect overlaps the officer's turn, repeats his denial and lists the games he owns and has borrowed that are similar but not the same as the one in question. Although this response is relevant to the topic of the prior turn, it does not attend to the contradictory evidence presented by the officer and therefore violates the maxims of manner and quantity. In doing so, the suspect is again able to respond to the officer's probe but avoid implicating himself by avoiding addressing the inconsistency in his account. The suspect is able to provide a truthful and informative response whilst appearing cooperative by adhering to the sequential order of interaction.

Extract 4 – Nephew

391.	P1		°r↓ight who:'s your ne:phew°
.			
397.	P1		>have you e:ver< brought hi:m °a° fungame tw↓o
398.			(0.2)
399.	S	→	°n↓o°
400.			(0.6)
401.	P1		°°ri:ght°° whe- whe:n peter was in the:re (1.2) <he: said tha:t> (0.2)
402.			<da:ddy's brought him a fungame two:> (0.2) [°r↓ecently°
403.	S	→	[°n:o° >i've got a<
404.			fungame o:ne: an: (0.5) >i er< bo:rrowed e:r (0.3) fungame e:xtr↓a

Extract 5

Later in the interview the officer continues exploring the topic raised in Extract 4. His so-prefaced question marks his coming turn as an 'upshot' (Heritage and Watson, 1979) of the suspect's earlier denials (lines 399/403, Extract 4).

There is an exchange of affirmatives from line 479-483, where the officer seeks and receives confirmation twice from the suspect that he had not lent the game to his nephew. The 'well' the officer produces at the beginning of his next statement (line 487) indicates that his turn is interactionally dispreferred; in this turn the officer states his intention to verify the facts with the nephew, which suggests that he doesn't agree with the suspect's repeated affirmations, or is not using these elicited responses as information. The officer's statement announces a subject to be visited 'later on', and then addresses the subject in his very next turn (line 489). The unexpected nature of this question is reflected on line 492, in the suspect's delayed response, turn-initial 'e::rr', and its hesitant production (Hutchby and Wooffitt, 2008).

The suspect's response violates the maxims of quantity and manner, and, unlike all the previous extracts, he does not then go on to produce a (seemingly) cooperative or informative response, and the content of his turn (being unsure of where his young nephew, and therefore his sister lives) suggests his response is also not used (as it is in all

the previous extracts) as an opportunity to say something truthful, or directed towards a divergent topic. However, this avoidance, ambiguity and non-cooperation enabled the suspect to respond to the officer's turn and therefore maintain adherence to the turntaking sequence of the interview whilst avoiding producing the required information that would lead to his lies being revealed. The suspect's response is not topicalised by the officer, who instead overlaps it with his question 'how old is john' (line 491); interrupting the suspect before he finishes his turn, despite the implication of saying that he didn't have an 'exact' address (line 491) being that he may have, or go on to provide, an approximate one. This swift change of question may also be symptomatic of the fact that the officer's previous four probing questions after the suspect has lied each resulted in a divergent response from the suspect. This is supported by the officer's explicit attempt to draw the suspect away from entering into a similar divergent and either unhelpful or irrelevant utterance in the final extract (lines 639/641, Extract 7).

Extract 5 – Exact address

476.	P1		>so if i: was to spe:ak to< j↓ohn he would say that (0.5) you haven't
477.			lent him fungame tw↓o
478.			(0.2)
479.	S	→	yea:h
480.			(0.4)
481.	P1		ye:ah
482.			(0.2)
483.	S	→	°yeh°
484.			(0.4)
485.	P1		°r↓ight°
486.			(0.3)
487.	P1		°>well if° i get his< details later o:n °then i'll s[pea:k to h↓im°
488.	S		[yeah, sure
489.	P1		oka:y (0.2) >wh↑ereabouts< does jo:hn li:ve
490.			(0.7)
491.	S	→	e::rr i >haven-hav↓en't< (0.6) °got the exa:ct addr↓ess [but° ↓e:r
492.	P1		[how o:ld is j↓ohn
493.			(0.6)
494.	S		twelve

Extract 6

Prior to the interaction shown below, the officer summarises his thoughts on what occurred; the suspect hired the items using his own ID, and didn't return them. The suspect then provides non-committal responses to each of the officer's claims. Extract 6 begins with the officer explicitly requesting a response to his thoughts on what happened. None is forthcoming, shown in the silence on line 602, and the officer proceeds to suggest a hypothetical situation in which the suspect may have not returned the items to the store.

The suspect's laughing response on line 609 indicates a lack of alignment (Carter,

2013) with the officer's proposed story. The officer's turn 'I think you know what it's about' (line 614-615) is then an invitation to the suspect to provide his own explanation of why he kept the videos and computer game. After a long pause, the suspect issues a lie – 'no' (line 618), and continues the turn by introducing a different topic; his annoyance at being 'dragged out of bed' for the interview (line 618). Although his response violates the maxims of relevance and quantity, and doesn't appear cooperative or informative, it enables the suspect to provide a response to the officer's question (as in all extracts thus far). It also enables the suspect to avoid implicating himself as he moved swiftly on from his short, detail-sparse lie onto a divergent topic away from the crime and onto one where he could make a longer, truthful statement (assuming the suspect was indeed annoyed at being awoken early to attend the police station). On line 627 the officer voices his own annoyance; the sub context of his turn 'couple of video games and videos or whatever' and his bubbling-through laughter (Carter, 2013) indicate this annoyance is directed towards the suspect's continued denials of a minor crime involving such low-value goods.

Extract 6 - Annoying

601.	P1		>wha:t have you to< say about th↓at
602.			(0.3)
603.	P1		>a:ll it is is< (.) >i mean< (0.6) >for the sake of< two: video games
604.			and a compu:ter g↓ame, >i mean< i dunno if you forgot to return them,
605.			↓or (1.3) you've passed them o:n to somebody else, (0.6) or you've
606.			>just thought< w↓ell >you know< i'll keep the:se i'm going on holiday
607.			fairly soon,
608.			(0.3)
609.	S		((breathy)) °°h..ur h..ur h..ur°°
610.			(2.7)
611.	S		hu::r=
612.	P1		>le:ts just< get this a:ll cleared ↓u[p
613.	S		[ye[ah yeah i've you kno:w ↓i've
614.	P1		[>i thi:nk (.) i thi:nk< you
615.			know wha:t (.) i th↑ink you know what it's ab↓out
617.			(1.5)
618.	S	→	no:, [i(.)<i find it>very ann↓oying that i've been dragged out of b↓ed
619.	P1		[>it's g-<
620.	P1		↓mmm
621.	S		you kn↓ow
622.			(0.3)
623.	P1		i mean i:find it very °ann-°h..h..y-anno(hh)ying as we:ll >yo:u kno:w<
.			
627.	P1		>co:uple of< video games and (0.3) vide:os, >or whatever,<

Extract 7

In Extract 7 the officer continues to attempt to draw information from the suspect.

Following his unsuccessful attempts in extract 6 and at the beginning of Extract 7, where his statement is met with a very long silence (line 632), the officer issues a clear prompt for the suspect to respond – 'don't ya' (line 633).

The suspect's 'no' (line 635) is distorted and softened with bubbling-through laughter, indicative of the suspect's discomfort with being made vulnerable in producing a lie at this stage of the interview. This is supported with the increasing lack of responses and increasingly transparent lack of cooperation from the suspect in the final episodes of lies and deceptions in the interview (Extract 6 and Extract 7). The long pause on line 636 is indicative of the officer anticipating further detail from the suspect following his one word denial 'no' in the previous turn. When this is not forthcoming, the officer issues a prompt for more detail – 'you're saying that you don't know anything about it at all' (line 637). After a further pause in which the suspect does not respond, the officer, on lines 639/641, then quickly qualifies his question.

Extract 7 – Get it cleared up

630.	P1		°i° just wa:nna get this matter cleared u:p and i th↑ink you know a
631.			bit more abo:ut i:t tha:n what you're >letting o:n<
632.			(4.0)
633.	P1		don't ya:
634.			(0.3)
635.	S	→	n(h)o:
636.			(1.2)
637.	P1		>you're sa:ying that you< don't know a:nything about it at ↓all
638.			(0.5)
639.	P1		>apart from what you heard the [other d↓ay< >apart from what you=
640.	S	→	[oh w↓ell (.) the only thi:ng=
641.	P1		=heard< ye:sterd↓ay
642.	S	→	=apart from what you told me yesterda:y tha[t he's already caught=
643.	P1		[°r↓ight°
644.	S	→	=so:meone (0.[..h]5) taki:ng f- (0.2) vid↓eos out on my me:mbership,

He orients to the suspect's earlier response (line147, Extract 1) to a similar question he asked regarding if the suspect knew 'anything about this at all' (lines 139-143, Extract 1). This anticipation of, and attempt to deflect, the suspect from a similarly literal interpretation leading to a similarly divergent response demonstrates the officer's interpretation of the suspect's earlier divergent response as neither sought nor useful, despite never explicitly attending to this at that time. Despite these efforts, the suspect overlaps the officer's qualification to offer a repeat of information from a previous dialogue with the officer (that the victim had already caught someone using the suspect's membership, lines 642/644). The 'change of state' token 'oh' (line 640) (Heritage, 1984), suggests the officer's qualification was unexpected by the suspect; the 'well' that follows this, a marker that the statement-to-come will not align with the prior utterance (Holtgraves, 2000), suggests that he is about to produce the type of response the officer has shown an explicit preference against regardless. Similar to Extract 1, the suspect takes a broad interpretation of the

officer's prior turn; transforming it into something akin to 'tell me anything apart from what you have already told me earlier'. As in Extract 1, in deviating from discussing his involvement in the crime, the suspect violates the maxim of relevance, but in doing so he is interactionally able to avoid implicating himself, to produce something truthful and to orient himself as a source of information and as a cooperative outsider. This frame of reference was claimed by the suspect as ratified by the victim in Extract 1, and in this extract ratified by the officer himself 'apart from what *you told me* yesterday that he's already caught *someone*' (lines 642/644), with the implication that that 'someone' is an individual other than the suspect.

Extract 8 – The Truth

Extract 8 – The truth

849.	P1		i:t <c↑ould> >have been a< misunderstand↓ing (0.5) •right,• (0.3)so
850.			i'm a:sking you n↓ow, (.) i:s it a misunderstand↓ing, (0.5) ha:ve you
851.			taken those videos ↓out, (0.5) •>and<• not returned them for
852.			>what↑ever re:ason< (.) be:st known •>to<• yours↓elf (0.7) and ↑if you
853.			ha:ve are you prepared to take them b↓↓a (.) t- t- to give them b↓ack
854.			(0.4)
855.	S	→	y↓es
856.			(0.8)
857.	P1		yes wh↓at
858.			(0.4)
859.	S	→	i will take them b↓ack
.			
875.	P1		[so:(.)you to↑ok the games(.)[you to:ok the games o:ut >yo:u've been<=
876.	S	→	[ye:s i've been l↓ying [yes
877.	P1		=lyi:ng (.) but you to:ok the games o:ut (.) and you intend to ret↓urn
.			
884.	P1		a:lri:ght o:ka:y fair eno↓ough (.) but youve got (1.[1) >we've go:t=
885.	S		[((clears throat))
886.	P1		= we go:t f↑u- f↑ungame tw↓o yeah,
887.			(0.8)
888.	S	→	f↑ungame tw↓o, sa:df↓ilm •↓and•
889.			(1.2)
890.	P2		•funnyfi:lm•
891.	P1		•[funny f↓ilm•
892.	S	→	[•funny f↓ilm ye:ah
893.			(0.7)
894.	P1		right whe:re are they n↓ow
895.			(0.3)
896.	S	→	•err >le:nt th↓em< to m↓e neph↓ew•

Conclusion

This research has explored the systematic production of divergent responses to the officer's questions immediately following a lie. Patterns within the data indicate a structured preference relating to the production of deceptive or divergent responses, which are closely linked to the interactional construction of the officer's prior turn, and governed by the suspect's adherence to the turntaking structure of the police interview. Lies were short, lacked detail and used few original words (echoing DePaulo *et al.*, 2003 and Hartwig *et al.*, 2006, while deceptive responses, produced following the officer's probing into the lie produced in a prior turn, were consistently accompanied by divergent talk. This satisfies the suspect's interactional requirement for responding and also allows the longer and more detailed response required by this type of question to be performed while avoiding a detailed lie, alleviates the cognitive load associated with being required to produce a detailed response (Vrij and Granhag, 2012) and reduces the risk of self-contradiction by avoiding the production of a lie (Hancock *et al.*, 2008). The divergent talk enables the suspect to maintain adherence to the turntaking structure of the interview whilst avoiding self-implication (all extracts), and to appear cooperative (Extract 1, Extract 3, Extract 4 and Extract 7), informative (Extract 1, Extract 2, Extract 4 and Extract 7) and truthful (Extract 1, Extract 2, Extract 3, Extract 4, Extract 6 and Extract 7); these are all traits that can usefully be attributed to truth-tellers and are also consistent with the research discussed in the earlier review of divergent talk in the literature.

The suspect's orientation to the structure of turntaking is evident even when this response is a lie; the data shows that the interactional preference for responding supersedes the preference for not being untruthful. However, this does not uniformly result in the suspect producing a lie in response to a question about the crime. Conflicts between the suspect's need to protect himself from discovery when faced with probing questions from the officer, and the interactional demands of the context often lead to a forfeiting of other interactional compacts. Specifically, through preference organisation (Extract 5 and Extract 7) and maxims of conversation, in particular those governing relevance (extracts 1, 2, 3, 6 and 7), quantity (extracts 2, 4, 5 and 6) and manner (Extract 2 and Extract 4). These manifest in ambiguity, vagueness, dissociative responses and the production of irrelevant information; all of these interactional manifestations of dispreferred response types and violations of the maxims of conversation are represented in the literature discussed at the beginning of this paper as indicative of deceptive interaction.

Despite the conflicting demands on the suspect and the subsequent violations of interactional frameworks, every case presented demonstrates the suspect's adherence to the sequential order of turntaking and attribution of question turns to the officer and answer (response) turns to the suspect. This is done in an ordered way, and these can be further exploited to attain objectives in line with the question that is being asked and in accordance with their status as a (guilty) suspect engaged in the business of avoiding self-incrimination. These findings are similar to those of Wilson and Sperber (2002) who explored the adaptable linguistic styles of deceivers. This could account for the difficulties (Picornell, 2011) in finding similarities in cues to deception across contexts (and indeed even between contexts); the present research argues that combinations or bundles of interactional phenomena are flexible and drawn on by deceivers in accordance with the question and the deceiver's basic and further objectives.

Duran *et al.* (2010: 441) posit that "the sender's maintenance of both their own false

reality and the receiver's ostensible reality comes at the price of cognitive resources". The present study argues that this cost is reflected in the suspect's neglect of interactional relevance in the business of attending to responding to the officer. It is suggested that resources useful to the suspect in protecting his position of innocence, such as saying something relevant, truthful, cooperative or informative, are discarded, if need be, in order to preserve the two basic concerns of adhering to the sequential structure of turntaking and of avoiding implicating himself, regardless of the implausibility of the response this produces. This also addresses questions (for example posed by Picornell (2013), on the reasons for different response types across the verbose-short response and direct-indirect response spectra. The present research suggests these are part of deception management, employed in accordance with the strategic and interactional requirements of the deceiver and the receiver.

The "discomfort and unpleasantness of having to maintain and defend a lie to a suspicious partner" (Van Swol *et al.*, 2012: 98) is seen in the suspect's explicit referral to being annoyed in Extract 6. The repeated suspicion and challenge of the suspect's denials and versions of events also ultimately appear to exhaust the divergent response route of the suspect, resulting in a breakdown of the suspect's adherence to the sequential order of turntaking in the final two instances of lying and deception (once in Extract 6, line 601, and twice in Extract 7, lines 633 and 637) before the suspect finally confesses (Extract 8). Buller and Burgoon (1996) suggest that if the deceiver realises their lie is suspected by the receiver, then this has an effect on the deceiver's interaction; the degradation of the suspect's adherence to the structure of turntaking in Extract 6 and Extract 7 provide some evidence towards a cumulative effect of the systematic and repeated suspicion on the interactional design of the suspect.

In addition to detailing the impact of the officer's question styles on the manifestation of deceptive responses, this paper proposes an underlying interactional explanation for the differences across the literature regarding the astounding variety in form, function and frequency of deception cues. Echoing Reynolds and Rendle-Short's (2010: 12) research concerning response latency, the present research found interactional phenomena (or deception cues) were "not a random 'by-product' of deception, they are interactional resources used by participants for specific purposes".

This paper posits that what would traditionally be described in the literature as cues to deception are essentially phenomena drawn on by the suspect in enabling their production of a non-self-implicating response that can also be directed towards supporting their account in a variety of ways. The findings suggest that, rather than cues to deception, these phenomena are in fact the suspect's attempts to satisfy the often conflicting interactional requirements and their own particular objectives in the interview, in response to probing questions. The findings support a call to move away from explorations that identify, collect and use cues to deception as a way to predict and understand it. It suggests that a focus directed towards the influence of the questioner's talk on the deceiver's response would ultimately provide a more useful understanding of the manifestation of deception, by reframing it as part of interactional design rather than a collection of discrete cues drawn upon at the point of deception. This renewed interpretation of deception cues and the perceptible link between the officer's question type and the suspect's interactional design has clear implications for the direction of future research into deception in this context. The observations made here have the potential to be used in evaluating interactions where

deception is suspected but not admitted, and could have a real and practical impact on interview training and practice.

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Discurso, gênero e violência: uma análise de representações públicas do crime de estupro

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Abstract. *From a critical perspective, we can say that discourse shapes and defines social life (Fairclough, 1992), that is, discourse not only reflects and represents society, it also helps to signify, build and modify what we understand as 'reality'. One of the effects of the constitutive nature of discourse can be seen in the creation and transformation of social identities. Based on the theoretical frameworks of critical discourse analysis and gender studies, in this article I discuss how two dominant public discourses (media discourse and legal discourse) represent and construct rape – a social event structured around/by rigid and unequal relations of power and gender – and its main participants, the rapist and the victim. I also discuss the impact of these discursive representations on the police and on the legal treatment given to perpetrators and victims of rape, as well as on the way women conceive crimes of sexual violence, sexuality and their own identities.*

Keywords: *Legal discourse, media, gender, representations, rape.*

Resumo. *Partindo de uma perspectiva discursiva crítica, podemos dizer que o discurso constrói o social (Fairclough, 1992), isto é, o discurso não só reflete e representa a sociedade, mas também a significa, constrói e modifica. Um dos efeitos constitutivos do discurso pode ser visto na criação e modificação de identidades sociais. Com base nas perspectivas teóricas da análise crítica do discurso e dos estudos de gênero, neste artigo discuto como dois discursos públicos (da mídia e da lei) representam o estupro, um evento social fortemente estruturado por relações de gênero e de poder, e seus principais participantes (estupradores e vítimas). Discuto também o impacto que essas representações discursivas têm sobre o tratamento policial e jurídico dado a perpetradores e vítimas, e sobre a forma como as mulheres concebem os crimes de violência sexual, a sexualidade e suas próprias identidades.*

Palavras-chave: *Discurso jurídico, discurso da mídia, representação, gênero, estupro.*

Introdução

Partindo de uma perspectiva discursiva crítica, podemos dizer que "o discurso constrói o social" (Fairclough, 1992: 64), isto é, o discurso não só reflete e representa a sociedade, mas

também a significa, constrói e modifica. E um dos efeitos constitutivos do discurso pode ser visto na criação e modificação de identidades sociais.

Distintas experiências sociais e distintas posições histórico-culturais influenciam profundamente as formas individuais de ser/estar, agir e pensar. Em função desse entrelaçamento de posições subjetivas, histórias pessoais e entornos sócio-históricos na criação e performance das identidades, pesquisadores em várias áreas das ciências sociais vêm utilizando a noção da "construção social dos sujeitos". Kress (1989), por exemplo, argumenta que o termo "sujeito", proveniente da psicanálise, aliado à metáfora da "construção", gera um construto bastante apropriado para discutir a formação social dos sujeitos. Além de abordar os indivíduos a partir de uma perspectiva social, a noção de "sujeitos construídos" traz à tona a presença de relações de poder na sociedade, e consequentemente no discurso (Kress, 1989), e as relações de poder são particularmente importantes quando pensamos na construção de identidades (e relações) de gênero, um processo que depende da linguagem, de sistemas de valores e de relações sociais. Posto que os sistemas de valores e as relações sociais operam basicamente através da linguagem, essas três fontes da subjetividade estão intimamente ligadas. Em resumo, a linguagem limita e restringe o que podemos ser, o que podemos dizer e no que podemos acreditar (Lees, 1997).

Com base nas perspectivas teóricas da análise crítica do discurso e dos estudos de gênero, neste artigo discuto como dois discursos públicos (da mídia e da lei) representam um evento social fortemente estruturado por relações de gênero e de poder, o estupro, e seus principais participantes (estupradores e vítimas). Discuto também o impacto que essas representações discursivas têm sobre o tratamento policial e jurídico dado a perpetradores e vítimas, e sobre a forma como as mulheres concebem os crimes de violência sexual, a sexualidade e suas próprias identidades.

Violência de gênero, estupro e identidades femininas

Representações públicas do estupro e índices de denúncias e condenações: algumas correlações

Desde os anos 1970, muito tem sido pesquisado e publicado sobre o estupro, basicamente em torno de três grandes áreas: as necessidades das vítimas, as limitações e inadequações do tratamento oficial dado às vítimas e a modificação/criação de leis sobre o estupro e outros crimes sexuais (Adler, 1987; Smart, 1985; Ehrlich, 2001; Araújo, 2003).

De acordo com Adler, uma pesquisadora que investigou a forma como os crimes de estupro eram julgados pelo sistema jurídico britânico nos anos 1980, a sociedade ocidental adota uma atitude ambígua em relação às vitimas de estupro. Por um lado, o estupro é reconhecido como um crime sério e há uma crescente conscientização de que suas vítimas são tratadas de forma inadequada pelas instituições da lei e da ordem. Por outro lado, a sociedade em geral (incluindo o sistema jurídico criminal) continua tolerando a violência de gênero e, apesar de mudanças superficiais nos discursos da mídia e da lei, por exemplo, noções preconcebidas, estereótipos e mitos sexuais permanecem em circulação. As mensagens ambíguas, contraditórias e confusas transmitidas pelos discursos públicos sobre os crimes sexuais têm consequências negativas de longo alcance, dentre elas o baixo índice de denúncias de estupros e outros crimes sexuais.

Pesquisas realizadas em países como a Inglaterra, os Estados Unidos e o Brasil indicam que o estupro é um dos crimes com baixo índice de denúncias e de condenações (Adler,

1987; Temkin, 1987; Matoesian, 1993; Sampson, 1994; Edwards, 1996; Lees, 1997; Figueiredo, 2000).[1] Como outros crimes sexuais (e.g. incesto e assédio sexual), o estupro ainda é cercado por uma aura de sigilo, provavelmente por envolver, do ponto de vista da vítima, sentimentos como vergonha, culpa, medo e dor (medo do tratamento policial e jurídico, da exposição pública, da sanção social e da perda de status). Tradicionalmente, as mulheres são ensinadas a calar sobre a violência sexual e a lidar com a vergonha e a dor em silêncio, e esse treinamento social é alcançado, em parte, através dos discursos que cercam, representam e constroem os crimes sexuais. Ao internalizarem valores e papéis estereotípicos femininos em circulação em discursos públicos e privados – como a passividade, a submissão, o cuidado dos demais, a adaptação às necessidades masculinas, a solicitude – as mulheres são também treinadas a muitas vezes ceder ao sexo quando não desejam e/ou a silenciar sobre a violência ocorrida (Kitizinger, 1999).

Tanto o tratamento policial quanto o judicial dado às mulheres que denunciam o estupro revela a presença de sexismo, discriminação e estereótipos sobre homens, mulheres e relações de gênero (Hall, 1985; Edwards, 1996; Lees, 1997; Coates e Wade, 2004). Longe de ser inócua, essa parcialidade baseada na diferença sexual exerce grande influência sobre o índice de denúncias, de julgamentos e de condenações por estupro. Ainda assim, os mesmos preconceitos, mitos e estereótipos que sustentam e justificam as práticas sociais e os procedimentos policiais e jurídicos relativos ao estupro são, com frequência, refletidos, incorporados e recontextualizados nas sentenças em casos de estupro.

Uma das questões envolvidas num julgamento de estupro é a da violência de gênero, que atingiu proporções epidêmicas na modernidade tardia (cf. Matoesian, 1993; Bergen, 1996; Lees, 1997; Figueiredo, 2000; Grossi e Teixeira, 2000; Rovinski, 2000; Garcia *et al.*, 2013). Como ilustração da dimensão desse tipo específico de violência, estima-se que no período de 2001 a 2011 ocorreram mais de 50 mil feminicídios no Brasil, ou seja, "mortes de mulheres por conflito de gênero", especialmente em casos de agressão perpetrada por parceiros íntimos, o que equivale a, aproximadamente, 5.000 mortes por ano. Grande parte destes óbitos foi decorrente de violência doméstica e familiar contra a mulher, uma vez que aproximadamente um terço deles teve lugar no domicílio da vítima (Garcia *et al.*, 2013).

Entretanto, apesar do potencial de letalidade da violência, na contemporaneidade passamos a ver diferentes formas de agressão e abuso como algo bastante comum, quase parte de nossas vidas diárias, seja através da cobertura midiática, da indústria de entretenimento (e.g. filmes, músicas, obras de arte), ou mesmo através de nosso contato pessoal com a violência em áreas urbanas. A naturalização e trivialização da violência é um processo em

[1] De acordo com o *National Crime Survey*, um estudo realizado pelo Ministério do Interior britânico em meados dos anos 2000, o percentual de estupros registrados que resultaram em condenações caiu a um nível sem precedentes no Reino Unido. O número de denúncias de estupros está subindo – mas somente 5.6% das 11.766 denúncias feitas em 2004 levaram à condenação do estuprador. O número de denúncias subiu de 6.281 em 1997 para 8.990 em 2003 e 11.766 em 2004, o que significa um aumento de 82%. Entretanto, o grupo *Women Against Rape* acredita que o aumento das estatísticas deve-se mais ao fato de que mais mulheres estão dispostas a denunciar um estupro, do que a um número maior de mulheres estarem sendo atacadas. Ruth Hall, do *Women Against Rape*, continua cética quanto à qualidade do tratamento que as mulheres que denunciam um estupro recebem do sistema policial e judiciário. Das 11.766 denúncias de estupro feitas em 2004 no Reino Unido, somente 655 levaram a condenações, 258 como resultado dos réus terem se declarado culpados. Somente 14% dos casos investigados foram levados a julgamento. Segundo Hall, o índice de condenações por estupro ainda é de somente 7% no Reino Unido: "Assim, não faz nenhuma diferença quantas mulheres denunciam, isso não significa que um número maior de homens está sendo condenado" (www.news.bbc.co.uk – coletado em 25 de fevereiro de 2005).

grande parte discursivo; os crimes sexuais, por exemplo, são descritos, discutidos e explorados quase que diariamente pelos discursos da mídia, do entretenimento, da religião, da ciência e da lei. Nas palavras de Sampson, a cobertura pública dos crimes sexuais alçou esse tipo de crime "do campo do extraordinário para o campo do comum" (1994: 43).

De um ponto de vista sociológico, podemos dizer que os problemas sociais como a violência não são apenas reflexos de condições objetivas, eles são também socialmente definidos. Essa definição determina a natureza do problema, como ele deve ser entendido e o que deve ser feito a respeito (Bergen, 1996). Se aplicarmos essa noção a uma veia linguística, podemos dizer que a construção discursiva de um problema como a violência contra a mulher, seja pela mídia, pela lei ou pela família, exerce uma forte influência na forma como esse tipo de violência é visto e como agressores e vítimas são tratados.

De um ponto de vista feminista, outro fator complicador, além da trivialização social e discursiva da violência de gênero, é o fato de "violência doméstica" e "estupro marital" serem adições linguísticas recentes.[2] O resultado é que, "historicamente [as mulheres] não dispõem de uma definição social que lhes permita ver o abuso como algo mais do que um problema pessoal" (Bergen, 1996: 40).[3] A normalização e banalização de fenômenos sociais violentos como o estupro levam inúmeras mulheres a encarar a violência sofrida como algo sem importância ou ocorrido por sua própria culpa, e a acreditar que não devem fazer "tempestade em copo d'água". Isso foi o que Hall observou durante seu contato com mulheres vítimas de abusos sexuais atendidas no centro de apoio WAR (Women Against Rape), na região central de Londres. Segundo a autora (1985: 23):[4]

> A visão feminina do que aconteceu conosco, e de quem é responsável, é determinada pelo que os outros vão pensar e por como nosso caso seria visto num tribunal. Se tivermos sido estupradas em condições consideradas 'duvidosas', ou se não foi utilizada força física, ou se o estuprador era um amigo, um namorado, é difícil desafiar a noção de que não temos nenhum direito de reclamar.

Abaixo apresento alguns depoimentos, extraídos da literatura consultada, de mulheres vítimas de estupro que tiveram dificuldade em ver suas experiências como "estupro":

Estupro depois de um encontro romântico

– "Eu passei por um bom período, você sabe, 'eu não deveria ter usado aquele top', você sabe, 'eu não deveria ter deixado ele me beijar', 'eu não deveria ter feito isso', 'eu não deveria ter feito aquilo" (Wood e Rennie, 1994: 132).

[2] Até os anos 1990, por exemplo, o sistema jurídico criminal britânico não considerava a existência de formas de sexo não consensual no casamento. A partir de 1991 o estupro marital tornou-se um crime na Inglaterra, e alguns maridos e ex-maridos foram acusados, julgados e condenados por estuprarem as esposas, embora ainda recebam penas menores do que estupradores desconhecidos (Figueiredo, 2000).

[3] Numa pesquisa com vítimas de estupro marital, Bergen (1996) observou que mulheres mais velhas (e também muitas jovens) tinham grande dificuldade em identificar suas experiências como estupro, por verem o sexo como parte de suas obrigações, uma forma de comportamento esperado de uma "boa esposa". Um estudo realizado na região de Los Angeles nos anos 1980 identificou várias circunstâncias nas quais o sexo forçado era considerado, tanto por homens quando por mulheres, como legítimo (Goodchilds *et al.*, 1988, apud Matoesian, 1993).

[4] Todas as traduções encontradas nesse artigo são de minha autoria.

– "Eu não deveria ter ido para a casa dele naquela noite. Eu não deveria, você sabe, 2:30 da madrugada, eu deveria saber que o cara estava bêbado" (Wood e Rennie, 1994: 132).

Estupro marital

– "Sempre me disseram que um marido não pode estuprar sua esposa, e foi por isso que eu levei tanto tempo para me dar conta do que estava acontecendo comigo. Isso me fez sentir muito isolada de certa forma, por exemplo, não poder falar sobre isso [o estupro] com ninguém – como você pode falar sobre algo que supostamente não existe [estupro marital]?" (Hall, 1985: 91).

– "Solidão e desespero – eu acabava internalizando o que ele me dizia, que eu não era razoável, era frígida, mesquinha, etc." (Hall, 1985: 95).

– "Eu não uso essa palavra [estupro] porque sou casada. Eu ouço na TV, e parece engraçado. Ele era meu marido, por isso não vejo a coisa como estupro, a não ser que ele me batesse durante o ato, ou me ferisse. Acho engraçado chamar isso de estupro." (Bergen, 1996: 48).

Mitologias de gênero e suas implicações no discurso judiciário

Além de circular em vários discursos sociais públicos e privados, esse leque de mitos, estereótipos e noções ideológicas sobre sexualidade e relações de gênero foi incorporado à legislação e à jurisprudência, assim como às práticas discursivas dos operadores do Direito (advogados, promotores, juízes, etc.). Há uma via de mão dupla ligando as práticas discursivas jurídicas e as práticas sociais mais amplas: visões culturais e ideológicas das relações de gênero influenciam as interações e o discurso judicial, que, por sua vez, constroem e reforçam noções do senso comum sobre as formas "corretas" e "aceitáveis" de comportamento social e sexual (Edwards, 1996).

Nos julgamentos de estupro, são profissionais em posições privilegiadas e de muito poder, como psicólogos, psiquiatras, advogados e juízes, quem avaliam os crimes sexuais. Resta-nos questionar, portanto, se esses profissionais de fato protegem os direitos dos membros menos poderosos da sociedade, como as vítimas desses crimes.

Realizando pesquisas sobre as representações linguísticas da violência sexual em julgamentos canadenses desde os anos 1990, Coates (1996) tem observado que o grau de responsabilidade atribuído a um agressor sexual depende apenas parcialmente de suas ações. Na verdade, a distribuição legal de culpa está diretamente ligada à forma como as ações do agressor e da vítima são representadas linguisticamente nos textos jurídicos, que por sua vez refletem, reproduzem e reconstroem outros discursos profissionais e públicos sobre a violência de gênero.

Uma das noções mais prejudiciais ainda vigente nos julgamentos e decisões judiciais é a de que o estupro é geralmente motivado pelas necessidades sexuais do agressor, muitas vezes somadas a precipitação da vítima, como ilustram as exemplos abaixo, retirados de acórdãos brasileiros e britânicos:

- Alega o réu, em síntese, que "há época dos fatos era dependente de bebidas alcoólicas" e que *"somado às provocações da vítima", não pode conter sua libido*

[Tribunal de Justiça de Santa Catarina (2001) – tio condenado por atentado violento ao pudor contra sobrinha de 14 anos – sentença de 3 anos e 3 meses aumentada para 8 anos].

- Assim, não se pode por em dúvida os fatos contados pela ofendida, mesmo porque percebe-se que ela, além de relatar *o modus operandi de seu pai para saciar sua lascívia*, deixa transparecer o profundo sentimento de repugnância, rancor e medo que nutre pelo algoz acusado, bem característico de quem sofre este tipo de abuso **[Tribunal de Justiça de Santa Catarina (1999) – pai condenado pelo estupro de filha de 11 anos – sentença de 7½ anos de prisão em regime fechado mantida]**.

- O apelante, *com 34 anos e um péssimo histórico criminal*, mas sem condenações por crimes sexuais, repetidamente estuprou duas mulheres, depois de ameaça-las com uma faca, uma delas a noite na casa da vitima, e a outra cinco dias depois numa garagem subterrânea para onde ele a arrastou pelo pescoço.

- [O advogado de defesa] argumenta que os tribunais decidiram no passado que o *fato de que o apelante estará consideravelmente mais velho depois de uma sentença de prisão deve ser levado em consideração, porque neste tipo de caso é provável que o apetite sexual diminua com a passagem dos anos* **[Dempster (1987) 85 Cr.App.R. 176 – Estupro cometido por um estranho – apelação indeferida – sentença de prisão perpétua mantida]**.

- Dezessete anos de prisão, especificados de acordo com a Lei de Justiça Criminal de 1991, somados a uma sentença de prisão perpétua, para um homem condenado por uma série de estupros, reduzidos para 10 anos [. . .] Decide-se: [. . .] o sentenciador não dispunha de evidências médicas sobre o apelante, mas deduziu, a partir do número e da gravidade dos crimes cometidos pelo apelante, que o mesmo representava um perigo para o público em geral.

- Ao prolatar sua decisão, o M.M. juiz declarou o seguinte: "David Razzaque, você é *um homem perigoso.* Você representa um *perigo para as mulheres uma vez que você é capaz de fazer qualquer coisa para satisfazer seu apetite sexual*" **[Razzaque (1997) 1 Cr.App.R.(S.) 154 – Estupro cometido por um estranho – período para pedido de liberdade condicional reduzido de 17 para 10 anos]**.

Entretanto, como apontam Coates e Wade (2004), descrever a agressão como uma forma de satisfazer os impulsos e necessidades sexuais masculinos significa dizer que agressão sexual e relação sexual são termos sinônimos, quando na verdade trata-se de formas de interação radicalmente distintas: a primeira é um ato unilateral de violência, enquanto a segunda é uma atividade coparticipativa. Outro problema na representação da agressão sexual como resultado de impulsos e necessidades masculinas é o fato de as vítimas desses crimes serem majoritariamente mulheres, crianças ou pessoas com algum tipo de deficiência/incapacidade. Se a causa dos crimes sexuais fosse de fato o desejo masculino incontrolado e incontrolável, as vítimas não seriam apenas mulheres, crianças e incapazes, mas qualquer pessoa que estivesse por perto, inclusive homens, o que não é o caso.

Além disso, como aponta recente pesquisa de opinião realizada pelo IPEA[5] sobre a tolerância social à violência contra as mulheres, o 'apetite sexual incontrolado' dos homens é com frequência usado como justificativa e apontado como a causa da violência de gênero (Brasil, 2014: 23):

> A culpabilização da mulher pela violência sexual é ainda mais evidente na alta concordância com a ideia de que "*se as mulheres soubessem como se comportar, haveria menos estupros*" (58,5%). Por trás da afirmação, está a noção de que os homens não conseguem controlar seus apetites sexuais; então, as mulheres, que os provocam, é que deveriam saber se comportar, e não os estupradores. A violência parece surgir, aqui, também, como uma correção. A mulher merece e deve ser estuprada para aprender a se comportar. O acesso dos homens aos corpos das mulheres é livre se elas não impuserem barreiras, como se comportar e se vestir "adequadamente".

Estupro: violência de gênero e sexualidade feminina

Como pudemos ver acima, o estupro não envolve apenas sexo, mas sexo como forma de expressar poder, dominação e treinamento[6] (Adler, 1987; McLean, 1988; Rhode, 1989; Smart, 1985; Edwards, 1981, 1996; Lees, 1997). Como afirma Adler (1987: 11), o problema em ver o estupro como o resultado de desejos sexuais frustrados é que:

> Essa noção serve de base para uma série de preconceitos, tanto sobre a vítima quanto sobre o agressor. Enquanto o estupro for encarado como um ato sexual e não como um ato de agressão e hostilidade, ele continuará a ser tratado como algo predominantemente prazeroso para ambas as partes, e não como algo danoso para as mulheres.

Também compartilho da visão de pesquisadoras como Coates de que, embora inerentemente social, o comportamento violento é também unilateral ao invés de conjunto ou mútuo, uma vez que envolve ações de um indivíduo contrárias aos desejos e ao bem estar de um@ outr@. Entretanto, apesar de unilaterais, os juízes com frequência representam as agressões sexuais como atos eróticos, românticos ou afetivos. Por exemplo, Coates e Wade encontraram sentenças canadenses em que o estupro foi descrito como 'relação sexual' ou 'sexo não desejado', e contatos físicos forçados como 'carícias' (2004: 501). Como lembram os autores, o uso de uma linguagem "que descreve o comportamento violento como mútuo implica que a vítima é ao menos parcialmente culpada e inevitavelmente mascara o fato de que o comportamento violento é unilateral e de responsabilidade exclusiva do agressor" (Coates e Wade, 2004: 501).

Além de tentarem descrever a agressão como um evento erótico e prazeroso, muitos agressores tentam fugir da responsabilidade penal escamoteando a natureza deliberada de suas ações e atribuindo seu comportamento violento a forças externas (e.g. uso de álcool ou drogas). No discurso dos julgamentos de estupro, o uso de formas de atribuição

[5]IPEA: Instituto de Pesquisa Econômica Aplicada – http://www.ipea.gov.br

[6]Catherine MacKinnon discorda do ponto de vista, compartilhado por muitas teóricas feministas, de que o estupro não representa sexo e sim violência, ou seja, de que o estupro é na verdade um mecanismo de poder e controle sobre as mulheres. Ela acredita que o estupro e outras formas de violência sexual representam de fato o sexo – e as formas preferenciais de sexo – para muitos homens. Entretanto, MacKinnon enfatiza a conexão entre estupro, gênero e relações de poder. Em suas palavras, "as diferenças entre homens e mulheres escondem relações de dominação e subordinação, dinamicamente estruturadas, que sustentam essas diferenças" (Mackinnon, 1987, 1989).

que descrevem a causa da agressão sexual como não violenta está diretamente ligado a sentenças mais leves e curtas (Coates, 1996; Figueiredo, 2000).

Da perspectiva dos estudos de gênero, o estupro está enraizado na agressão e no desejo de dominação – geralmente o desejo de dominar os mais fracos e mais vulneráveis (como as crianças, por exemplo) (McLean, 1988).[7] Ao dizer que o estupro é um ato de abuso de poder, não estou afirmando que não haja um elemento sexual neste crime. O que quero dizer é que a conotação sexual dos crimes sexuais é distinta da noção de sexo compartilhada pela maioria de nós. Pensadoras e pesquisadoras feministas concordam que no núcleo do estupro estão a violência e o desejo de dominação (Mackinnon, 1983; Graycar e Morgan, 1992; Matoesian, 1993; Coates e Wade, 2004); o abuso sexual é uma arma usada pelo agressor para infligir à vítima uma camada extra de ofensa, dor e humilhação.[8]

Se pudéssemos apontar a gênese das agressões sexuais, ela provavelmente estaria na existência de posições desiguais de poder entre as pessoas (homens e mulheres, adultos e crianças, negros e brancos, ricos e pobres, etc.). McLean argumenta que, "aparentemente, é a falta de poder (em termos políticos, sociais, sexuais ou físicos) que torna certas pessoas alvos de [diferentes formas de] abuso" (McLean, 1988: 205).[9]

O discurso desempenha um importante papel no controle da sexualidade. Em sua obra "A História da Sexualidade" (1984), Foucault argumenta que as proibições, exclusões e limitações legais sobre a sexualidade estão ligadas a certas práticas discursivas. Dessa perspectiva, o controle do comportamento sexual feminino é alcançado através de proibições e regulamentações sobre a sexualidade estabelecidas por práticas discursivas médicas e jurídicas, dentre outras (Edwards, 1981: 13). A forma como as mulheres percebem o fenômeno da violência de gênero e dos crimes sexuais, por exemplo, tem um impacto direto em seu comportamento social. Estudos realizados na Inglaterra indicam que o medo da criminalidade e da violência funciona como um "toque de recolher" para as mulheres, levando-as a adotar estratégias para evitar os homens, a andar somente em locais bem iluminados e com bastante movimento, a carregar acessórios para proteção pessoal (p.ex. spray de pimenta, arma de choque), a fazer cursos de defesa pessoal, ou simplesmente a sair menos. O temor de agressões sexuais circunscreve os modos de vida, o comportamento e as atividades sociais das mulheres (Edwards, 1991).

Até os anos 1980, era comum encontrar no discurso jurídico britânico exemplos de críticas às mulheres por terem saído sozinhas, por terem um passado sexual "promíscuo", por pedirem carona, por vestirem-se de forma provocativa, e até mesmo por morarem

[7] As explicações teóricas recentes sobre os crimes sexuais dividem-se basicamente em três escolas: a *sociológica*, que explica a ocorrência de crimes sexuais (em especial o estupro) através do funcionamento de relações de poder e de gênero na sociedade; a *biológica*, que se baseia em teorias evolutivas darwinianas ou na influência hormonal sobre o comportamento; e a *psicológica*, que liga os crimes sexuais à estrutura psicológica dos indivíduos (Sampson, 1994: 6–7). O discurso judicial apresenta traços tanto da teoria biológica quanta da psicológica em suas interpretações do estupro (Figueiredo, 2000).

[8] Devido ao seu potencial de dominação e humilhação, o estupro vem sendo usado, de forma sistemática, como arma de guerra em conflitos civis em regiões como a ex-Iugoslávia, em vários países africanos, e em outras partes do mundo onde diferentes grupos étnicos e/ou religiosos lutam pelo poder.

[9] Na África do Sul, por exemplo, houve um aumento considerável no número de estupros, no final dos anos 1990 (mais de um milhão de vitimas por ano). Carol Bower, diretora de um centro de proteção e apoio a vítimas de estupro na Cidade do Cabo, acredita haver uma conexão entre o *apartheid*, o colonialismo e o aumento da violência de gênero. Em sua opinião, muitos homens sul-africanos sentem que podem recuperar o poder político e social que haviam perdido através do uso da violência física e sexual (Folha de São Paulo, 1999).

sozinhas ou dormirem seminuas (Adler, 1987)[10]. A partir dos anos 1990, essas críticas passaram a ser consideradas politicamente incorretas e deixaram de aparecer de forma aberta no discurso dos juízes. Atualmente, uma técnica avaliativa mais sutil é aplicada: os juízes de apelação, por exemplo, já não criticam as mulheres "provocativas" ou "imprudentes" que sofreram um estupro, mas abertamente elogiam e descrevem como "genuínas" aquelas vítimas que conseguem caracterizar-se como mulheres que não contribuíram para a agressão sexual sofrida: moças muito jovens (ou crianças); mulheres estupradas por estranhos, de preferência, em suas próprias casas; senhoras idosas; vítimas de estupradores psicóticos.

Em resumo, a forma como relatamos as ações dos agressores e das vítimas de crimes violentos tem implicações de longo alcance. Como afirmam Coates e Wade (2004: 503),

> Os relatos [de crimes sexuais] não são reflexos objetivos e imparciais de eventos; ao contrário, os relatos devem ser tratados como representações de eventos com distintos graus de precisão. Construtos fundamentais como a natureza do evento (e.g. violento v. sexual), a causa do evento (e.g. deliberado v. acidental), o caráter do agressor (e.g. bom v. mau) e o caráter da vítima (e.g. passiva v. ativa) são construídos dentro do relato do crime. Relatos distintos implicam tipos distintos de ação social. Por exemplo, embora os relatos "ele a beijou" e "ele forçou sua boca contra a dela" possam, à primeira vista, ser usados para descrever o mesmo ato físico, eles sugerem caracterizações muito diferentes do ato em si (e.g. afetivo v. violento) e demandam reações sociais radicalmente diversas (e.g. nenhuma intervenção v. intervenção jurídica).

A pesquisa de Coates e Wade indica que os juízes canadenses frequentemente atenuam a responsabilidade dos agressores em crimes sexuais ao retratá-los como compelidos por forças além de seu controle (e.g. álcool, apetites sexuais, patologia, emoções, experiências traumáticas), e muitas vezes reformulam suas ações como não deliberadas e não autônomas. Como consequência, os juízes produzem sentenças e recomendam programas de tratamento consistentes com essas reformulações.

O discurso jurídico sobre o estupro é caracterizado por uma grande ênfase e preocupação com a sexualidade, principalmente a sexualidade da mulher (Smart, 1989). O sistema jurídico vê o corpo feminino e suas atividades como uma área de jurisdição legal. A partir do surgimento das primeiras leis codificadas até o momento atual, os corpos das mulheres (particularmente em suas capacidades sexual e reprodutiva) têm sido objetos de regulamentação, controle e punição jurídicos (Smart, 1989). Algumas pesquisadoras na área da criminologia feminista acreditam que o discurso jurídico constrói o corpo feminino como doente, histérico e imoral. Susan Edwards (1981), por exemplo, argumenta que o discurso dos julgamentos de estupro é pleno de noções estereotipadas sobre o comportamento sexual feminino, tais como a passividade feminina, a construção das mulheres como vítimas e a culpabilidade feminina. Em outras palavras, para a cultura jurídica a sexualidade é o traço central, aquele que constrói, modela e define a identidade da mulher. Essa centralidade sexual na construção de identidades femininas é alcançada através da ênfase dada a um traço específico do comportamento da mulher (suas práticas sexuais), conferindo-lhe

[10]Uma recente pesquisa divulgada pelo Instituto de Pesquisa Econômica Aplicada (Ipea) mostra que 58,5% d@s entrevistad@s concordam totalmente (35,3%) ou parcialmente (23,2%) com a frase "Se as mulheres soubessem como se comportar, haveria menos estupros". A pesquisa ouviu 3.810 pessoas, 66,5% delas mulheres, entre maio e junho de 2013 em 212 cidades brasileiras. (Disponível em http://g1.globo.com/brasil/noticia/2014/03/para-585-comportamento-feminino-influencia-estupros-diz-pesquisa.html)

um "status central" (Liebes-Plesner, 1984). Vejamos os seguintes exemplos retirados de uma sentença de apelação britânica e de uma notícia de um jornal brasileiro sobre o resultado de um julgamento de estupro, nos quais a história sexual das vítimas foi focalizada na representação dos crimes:

– [O advogado do réu] pediu permissão ao juiz de primeiro grau para interrogar a reclamante sobre suas relações sexuais com outros homens, alegando que havia *evidência de promiscuidade*, isto é, que *ela não apenas havia tido experiências sexuais com homens com os quais não estava casada, como o havia feito indiscriminadamente*, e que esses fatos estavam relacionados à questão do consentimento.

– O promotor público se opôs ao pedido da defesa contra-argumentando que, ainda que os fatos indicassem promiscuidade por parte a reclamante, isso não era relevante para a linha de defesa de que ela teria consentido, embora pudesse ter tido alguma relevância se a defesa tivesse alegado que o réu genuinamente acreditou que ela estava consentindo. **[Uriah Samuel Brown (1988) 86 Cr.App.R. 97 – estupro cometido por um conhecido – apelação indeferida]**.

– "Por sete votos a zero, as sete mulheres que estavam compondo o Conselho de Sentença do Júri popular de Upanema . . . entenderam que o agricultor Francisco . . . *matou em legítima defesa da honra*, a doméstica Maria Irene da Conceição . . . crime ocorrido em 5 de outubro de 1994. Segundo foi apurado, a vítima vivia nos bares e, no dia do crime, estava com o agricultor, num bar localizado fora da cidade, passando a dizer que ele não era homem, ocasião em que foi morta com uma cutilada de faca-peixeira . . . Segundo informou o assessor de imprensa da prefeitura de Upanema, *a reputação da vítima era duvidosa*". **[Trecho de um artigo publicado no Diário de Natal, 21/11/1996 – GROSSI; TEIXEIRA, 2000, p. 80]**.

Quando a vítima é retratada como uma mulher de "reputação duvidosa", torna-se bastante difícil convencer os representantes da lei e os jurados de que ela não queria ter relações sexuais com o acusado, ou que o acusado comportou-se de forma incorreta.

Em casos como os ilustrados acima, os demais traços da personalidade feminina são representados como subordinados (ou auxiliares) ao traço dominante (o comportamento sexual) ou, em caso de conflito, são minimizados. O discurso jurídico sobre o estupro invoca com frequência mitos do imaginário popular sobre a mulher, tais como a boa mãe, a mulher casta, a mulher perdida, a mulher promíscua, a virgem, a esposa que perdoa, etc., criando um retrato feminino plano e unidimensional. De acordo com Liebes-Plesner (1984: 186), essa caracterização restritiva da mulher é bastante comum:

> A sociedade não consegue perceber que a personalidade de uma mulher pode combinar diferentes características. Ao invés de ser vista como dona de uma identidade complexa, capaz de incorporar tanto o amor maternal quanto a paixão, a mulher é retratada de forma unidimensional. Ou ela é boa ou má, ou maternal ou sexual, ou Madona ou prostituta, inocente e pura ou sedutora e manipuladora. Essa imagem partida está presente em todas as formas da cultura popular.

Discurso e violência vistos 'do outro lado': representações masculinas do estupro

No início deste artigo argumentei que o discurso constitui o social, ajudando a estabelecer instituições, relações sociais e identidades. Nesta seção tecerei alguns comentários sobre como as práticas discursivas levam muitos homens a enxergar a violência como algo trivial, normal, até mesmo aceitável. Referindo-se à ligação existente entre os processos de formação da identidade e a linguagem, Scollon afirma que nossa individualidade é construída com base na linguagem do mundo que nos cerca. Ele chama nossa realidade interna de "pensamentos", e aquilo que está fora de nós de "comportamento". Segundo essa perspectiva, o comportamento dos indivíduos é formado pelo processo de internalização do discurso público[11] na forma de ideias (ou "fala interna"); essa "fala interna", por sua vez, é externalizada na forma de comportamento individual (o que inclui o comportamento linguístico). Para Scollon, "o comportamento de um indivíduo resulta diretamente do discurso público através deste processo de socialização" (1997: 45–6).

Embora nem todos os homens envolvam-se com a violência ou a aprovem, nas sociedades patriarcais ocidentais contemporâneas o modelo hegemônico, ou dominante, de masculinidade é misógino e agressivo (Newburn e Stanko, 1994). Ainda assim, os discursos da lei e da moralidade teorizam a violência (incluindo aqui a violência de gênero) como algo "errado". Da perspectiva sociológica, pessoas que realizam atos definidos social ou legalmente como "errados" costumam utilizar o discurso para se apresentarem como "normais". No contexto do estupro, por exemplo, a socióloga Diana Scully (1990) investigou o "vocabulário de motivos" apresentado por estupradores americanos condenados, isto é, os recursos linguísticos utilizados por estupradores para interpretar e explicar seus atos e torná-los social e culturalmente aceitáveis.

Durante sua pesquisa, realizada com estupradores encarcerados, Scully identificou dois tipos de agressores: os que admitiam e os que negavam o ato. Os que admitiam lançavam mão de diferentes desculpas numa tentativa de explicar porque, embora seu comportamento pudesse ser definido como estupro, eles não eram estupradores. Os que negavam, por outro lado, admitiam que o estupro é geralmente inaceitável, mas argumentavam que, em seus casos particulares, existiam justificativas que tornavam seu comportamento apropriado, até mesmo correto. Scully observa que, assim "como outros indivíduos em nossa sociedade, esses homens utilizavam limites bastante estreitos para definir o tipo de comportamento que eles chamariam de estupro" (1990: 115). Os estupradores investigados por ela utilizavam a linguagem para construir suas justificativas e contavam com estereótipos bastante comuns para justificar suas ações. Nos relatos dos que negavam terem cometido estupro, por exemplo, a vítima e seu comportamento eram frequentemente descritos de forma a tornar o evento aceitável dentro das circunstâncias. Scully concluiu que o domínio de um certo vocabulário parece ser essencial para que um homem aprenda a aceitar, justificar e realizar um estupro, por exemplo, o domínio de termos pejorativos e avaliativos sobre a mulher baseados em seu comportamento social e/ou sexual (e.g. 'vadia', 'periguete', 'cachorra').

Como apontaram vários cientistas sociais, o uso estratégico da linguagem é fulcral

[11] O conceito de "discurso público" adotado neste artigo é duplo: numa perspectiva mais ampla, discurso público é aquele que produz consequências públicas; numa perspectiva mais específica e situada, discurso público é aquele que "conquistou legitimidade através de entidades institucionais e procedimentos oficiais de transmissão" (Scollon, 1997: 44).

para a aquisição e o exercício do poder, até mesmo em suas formas mais benignas (Foucault, 1980; Habermas, 1984; Fairclough, 1989). E as representações constituem uma das formas mais eficazes de usar a linguagem para construir, manter ou alcançar posições hegemônicas de poder. No contexto dos crimes violentos, por exemplo, a manipulação das representações é um dos componentes centrais da violência interpessoal e de outras formas de opressão. Com frequência, os agressores constroem representações distorcidas de suas ações de forma a angariar apoio, evitar responsabilidade, culpabilizar a vítima e esconder suas atividades (Coates e Wade, 2004).

Neste trabalho, compartilho da noção de que o estupro é, em grande parte, um comportamento adquirido pelas mesmas vias através das quais se aprende outras formas de comportamento: socialmente, através da associação direta com outros indivíduos, e indiretamente, através do contato cultural. Nessa veia, "o aprendizado inclui não apenas técnicas de comportamento, mas também uma gama de valores e crenças, como os mitos sobre o estupro, compatíveis com a agressão sexual contra as mulheres" (Scully, 1990: 59). Os estereótipos mais comuns mencionados pelos sujeitos investigados no estudo de Scully foram: i) as mulheres são sedutoras; ii) as mulheres dizem "não" quando querem dizer "sim"; iii) no final, as mulheres "relaxam e aproveitam"; iv) boas meninas não são estupradas (Scully, 1990: 102). Os extratos que se seguem, retirados de relatos de estupradores coletados por Scully (1990) e de sentenças em julgamentos de estupro, ilustram alguns desses estereótipos:

Quando o "não" é interpretado como "sim":

- "Todas as mulheres dizem 'não' quando querem dizer 'sim', mas é um 'não' social, para que elas não tenham que se sentir responsáveis mais tarde" **[relato de um homem de 34 anos que raptou e estuprou uma moça de 15 anos, sob ameaça de faca] (Scully, 1990: 104)**.

- "Mulheres que dizem não muitas vezes querem dizer sim. Não se trata simplesmente de dizer não, trata-se de como a mulher diz não, como ela demonstra e deixa isso claro. Se ela não quiser basta manter as pernas fechadas, ela não seria estuprada sem o uso de força, e haveriam marcas da forca utilizada". **[trecho dos comentários finais do juiz num caso de estupro julgado em Cambridge em 1982, no qual o acusado foi absolvido] (Pattullo, 1983: 20–21)**.

Estudos na área da Análise da Conversa (AC) indicam que tanto homens quanto mulheres possuem habilidades bastante sofisticadas para produzir e compreender recusas, incluindo aquelas que não contêm a palavra 'não'. Com base nessas pesquisas, Kitizinger (1999) argumenta que quando um homem alega não ter compreendido uma recusa feminina produzida segundo padrões culturais normativos perfeitamente reconhecíveis, essa alegação deve ser vista como uma tentativa de justificar e desculpar seu comportamento coercitivo e abusivo.

A premissa de que as mulheres não sabem dizer 'não' de forma clara implicitamente reforça a teoria da 'má comunicação', que vê o estupro ocorrido no contexto de um encontro romântico como resultado de falhas na comunicação entre os sexos: o agressor entende mal a comunicação verbal e não verbal produzida pela mulher e pensa que ela deseja ter sexo, enquanto a mulher não consegue fazer seu 'não' parecer suficientemente claro. Ou

seja, essa teoria coloca toda a responsabilidade pelo estupro nos ombros da mulher agredida e evita por completo a questão da violência de gênero (Kitizinger, 1999). O modelo da 'má comunicação' acionado em julgamentos de estupro depois de um encontro romântico é muito conveniente para os acusados, que alegam serem inocentes porque a vítima não indicou claramente sua recusa (Ehrlich, 1998).

As recusas são naturalmente difíceis do ponto de vista cultural, sendo consideradas respostas não preferidas (Kitizinger, 1999). Por isso declinar um convite ou proposta é uma interação delicada, com muita frequência feita de forma não explícita. Segundo Cameron (1995), o treinamento para aprender como dizer 'não' de forma polida faz parte de um conjunto de "práticas de higiene verbal" endereçadas maciçamente às mulheres para lhes ensinar a falar como 'damas'.

As recusas, como interações não preferidas, raramente são realizadas simplesmente dizendo não. Elas são adiadas e indiretas e seguem um padrão que costuma incluir uma pausa inicial, algum tipo de prefácio (expressões/palavras como 'Ah …', 'puxa', 'bem'), a recusa em si e um comentário paliativo, ou algum tipo de relato, que suaviza, explica, justifica, desculpa ou redefine a recusa. Nessa linha de raciocínio, podemos concluir que, da mesma forma que na produção de recusas em geral, nas propostas românticas e/ou sexuais a pausa depois de um convite, o uso de *hedges*, o uso de paliativos, ou até mesmo 'aceitações' tardias ou fracas, são perfeitamente compreensíveis como recusas (Kitizinger, 1999).

Em resumo, o que quero destacar é que, ao utilizarem estratégias polidas (pausa depois de um convite, *hedges*, paliativos, ou 'aceitações' tardias ou fracas) para recusarem sexo em interações íntimas com homens, as mulheres estão se comunicando de forma social e culturalmente eficaz. Na verdade, o que deve ser questionado e posto em dúvida em casos de crimes sexuais não é a habilidade da mulher como comunicadora, e sim a alegação do homem agressor de que não entendeu que aquela mulher estava recusando sexo.

Em resumo, os discursos públicos sobre o estupro (dentre eles o jurídico) geralmente apagam ou desconsideram o fato de que a resistência é um fenômeno endêmico: toda vez que indivíduos são tratados mal, eles resistem. Como apontam Coates e Wade (2004), uma das evidências da universalidade e relevância da resistência das vítimas talvez sejam os esforços dos agressores sexuais para esconder ou suprimir essa resistência, que pode inclusive ser reformulada e transformada em 'falta de habilidades comunicativas' (não ser capaz de dizer 'não' eficazmente), em deficiência ou em desordem. Se o agressor for bem sucedido em camuflar ou esconder a resistência da vítima, a questão de como essa resistência foi suprimida não será sequer discutida no âmbito jurídico, e a aparente falta de oposição da vítima pode se tornar o foco da avaliação judicial.

"Boas meninas não são estupradas" – ou o mito da culpabilidade feminina

– "Para ser sincero, nós [a família do agressor] sabíamos que ela era uma puta, e que se ela transasse com 1 homem ou com 50 não faria nenhuma diferença" **[declaração de um estuprador que atacou a vitima sob ameaça de faca] (Scully, 1990: 108)**.

– "O que quero dizer é que uma moça pedindo carona tarde da noite não deveria buscar a proteção da lei; ela é culpada de uma grande dose de negligência, tendo

contribuído para o crime" **[trecho de um julgamento inglês de estupro de 1982, no qual o acusado recebeu uma multa de 200 libras por estuprar uma moça de 17 anos] (Pattullo, 1983: 21)**.

– "O que o advogado de defesa tentou fazer durante o julgamento [...] foi demonstrar que a reclamante era promíscua, isto é, que ela não apenas havia tido experiências sexuais com homens com os quais não estava casada, mas que havia agido de forma casual e sem discriminação. Em todo caso, era fundamental para tal argumentação o fato de que havia uma base factual para sugerir a promiscuidade [da vítima] neste caso" **[trecho de uma decisão de apelação britânica de 1988 num caso onde a promiscuidade da vítima foi utilizada como evidência de consentimento] (The Criminal Appeal Reports, 1997)**.

Scully oferece uma explicação sociológica para a aparente insensibilidade de muitos dos estupradores que ela entrevistou em relação às suas vítimas. Ela argumenta que os estupradores têm dificuldade em se colocar no lugar da vítima e entender sua perspectiva. Essa falta de empatia está intimamente relacionada com a forma como o poder é distribuído entre os gêneros. Pessoas em posição de poder têm poucos motivos para se colocar no lugar daqueles que têm menos poder. Para os que têm menos poder, entretanto, é vital aprender a entender e antecipar o comportamento dos demais. Para os homens, por exemplo, colocar-se no lugar das mulheres, isto é, tentar ver as coisas a partir de um prisma feminino, não é essencial, enquanto que para as mulheres colocar-se no lugar dos homens "é uma estratégia de sobrevivência" (Scully, 1990: 115–6).

Comentários finais

O discurso judicial sobre o estupro ilustra o uso de padrões patriarcais que não estão restritos ao sistema jurídico e que funcionam de forma simbiótica com as práticas discursivas da sociedade em geral em relação à violência de gênero. De acordo com esses padrões patriarcais hegemônicos, o estuprador nem sempre é inteiramente responsável por seus atos e a vítima é, com frequência, chamada a compartilhar uma parte (senão toda) da culpa pelo ocorrido.

Como apontei anteriormente, somente uma pequena proporção de casos de estupro é denunciada, e um número ainda menor dos casos denunciados chega aos tribunais. Os que chegam, entretanto, ocupam um lugar simbólico na medida em que seus principais personagens, isto é, o acusado e a vítima, representam papeis sociais; o julgamento em si personifica anseios e noções culturais como a de uma "boa" sociedade (e de um sistema jurídico criminal justo e confiável), e a possibilidade de se fazer justiça em casos específicos (Bumillier, 1991). Entretanto, os julgamentos de estupro simbolizam não apenas valores socialmente desejáveis como "justiça para todos" e a "confiabilidade" do sistema jurídico, mas também noções do senso comum sobre os homens, as mulheres e suas formas de relacionamento. O discurso dos julgamentos de estupro transforma em ação social esses valores culturais, reforçando-os, ou, com menos frequência, ajudando a subvertê-los e alterá-los (Conley e O'Barr, 1998). Liebes-Plesner considera que os estereótipos relativos ao comportamento social e sexual feminino invocados durante os casos de estupro (seja pela defesa, pela promotoria, ou pelos juízes) "desempenham um papel social paralelo ao dos mitos e estórias populares, confirmando a noção de que os julgamentos funcionam

mais como lições moralizantes do que como uma forma eficiente de resolução de conflitos" (1984: 173).[12]

Essas representações desiguais não resultam necessariamente de uma posição ideológica reproduzida de forma consciente. Na verdade, o simples ato de participar de práticas discursivas naturalizadas, como as interações e representações jurídicas do estupro, direta e indiretamente reproduz injustiças sociais e impede formas efetivas de intervenção no fenômeno da violência de gênero. Afinal, o discurso não reflete uma realidade independente e pré-existente a ele. Ao contrário, "as práticas discursivas estabelecem uma relação ativa com a realidade e, de fato, mudam a realidade" (Fairclough, 1989: 37).

Em outras palavras, para que o Estado (através do Poder Judiciário, por exemplo) responda à violência de gênero, criando políticas e programas de prevenção e intervenção justos, seguros e eficazes, será preciso adotar práticas discursivas que (1) exponham a violência; (2) esclareçam a responsabilidade; (3) explicitem e valorizem as respostas e a resistência das vítimas; e (4) contestem a culpabilização e patologização das vítimas (Coates e Wade, 2004: 522).

Nos anos 1980, as demandas dos movimentos feministas brasileiros para que a violência de gênero, a violência conjugal e os 'crimes em defesa da honra' fossem identificados pelo poder público como problemas sociais graves levaram à implantação, no ano de 1985, da primeira Delegacia de Polícia especializada no atendimento a mulheres vítimas de violência, no Estado de São Paulo (Boselli, 2003). Segundo pesquisa realizada pela Secretaria Nacional de Segurança Pública, em 2003 o Brasil contava com aproximadamente 400 unidades dessas delegacias especializadas no território nacional, com pelo menos uma unidade por estado. A implantação das delegacias da mulher abriu um espaço público oficial onde as mulheres passaram a denunciar seus agressores em escala muito maior, o que promoveu certo dimensionamento e publicização da questão da violência contra a mulher no país (Scarduelli, 2006).

Entretanto, o objetivo inicial da criação da Delegacia da Mulher, a viabilização de um espaço com condições adequadas para que as mulheres pudessem denunciar a violência sofrida e receber um tratamento especializado, ainda não foi inteiramente alcançado, como aponta Scarduelli (2006: 35):

> Passado o momento de euforia inicial da criação do órgão, do qual se esperava muito, inúmeras expectativas não foram cumpridas. Em mais de dez anos de experiência policial, pude perceber um nível bastante baixo de motivação entre os policiais que desempenham suas funções na Delegacia da Mulher, bem como dos policiais das outras delegacias com relação ao trabalho da DM. É possível perceber um quadro de desencanto, ou mesmo de apatia, em relação à função social que as DMs exercem no contexto da violência contra a mulher.

Para a autora, essa desmotivação decorre, em boa parte, da falta de capacitação adequada dos agentes policiais na perspectiva de gênero, levando-os, muitas vezes, a se referirem às vítimas com expressões que as fazem sentirem-se culpadas por terem sido agredidas.

Em resumo, ao contrário de garantir os direitos femininos, em sua forma atual de funcionamento os discursos da lei e da ordem e da mídia sobre o estupro podem acentuar ainda mais o desequilíbrio de poder entre os gêneros (por exemplo, através da trivialização

[12]Sobre o papel pedagógico dos julgamentos de estupro, ver Figueiredo (2002).

da violência doméstica e reformulação de atos violentos em atos eróticos e mútuos). Um dos efeitos mais perversos dos discursos públicos sobre o estupro é seu poder de influenciar, de forma profunda, o modo como as mulheres veem a si mesmas, seus agressores e a violência a que foram expostas. Mulheres diferentes provavelmente minimizam ou silenciam a violação sofrida, especialmente quando seus casos particulares não se enquadram nos protótipos aceitos, tanto pela sociedade quanto pela lei, sobre que constitui um estupro "genuíno".[13] A própria dificuldade das mulheres em reconhecer o que viverem como estupro, acrescida de sentimentos de vergonha, de culpa e do temor do tratamento policial e jurídico, leva muitas delas a silenciar sobre os crimes sexuais.

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[13] Sobre a categorização dos casos de estupro, ver Figueiredo (2004). Sobre a categorização de estupradores e vítimas, ver Figueiredo (2000).

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Linguistic minorities in court: the exclusion of indigenous peoples in Brazil

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Abstract. *The main purpose of this study is to demonstrate how Brazilian Courts have contributed to the process of destruction of indigenous languages in Brazil. The history of Brazilian indigenous populations, just as in other countries, is a history of violence, persecution and murder. Only recently Brazil has adopted laws that would enable effective protection of the Indians and their culture.*
However, the strict interpretation of these laws, adopted by Brazilian Courts, is resulting in restrictions of the rights of the Indians, among them, the right to express themselves in their own language. This situation reached a climax in the recent Verón case, in which Indians who witnessed a homicide were prevented from testifying in their own language, because they were also able to express themselves in Portuguese. As I will demonstrate, there is scientific evidence that such ruling, if it had been enforced, would have potential to cause misunderstandings and misinterpretation of the report provided by the witnesses.
At the conclusion, I seek to demonstrate how other countries, notably Canada, Ireland and Australia, are dealing with this situation more adequately than Brazil, ensuring linguistic diversity and the protection of Indians and their culture.

Keywords: *Indians, linguistic diversity, Courts.*

Resumo. *O objetivo principal do presente estudo é demonstrar como o Poder Judiciário brasileiro vem contribuindo para o processo de destruição e inutilização das línguas indígenas no Brasil. A história das populações indígenas brasileiras, do mesmo modo que em outros países, é marcada pela violência, pela perseguição e pelo assassinato. Apenas muito recentemente o Brasil adotou normas que permitiriam a efetiva proteção dos índios e de sua integridade cultural.*
Contudo, a interpretação dessas normas, feitas pelas cortes brasileiras, tem sido marcada pelo conservadorismo que redunda na restrição de direitos dos índios, dentre os quais o direito de se expressar em seu próprio idioma. Essa situação atingiu o ápice no recente caso Verón, no qual índios que testemunharam um homicídio foram impedidos de prestar depoimento em seu próprio idioma, ao argumento de que também eram capazes de se expressar em português. Conforme se argumentará, há evidências científicas de que tal determinação judicial, caso tivesse sido cumprida, teria potencial para acarretar enganos e má-interpretação do relato fornecido.

Ao final, procura-se demonstrar como outros países, notadamente, Canadá, Irlanda e Austrália, têm tratado esse problema de modo mais adequado que o Brasil, garantindo a diversidade linguística e a proteção dos índios e de sua cultura.

***Palavras-chave**: Índios, diversidade linguística, tribunais.*

Introduction

Unlike Spanish America, the indigenous population in Brazil is small, both in numbers and in representation.[1] The current situation stems from successive processes of exclusion. After the 'discovery' of the country by Portuguese sailors, settlers had no compunction about murdering the natives, both directly and by promoting the existing intertribal conflicts. The strong religiosity of the Portuguese people, visible from the very first document about Brazil, the letter from Pero Vaz de Caminha, which referred to "the souls of the Indians to convert," was not enough to curb the greed of the colonizer. The indigenous peoples were enslaved. With the advance of colonization and the constant presence of Europeans in Brazil, the hostility between the indigenous people and the colonizers became increasingly acute, culminating in fighting and killing on a large scale. The introduction of exotic diseases, against which the Indians had no natural defenses, also contributed to the massive reduction of indigenous populations in colonized areas. Noting the elusive nature of the newcomers, who frequently did not comply with their commitments, the Indians increasingly turned against the colonizers, generating a considerable number of wars (Almeida, 2010). As the colonization process demanded the occupation of new territories, the Indians were evicted from their lands, a process that extends to the present day.

Panorama of Brazilian indigenous rights in the twentieth century

The indigenous peoples who survived in Brazil until the twentieth century could be classified, in a simplified way, into one of the following groups: a) those who were located in very sparsely populated areas, who were able to maintain their cultural roots, since the area occupied by them was not of interest to the people surrounding them; b) those who occupied areas of agricultural interest, who were expelled or had their territories greatly reduced, although several of these groups remained in those regions or near them, preserving, even if only partially, their cultural traditions; c) those who occupied areas of urban interest, who were physically and culturally decimated, in a process that has been euphemistically called "acculturation". Therefore, it is possible to say that, in general terms, the size of the indigenous communities in Brazil is inversely proportional to the economic interests of non-Indians in Indian property.

This is a curious and sad conclusion to reach, since all versions of the Brazilian Constitution[2], since 1934, have guaranteed to the indigenous peoples the ownership[3] of their

[1] According to 2010 data, 896.000 people declare themselves as Indians in Brazil. Only 8 ethnicities, however, have more than 20.000 people.

[2] As a country with little democratic tradition, Brazil has had, since its independence, 7 Constitutions, which alternated between usually shy moments of democracy and moments of frequently violent dictatorship.

[3] To be more precise, indigenous people do not have the ownership of their land, but only the exclusive tenure. The property rights are reserved for the federal government. Anyway, this is of little importance to the present discussion.

lands[4]. Therefore, it is not the lack of laws that afflicts the indigenous communities, but the lack of implementation. Even now under the current 1988 Constitution, there are many cases of murders of Indians related to land disputes.

In the 1970s, the indigenous peoples began to organize themselves politically, demanding, among other things, the guarantee of their lands. In 1973, a law came into force, which regulated the rights of indigenous peoples, receiving the name of the Indigenous Statute, number 6.001/73. This statute, however, took for granted that the Indians should be "integrated into their own national community". This means, in other words, that the Indians' rights were guaranteed in a transitional situation, as long as they remained Indians[5]. The Brazilian State goal was to abolish this condition by turning Indians into non-Indians, through the so-called "integration" process.

It is a fact that the approval of the Indian Statute in 1973 meant a move forward in its day in the protection of indigenous peoples. Nevertheless, behind declarations of harmony, culture preservation and integration, the purpose of the Act was to make Indians become non-Indians, "progressively and harmoniously". Thus, they would become part of the "national community", which was nothing more than the non-indigenous society. Even though it has brought important standards for the protection of Indians, the Indian Statute has not preserved the most important right, which is the right to continue to exist as an Indian. It did not recognize that the Indians, as such, are already part of the national community, which is pluralistic. It preferred to stimulate the phasing-out of the indigenous cultures.

It is true that the 1973 Brazilian legislator was not entirely detached from international ideas in the field of traditional communities. The International Labor Organization (ILO), which has embraced the discussion and adopted conventions in this matter, had at this time the 107 Convention still in effect, which was concerned with the protection *and integration* of indigenous and other tribal and semi-tribal populations in independent countries[6]. Although adopted by the ILO, the Convention goes beyond the issue of labor, establishing general rules about indigenous peoples. The convention called for the gradual integration of indigenous peoples in the life of their respective countries, despite the prohibition of "artificial assimilation of these populations". The integration should be oriented by the development of the dignity, social usefulness and individual initiative of the peoples. Dignity and "social utility" were at the same level of importance, demonstrating the importance of working as an element to integrate indigenous peoples. The idea behind the formula, one can argue, is simple: Indians, as Indians, are useless, but if they become workers, they will then have "social utility."

Thus, if the 1973 Brazilian law was not ahead of its time, it was not far behind. Only in 1980 does the ILO go on to discuss a new Convention to protect the right to be and the right to remain an Indian. The new version of the Convention was approved as number

[4]The constitutional text of 1934 was: "Article 129 – The tenure of indigenous lands in which indigenous peoples are found is to be respected, but the indigenous peoples do not have the right to sell them".

[5]Statute 6001/73, Art. 1º – "This act regulates the legal status of Indians or aborigines and indigenous communities, in order to preserve their culture and to integrate them progressively and harmoniously, into the national community".

[6]Article 2: 1. Governments shall have the primary responsibility for developing co-ordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries.

169 and was adopted in 1989, being ratified and adopted in Brazil by Presidential Decree 5.051 in 2004[7].

While the ILO was discussing the 169 Convention, Brazil was working to approve its first democratic constitution in over 20 years. The indigenous peoples, already a politically organized group, actively participated in the discussions. The new 1988 Constitution brought significant advances in addressing the issue, by acknowledging their social organization, languages, beliefs and traditions of the indigenous peoples, without even mentioning the possibility of integration. The 169 ILO Convention was ratified and incorporated into Brazilian law in 2004, reinforcing these rights by providing that the responsibility of governments is to protect the rights and respect the integrity of communities[8]. It is up to them to define their own development priorities, including the right to remain exactly as they are and to refuse the public policies intended for them[9].

The 169 ILO Convention largely met the wishes of the indigenous groups, demanding that the countries guarantee them the right to their traditionally occupied land, prior consultation about the public policies that affect them and the right to keep their traditions.

The problem is that, for reasons difficult to pinpoint, Brazilian courts refuse to apply the Convention. It is not an explicit refusal, or a rationally debated controversy. The Convention is simply ignored. To paint this scenario properly, in a survey of all the decisions adopted by the Brazilian federal courts[10], which address indigenous issues, while there are 1,209 decisions containing the word "Indian" only 8 contain the words "169 ILO Convention". Furthermore, not all of these eight rulings are concerned with indigenous peoples and none of them is from the Supreme Court or the Superior Court of Appeal. The situation is even worse if we focus our attention on the United Nations Declaration on the Rights of Indigenous Peoples. The 169 ILO Convention is a binding norm in Brazil but, even so, it is ignored. The United Nations Declaration, a document, in many ways, more advanced than the ILO Convention, was considered by the Supreme Court in the trial of the case "Raposa Serra do Sol" as a "soft law", and not binding on Brazil.

Therefore, Brazilian courts effectively apply the Statute of 1973 to the indigenous peoples. It is easy to find, nowadays, rulings using prejudiced expressions, such as acculturation, integration, forestry, civil incapacity etc., which were used in 1973. It is also common for judges to deny rights to Indians or indigenous peoples by simply denying them the indigenous condition. Brazilian courts have stated, more than once, that if someone can read or speak Portuguese, is able to vote or if he even knows how to ride a motorcycle, then he is not an Indian and, therefore, is not entitled to any legal benefits derived from

[7] According to the ILO, only 20 countries have ratified the 169 Convention. They are Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal, Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain and Venezuela.

[8] Article 2: 1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

[9] Article 7: 1. The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

[10] Available at http://www.jf.jus.br/juris/unificada/

this condition. In addition, it is not necessary, according to the Brazilian Judicial system, to produce any anthropological evidence for the judge to decide if someone is an Indian or not. If the judge concludes, through his own experience (or, better maybe, through his own prejudice), that the Indian is integrated into the surrounding culture, he can be treated as if he were not an Indian, by the simple use of the formula "Indian already integrated to non-indigenous society"[11].

The linguistic problem

Although the exact number of indigenous languages spoken in Brazil by the time of the arrival of the Portuguese sailors is unknown, scholars estimate around 1,200 different languages[12]. Initially, the Jesuit evangelists sought to learn the indigenous languages and convey the gospels to the Indians in their own languages.

Over time, however, the need to strengthen the colonization made Portugal try to reinforce the identity of the colonial territory and the linguistic variety was perceived as an obstacle. In 1701, the Portuguese crown recommended that priests should teach the Portuguese language to the Indians. In 1757, in the context of the reforms conducted by the Marquis of Pombal, the Indian Directory[13] was published, the first official document of the Portuguese State in which the explicit purpose of "civilizing" the Indians can be found. The Directory stated that Indians should be persuaded to work, to farm their lands, to abandon what was classified as "idleness", to trade goods they produced and to adopt many other behaviors consistent with the mores of the colonizer, particularly the ones regarding the indigenous languages, as stated in the Directory:

> It has always been the practice among all Nations which conquered new domains, to introduce their own language to the conquered peoples, because this is one of the most effective ways to banish the rustic barbarity of their ancient customs, and experience has shown that the introduction of the language of the Prince also introduces affection, reverence, and obedience to the same Prince. This prudent system, used worldwide, was not implemented by the first conquerors, who only established a language they called 'general'; this invention was truly heinous and diabolical, and deprived the Indians of all those factors that could civilize them, and they remained in barbaric subjection until today. To banish this abuse will be one of the main concerns of the Directors and their respective Settlements, to establish the use of the Portuguese language, by not consenting, in any way, that boys and girls who attend school and all those Indians who are capable of instruction in this area, use the language of their own nations, or the one called 'general', but only Portuguese, in accordance to what His Majesty has recommended in reiterated orders, which until now were not observed, to the complete spiritual and temporal ruin of the State.

This integration process has contributed enormously to the squandering of the national languages heritage. As Inês Virginia Prado Soares (2013) observes, the state apparatus was consciously used to promote monolingualism.

[11] It is possible to exemplify this situation with rulings from the Supreme Court such as HC 30113, Justice Gilson Dipp, DJ 16.11.04 and HC 25003, Justice Paulo Medina, DJ 1/12/03. The Supreme Court, ruling the HC 85198, Justice Eros Grau, J. 17.11.05, stated that the production of an anthropological evidence is not mandatory for the judge.

[12] See Rodrigues (1986)

[13] Available, in Portuguese, at http://www.nacaomestica.org/diretorio_dos_indios.htm.

Nowadays, although there is some disagreement among scholars about the distinction between indigenous languages and dialects[14], studies indicate that there are still some 274 indigenous languages in Brazil; even so it is regrettable that so many languages have been definitively lost since the beginning of colonization.

Besides the languages that are already extinct, Seki (nd) points out that currently only 25 of the surviving indigenous languages have more than five thousand speakers. According to UNESCO data, in Brazil 12 languages have recently become extinct, 45 are in serious danger of extinction, 19 in serious risk of extinction, 17 are in risk and 97 are vulnerable. This means that 190 of the 274 languages are under serious threat of disappearing in the short run.

The disregard for indigenous languages can also be observed in other situations. There are very few public policies to preserve these endangered languages, all of them with insufficient funding. Also, as Ana Valéria Leitão (1993) points out, until 1991, the Indigenous Statute, although having been adopted in 1976, with versions in English and French, had not been translated into a single indigenous language.

Brazilian legislators have not been very effective or sensitive towards this situation. Even though the 1988 Constitution granted indigenous people the right to keep their traditions (article 231), several Latin American Constitutions have clearer positions related to the protection of linguistic diversity. The Mexican Constitution, for example, guarantees the Indians the right to preserve and enrich their languages (art. 2). The Constitution of Paraguay (art. 140) considers the country as bilingual, recognizing Guarani as an official language. The Constitution of Bolivia goes further and states that all official documents shall be drawn up in at least two of the 37 languages recognized as official: Spanish and 36 distinct indigenous languages (art. 5).

Therefore, in Brazil, while the indigenous languages are protected, they at the same time are limited to their own communities, which aggravates the danger of "linguistic invasion", as the Ministry of Education has pointed out[15]:

> Another cause that explains the disappearance of indigenous languages is sociolinguistic displacement. This happens when, in situations of bilingualism, the dominant language occupies, little by little, the communicative territory of the dominated language. (...) The problem, however, is that due to social pressure against the use of indigenous languages, their speakers start using Portuguese in different environments. When this happens, for example, within the family environment, the indigenous language weakens, because it loses strength and speakers: children will grow up speaking Portuguese. Religious practices with songs and prayers "imported" are one of numerous other ports of entry through which the official language will expel the indigenous language from its traditional territories and grow within the community. These "linguistic invasions", after some time, may cause an indigenous language to disappear. It disappears because it no longer has reason to exist. It disappears because its use becomes virtually inexistent, because it no longer has important functions within the community. In general, the loss of an indigenous language occurs so rapidly that its speakers hardly even realize that it is indeed happening. It is quite common that in three generations a

[14] About this problem, see Moore (2013).

[15] National Curriculum for indigenous schools, prepared by the Ministry of Education in 1998. Available at http://www.dominiopublico.gov.br/download/texto/me002078.pdf.

> community traditionally monolingual in an indigenous language becomes bilingual (Portuguese/indigenous language) and then goes back to being monolingual again, only this time, monolingual in Portuguese.

The linguistic exclusion of indigenous peoples in the judicial system

In 2010, the UN released a report stating that a third of the population living in extreme poverty in the world, estimated at 900 million people, is composed of indigenous people. In all countries, indigenous people are in a worse socioeconomic situation than the non-indigenous population[16].

Brazil is no exception. Indigenous communities nowadays reflect the history of exploitation that pervaded their contact with the colonizers, having very limited access to education, health, sanitation or other basic amenities. In particular, the lands granted to the Indians are usually insufficient for the maintenance of their way of life and production, which are not the capitalist ones. Despite all this, what we want to highlight in this article is not the social exclusion of the indigenous peoples, but that this exclusion happens also in the Judicial system. The Brazilian Judiciary has consolidated conservative interpretations, which are prejudicial to indigenous peoples. This is unfortunate, considering the role that the Judicial system should play as the guardian of fundamental rights. Two of these forms of exclusion are related to the linguistic issue: exclusion of the indigenous identity and the prohibition to speak their own language.

Exclusion of the indigenous identity

According to the Indigenous Statute of 1973, the rights of the Indians are derived from the sole condition of being an Indian. However, the Statute considered the indigenous condition as transitory, destined to be extinct as soon as all the Indians were "progressively and harmoniously integrated to the national community". For this reason, the so-called "integrated Indians" have no rights at all. As this condition of "integration" is quite ambiguous, in every judicial decision related to indigenous rights, Brazilian Courts consider as a preliminary question whether the person concerned is or is not an Indian.

The Federal Prosecutors Office, which is constitutionally assigned as the defender of the collective rights of indigenous peoples[17], advocates that the indigenous identity must be defined according to the 169 ILO Convention, which states that "self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply". If there is any doubt about the indigenous condition, after the use of the self-identification criterion, the Federal Prosecutors Office argues that it is mandatory for the judge to require the production of an anthropological report. The anthropologist is the technically qualified professional to evaluate the cultural understanding that the Indian or the indigenous group has about its own condition and the situation submitted to the court.

[16]It is necessary to stress that the Indian is only "poor" by the parameters of good life set by the majority of capitalist society. This does not necessarily mean that, from the Indian perspective, he can be considered poorer than a non-Indian.

[17]The Prosecution Office in Brazil, both in federal and state levels, is a very unique institution. Besides its traditional role of criminal charge, the Prosecutors are also responsible for the defense of civil society's collective rights. The Prosecution Office has become, over time, the main institution in the judicial defense of the environment, the public finances, the indigenous communities, the rights of consumers, among others. Also, Prosecutors have the same status and functional prerogatives as judges.

Despite this, Brazilian Courts have decided, in a considerable number of cases, that it is possible to assign or deny someone the indigenous condition through the analysis of various elements included in the lawsuit. Among those elements is the knowledge of the Portuguese language. Here are some examples:

> Indian convicted of the crime of trafficking narcotics, illegal association and possession of a firearm. It is not necessary to conduct an anthropological examination designed to measure the degree of integration of the patient into society if the judge affirms his full liability on the basis of assessment of literacy, fluency in the Portuguese language and the level of leadership exercised in the gang, among other elements of the conviction. (Supreme Court, Habeas Corpus 85.198, Justice Eros Grau, 2005).

> It is not essential to carry out an anthropological survey, if it is clear that the defendant, despite being an Indian, is integrated into the society and habits of the civilization. If the elements of the case are sufficient to remove any question about the defendant's non-liability, such as fluency in the Portuguese language, degree of education, skills and resourcefulness to drive motorcycles and to participate in criminal activities, such as attending the meetings of traffickers, there is no need to elaborate an anthropological report. For the application of art. 56, sole paragraph, of Statute n.º 6.001/73, which is intended to protect the Indians, it is necessary to check the degree of integration of the Indian into the national community. If evidence shows, in such a case, that the defendant is integrated into society, he is not entitled to the special semi-freedom regime provided for in the Indian Statute. (Superior Court of Appeals, Habeas Corpus 200301544950, Justice Gilson Dipp, 2004).

Such cases occur in the inferior courts as well. In a ruling with only a few pages, the Justice Court of the State of Mato Grosso stated that "the indigenous person who understands and speaks perfect Portuguese, who studied up to the 5th grade, who works and has his/her working papers is properly integrated into society, therefore, subject to the ordinary laws applied to all citizens"[18]. As we can see, the degradation of indigenous traditions, including their language, caused by the surrounding society, is used to deny the indigenous peoples their own status and the rights that would stem from it. As we have demonstrated, the indigenous culture has been destroyed since the discovery of Brazil by the colonizers by means of mandatory work and cultural assimilation. The Indians have not willingly destroyed their culture. At present, the same non-indigenous society that is responsible for the destruction of the indigenous culture uses this destruction as an argument to deny rights to the indigenous peoples. Judges do not have the professional ability to determine, without the help of an anthropologist, if an Indian can or cannot understand the wrongfulness of his acts and if his indigenous background played a part in the criminal act. The simple fact that someone can speak a language or ride a motorcycle should be considered useless for such purposes.

The prohibition of indigenous languages in court: the Veron case

Another way in which Brazilian Courts have contributed to the destruction of the indigenous culture and especially the indigenous linguistic culture, is by disregarding or even forbidding the use of indigenous languages in court.

[18]Criminal Case 2010.019022-1/0000-00, Judge Dorival Moreira dos Santos, 2010.

It is not uncommon for a suspect of Indian origin to be denied the assistance of a translator during procedural acts, because of the alleged understanding of the Portuguese language. This situation has already been considered by the Supreme Court, which ruled in the following terms:

> If the "Indian can read, vote, and is integrated into the civilization, speaking Portuguese fluently" as found by the judge, the presence of an interpreter in the procedural acts is not necessary. (Habeas Corpus 79530, Justice Ilmar Galvão, 1999)

The explicit argument that denies Indians the right to translation is an appeal to the traditional theory of procedural invalidation, which provides that the annulment demands proof of harm[19]. Thus, in the case mentioned above, the Supreme Court stated that "the absence of the interpreter did not cause harm to the defendant, who understood everything and was understood by the others".

From the strict point of view of procedural theory, the argument is not false, if one could prove that the indigenous condition did not play any part in the situation on trial. The problem is that, if one reads the entire ruling, it becomes clear that the real intention is to deny the indigenous identity to the accused, without offering a detailed consideration of reality. There are many references in the decision that support this conclusion, such as "we are not facing an isolated or not integrated Indian" and "the defense merely invokes the absence of a psychological and anthropological report, without providing the slightest hint that the defendant has an incomplete mental development". It is important to stress that those words, that mistake the indigenous condition for incomplete mental development, are not the isolated words from a sole judge, but terms from the Supreme Court.

Of course, the indigenous condition has nothing to do with mental development. The anthropological report has no relation to the mental condition of the defendant, as indigenous people are not handicapped. The aim of the report is to check the understanding the Indian has about the crime that he is charged with, according to his own culture, and to determine if the indigenous condition played any part in the commission of the crime. This is an important tool to assist the court in assessing the defendant's liability.

Rulings like these are the result of two different, but closely related, prejudices: the first is that the indigenous culture is inferior to European culture and the second is that an Indian is an Indian only if he is isolated from the exterior world, i.e., only if he matches the stereotyped pre-Columbian image of an Indian, a stereotype that has remained unaltered for the last five hundred years. The only Indian accepted by the Brazilian Courts is the kind of person who would fit the folkloric description depicted in a textbook.

The prejudiced rulings adopted by the Supreme Court are reflected in the lower courts. One can highlight the recent Verón case, a murder trial conducted by a Federal Court in São Paulo.

Chief Marcos Verón, 72 years-old, was a leader of the indigenous group Guarani-Kaiowá, in the city of Dourados, Mato Grosso do Sul. In 2003, he was beaten, kidnapped and murdered by a group of four armed men, whose aim was to expel the indigenous group from what they considered to be their land[20].

[19]This theory is often referred to in French: *pas de nullité sans grief*.

[20]The situation of violence against the Guarani-Kaiowá group in Mato Grosso do Sul is neither new nor ended with the murder of chief Verón. Recently, in 2012, the group was resisting a court order that ruled they must leave their traditional lands. In this context, they said that it would be better to decree the

The man suspected of being the mastermind of the crime, a highly influential local farmer, had his trial moved to São Paulo. When it started, in 2010, the federal prosecutors requested that the Indians who had witnessed the crime could address the court in their own language, Guarani[21]. The federal judge rejected this request, pointing out that the Indians were able to express themselves in Portuguese. The Federal Prosecutor insisted, requiring that the judge, before questioning the witnesses, should ask in which language they would express themselves better, Guarani or Portuguese, and then, conduct the inquiry in the appointed language. This request was also denied.

The judge considered that all Indians who could express themselves in Portuguese should do so. The argument on which the ruling was based was an extension of the thesis from the Supreme Court, as transcribed: if someone speaks Portuguese, there is no reason to appoint a translator.

The prosecutors, then, had no option, since this decision could not be immediately appealed. They left the room, which forced the suspension of the trial. It was a very radical decision, but the only one that could preserve the linguistic rights of the group[22].

The Federal Judges Association (AJUFE) considered this an act of disrespect towards the court. AJUFE issued a strongly-worded statement in which they mentioned that "linguistic diversity may have been protected, but society certainly was not". The association said that the abandonment of the trial, on "the pretext of defending the rights of indigenous witnesses and victims to express themselves in their language," was a "disrespectful and authoritarian attitude, against the public interest and the interest of the Indians". It was, in short, "a whim of the Federal Prosecutor"[23].

The statement is, at the very least, problematic. Linguistic diversity is treated as a superfluous right, as if its defense was a total and complete absurdity. Unlike the Association, the head of the Federal Prosecution Office endorsed the attitude of the Prosecutor. The Vice-Federal Prosecutor General, Deborah Duprat, stated[24]:

> The lack of knowledge about indigenous issues in Brazilian Courts is clear in the case of the trial for the suspect of murdering the leader Marcos Veron, who was moved from Mato Grosso do Sul to São Paulo, seeking an impartial jury. The judge in the case forbade the indigenous people to express themselves in Guarani because they had responded to a simple question in Portuguese. This is the greatest example of prejudice, because speaking a language does not mean that the Indians share the same understanding and codes of conduct as the non-indigenous people. Especially in an environment that is completely different and incomprehensible to

extinction of the group. This statement was interpreted as a threat of mass suicide. The situation took momentum within the national media and there were protests from non-indigenous people in several cities, even far from the site of the conflict. Thousands of people changed their last names on Facebook to Guarani-Kaiowá. There were so many changes that Facebook forbade the name.

[21] When the right to speak their own language is intended for Indians accused of crimes, it is often seen as a delaying maneuver. In the Verón case, the right was intended for eyewitnesses who were also related to the victim. They did not have, therefore, any interest in delaying the trial.

[22] The decision to abandon the trial was made by Federal Prosecutor Vladimir Aras, whom I thank for providing the account of the events of the trial. His report is also available on his blog http://blogdovladimir.wordpress.com/2010/05/06/o-caso-veron-e-o-direito-a-diversidade-linguistica-ao-lado-das-vitimas/.

[23] The statement is available at http://www.conjur.com.br/2010-mai-12/ajufe-sai-defesa-juiza-procurador-abandonou-juri.

[24] Available at http://www.brasildefato.com.br/node/5164.

> them, such as the court, it was necessary to allow them something familiar, like their language. (...) As soon as I knew about the facts, I contacted the colleagues to congratulate them for their attitude. I think it was the right thing to do in respect for the Indians present to the trial.

After the interruption of the trial, the Federal Prosecutors issued an injunction against the decision to the Federal Court of the 3rd Region. The Court denied the injunction order, arguing simply that there is no law that obliges the judge to ask the witness in what language he expresses himself best. Also, according to the ruling, the best possible communication is the one that "enables the most perfect understanding by the receiver of the message sent". So, if the judge speaks Portuguese and the witness does too, the best communication will be in Portuguese[25].

The ruling of the Federal Court was based on formal interpretation and its arguments are grounded in common sense, without any mention of linguists or researchers of language. However, it can equally be responded to through the use of common sense: a person may know how to communicate in a language other than his native language, but he may not be able to do it with the same fluency and richness of detail. If the speaker is not able to transmit the message adequately, it is impossible to imagine that it will be "the most perfect communication" just because the communication happens in the language spoken by the receiver. One has also to take into consideration that those people witnessed a traumatic event and may not be able to talk about it clearly in a foreign language. Besides these arguments, there are also technical ones. The anthropologist Marcos Homero Ferreira Lima conducted research into the Kaiowa group, in which he stated:

> It is often said, in the border region, that Kaiowa Indians are "integrated", because they have the ability to use the Portuguese language. (...) The expert report found that the Kaiowa communicate in Portuguese as their second language. For this reason, they do not understand some communicative situations, which can lead to total incomprehension when talking to non-indigenous people. The difficulties of dialogue exacerbate if the non-indigenous individual involved in the dialogue does not know how to negotiate meanings, breaks rules of the interaction, uses vocabulary incompatible with the understanding of the Indian, maintains social distance and/or seems aggressive. Communication becomes even more difficult when the topic does not belong to the universe of understanding of the Indian, is rather abstract or is not part of his everyday life. (...) The implication is that a non-Indian must be aware of the relevant linguistic aspects that come into operation in the interaction between indigenous and non-indigenous people, speaking Portuguese. The non-observance of certain precautions potentially prevents understanding between indigenous and non-indigenous people.

The research demonstrates that the Guarani-Kaiowa Indians, even the ones who can speak Portuguese, have a variety of difficulties that can create contradictions between the idea expressed and the speaker's perception of the world. Among those difficulties, the anthropologist lists low capacity for selection and production of grammatical structures, low understanding of the multiple meanings of words, difficulty in grasping meaning from the context, low potential for nonverbal communication, especially for gestures and embarrassment when looked directly into the eyes. Regarding discursive competence, which is essential for a witness, the anthropologist states:

[25]Injunction 2010.03.00.027550-8/MS, Judge Nelton dos Santos, 2012.

> Regarding discursive competence, namely how the speaker organizes his ideas, gives coherence and cohesion to the phrases and makes the speech intelligible, one can notice some characteristics of the Kaiowa group. First, the Kaiowa hierarchize and classify the events of the world in a very particular way, differently from western culture. For this reason, their narrative does not follow the linear and cartesian scheme used by non-Indian speakers of Portuguese. Another peculiarity is that their narratives often fail to consider the prior knowledge of the listener.

Thus, there are scientific bases for the claim that the Indians should be heard in their own native language. The imposition of testimony in Portuguese has the potential to lead to misunderstandings and, therefore, to have a detrimental effect on the final ruling.

The statement of the Federal Judges Association was also mistaken in another aspect: that the Guarani-Kaiowa people did not feel disrespected by the decision of the Federal Prosecutors. On the contrary, the daughter of the murdered victim, Valdenice Verón, stated[26]:

> "I am very angry, very sad. They want to censor my language. Don't I have the right to speak, express and defend myself in my own language?" (...) In an emotional and angry testimony, Valdelice Verón regretted that people "with so much education," do not know how to respect differences, as guaranteed by law. "Where is the education of those people who can judge a people as different as us, Indians?" She concluded: "Censoring our language will end our history and our Guarani-Kaiowa people".

The end of the story is bittersweet. When the trial was rescheduled, the indigenous witnesses simply refused to speak Portuguese, forcing the use of a translator, just as the Federal Prosecutors had wanted. They had achieved, by their own persistence, the right that the Judiciary had previously denied them. Thus, against the wishes of the court, multilingualism was protected.

However, the result of the trial, although unrelated to the linguistic issue, was not good. The jury, by a majority of a single vote[27], found the defendant not guilty of the murder charge but still sentenced him for kidnapping, torture, participation in an armed gang, battery and procedural fraud, which resulted in a total sentence of twelve years in prison, a very lenient penalty considered the heinous nature of the crime.

Even so, there is no doubt that Brazilian courts should allow Indians the kind of consideration that they have in other countries. The protection of multilingualism is an obligation that Brazil has to fulfill, in respect of both its Constitution and its International commitments. The international experience reported below should inspire improvements in Brazil.

Conclusion: what we can learn from Canada, Ireland and Australia

From the foregoing, it is evident that Brazilian Courts have adopted prejudicial rulings against the indigenous peoples. With no technical background, courts decide cases related to these peoples disregarding their history, their culture their language ability and their aspirations.

There are many decisions refusing indigenous status to plaintiffs, defendants and even witnesses, with the sole purpose of denying them the (very few) benefits guaranteed by

[26] Available at http://www.adital.com.br/site/noticia_imp.asp?cod=47614&lang=PT
[27] In Brazil, juries decide by a majority opinion, not by an unanimous one, like in the US.

law. In the situation in which Indians are defendants, their claim for their rights is frequently characterized as a maneuver intended to delay the procedures.

As we have seen in the Verón case, this jurisdictional prejudice exceeded the limits of the ruling, reverberating in a statement from the Federal Judges Association. It stated that the attitude of the Federal Prosecutor, to leave the court because the Indian witnesses were not allowed to speak in their own language, was "whimsical" and "disrespectful". The Association made it very clear that it viewed the linguistic rights of the indigenous peoples as of secondary importance.

There are, therefore, two problems: the appropriate treatment of indigenous issues and the protection of linguistic minorities in Court. For each of these problems, it is possible to find examples in other countries, which demonstrate better solutions.

In the matter of the appropriate treatment of cases involving indigenous people, the Criminal Code of Canada states that the judge should consider the possibility of imposing alternative penalties, different from imprisonment[28] on indigenous people who commit crimes.

The Supreme Court of Canada has interpreted this rule very broadly in the Ipeelee case[29], stating that it contains more than a principle of criminal sentence, urging judges to use different methods to determine an appropriate sentence if the criminal is an Indian. The ruling affirms:

> The enactment of s. 718.2(e) is a specific direction by Parliament to pay particular attention to the circumstances of Aboriginal offenders during the sentencing process because those circumstances are unique and different from those of non Aboriginal offenders. To the extent that current sentencing practices do not further the objectives of deterring criminality and rehabilitating offenders, those practices must change so as to meet the needs of Aboriginal offenders and their communities. Sentencing judges, as front line workers in the criminal justice system, are in the best position to re-evaluate these criteria to ensure that they are not contributing to ongoing systemic racial discrimination. Just sanctions are those that do not operate in a discriminatory manner.

The ruling reaffirms the application of the *Gladue principles*[30], which require the judge to consider, at the time of the criminal conviction of an Indian, the systemic background that might have led him to commit the offense. These factors should include the history of colonialism and expulsion and how this history continues to be reflected in poverty, low educational levels, unemployment and high rates of alcohol and drug abuse and suicides. The judge must consider the offender's indigenous status when setting the penalty as well as the types of sanctions that are appropriate.

It is interesting to notice that the Ipeelee case involved Indians that had been repeatedly convicted of criminal offenses (long-term offenders), some of them committed with violence. They had already been punished with lighter penalties, including imprisonment. Those Indians, in Brazil, would certainly have been considered "integrated to the society" and, therefore, as having no right to criminal benefits.

[28] Art. 718.2 (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[29] R. v. Ipeelee, 2012 SCC 13, [2012] 1 S.C.R. 433.

[30] R. v. Gladue, [1999] 1 S.C.R. 688.

The Canadian Supreme Court took into consideration the indigenous peoples as they are today and as they have changed throughout history, including the pernicious influence of the surrounding society. So-called "integration" was not considered as a factor in order to deny criminal benefits, but as a reinforcement of the argument that the judge should benefit the defendants when imposing the penalty. In addition, regarding the issue of protecting Indians in judicial procedures, the Canadian experience is much more adequate than the Brazilian, as Canadian courts take into consideration the factors that contributed to the felony, even if the defendant has committed prior offenses.

Regarding the issue of protecting linguistic diversity, besides the examples of several Latin American countries already mentioned, it is appropriate to mention how the issue is dealt with in Ireland, although not in an indigenous context. All inhabitants of Ireland speak English, but a small number of them have Irish as their native language[31]. According to the Irish Times, Irish is not even among the ten most spoken languages in the courts of Ireland.

Nevertheless, being a language linked to the history of the Irish people, it is recognized by the Constitution of 1937 as the first official language of the country. Based on this provision, in 2003 the "Official Languages Act" was adopted. It guarantees every person the right to be heard, before any court, in Irish, using, if necessary, a translator[32].

Even if the party is able to speak English, it is his right to choose to speak in this language or in Irish, even if the judge himself does not speak Irish. Furthermore, if a public agency is a party in the proceedings, it has the duty to speak in the language chosen by the other party[33]. Specifically in the case of witnesses, the "Official Languages Act" states that "notwithstanding any other provision of this section, a person shall not be compelled to give evidence in a particular official language in any proceedings".

Finally, there has been a great deal of research in Australia into the communication problems of aboriginal people within the criminal justice system[34]. There is strong evidences that, although most Indigenous people in Australia speak English, their comprehension of the language is not the same as that of someone who speaks Standard Australian English. These differences can lead to misunderstandings and necessitate the presence of an interpreter who can explain to the court these peculiarities. A word-by-word translation is not enough to prevent problems in communication.

Cook points out that, as far back as 1959, the Supreme Court of the Northern Territory, in R. v. Ab-original Dulcie Dumala, noticed that Aboriginal witnesses tended to be suggestible and to answer questions in a way they thought more likely to be acceptable to the questioner Cooke (2009: 27). This early consciousness of the problem created a supportive

[31] According to Pierce (2000: 1140), the population of Irish speakers is about 20,000 to 80,000 people, all of which also speak English.

[32] 8. (1) A person may use either of the official languages in, or in any pleading in or document issuing from, any court. (2) Every court has, in any proceedings before it, the duty to ensure that any person appearing in or giving evidence before it may be heard in the official language of his or her choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language. (3) For the purposes of ensuring that no person is placed at a disadvantage as aforesaid, the court may cause such facilities to be made available, as it considers appropriate, for the simultaneous or consecutive interpretation of proceedings from one official language into the other.

[33] (4) Where the State or a public body is a party to civil proceedings before a court. (a) the State or the public body shall use in the proceedings the official language chosen by the other party (. . .).

[34] See, for example, Cooke (2009) and Cooke (2002).

context for research into the role of the interpreter and his importance in ensuring a fair trial. Nowadays, there are guidelines, issued by the Courts, to instruct judges on how to deal with such situations. Although some problems are still reported, they have mostly to do with the lack of uniformity in the guidelines or with their interpretation. There is no question about the importance of the interpreter's work. The discussion is, therefore, at a much higher level. For example, the Australian Criminal Justice has created many commissions that study the best ways of providing effective interpreters for Aboriginal people (Hale, 2011).

Linguistic diversity, therefore, is not a superfluous legal right that can be forgotten if the pragmatic circumstances make its implementation hard. Linguistic diversity is an important heritage, to be respected and cultivated by the state. Regrettably, Brazil is doing very little to preserve indigenous languages. Instead, it has actually done a great deal to marginalize them, even in spaces that are traditionally regarded as being places of tolerance and respect, such as the Courts. Brazilian judges should appoint interpreters and anthropological experts in all lawsuits involving indigenous people, in order to make sure they are being adequately comprehended. But this is not enough. As Cook points out, lawyers should be properly instructed on how to deal with these clients; yes/no questions should be avoided; judges should learn about the process of interpreting and not insist on a literal translation or on a poor expression in Portuguese (2009: 34). Conducting an appropriate communication process is essential to ensure the fairness of the judgment.

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Three stages of interpreting in Japan's criminal process

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Abstract. *There are three main stages in Japan's criminal process involving interpreters: interrogations by the Police, interviews conducted by the Public Prosecutors Office, and the criminal trial, heard either by a professional judge (or judges) alone, or together with the so-called 'lay judges.' Even though these three stages may eventually form a single judicial process, the expectations of the interpreter, as well as the interpreting techniques, vary, thus making legal interpreting in Japan a multi-faceted and demanding endeavor. This paper gives an overview of the Japanese legal interpreting process exploring the various aspects that emerge during the three stages.*

Keywords: *court interpreting, criminal process, interpreting modes, Japan, legal interpreting, police interpreting.*

Resumo. *Há três estágios principais no processo criminal envolvendo intérpretes no Japão: interrogatórios policiais, depoimentos conduzidos pelo Ministério Público e julgamentos de processos criminais, julgados por um ou mais juízes profissionais, ou em conjunto com os juízes chamados de 'lay judges'. Mesmo que estes três estágios possam, eventualmente, fazer parte de um único processo judicial, as expectativas dos intérpretes, bem como as técnicas de interpretação, variam, tornando a interpretação jurídica no Japão uma tarefa exigente, com esforço multifacetado. Este artigo oferece uma visão geral do processo de interpretação jurídica no Japão, explorando vários aspectos que emergem durante os três estágios.*

Palavras-chave: *interpretação em tribunais, processos criminais, modalidades de interpretação, Japão, interpretação jurídica, interpretação em delegacias.*

Introduction

'Legal interpreting' is a broad term that includes a vast number of different legal genres, in which interpreters play a crucial role. According to Tsuda (2008: 136), this term in Japan is applied to interpreting practiced not only in courtrooms, but also to interpreting during other stages of the penal process, which occur before, during and after the trial. Thus, interpreters find themselves working for the Police and the Public Prosecutors Office (PPO), the Bar Associations (during lawyer-client conferences), prisons and other correctional facilities, as well as the Immigration Bureau, the Ministry of Justice and other legal entities.

In other words, the term refers to interpreting in all situations in which a foreign national (or, more precisely, any person not fluent in the Japanese language) finds him- or herself a suspect, a defendant or a witness in the legal process.

Most studies of legal interpreting in Japan, however, focus on the courtroom, probably due to the fact that the trial is the only easily accessible part of the penal process. On the other hand, in some common law jurisdictions, interpreting during police interrogations (or interviews) is also a major field of research. These studies often discuss the underuse of impartial qualified interpreters (Berk-Seligson, 2000), the problem of 'verballing' (fabrication of the suspect's statement by the police), intentional or not (Gibbons, 1990; Hall, 2004), and the issue of communicating the suspects rights (Nakane, 2007).

Such analytical linguistic research, however, is highly improbable in Japan. This is because unlike in some common law jurisdictions, such as the U.K. and (some states of) Australia (Gibbons, 2003), the video- or audiorecording of police interrogations is not commonplace in Japan (it is currently at the 'experimental' stage). Further, even if they existed, such recordings would not be easily available to researchers, thus leaving them with virtually no verbatim data to base their study on. Therefore, a scholarly discussion of police interpreting in Japan can only address how the interpreting process is actually conducted, on the basis on reports and insights derived from interpreters (including the author) and the small amount of available literature, rather than on verbatim linguistic data.

One of the unique aspects of the legal interpreting practice in Japan (unique in that it is rarely mentioned in the literature about other jurisdictions) is that interpreters are also present during interviews conducted by the Public Prosecutors Office, while the suspect is (usually) held in police custody. The interpreter may be present either during a 'regular' interview, where the prosecutor listens to the suspect's side of the story, or during the so-called 'detention hearing,' which involves not only the prosecutor but also a judge, and whose purpose it is to enable the judge to decide whether or not to grant the prosecutor's request to extend the period of detention.

In the following sections differences in the interpreting practice in these three stages will be discussed focusing on how the setting impacts on the interpreter's work. First, however, the process of registering and appointing legal interpreters will be described, thus showing some striking differences between how the interpreting job is performed and managed in Japan and in some English-speaking countries.

Registering and appointing legal interpreters

The issue of the lack of an accreditation system for legal interpreters

There is no accreditation system for court interpreters and translators in Japan. This is one of the most commonly raised issues relating to interpreting in legal settings, and the need for such a system is discussed by both academics and lawyers. In an opinion submitted in 2013 to the Supreme Court of Japan by the Japan Federation of Bar Associations, implementing such a system is noted as the first condition for improving the quality of interpreting services as well as securing the defendant's human rights (Japan Federation of Bar Associations, 2013: 1).

It could be argued, however, that such accreditation systems hardly solve all the problems related to court interpreting. As Berk-Seligson demonstrates in her extensive research, even in jurisdictions with such systems, the quality and accuracy of court interpreting are far from perfect, even for a language used in the U.S. courts as frequently as

Spanish (Berk-Seligson, 1990: 5). Similar reports come from Australia, where interpreters have been found to make significant alterations to original utterances (Hale and Gibbons, 1999). The U.K., too, faces interpreting-related problems. Even though in England and Wales court interpreters are certified, their services have recently been outsourced to a commercial agency, which leads to certain problems: "the evidence emerging from the courts and the interpreting profession is that un-assessed, unqualified and inexperienced interpreters are being sent to courts where they are found to be unable to cope with the work" (Fowler, 2012: 37).

That being said, the issue of the lack of a proper mechanism to secure professional and quality interpreting in Japan is naturally a serious one. It leads to two basic questions: 1) how is the work of legal interpreters organized and managed? and, 2) how is the work of interpreters evaluated? As Tsuda (2002: 9) reports, "'[t]he High Courts maintain a List of Court Interpreters, but this listing is done by the court and no registration is required by the interpreters themselves (...) There is no standard procedure for checking the competence of court interpreters" (Tsuda, 2002: 10). Moreover, the transcript based on court recordings is only made in Japanese, therefore, there is no way of assessing how well (or how badly) the interpreter interpreted from and/or into Japanese.

Registration and appointment

Each legal institution concerned (i.e. the Police, the PPO and Courts) has their own interpreters' lists. Thus, in order to work for all of them, an aspiring interpreter needs to be "registered" on three separate lists. Further, except for the lists kept by the courts, these databases are not centrally managed, which means that if one wishes to work for the Police or the PPO in different parts of the country, they need to have their name listed in separate databases managed by the jurisdictions in question.

Naturally, authorities in different parts of Japan are in contact with one another, so gaining access to the interpreters' list from other jurisdictions is not problematic. Nevertheless, this system is a serious hurdle for interpreters, who need to be listed anew in a different jurisdiction, should they, for example, change the place of residence. Further, the need for foreign languages varies depending on the jurisdiction, and so, an interpreter who has been active in a certain part of Japan, might not even get enlisted in the new jurisdiction, should the legal authority in question deem that the demand for their language is already sufficiently provided for. Moreover, some legal entities only register interpreters who are capable of working with two or more foreign languages. In other words, such separate databases with information on interpreters seem to work for legal authorities, but not for interpreters (which may be a reason for interpreters themselves to argue for a centrally managed registration system).

How does one become a legal interpreter in Japan, then, given the situation described above? Anyone who wishes to work in the field needs to submit their resume and other documents to the legal institution they wish to work for. Afterwards, the candidate is invited to an interview, where a test in the foreign language concerned is conducted and the interviewee's motivation discussed. These tests may vary in form and complexity depending on the jurisdiction and the legal institution in question. In the author's case, the test conducted by the Police included written translation both into and from Japanese and English, whereas the one by the court consisted of only translation of a short legal text from English into Japanese. By contrast, no test at all was conducted at the PPO – the enlistment was made solely on the basis of an interview (in Japanese). The tests

and interviews are usually conducted by members of the judiciary, officers or staff of the legal institution in question, in charge of interpreting-related matters, (for example, Osaka Prefectural Police has an Interpreting Center in charge of enlisting, managing and appointing interpreters).

Naturally, foreign language proficiency diplomas or having lived in a country where the language in question is spoken can be an advantage, however, there are no clear criteria that would be decisive in the enlisting process. Should the interviewer in charge deem that the candidate is suitable for the job, their name will be registered in the database managed by the institution in question. Such interpreters are contacted (and appointed) directly by these institutions for each case involving a non-Japanese speaking suspect, defendant or witness. Since interpreters are appointed directly, there is no need for any agent to come in between, and so, they receive remuneration for their services directly from the authorities they work for. As a Survey[1] ('the Survey' hereunder) by the University of Shizuoka Court Interpreters Research Team ('USCIRT' hereunder) finds, however, lack of clear details or a basis for calculating the interpreting fees are reasons for interpreters' dissatisfaction (University of Shizuoka Court Interpreters Research Team, 2013: 54).

The choice of the language of interpreting

One of the most important issues for foreigners involved in the penal process is the choice of the right interpreting language. Naturally, appointing an interpreter in a language of which the suspect or the defendant does not possess a sufficient command, nullifies the point of having the interpreter in the first place, but in some cases this is exactly what happens. The International Covenant on Civil and Political Rights, to which Japan is a signatory, states:

> In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail **in a language which he understands** of the nature and cause of the charge against him (. . .) (emphasis added).

The highlighted wording is crucial. There are no clear criteria determining what level of proficiency would guarantee adequate comprehension of the legal discourse. Naturally, this issue is problematic mainly for two categories of subjects (or a mixture thereof): 1) those who speak rare languages, and 2) those who come from a multilingual country or background.

With regard to the first category subjects, since the authorities (the Police and the PPO) are fighting against time when conducting their investigations, finding an interpreter in the defendant's primary language, skilled enough to work in the legal setting very often proves simply impossible. Therefore, 'official languages' of the subjects' home countries or 'lingua francas,' such as English, French or Spanish, are often used during investigations and subsequent court proceedings, despite the fact that the subject's command of the language might not be very high. This is often the case for subjects of African origin (from countries such as Nigeria or Uganda), whose mother tongue (for example, Igbo, Hausa or Luganda) is usually different from the country's official language (i.e. English).

The matter of the subjects of the second group is somewhat more complex. The reasons for the erroneous choice may vary, but in many cases, they can probably be attributed

[1] 2012 Court Interpreters in Japan. Survey Report.

to what Haviland (2003) refers to as 'language ideologies.' This implies that the authorities appointing the interpreter have various fixed ideas about certain countries and languages, which impact on their choice of the interpreting language. This, of course, may happen in many jurisdictions, not just Japan. Conley and O'Barr comment on the case of a Mixtec-speaking witness analyzed by Haviland (2003), who was not sufficiently fluent in Mexico's official language – Spanish, and thus had serious problems with communicating with the District Attorney during the examination:

> What was happening here? One possible interpretation is that the district attorney was an idiot. How complicated is it to understand that there are people in Mexico who speak indigenous languages? That such languages are radically different from *all* European languages? That an interpreter who speaks Spanish does not necessarily speak every language found in every Spanish-speaking country? (1998: 152)

Of course, as Conley and O'Barr justly note, "[a] related practical issue is how much linguistic competence and sophistication courts can be expected to have" (Conley and O'Barr, 1998: 154). This can be applied to investigative authorities as well. It would be unreasonable to expect these institutions to have a vast knowledge of the ethnic and linguistic diversity of numerous countries, but, nevertheless, an erroneous choice can have serious consequences. As an interpreter working with Tagalog informs, such errors often happen with suspects and defendants from the Philippines. Even though the country has an established 'national' language ('Filipino,' which is largely based on Tagalog), it is not the first language of many Filipinos, who speak a wide variety of languages such as Cebuano or Ilocano.

Naturally, should such a subject be completely incapable of using their country's official language, communication problems would surface rapidly. The problem, however, lies with subjects, who have *some* but an *insufficient* command of the language. According to the interpreter mentioned above, the issue of an erroneously chosen language of interpreting can sometimes surface as late in the penal process as the trial itself. Consequently, this means that the subject of the process has been interrogated (or interviewed) in a language they did not have sufficient command of. This raises questions about the credibility and reliability of documents (written statements) produced by the Police and the PPO citing what the suspect 'stated' at the investigative stage.

Stage one: police interpreting

Interpreter in between but not neutral

Even though in Japan, as in other jurisdictions (Berk-Seligson, 2000), interpreting can be performed by police officers themselves (Tsuda, 2002), it is my experience as an external police interpreter, that even suspects with a fairly good (conversational) command of Japanese are usually provided with interpreting services. This might misleadingly suggest that such *external* interpreters are expected to be neutral. However, as newly registered police interpreters are informed, their job is to facilitate communication between officers and suspects during interrogations, meaning that they are to assist *the officers* (they are expected to interpret fairly and accurately, though). Therefore, everything that the suspect states during the interrogation must be rendered into Japanese. On the other hand, not all

statements by police officers are to be interpreted for the suspect (for example, the officer may ask the interpreter questions about the suspect's country or language). This does not mean that interpreters 'side' with police officers and take on an interrogative or accusatory attitude towards suspects. What it does mean, however, is that different institutions define the interpreter's role in different ways.

The police interpreters are usually seated between the interrogating officer and the suspect (and not, for example, beside the officer), thus emphasizing their not being part of the police organization. The Police are allowed 72 hours before sending the case over to the PPO. Should the prosecutor in charge decide to request the court to extend the detention period, the suspect may spend up to 20 more days (added to the original 72 hours) in custody, before any charges are pressed.

The investigation (and interrogation) continues throughout this period, during which the interpreter keeps on working under conditions that leave a lot to be desired, as interrogation rooms in Japanese police stations are usually far from spacious. The interpreter usually sits by the shorter side of the table, so that the officer and the suspect face each other. This leaves the interpreter with hardly any desk-space- there is often only enough space left on the table for the interpreter's notepad.

The main technique used during interrogations is consecutive interpreting. The officer questions the suspect and notes down their answers and then produces the suspect's written statement. This raises the question of how accurate such statements are (in other words, how much of the statement is actually the suspect's own translated words), and consequently, on the issue of 'verballing' discussed in the subsequent subsection.

Production of the written statement and the verballing issue

Since suspects' written statements taken during interrogation may later be used as evidence in court, they are of unquestionably high importance, which makes the issue of verballing a potentially serious threat. Further, as the suspect has no right to have an attorney present during the interrogation (they do, however, have the right to remain silent), the only parties present are the officer(s), the suspect and the interpreter. This is crucial, as interrogations in Japan are rarely recorded, and the written statement is often the only record of what the suspect said to the police officers.

As Gibbons reported more than twenty years ago, there was a serious issue of dubious credibility of suspect statements in the Australian state of New South Wales. Such manufactured evidence (or 'verbals') was often challenged by defense attorneys, "on the assumption that there is a distinct possibility that their client has been 'fitted up"' (Gibbons, 1990: 230). This does not mean that such misrepresentations of the suspect's statements are always made in bad faith. As Hall (2004) suggests:

> [B]ecause of the unreasonable expectations of these regulations [which require the suspect to accept the written version of their earlier interaction with the police], interviewers are placed in a position in which it is difficult for them to avoid misrepresentation of suspects (. . .). (2004: 45)

This situation seems to be similar to what is happening during suspect interrogations in Japan. After the interrogation has been finished for the day, the police officer produces a written version of the suspect's statement. Since this document is to be used as evidence in further stages of the criminal process, it must meet certain formal and linguistic requirements (as to style, register etc.). Therefore, it could be argued that the suspect's written

statement is to some extent a police-manufactured product by default (for example, in one case the author worked on, the suspect asked the interrogating officer to be allowed to write the statement himself using his own words that would be later on translated into Japanese, but was informed that such methods are unheard of). Naturally, some defense counsels try to challenge these statements in court, just like their Australian counterparts, but such claims seem to be rarely accepted by judges, since, after all, suspects have the right to refuse to sign the document, should they find that it does not represent what they stated during the interrogation.

Naturally, should such a document be presented to the suspect through 'the interpreter-filter,' some information can literally get 'lost in translation,' as no written translation of the Japanese original is made. Presentation of the statement can be done in two ways: 1) the officer reads the statement out loud in chunks and gives the interpreter time to interpret these portions consecutively, or 2) the officer simply passes the document in Japanese over to the interpreter, which they in turn sight-translate for the suspect. Should the suspect decide that (the interpreted or sight-translated version of) the written statement represents their words accurately and has no errors (in case it does, however, corrections are made), they sign the document and put their fingerprint on every page (the interpreter, too, puts their signature on the statement). Such written statements (together with other investigative documents) are then sent over to the PPO, which, too, will question the suspect and decide whether or not to indict them.

Stage two: interpreting at the public prosecutors office

Interpreting during the suspect's interview

Interviews by the PPO and the Police are conducted in a similar manner. One of the more significant differences, however, is that prosecutors have access to evidence and documents already collected by the Police (Hayakawa, 2008: 26). It is also noteworthy that unlike during the police interrogations, in the PPO interviews interpreters are expected to demonstrate a neutral attitude (Tatsumi, 2008: 118). Another difference is that, according to the author's experience as both interpreter in and observer of court hearings, recordings taken during these interviews seem to make their way to the courtroom as evidence far more frequently than the ones taken during police interrogations. This might suggest that prosecutors record their interviews more often than police officers. For example, in a trial in which the author served as an interpreter, the video of the defendant (then only a suspect) being interviewed by the prosecutor was played during the court hearing. This video included the whole unedited interview session (approximately one hour long) and was meant to demonstrate that the prosecutor did not intimidate the suspect in any way and that, consequently, the suspect's statement given to the prosecutor at the investigative stage was credible and reliable (this is because the defendant tried to recant some of the earlier statement). In the video, one could see both the interviewing prosecutor and the suspect, and hear the interpreter's voice (the interpreter's face, though, was not shown in order to conceal their identity). Such recordings are usually used by the investigative authorities to demonstrate how the interview was conducted and what the suspect stated verbatim (as these are video-recordings it would be hard to argue that the statement was 'verballed' in any way).

Before the prosecutor's interview starts, the interpreter receives a copy of 'alleged facts of crime.' Just as the name suggests, this document discusses what the interviewee is

suspected of, and the circumstances and some details of the alleged crime. The interpreter has a few minutes to go through the text or produce a prompt written translation of it, before the handcuffed suspect with a security cord tied around their waist comes escorted into the office.

The interview then begins with four people present in the room: the prosecutor, the suspect, the prosecutor's clerk and the interpreter. After confirming the suspect's identity and other basic information, the prosecutor asks the following question: 'Do you understand the [foreign language] spoken by the interpreter?' As simple as this question sounds, it has serious implications for the interview and the evidence produced. Even though lack of a clear affirmative answer should probably end the interview, unfortunately, this is not always the case. In one of the cases the author worked on, an Indian suspect replied 'more or less' in Japanese. Nevertheless, the interview continued with the interpreter using English, to which the suspect responded with a smattering mixture of English and Japanese. What was even more alarming was that the wording of the written statement produced after the interview read: 'I understand the interpreter's English *well*' (emphasis added). Unfortunately, there is not much interpreters can do in such situations, except for trying to interpret as clearly and comprehensibly as possible. One can only hope that this case was a rare exception and not the common practice.

Other aspects of interpreting for the PPO are also similar to the work for the Police. The question – answer sequence is interpreted consecutively and after the interview is completed, the written statement produced is sight-translated or interpreted consecutively and (after potential corrections) signed by the suspect.

Detention hearings: from the PPO to the courthouse and back

Should the prosecutor decide that the suspect's detention period ought to be extended (in order to secure an unobstructed investigation), they need to file a request to the court. The grounds for such requests are usually flight risk or probability that the suspect might try to conceal evidence or obstruct the investigation in other ways. The court must then decide whether or not to grant the request, based on an interpreted interview with the suspect conducted by a judge.

What this means for the interpreter is that they move between the PPO and court on the same day, accompanying the suspect and escorted by police officers. Since the questioning is conducted by two separate institutions (first the PPO and then the court), the interpreter receives remuneration from both of them. However, as the interpreter is called in and appointed by the PPO, they do not have to be registered at court as well to work during the court interview.

After the (consecutively interpreted) detention hearing, the suspect and the interpreter are escorted back to the PPO, where, after a while, the suspect is informed about the results of the procedure. Even though the total interpreting time usually amounts to less than 1 hour, the whole process takes up most of the interpreter's day, due to long waiting time in between. Should the prosecutor's request be granted and should they decide to press the charges, the case will reach the next phase in the criminal process, the trial.

Stage three: Japan's bilingual courtrooms

Interpreter impartiality

Probably nothing impacts on the power relations and defines expectations towards the interpreter as overtly as the physical setting of the courtroom itself. In other words, where

the interpreter sits defines who he or she 'works for.' As a consequence, due to different attitudes towards the interpreter's role, different jurisdictions choose different solutions to the location of the interpreter. In this respect Japan seems to have chosen an approach somewhat different from that of many common law countries. Figure 1 below demonstrates a simplified layout of a typical Japanese courtroom with the interpreter seated by side the court clerk.

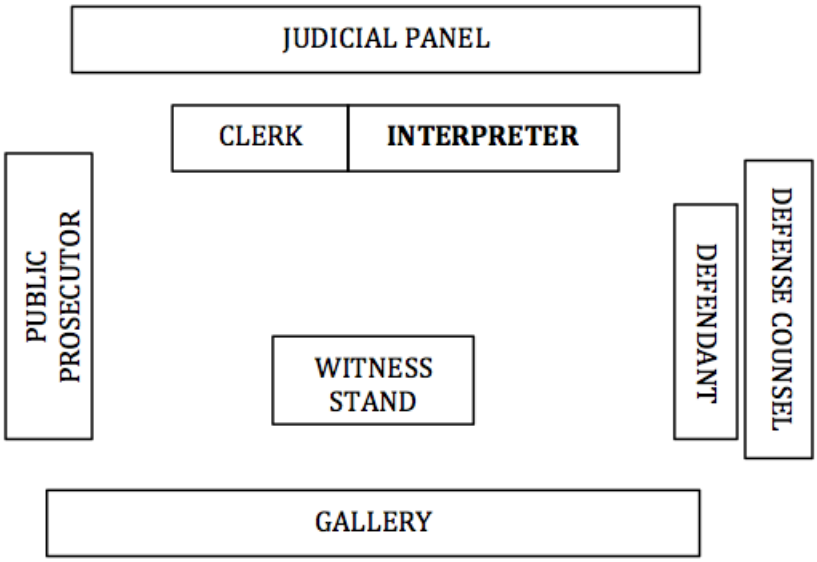

Figure 1. Simplified layout of a typical Japanese courtroom.

Certain aspects of the courtroom layout may vary slightly from the ones shown in 1, depending on the courthouse or the case tried: 1) The Judicial panel may consist of a) one judge, b) three judges or c) three professional and six lay judges; 2) location of the prosecutor's and defense counsel's seats may be opposite to the ones shown, and 3) defendant may be seated next to their defense counsel instead of sitting in front of them as in the Figure. Further, there may be more than one prosecutor, and/or defense counsel, as well as interpreter involved, as is often the case in lay judge trials (the *Lay Judge System*, or the *Saiban-in System* allows the general public to take part in criminal trials dealing with graver[2] crimes. The judicial panel composed of three professional judges and six *saiban-in* (or 'lay judges') deliberates and decides on the guilt or innocence of the defendant, and the punishment together). Nevertheless, it seems that in all criminal cases and all courtrooms in Japan, the interpreter's location is always the same, namely that they are seated next to the court clerk (either on their right or left side), facing the witness stand (and consequently the defendant, who takes the stand during examination).

Such location of the interpreter can have serious implications on how the interpreter is viewed by both the adversaries in the trial and the defendant. According to Mouri (2013: 231), this location aims at securing the interpreter's physical safety in case the defendant gets violent (interestingly, the interpreter is the only participant working in the courtroom not covered by labor insurance). As she argues, however, it may just as well sabotage their impartiality (which the interpreter in criminal trials is expected to demonstrate), since the

[2]Such as homicide, rape or drug trafficking for profit etc.

defendant has to face the interpreter just like the judicial panel, thus possibly making the interpreter seem as the defendant's opponent (Mouri, 2013: 233).

Mouri (2013) seems to agree with Berk-Seligson (1990) in that the interpreter should be located next to the defendant (or witness during examinations), as is often practiced in courts in the U.S., in the U.K. (Fowler, 2012), or in Hong Kong (Ng, 2013). Whether one shares this view or not, it is certain that the physical location of the interpreter defines not only their role in the eyes of the participants but also the interpreting techniques used during the trial. In some common law countries, since the interpreter is located next to the defendant, it is mainly the defendant that the interpreter is 'working for.' Further, this physical vicinity allows the interpreter to use simultaneous interpreting, usually in the *chuchotage* (or 'whispering'/'whispered interpreting') form. The subsequent subsection will discuss how the above layout of Japanese courtrooms determines, which interpreting techniques are used during criminal trials.

Interpreting modes used in Japan's criminal courtrooms

According to Berk-Seligson there are three main interpreting modes that court interpreters are expected to be able to perform: consecutive, simultaneous and summary interpreting (Berk-Seligson, 1990: 38). Even though the technique generally used in U.S. courts is consecutive interpreting, simultaneous interpreting "is used at the counsel table, whereby the interpreter interprets for the defendant or litigant what the attorneys, judge, and English-speaking witnesses are saying" (ibid.). The third mode, summary interpreting, "is to be kept to a minimum in court interpreting, and is restricted to highly technical legal language (. . .) difficult to follow even for a native speaker of English" (Berk-Seligson, 1990: 39).

In Hong Kong, on the other hand, the main mode used by interpreters (in cases where the defendant or witness is the linguistic minority) is simultaneous interpreting (usually in the form of *chuchotage*). According to Ng, this mode enables the interpreter, who usually either sits or stands by the defendant, "to remain less intrusive and thus invisible throughout the trial, though it would be difficult, if not impossible, to monitor the quality of the interpretation" (Ng, 2013: 90). Consecutive interpreting, on the other hand, is used mainly to render utterances by the (for example, Cantonese-speaking) defendant into the language of the court, i.e. English. With this mode, "the interpreter is brought into the foreground, and ostensibly assumes a participant role in the interaction" (ibid.).

Consecutive interpreting

Court interpreting in Japan is performed using interpreting modes rather differently than in the U.S.A or Hong Kong. Consecutive interpreting is used for all witness and defendant examinations, not just for utterances from the foreign language into the language of the court. It can be performed in two ways, based on the judge's discretion (or the interpreter's request) and on whether the witness under examination is speaking in Japanese or in the foreign language.

In the first method used for Japanese speaking witnesses, the prosecutor, the defense counsel or the judicial panel asks the original question (Q) in Japanese, which the witness answers (A). When the Question-Answer sequence in Japanese is completed, the interpreter interprets (I) it into the foreign language (the 'Q-A-I' method).

The other method used in the consecutive mode can be expressed with the acronym 'Q-I-A-I.' With this method, an attorney (or the judicial panel) asks the question, which

the interpreter renders from Japanese into the foreign language. The witness waits for the interpreter to finish the interpretation and then answers the question, which in turn is interpreted into Japanese. Naturally, during examination of non-Japanese speaking defendants (or witnesses) only the latter method (Q-I-A-I) can be applied. Should the question, the answer or the whole Q-A sequence be too long for the interpreter to remember (the interpreter is allowed and expected to be taking notes, though), they may ask the court to instruct the speaker to cut the utterance into smaller chunks. Naturally this interpreting mode takes more time than, for example, simultaneous interpreting, as well as, in Ng's terms "brings the interpreter into the foreground," but is the preferred mode during court proceedings, probably because it is believed to be more accurate and because it allows easier monitoring of the interpretation.

'Simultaneous (-ly progressing) interpreting'

The simultaneous interpreting mode is almost never used during criminal court proceedings in Japan (if used at all). Even though, as Tsuda (2009: 4) reports, interpreters working during the first lay judge trial against a non-Japanese speaking defendant (held in September 2009), "alternately and simultaneously interpreted [a document read out by the prosecutor]," this seems to be a highly rare exception in the courtroom interpreting practice. Further, during this same trial, other documents read out by the attorneys were sight-translated by the same team of interpreters rather than interpreted simultaneously (ibid.).

Reading out documents by lawyers is a very common (or even essential) procedure during criminal trials in Japan. These documents include the indictment act (document introducing pressed charges and applicable penal codes), opening statements and closing arguments, evidence lists and other documentary evidence presented throughout the hearing. Reading such documents in Japanese and then having the interpreter render them consecutively would naturally take a lot of time. This is where wireless technology proves useful. While the attorney is reading out their document, the interpreter *simultaneously* reads out the translation of that document. In other words, no interpreting process is taking place at all. Even though the Courtroom Interpreting Handbook issued under supervision of Japan's Supreme Court, explicitly states that "[the wireless system] allows for the interpretation to be progressing simultaneously [to the attorney's reading out the original] (...) [but] it is different from the so-called 'simultaneous interpreting,"'[3] (Hosokai, 2011: 23) some judges and lawyers erroneously refer to this as *simultaneous interpreting*.

Naturally, in order for the interpreter to be able to read out the translated text, they need to receive the Japanese originals in advance. Depending on the attorney or judge, however, the documents can reach the interpreter as late as the morning of the scheduled hearing, or, in even worse cases, be not delivered to the interpreter at all. Should this happen, the interpreter is left with no other choice but to perform sight-translation (of a document they are seeing for the first time) during the hearing. Interestingly, according to the results of the Survey mentioned in the previous section, these documents got longer as a consequence of the implementation of the Lay Judge System (University of Shizuoka Court Interpreters Research Team, 2013: 55), since lay judges (who are not legal experts) are believed to need more detailed (and thus, more lengthy) explanations on various aspects of the case. Naturally, this leaves interpreters with a heavier workload and, consequently,

[3]Translated by the author.

less time to prepare the translation (University of Shizuoka Court Interpreters Research Team, 2013: 55).

Between sight translation and consecutive interpreting

Aside from cases of sight translation described in the preceding sections (i.e. cases of presenting the suspect's written statement after the police interrogation or PPO interview, or when the interpreter was not allowed enough time to prepare the translation of longer documents presented in court), this technique can also be used in court hearings during presentation of other (usually shorter) pieces of evidence by the attorneys. It is often practiced during lay judge trials, when, as mentioned in the previous subsection, all materials must be presented clearly and comprehensibly to the *saiban-ins*.

While the attorney explains the contents of these materials, they are also usually displayed on big screens installed in the courtroom visible to all participants of the trial (including observers in the gallery), or (depending on the nature and contents) only on smaller monitors placed in front of the (professional and lay) judges, the attorneys and the court clerk. Since the interpreter is sitting by the clerk's side, they have easy access to the contents displayed on the monitor as well.

Thus, there are two sources of input for the interpreter: the attorney's voice and the contents displayed on the monitor. It could be argued, therefore, that this is not 'pure' sight translation, but rather a mixture of sight translation and consecutive interpreting. This is because even though the interpreter sees and interprets the contents presented on the screen, they still wait for the attorney to finish talking before they start the interpretation. Attorneys, on the other hand, aware of the interpreter's presence, often try to cut their explanation into smaller chunks, thus making it easier for the interpreter. As these materials usually include information consisting of numbers, dates or names of places and people, and since the interpreter sees them for the first time, this mixed interpreting mode based on two input sources allows for an accurate interpretation and prompt detection and correction of potential interpreting errors.

Summary interpreting

Berk-Seligson's third mode – summary interpreting – seems to be used in Japan more often than in the U.S., however calling it frequent would be an overstatement. This method is usually applied when the three judicial parties (the court, the public prosecutor and the defense counsel) discuss legal or procedural issues, or when one of the attorneys has raised an objection.

Interpreting these discussions may take various forms. First, the judge may instruct the interpreter to wait for the parties to finish the discussion. Should this be the case, the judge may afterwards summarize the issues discussed and the conclusions, and then instruct the interpreter to render this summarized version to the defendant. On other occasions, the judge may simply expect the interpreter to summarize the conclusion for the defendant. Some interpreters, however, believe that their job is to *interpret* and not summarize lawyers' discussions, and assertively request the presiding judge to do the summarizing, which they then interpret. Either way, due to the very nature of summary interpreting, not every utterance is rendered in its full form and length, and consequently, there is a hazard that some important pieces of information will not be conveyed to the defendant.

Concluding remarks

Legal interpreting is a demanding job in any country and setting. Depending on the institution appointing the interpreter, however, the interpreting process can be conducted in different ways with the use of different techniques and, consequently, accompanied by different challenges and constraints.

As the preceding sections have demonstrated, in all three settings discussed, consecutive interpreting is the prevailing mode in the legal interpreting practice in Japan. While sight-translation is commonly used for documents read out during police interrogations and PPO interviews, the so-called 'simultaneously progressing interpreting' (or, in other words, reading out translations of documents), is frequently practiced in courtrooms. Thus, due to physical conditions (including the interpreter's location) of the venues the interpreting process takes place, modes like simultaneous interpreting (for example, in the form of *chuchotage* as is often the case in Hong Kong) are virtually not practiced at all in legal interpreting in Japan. Moreover, due to different expectations towards interpreters and their role in the legal process, they may be viewed as an impartial and neutral entity or an assistant to one of the sides (as is the case for police interpreters).

One of the more significant differences between legal interpreting in Japan and other jurisdictions is the lack of an accreditation system for interpreters. Whether one advocates for or against the implementation of such a system, the fact of the matter is that lack of a mechanism for monitoring the quality of interpreters is a serious issue. Thus, it seems that Japan's legal institutions will have to revise their views on interpreting, in order to improve this far from perfect situation. This would also require interpreters to reflect on their own attitudes towards their work – they would have to be open to both scrutiny and the (sometimes critical) evaluation of their performance.

This is not to imply that the legal interpreting practice in Japan is of low quality or that the legal authorities are oblivious to its difficulties and dangers, though. Nevertheless, it should be borne in mind that there is always room for improvement and that changes might work to the advantage of subjects of the penal process, legal professionals and interpreters alike. These changes, however, can be implemented only if the parties involved engage in the debate. Thus, research into legal interpreting based on the participation of scholars, interpreters and legal professionals can provide the most powerful arguments to initiate such discussions and the consequent changes, hopefully leading to a better administration of justice.

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PhD Abstract

The atypical bilingual courtroom: an exploratory study of the interactional dynamics in interpreter-mediated trials in Hong Kong

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Keywords: Participant role, participation status, bilinguals, power asymmetry, interpreting style

In many jurisdictions, court interpreting is typically provided for the linguistic minority, often for a single individual involved in a trial as a defendant or witness, who does not speak the language of the court. This study is situated in the Hong Kong bilingual courtroom, which is an 'atypical bilingual courtroom'. In Hong Kong, interpreters, known as 'the mouth and ears of the court' (Sin and Djung, 1994: 138), have long been hired to serve the needs of the Cantonese-speaking majority in trials conducted in English. Due to the colonial background of Hong Kong, English has long been an official language (indeed the only one before 1974) despite the fact that it is spoken by only slightly over 3%

of the local population as "the usual language" (Population Census Office, 2011). There is an interesting linguistic dichotomy in an English-medium trial in Hong Kong courts: Cantonese, a language spoken by around 90% of the inhabitants in Hong Kong, is used by lay-participants but English by the legal professionals, which makes the presence of a court interpreter a *sine qua non*. Hong Kong is therefore described as having one of the most 'interpreted' legal systems in the world (Ng, 2009b).

In an English-medium trial, the Cantonese-speaking majority in court, including not only defendants and witnesses, but also spectators in the public gallery, has to rely on the Cantonese interpretation of the utterances produced in English in order to participate in the proceedings (see also Cheung (2012); Ng (2009a,b, 2013). On the other hand, interpreters in the Hong Kong courtroom nowadays often have to work with other court actors, especially legal professionals, who are proficient in both English and Cantonese. Even lay participants as witnesses and defendants who elect to give evidence in Cantonese through an interpreter may also have access (full or partial) to utterances produced in English, which is spoken by about 40% of the local population as "another language" (Population Census Office, 2011).

The central aim of this study was to carry out a detailed investigation into the communication process in this atypical bilingual setting and see in what ways the interactional dynamics differ from those in both a monolingual and a typical bilingual setting. This study is based on authentic audio-recordings of nine criminal trials from three court levels in Hong Kong, supplemented by a survey administered to court interpreters enquiring about the different strategies they adopt when interpreting for the legal professionals and the lay participants and the rationale behind their decisions. It compares the participant roles of different court actors in different court settings, monolingual and bilingual, using Goffman's (1981) participation framework and Bell's (1984) audience design as the conceptual framework. It explores the participation status of individual court actors at different stages of a trial and in different interactional scenarios.

It was found that the notion of recipientship in the Hong Kong courtroom is complicated by the presence of other bilinguals, who take on both a ratified role as an addressee or auditor of one version of the trial talk and also a non-ratified overhearer role of the other version of the talk. This inevitably changes the interactional dynamics and impacts on the power of court interpreter. It is therefore not uncommon for a bilingual counsel to challenge the accuracy of an interpretation and to suggest to an interpreter how she should have interpreted a certain term or expression. For example, in a High Court rape case, the interpreter had to change her earlier interpretation of a polysemous Cantonese word *saam*, uttered by the defendant, from "garment" to "upper garment", at the suggestion of the bilingual prosecution counsel, who obviously believed that the latter would create a discrepancy in the defendant's testimony and thus help with the prosecution's case. In another High Court trial, a murder case, where the judge and both counsel were monolingual English-speaking expatriates, the interpreter was found to assume a more powerful role in negotiating meaning with the witness and in controlling the flow of the testimony. There were also instances of real interpreting mistakes which had gone unnoticed as the monolingual legal professionals were not equipped with the required linguistic means to interfere with the interpretation. The findings of this study show that the power of the court actors is realised in the participant role(s) they and the other co-present court actors take on or are capable of playing.

The findings also indicate that the interventions of judges in witness examination, thereby changing their participant role from default auditor to speaker, are particularly problematic and often result in omissions in interpreting and thus the exclusion of the non-English-speaking majority in court, including defendants, witnesses and the spectators in the public gallery. It is also found that the use of whispered interpreting (*chuchotage*), a mode commonly adopted in a typical bilingual setting where there is only one individual who does not speak the language of the court, inevitably excludes all others who have to rely on the Cantonese interpretation for their participation in the proceedings. It is suggested that denying non-English-speaking participants access to the trial in its entirety may compromise the administration of justice. It is also found that the notion of power asymmetry in the courtroom has an effect on the footings adopted by interpreters and potentially on their perceived neutrality as they are observed to assume the voice of lay-participants by interpreting their utterances in the first person but to interpret that of legal professionals in the third person. In the light of these findings, this study identifies training needs and makes recommendations for best practice in the courtroom and for institutional and administrative practice.

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PhD Abstract

Linguistic identifiers of L1 Persian speakers writing in English. NLID for authorship analysis.

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Keywords: Native language identification (NLID), authorship analysis, forensic linguistics, Persian, weblogistan, interlanguage.

This dissertation presents research on the linguistic identifiers of native (L1) Persian speakers writing weblogs in English, as a contribution towards Native Language Identification (NLID). NLID is a specific area of authorship profiling that focuses on identifying an anonymous author's native language. This research investigates what are the distinctive features of the language of a native L1 Persian speaker writing in English. It also focuses on the development of a system that can be used by forensic authorship analysts to determine whether an anonymous author is likely to be a native Persian speaker. The approach taken is firmly grounded within the field of forensic linguistics, and more specifically within the area of authorship analysis.

Native Language Identification (NLID) is an understudied area of forensic linguistic authorship analysis, yet an area that holds considerable practical potential (Koppel *et al.*, 2005). The potential usefulness is even more significant when we consider that the majority of the world's population is bilingual (Thomason, 2001) and that English is one of the most widely spoken second languages with up a quarter of all people having some degree of competence in English (Bhatia and Ritchie, 2004: 519). The belief that one can identify someone's native language (L1) from the way they use a second language (L2) is not a new one, neither is the inevitable link to the potential forensic applications. In the 1930's case of Bruno Hauptmann, handwriting experts drew on orthographic and linguistic features in the ransom notes to hypothesis that the texts were most likely authored by a native German speaker. More recently cases documented by Kniffka (1996) and Hubbard (1996) involved degrees of NLID and demonstrate the potential of NLID as a tool for forensic authorship analysis. The data for this research comprises several corpora of internet blogs, this has many benefits for research from a forensic linguistic perspective, the most significant in this situation is that it is collected data, as opposed to elicited. Conversely most existing research investigating cross-linguistic influence looks at student data, which is elicited by teachers, and is also written for the purpose of being critically read, whereas forensic texts have a predominantly communicative purpose. Using internet blogs as a data source means that the data more closely matches the kind of forensic texts which may later benefit from the application of NLID analysis.

The objective of this research was to analyse and investigate the linguistic features of an L1 Persian speaker blogging in English, and to develop an implementable model that would form a useful tool for forensic authorship analysis. This can be broken down into the following six research aims:

1. To determine if interlingual features in L2 writing can be used to indicate an author's native tongue (Study One, and throughout other studies)
2. To develop a methodology of NLID (Native Language Identification) (Study One)
3. To determine what features indicate authorship by a native Persian speaker (Study One)
4. To determine if we can identify specific linguistic choices as being indicative of influence from a specific language rather than a language family, and to determine whether we can distinguish between two languages from the similar geographical area (Study Two)
5. To determine if it is possible to distinguish between a genuine native Persian speaker writing in English and someone who is trying to disguise their language to give the false impression that they have an L1 influence from Persian (Study Three)
6. To understand with what degree of accuracy we can draw conclusions based on the analysis involved (throughout all studies)

These objectives were realised through three sub-studies; the first study devised a coding system to account for the interlingual features identified in a corpus of L1 Persian speakers blogging in English, and in a corpus of L1 English blogs. The second study looked at the features identified in Study One, with relation to other, related languages, namely; Azeri and Pashto, using collected blog data. The third study sought to determine if the features identified could distinguish between genuine L1 Persian authors and authors

attempting to disguise their language. It used elicited data from a questionnaire and a writing task. The final section considered the application of the results of the studies and developed an implementable model. Unlike previous research, this project focused predominantly on blogs, as opposed to student data, making the findings more appropriate to forensic casework data.

In summary this research showed that NLID is possible and can provide a valuable, reliable tool for forensic authorship analysis. The basic finding from Study One is that Native Language Identification (NLID) is possible, and that it can distinguish between texts produced by an L1 English speaker and an L1 Persian speaker writing in English. A template of features was created. This template can theoretically be applied to any collection of texts. These features were then tested using logistic regression to see if they were able to distinguish between authorship by L1 English and L1 Persian speakers, and which combination of features formed the optimum set. Study Two compared the corpus of L1 Persian authors with a corpus of blogs by L1 Azeri and L1 Pashto speakers and demonstrated that it was possible to use the features to determine group membership of the authors, as well as determining which combination of features was the most discriminatory between the groups. Study Three distinguished between a genuine L1 Persian author and an author who was attempting to disguise their language to give the false impression that they are an L1 Persian speaker and determined that there was a clear difference between the groups. The implications for forensic authorship analysis are significant and this PhD forms part of a continuing study into this previously under-researched area.

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Book Review

A comparative review of *The Routledge Handbook of Forensic Linguistics* and *The Oxford Handbook of Language and Law*

Reviewed by Samuel Larner

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The Oxford Handbook of Language and Law
Peter M. Tiersma & Lawrence M. Solan (eds) (2012)
Oxford: Oxford University Press

The Routledge Handbook of Forensic Linguistics
Malcolm Coulthard & Alison Johnson (eds) (2010)
Abingdon, Oxon: Routledge

It is something of a challenge to review two prominent handbooks like Coulthard and Johnson (2010) and Tiersma and Solan (2012) alongside each other. From the outset, there is no sense that either handbook will be in any way deficient—both are edited by respected figures in the field, both are published by reputable publishers, and both contain a wealth of relevant and insightful articles written by leading, established, and emergent scholars in a variety of areas of research pertaining to the intersection between language and law. It is my intention, therefore, to briefly offer an overview of each of the handbooks before highlighting some of the key considerations that arise through a direct comparison.

Turning firstly to structure and content, Coulthard and Johnson (2010) present 39 chapters split across three sections, with each major section containing between four and six chapters on various themes: Section 1, 'The language of the law and the legal process' contains themed chapters on legal language, participants in police investigation, interviews and interrogation, courtroom genres, and lay participants in the judicial process. Section 2, entitled 'The linguist as expert in legal processes' contains themed chapters on

expert and process, multilingualism in legal contexts, and authorship and opinion. The final section, 'New debates and directions', contains chapters written by prominent scholars, who lay out the future scope of the field, concluding with a chapter by Coulthard and Johnson themselves. Tiersma and Solan (2012) contains 40 chapters, this time split across nine sections, with each section containing between three and six chapters: legal language; the interpretation of legal texts; multilingualism and translation; language rights; language and criminal law; courtroom discourse; intellectual property; identification of authorship and deception; and speaker identification. There are 48 contributors to Tiersma and Solan (2012) and 40 contributors to Coulthard and Johnson (2010). Despite some overlap in content, it should be noted that only nine contributors are shared across the two handbooks and so each handbook certainly offers different perspectives on the various topics covered.

The aims and approaches of both handbooks become clear from the introductory chapters. Coulthard and Johnson (2010) take as their starting point Halliday's functional theory of language—which foregrounds the importance of context and social practice to meaning-making—since the world of the law is context-rich, hierarchically ordered, and multiply imbued with meaning (p. 1). From this perspective, they explain that the focus of their handbook is on ""[w]hat legal people do with lay people through legal language, legal texts and legal interaction" and that the chapters in their collection "examine the ways that language has and is being used, who is using it, how they are writing, where they are speaking, why they are interacting in that way and what is being accomplished through that interaction" (p. 1). Tiersma and Solan (2012), on the other hand, give prominence to the role of interdisciplinarity in language and law research. Their handbook aims to highlight themes which reflect "some of the most interesting issues that arise when the interactions of the fields are studied" (p. 9). They argue that their handbook identifies problems which will benefit from discussion and collaboration across disciplines. However, they further explain that the chapters included in their handbook do more than enhance discussion: "They demonstrate a state of the art that shows enormous progress in this interdisciplinary endeavor, pointing the way for future inquiry" (p. 9). Interdisciplinarity is an important point, to which I will return below.

Possibly the biggest difference between the handbooks is the extent to which the editors integrate their own perspectives – that is, Tiersma and Solan (2012) provide an editorial introduction which outlines and describes the main themes covered, but leave individual chapters to speak for themselves. Coulthard and Johnson (2010) on the other hand provide an introduction which relates to, and develops, their earlier (2007) textbook. In their textbook, Coulthard and Johnson distinguished between the description of the language of the law and the work of an expert witness, but in their handbook argue that this binary distinction created an unwelcome boundary between written and spoken language. In their handbook, they instead propose a tripartite division between the study of the written language of the law, interaction in the legal process, and the work of a linguist acting as an expert witness (p. 7). In addition to their editorial introduction, they also offer a concluding chapter on future directions in forensic linguistics. In the concluding remarks chapter, Coulthard and Johnson draw out the main themes common across the chapters. They highlight in particular the relationship between power and (dis-)advantage, and predict critical forensic linguistics as an area that will be taken up in the next two decades. In this way, Coulthard and Johnson offer something more by way of their own commentary on the state of the field, both current and future. The connections between works (2007

and 2010) are made explicit and therefore may be more appropriate for the reader who is new to the field. All chapters in Coulthard and Johnson (2010) also conclude with suggestions for further reading. In this way, then, we get a sense of wisdom and direction being imparted to the reader that is perhaps missing from Tiersma and Solan (2012).

With this brief summary of both handbooks, it is now possible to consider two issues that arise. I offer these not as flaws or deficiencies in the handbooks, but as debates that may warrant wider consideration as a result of these two publications: 1) the naming of the handbooks; and 2) the nature of disciplinary engagement.

In naming the handbooks, Coulthard and Johnson (2010) adopted forensic linguistics whilst Tiersma and Solan (2012) elected for language and law. Gibbons (2003) explained that forensic linguistics "can be used narrowly to refer only to the issue of language evidence. However it is becoming accepted as a cover term for language and the law issues" (p. 12). Despite being written over a decade ago, there still appears to be little consistency in the field over whether – as with Coulthard and Johnson (2010) – forensic linguistics is an umbrella term that encompasses language and law (e.g. Olsson (2004); Olsson and Luchjenbroers (2014) or, as Tiersma and Solan's (2012) title suggests, whether language and law encompasses forensic linguistics, or even whether such a distinction is relevant and apparent (e.g. Mooney (2014). Since both handbooks contain chapters that address the use of language in the legal system and language as evidence, the publication of these two handbooks seems to be moving the field in the direction of forensic linguistics being used synonymously with language and law, both as umbrella terms to cover the wide variety of research and consultancy carried out at the interface between language and law.

The second issue to consider is the importance of disciplinary engagement, which is given attention in both handbooks although with differing levels of prominence. Tiersma and Solan (2012) place interdisciplinarity at the forefront of their handbook and argue that the advances that have been made in language and law research have arisen because of the increase in interdisciplinary research being carried out in law, coupled with the emergence and impact of linguistics (p. 1). Naturally, as scholars of both linguistics and law themselves, Tiersma and Solan are strong advocates of interdisciplinarity. Coulthard and Johnson (2010) also promote interdisiciplinarity and claim that ""[a]s a group, we are truly inter- and cross-disciplinary in composition and often in approach" (p. 2), perhaps placing emphasis on the training that contributors have received, rather than the ways in which methods and ideas from different disciplines have really been integrated and synthesised—the goal of true interdisciplinary research (Committee on Facilitating Interdisciplinary Research, Committee on Science, Engineering, and Public Policy, National Academic of Engineering, and Institute of Medicine, 2005: 27). Both handbooks contain chapters written by academics based in a variety of departments including psychology, education, criminology, sociology, philosophy, and of course linguistics, as well as by a range of professions including interpreters, translators, attorneys and judges and in this sense, both handbooks do represent interdisciplinarity rather than representing only the work of linguists. However, in the spirit of ensuring greater social impact, maybe the time has come to move beyond interdisciplinary research towards transdisciplinary research—"the cooperation of academics, stakeholders, and practitioners to solve complex societal . . . problems of common interest with the goal of resolving them by designing and implementing public policy" (Repko *et al.*, 2014: 36) – a goal that becomes more important given "the lack of communication and genuine collaboration between institutions and

researchers" (Coulthard and Johnson, 2010: 609).

In conclusion, these are two absolutely superb handbooks that represent to the highest standards what has been achieved in research carried out at the intersection between language and law. Both are excellent resources, which arguably fulfil the needs of different audiences. Tiersma and Solan (2012) is perhaps most suited to the independent student or researcher, whereas Coulthard and Johnson (2010) may be less intimidating to a newcomer to the field, waiting and willing to be inducted into the major issues. Both certainly make fantastic additions to the field. Indeed, my copies are well-thumbed and are in regular use in my own research and teaching.

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P. M. Tiersma and L. M. Solan, Eds. (2012). *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press.

Recensão

Linguagem e Direito

Recensão de Rita Faria

Universidade do Porto

Linguagem e Direito
Virgínia Colares (org) (2010)
Recife: Editora Universitária da UFPE

Virgínia Colares propõe nesta obra um exercício visível de diálogo entre a Linguagem e Direito. A visibilidade decorre dos contributos empíricos e teóricos que logrou reunir e que demonstram a heterogeneidade de objetos, de abordagens e de metodologias. Sinal indelével da riqueza e variedade de interrogações e análises possíveis plasmadas neste que é um livro de referência em língua portuguesa, na área em apreço. No entanto, a obra não é uma reunião aleatória de trabalhos relevantes. O primeiro contacto com a estrutura desta obra coletiva permite vislumbrar as múltiplas abordagens passíveis de serem exploradas quando o estudo da Linguagem e do Direito se unem.

A obra coletiva conta com sete secções e doze capítulos, para além da introdução e prefácio.

A secção I, proclamada *Filosofia do Direito*, contém um artigo de José Antonio de Albuquerque Filho intitulado "A Tópica e sua relação com a Ordem Jurídica".

A secção II, *Terminologia e a Lexicologia*, contém um artigo de Graciele da Mata Massarett i Dias e de Manoel Messias Alves da Silva, designado "Aspectos da terminologia jurídica".

A secção III, *Letramento e Acesso à Justiça*, inclui trabalhos de Leda Verdiani Tfouni e Dionéia Mott a Monte-Serratn, "Letramento e Discurso Jurídico", e de Leonardo Mozdzenski, "O Papel dos Estereótipos Jurídicos na divulgação do Direito e da Cidadania: uma abordagem crítica".

A secção IV, *Análise do Discurso – Escola Francesa*, reúne os trabalhos de Cristina Cattaneo da Silveira, "Interpretação do/no Discurso Jurídico" e de Lucas do Nascimento,

"Processo Penal: a fala do réu e a voz do outro em Discurso Jurídico de Defensoria Pública Brasileira".

A secção V, nomeada *Direito Penal*, junta os contributos de Mariana Cucatto que questiona "Cómo narran los jueces. Reflexiones desde la Lingüística Cognitiva para comprender de qué modo las acciones de los ciudadanos se convierten en hechos penales" e de Maria Helena Cruz Pistori sobre "Persuasão e paixão em um processo judicial".

A secção VI, *Análise Crítica do Discurso Legal/Jurídico*, conta com os estudos de José Adelmy da Silva Acioli, "A análise crítica do art. 5º, lXVII, da Constituição Federal de 1988 sob o prisma do depositário judicial de bens penhorados" e de Ana Maria Aparecida de Freitas, "Análise crítica do discurso e o julgamento do Supremo Tribunal Federal no recurso extraordinário nº 569.056-3-PA".

Finalmente, a secção VII, intitulada *Hermenêutica*, encerra a estrutura da obra com estudos de Vinicius de Negreiros Calado, a propósito do "Porte ilegal de fala: o 'crime' de discurso crítico contra-hegemônico" e de Virgínia Colares, em torno do "Direito, produção de sentido e o regime de liberdade condicional".

A obra parece organizar-se, assim, em torno de três eixos que decorrem das relações entre Linguagem e Direito ou, melhor ainda, decorrem das análises que olhando para o Direito observam as suas práticas linguísticas e, olhando para a Linguagem, focam especialmente no seu uso normativo. São eles[1]:

1. As questões do Saber: os questionamentos epistemológicos e metodológicos de "criação" ou descoberta de uma linguagem à qual se atribui uma identidade própria e se designa como Direito – estamos no limiar de indagação da constituição do saber, eventualmente científico, na relação entre Linguagem e Direito.
2. As questões de Poder, da ideologia (dominante) que perpassa a prática judicial e a criação e aplicação da Lei, eventualmente desigual, ideológica, certamente criativa de categorias de ações, de sujeitos, de distribuição de privilégios e sanções.
3. A Subjetividade, a relevância do sujeito na interpretação da Norma Jurídica, as características pessoais do aplicador e intérprete mas também a criação de categorias de sujeitos face à lei: sujeito de direitos e de deveres, cidadãos, queixosos, aquele que pode falar a Lei ou aquele sobre quem a Lei se abate.

A criação do Direito Penal como espaço autónomo (da religião, da esfera social, da vontade individual) deve muito aos trabalhos genéticos de Beccaria sobre o tema, (cfr. "Dos delitos e das penas" 1764). E ainda que o Direito não se limite ao Direito Penal – que os trabalhos apresentados na obra agora revista também versam, para além do Direito Constitucional ou Laboral – muitos dos teóricos defendem o fechamento do Direito sobre si mesmo, como se se tratasse de um sistema social de fronteiras rígidas, pouco interagindo com o seu ambiente.

No entanto, este sistema social que cria e diz a regra, que determina a normatividade e o normal, que reserva a sanção ou a obrigação de cumprir, que cumpre rituais específicos e formaliza contratos entre agentes sociais, é perpassado por uma manifestação específica do espírito humano: a Linguagem. O processo de comunicação orienta e cria a ação humana e as instituições sociais, tal como entendem os autores do interacionismo simbólico. Muito

[1]E aqui inspiro-me, ainda que indiretamente, nos três principais eixos de análise concebidos por M. Foucault ao longo da sua carreira.

pertinentemente, estes vêm demonstrar que *comunidade* e *comunicação* têm a mesma raiz. A linguagem é comunicação; o Direito é orientação da vida em comunidade.

Se na Criminologia se percebeu já a centralidade da Linguagem na produção de relações e sentidos entre sujeitos e norma, este tipo de considerações encontra mais resistências por parte dos estudiosos do Direito. Ainda que os juristas sejam formados na análise e interpretação da Lei, das decisões jurisprudenciais e da doutrina, o Direito e seus agentes parecem resistir à entrada de outras ciências no seu seio. Venham elas para o coadjuvar, como sucedeu com as ciências sociais e do comportamento que venceram resistências sérias até serem admitidas a auxiliar o Direito, mormente o Direito Penal para a determinação da inimputabilidade por anomalia moral. Venham elas para estudar e identificar os processos constitutivos da criação, aplicação da norma e consequências dessa aplicação. Talvez por isso a obra que agora se revê constitua a exceção num panorama que, na língua portuguesa, parece continuar relativamente insensível aos aportes que as restantes ciências empíricas, nomeadamente a Linguística, podem trazer ao Direito.

Como afirma Jayme Benvenuto no prefácio, "Se é por meio da linguagem que o Direito se estabelece (...) não parece adequado persistir excluindo a linguagem do conhecimento jurídico" (p. 7). E Virgínia Colares, na apresentação, vai procurar apresentar os cultores estabelecidos do campo, as tradições mais marcantes, as preocupações tradicionais, os domínios de aplicação (potencial) e sugerir pistas de trabalho futuro para os *jurislinguistas* (p. 14). Acima de tudo, sublinha a necessidade de olhar para a Linguagem do/no Direito em ação: "(...) a linguagem consiste na atividade de sujeitos sociais autênticos na dimensão da praxis. Donde, a importância de proceder ao estudo da linguagem jurídica in vivo no evento comunicativo e não in vitro nas páginas de livros a priori construídas pelos doutrinadores" (p. 13).

José António de Albuquerque Filho traça o objetivo de surgimento da tópica tal como desenhada por Viehweg, no pós segunda guerra mundial, em época de contestação social e de ceticismo face ao positivismo científico. A possibilidade de inexistência d'A Verdade mas antes a verificação de que existem alternativas, dialética que conduz Viehweg a propor um estilo que busque especificamente responder a problemas usando os *tipoi*. A tópica é uma bússola a ser usada pelo magistrado quando este sente que deve sair do sistema normativo (interno) para o externo (interpretação teleológica) e que o guia na busca de alternativas criativas "(...) no caso de lacunas da lei ou buscando o magistrado outras saídas que não seja a norma jurídica para a solução do problema (...)" (p. 39). A tópica permitiria o ativismo judicial e a orientação do magistrado pelos valores ou princípios não escritos que transcendem a norma jurídica.

Graciele da Mata Massaretti Dias e Manoel Messias Alves da Silva definem, distinguem e relacionam Terminologia e Lexicologia, para se centrarem especificamente sobre a primeira enquanto "(...) uso especializado da língua (...)" (p. 52). Esta é essencial para a atividade de especialistas porquanto facilita a comunicação objetiva através da organização e sistematização dos termos usados em específicas áreas do saber ou científicas. Donde se conclui que também o Direito necessita de uma organização dos seus termos mormente por via da elaboração de obras de referência como sejam os dicionários. Sucede que o Direito apresenta especificidades, o que justificaria o apoio da jurislinguística "(...) que procura analisar os meios e definir as técnicas mais adequadas para a tradução, redação, terminologia, lexicografia jurídica." (p. 58). Por exemplo, o Direito usa termos exclusivamente jurídicos mas também termos usados pela língua geral. Destes, (b1) termos

inicialmente jurídicos foram popularizados; ou (b2) termos populares adquiriram efeitos jurídicos; ou (b3) migraram preservando o seu sentido inicial. Estas especificidades justificam a intervenção de terminólogos nos dicionários que incluam termos jurídicos. A análise conduzida pelos autores permite-lhes concluir que, no Brasil, essa intervenção não tem sido suficiente.

Leda Verdiani Tfouni e Dionéia Motta Monte-Serra perguntam "[O] que impede (...) que as narrativas dos depoentes sejam levadas com conta tal qual são tomadas em audiência?" (p. 92). A sua preocupação anda em torno da intervenção do magistrado na direção do processo, em termos da forma como seleciona, traduz e formaliza o discurso das partes na audiência de julgamento (um evento de letramento) ao abrigo da lei processual. Mas esta objetividade e igualdade da lei é apenas aparente pois sob a atividade jurisdicional a linguagem transcorre todo um "percurso social, ideológico e psíquico" (p. 74). Apoiadas na Análise do Discurso, em Pêcheux, e na teoria do letramento demonstram que a audiência se faz em torno de ilusões de propriedades: ilusão de autonomia e de identidade do autor, do réu e do juiz e crença "de que existe uma língua homogénea e universal que igualaria a todos perante a lei" (p. 80). Tal não sucede. A audiência é local e momento de luta e de embate entre formações discursivas opostas, também de imposição de ideologias de forma mais ou menos inconsciente, de manejo da autoridade e atribuição de identidades; é local e momento de materialidade discursiva, de inscrição histórica e construção do sujeito.

Leonardo Modzenski, esteado no movimento de Análise Crítica do Discurso vem mostrar de que forma, ao invés de proceder à emancipação e informação dos cidadãos, as cartilhas jurídicas podem ter o mero efeito de maquilhar o elitismo dos marcadores discursivos apoiados no Direito. A democratização discursiva não acontece. Ao invés, as cartilhas podem servir de instrumento de controlo social paradoxal: por um lado são encaradas como mecanismo para o exercício da democracia, ilustrando o Direito, esclarecendo os leitores; por outro lado, parecem ser um eficiente veículo de manutenção do *status quo* e das desigualdades sociais: "(...) instrui-se o sujeito a se conformar com as convenções e relações hegemônicas de poder vigentes (...)" (p. 104). Tal sucede através da criação de estereótipos normativos ou jurídicos, que (re)constroem ideologicamente o real e produzem efeitos de verdade com consequências relevantes na vida dos cidadãos. Considere-se, para o efeito, a nominalização, que opera uma "(...) modificação da agência e da causalidade (...) transforma uma condição local e temporária num estado inerente ou numa propriedade" (p. 117) que, assim reificada, pode ser alvo de manipulação na criação de (falsos) consensos e na construção do real.

Cristina Cattaneo da Silveira analisa o recurso de uma decisão judicial de Reintegração de Posse para concluir que o desfecho do processo se deu não com base na mera aplicação da lei mas decorreu da interpretação diferencial dos magistrados envolvidos, considerados como sujeitos ideologicamente orientados. O debate entre propriedade e direitos humanos, as noções de justiça e defesa que os decisores apresentam põem em confronto diferentes motivações já que aqueles são constituídos de inconsciente e inseridos "(...) em uma determinada FD [formação discursiva], numa posição específica (...)" (p. 145). A análise é possível porque a autora se orienta pela Escola Francesa de Análise do Discurso que afasta a homogeneidade e transparência da linguagem jurídica pois "(...) o sentido não está na literalidade da lei, mas sim no sujeito ideologicamente determinado" (p. 130). Daí que finalmente se responda a uma preocupação tão comum aos cidadãos: como explicar

que perante um mesmo caso e o mesmo texto jurídico, possam existir decisões judiciais opostas?

As questões da ideologia sobre os aplicadores do Direito e a influência de Pêcheux voltam a ativar-se no contributo de Lucas do Nascimento que é também influenciado por uma leitura da obra de Foucault sobre o Direito. Considerando o sujeito (não meramente o indivíduo) enquanto aglutinador de fatores sociais, de inconsciente, de ideológico, possuidor de representações, evocador de símbolos e detentor de processos discursivos anteriores, o autor vai analisar o discurso do sujeito Defensor Público em processo criminal. Para tal lança mão do arquivo jurídico composto por diferentes textos produzidos no âmbito de um processo penal concreto. A análise faz-se em torno de "(…) uma escrita que legitima, documenta, indexa, cataloga, acumula (…)", que é "(…) memória institucionalizada, [que] congela, organiza e distribui sentidos" (p. 158). Este exercício permite o acesso às posições do defensor público quanto à tentativa de absolvição dos réus, quer na relação com o sujeito Juiz.

Mariana Cucatto dá conta de uma investigação em curso sobre as sentenças penais de primeira instância. A sua perspetiva de trabalho, a Linguística Cognitiva, procura analisar as narrativas produzidas no processo penal, assumindo as sentenças como formas de apresentar a realidade que é, simultaneamente, uma interpretação operativa e autoritária da lei e uma forma de constatação de factos e sua transformação, por via do confronto com a norma, em caso. Acresce ainda que são narrativas que visam a construção discursiva de provas, de situações relevantes e, por isso, revestem específicas roupagens. Estas narrativas descrevem factos mas não "histórias de vidas humanas" (p. 192) e os esquemas narrativos fazem-se na relação com a norma, não de forma aleatória, e segundo as regras de recolha e análise da prova. Simultaneamente, há todo um processo de "atenuação narrativa" na construção do caso pelo qual o contexto é ignorado, selecionados os participantes relevantes, eliminado o narrador. A exploração destas atividades é campo frutuoso de exploração para a Linguística.

Maria Helena Cruz Pistori analisa parte do processo-crime desenvolvido em torno do assassinato de um índio à mão de cinco jovens. Busca determinar o peso e importância da argumentação passional que se desenvolve no seio do Direito, que se arroga racionalidade acima e antes de tudo, bem como a relevância daquela argumentação na decisão final. A paixão entra no campo do Direito quer porque passa a ser objeto de estudo, quer porque é revelado que o Direito também por ela se orienta – como aliás Durkheim (1958-1917) (cit. in Digneffe, 1998) já o dizia a propósito da sanção penal. Conclui a autora que "(…) a intensidade passional foi alta, particularmente nas peças da Defesa" (p. 230). Mas também na sentença de desclassificação.

Entre lei e doutrina encontram-se os trabalhos de José Adelmy da Silva Acioli e de Ana Maria Aparecida de Freitas. Aquele realiza uma análise crítica do art.5º, LXVIII da Constituição da República Federativa do Brasil, sob a perspetiva do depositário judicial de bens penhorados, que contém um equívoco linguístico. Este lapso tem sido fonte de incoerências semânticas e "(…) responsável pela formação de distorcido senso comum sobre a matéria que sedimenta o entendimento jurisprudencial predominante nos tribunais superiores no sentido da proscrição da possibilidade de prisão do depositário infiel no Brasil (…)" (p. 236) especialmente na relação com a Convenção Americana de Direitos Humanos. Já a segunda autora procura clarificar se é ou não da competência da Justiça do Trabalho executar a contribuição previdenciária incidente sobre o vínculo de emprego reconhecido

judicialmente, indagando se referente o acórdão proferido pelo Supremo Tribunal Federal, considerado guardião da Constituição Federal, foi ou não fundado em argumentos de cunho político e ideológico. Conclui a autora que assim aconteceu. Aí temos de que forma a Linguística tem espaço para auxiliar e melhorar a jurisprudência.

Inspirado em Bourdieu, Foucault e Thompson, Vinicius de Negreiros Calado, introduz o "crime de porte ilegal de fala" (Lenio Streck) que remete para as questões da distribuição desigual de poder e, portanto, de desigual possibilidades de fala e de discurso, em função da estrutura social hierarquizada. A "fala autorizada" é aquela que já foi superiormente permitida e resultou de lutas simbólicas, de conformação com as regras do jogo e do monopólio na detenção da violência simbólica legítima: "(...) há a imposição da visão de mundo dos dominantes aos dominados, através da criação de um conjunto de normas jurídicas universalizantes que (...) produzem o efeito de normalização, com o consequente aumento da autoridade social da prática jurídica estabelecida" (p. 287). Donde que desviante e infrator, conforme e normal não sejam senão construções ou atribuições (e não realidades ontológicas). É o discurso que é poder – de designar, de atribuir, de sujeitar. E o discurso jurídico ocupa uma posição específica neste exercício do poder, "(...) o indivíduo que não ocupa um determinado local social não pode dar uma interpretação jurídica que seja divergente e que (...) contrarie o senso comum teórico dos juristas" (p. 295). O discurso crítico e contra-hegemônico é desvio e crime.

Finalmente, Virgínia Colares vai procurar trilhar caminhos de confluência para os "(...) analistas críticos do discurso, semióticos do Direito e hermeneutas" (p. 300) na consideração das questões da pragmática linguística. Começa por fazer uma extensa e rigorosa revisão dos principais manuais de Direito, instrumentos de socialização e transmissão de paradigmas, como diria Thomas Kuhn (2000) (1922-1996), naquilo que foi produzido em torno da interpretação jurídica. Desfilam nomes como Arnaud, França, Baudry-Lacantinerie, Savignny, Abbagnano, entre outros. De seguida analisa a noção de *claritas* nos brocardos jurídicos que têm orientado a interpretação jurídica e parecem privilegiar a interpretação literal, o que não obsta à dificuldade da sua apreensão por parte do jurista que procura ali pontos de referência para a sua tarefa. Finalmente, usando analogias como a de "regime de liberdade condicional" ou de "cebola semântica", a autora remete para a necessidade de se considerar a indeterminação da língua por afastamento da reificação da realidade (típico de modelos positivistas e estruturalistas). Donde a defesa do uso da Análise Crítica do Discurso que "(...) aponta formas de olhar a linguagem em suas interfaces e confluências com as demais ciências humanas e sociais, identificando os processos sociocognitivos nos quais (...) são investidas políticas e ideologias nessas práticas cotidianas de sujeitos históricos" (p. 333). Se o Direito não existe isolado, também a Linguagem não deve deixar de ser estudada na relação com as restantes ciências para passar a ser considerada "uma forma de vida".

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Book Review

Forensic Linguistics

Reviewed by Ria Perkins

Aston University

Forensic Linguistics
John Olsson & June Luchjenbroers (2014)
London: Bloomsbury

This review focuses on the third edition of John Olsson's book *Forensic Linguistics* (Olsson and Luchjenbroers, 2014). This most recent edition retains the same aims as the previous versions (Olsson, 2004, 2008), but has been considerably revised and updated. There is greater collaboration from June Luchjenbroers, a renowned linguist and senior lecturer at Bangor University, who is now a named co-author, and a redesigned structure complete with a new chapter on forensic phonetics by Harry Hollien. The contents bear testament to this overhaul; excluding the introduction, there are now seventeen chapters divided into four main sections, allowing more attention to be given to the wider spectrum of areas covered by forensic linguistics. Like previous editions this "book is intended for students of forensic linguistics at undergraduate and postgraduate levels [as well as] novices to the field of linguistics" (Olsson and Luchjenbroers, 2014: xvii). In keeping with this aim it seeks to introduce the broad range of topics and fields included in the realm of forensic linguistics. The first, and largest, section introduces the idea of language as forensic evidence; it considers the main concepts of authorship analysis, as well as discussing some of the key complexities. The second section discusses dealing with linguistic evidence, the third looks at language, law and the legal process, and the fourth section then focuses on the language of the law. Under this structure the book does a very good job of introducing the main topic areas of forensic linguistics.

Like the previous editions this is intended as a practical introduction to forensic linguistics, with exercises and forensic texts to complement the theory in the chapters. This book is aimed at students and those interested in the field of forensic linguistics. It seeks to provide a general introduction to the wide field of forensic linguistics, and this is represented in the chapters. These have been expanded from the previous versions, with

certain chapters being written by different authors with expertise in the relevant area. Credit should be given to the wide range of forensic linguistic fields that this book seeks to introduce. Areas such as vulnerable witnesses and cybercrime did not receive such explicit attention in previous editions. Due to the breadth of the field of forensic linguistics, some of the fields receive only a brief discussion (for example the section on LADO). While more depth of discussion might be nice, this does allow the book to introduce a wide range of topics in an easily digestible manner. A list of further reading is provided at the end of each chapter to signpost readers to more in-depth literature.

The intention of the book to be a widely accessible introduction to the field of forensic linguistics is evidenced through the writing style. It is enigmatically written; discussing a range of complex concepts and issues without being overly academic. There are places which could benefit from more acknowledgement of the fact that forensic linguistics is still a young field and more discussion of the evolving nature of methodologies as well as the limitations. This is perhaps typified in Chapter Twelve, which seeks to discuss *Forensic linguistic evidence in court*. It does this through focusing on one particular case, which does help locate the experts' role in a courtroom setting. However, the focus is predominantly on criticising the prosecution expert. While critical evaluation should be welcomed, the chapter only fleetingly mentions that the prosecution witness's evidence was upheld by The Court of Appeal; which had the significant consequence of setting a sturdy precedent for linguistic evidence being accepted in court. Perhaps, as this is an introductory book, this chapter could benefit from a revision so that it looks at the wider perspective and context, as is done in the other chapters. The greater collaboration that can be seen in this edition has certainly served to strengthen the book. Harry Hollien's new chapter on forensic phonetics gives a comprehensive introduction to the field, from an acclaimed expert in forensic phonetics, who is also responsible for one of the field's key texts (Hollien, 2002). This collaboration not only gives the book greater balance, but introduces new readers directly to his work and expertise.

The real strength of this book lies in the practical exercises, based on real-life data. In my own experience, as both a student and teacher of forensic linguistics, being able to use such data is infinitely more interesting and engages people more. It also helps to better explain the context of forensic linguistics. There is wide range of cases and data used in the book; from literature to SMS text messages. Importantly the exercises are accompanied by discussion, answers and commentaries which, in the absence of one-to-one teaching, can enable students to test themselves and develop their analytical skills.

To conclude this is a book that forms a constructive part of the field of forensic linguistics. It provides a general introduction to the wide variety of aspects of the field, along with practical examples for readers to get their teeth into. This practical introduction is in my opinion one of the most valuable attributes of this book, as it is seldom seen to this extent in other introductory books. In fact I intend using some of the exercises with my own undergraduate students. The third edition is considerably superior to the earlier editions, introducing a much wider range of topics, and greatly strengthened through more explicit collaboration. This is a useful book that will likely be of benefit to many people who are looking for an introduction to the field of forensic linguistics.

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Editor's note

Until Dr Perkins submitted her review of the 3rd edition of Forensic Linguistics, I had not opened my copy despite having a personal dedication "Thanks so much for everything I've learned over nearly 20 years, All the best, John". However, as I am the unnamed expert criticised in Chapter 12, *Forensic Linguistic Evidence in Court*, I feel I have the right to comment on both the author and some of the content.

1. Dr Olsson quotes from my expert report produced for the trial of David Hodgson who was accused of murdering his estranged girlfriend Jenny Nichol. Dr Olsson had privileged access to my report as he was called as a defence expert in Hodgson's Appeal against conviction. However, as Dr Olsson did not ask for permission to quote from the report and as expert reports, unlike the evidence that experts give verbally in court, are not in the public domain and indeed are never seen by the jury, I assume this is a breach of copyright. I will raise this point with the publishers. I might add that this is by no means the first time Dr Olsson has published, without permission, texts he obtained in confidence.

2. Dr Olsson claims misleadingly, on p 235, that my oral evidence suggested "someone who is confident that the defendant is the author of the questioned texts". In fact, the Prosecution barrister at the first trial felt that I had been too helpful to the Defence in stressing that, on the basis of the linguistic evidence alone, the defendant could only be regarded as one of a set of possible authors; indeed I pointed out similarities between the questioned texts and texts sent by one of Hodgson's daughters. The Court of Appeal judgement, a public domain document which Dr Olsson chooses not to quote, noted that I had indeed given "'heavily qualified' testimony about the authorship of the 'suspect' texts, declining to categorically identify Hodgson as the writer".

3. No expert report is perfect, particularly one that was written eight years ago; the techniques of authorship attribution are improving all the time and, given the same data today I would produce a very different report. Of course, one hopes that most experts see themselves as working collaboratively to advance the field, rather than sniping at each other and doing so in places which do not even allow for a response, let alone a rebuttal.

4. It is a wonderful irony that Dr Olsson's chapter on Forensic Linguistic Evidence in Court is based on the Hodgson case. Not only is Dr Olsson's account partial and self-congratulatory, it is deliberately misleading about his own contribution.

Firstly, he implies that he, unlike me, would have remained on the fence and made no claims as to authorship – "it is clear that there are dangers in making judgements based on so few texts" (p 229). It will therefore be something of a surprise to readers to learn that Dr Olsson had actually told the police long before I had been sent the text messages, that "the likely author was probably an older male, given some of the outdated 'slang' of the texts", (Court of Appeal Judgment, EWCA Crim 742 [2009], §59). So much for the "dangers in making judgements based on so few texts".

Secondly, readers interested in learning more from Dr Olsson about presenting evidence in court would I am sure be disturbed to discover that in their judgement the Appeal Court judges commented on the fact that "Mr Olsson was an unimpressive witness. He criticised Professor Coulthard for being partisan, but failed to resist the temptation to use hyperbole himself in a way that we found less than helpful", (Judgment, §63). They also said "we are not by any means convinced that had [the defence barrister] Mr Hill known of Mr Olsson at the time of the trial he would necessarily have called him", (§62).

Caveat Emptor et Lector

Malcolm Coulthard
Florianópolis,
19.08.14

Obituary

In Memoriam – Maria Teresa Turell Julià
1949 – 2013

Núria Gavaldà & Malcolm Coulthard

Universitat Pompeu Fabra & Universidade Federal de Santa Catarina

Maite, as she was universally known within the academic community died on 24th April 2013 after a long fight with leukaemia. She is survived by her daughter, Julia and her 2-year old granddaughter Alice, who brought great joy to the last months of her life.

Everyone who met Maite for the first time was struck by her energy, enthusiasm, determination and perspicacity. Those who were lucky enough to count themselves among her many friends benefitted from her warmth, kindness and an amazing generosity with her time. We are honoured to have been invited to write this appreciation.

One of Maite's most attractive features was her pioneering spirit, which was present throughout her academic career. Her doctoral dissertation, as well as much of her research during the 1980s and 90s, introduced Spanish academics to the main theoretical and methodological principles of sociolinguistics. Her research was, from the beginning, characterized by the scientific rigour in the treatment of data that would mark her subsequent research in the areas of language contact, multilingualism, language acquisition and latterly forensic linguistics, to which she dedicated most of her academic research and publications in the last twelve years. Indeed, she was instrumental in introducing the field into Spain running impeccably organised conferences, supervising a wide variety of postgraduate students and creating one of the first Masters degrees in Forensic Linguistics in the world.

In 2003, Maite set up the first forensic linguistics laboratory in Spain, ForensicLab, within a pre-existing research group that was investigating linguistic variation (UVAL). ForensicLab was based inside the Institute for Applied Linguistics (IULA), at Universitat Pompeu Fabra (UPF) and under Maite's leadership, became a pioneer in teaching, research and expert witness work in forensic linguistics, not only nationally but also internationally. At the same time Maite, always an enthusiastic and gifted teacher, created and directed the first Master's Degree in Forensic Linguistics to be offered in Spanish. Always aware of the difficulty of creating a new degree almost single-handedly while at the same time training the next generation of scholars to continue the discipline, she ensured the highest quality input for her students by regularly inviting internationally recognised experts to contribute short intensive courses to her fledgling Mestrado.

At the same time, during the six-year period from 2007 and until shortly before she died Maite coordinated two high prestige Government funded research projects into linguistic features of idiolect. The main objective of these projects was the creation of an *Index of Idiolectal Similitude* that would measure linguistic variation and determine whether two given samples showed more inter- or more intra-speaker/writer variation. While constituting important basic research in itself, the Index had obvious casework applications, as it allows the researcher to express an opinion about the likelihood of two or more language samples having been produced by the same or by different individuals. Both these research projects set out to investigate not only three linguistic levels, the phonological, the morpho-syntactic and the discourse-pragmatic, but also three typologically distinct languages, Spanish, Catalan and English. At the beginning of 2013, when Maite was no longer able to devote as much time and energy to academic matters, she and her ForensicLab team were awarded funding for a third stage in order to continue refining the Index. Despite her absence, her team of researchers at ForensicLab is currently continuing with this project with the same energy that they learnt from her.

In 2011, Maite assumed with great pride the Presidency of the International Association of Forensic Linguists. She acted with typical energy and decisiveness whenever her illness permitted her to do so and she always returned, after the enforced absences for treatment, with renewed enthusiasm. The organisers of the regional conferences in Kuala Lumpur and Porto benefited greatly from her input and although not well enough to attend herself she sent a Presidential opening address to both.

Apart from these and many other academic achievements, Maite's life was also characterised by her continual engagement in both teaching and the transmission of her knowledge and the fruits of her research to the next generation. She still prepared her classes with the same meticulousness with which she had prepared her very first classes in the 70s. She would give of herself completely during each and every class, so much so that she taught an intensive MA course on Plagiarism in the same week that she was admitted to hospital for the very last time. She was utterly devoted to her students, especially the MA Forensic Linguistics students, as the teaching and dissemination of this field was one of her main academic objectives until the very end.

For a PhD candidate and inexperienced academician, meeting Maite and conducting research under her supervision was an unforgettable experience that would shape a student's career. Her continual professionalism was the first thing that would strike you, as she showed utter devotion and dedication to her work, great respect for fellow academicians, whether she shared their views or not, and unwavering loyalty to the university and scientific institutions, as well as to their representatives. Maite wanted not only to contribute to academia with her scientific research and the diffusion of her knowledge to younger generations, but also to be involved and to improve the structures and functioning of the university. In 2007, Universitat Pompeu Fabra gave Maite a special award in recognition of her contribution in the areas of teaching, management, institutional representation and research.

Another striking characteristic of Maite was her great vital strength. Working day-to-day with Maite was always stimulating. Whenever she came into the office she would fill the air with energy, and she would make you feel able to succeed in any new challenge and achieve any ambition. And even at the darkest moments of her health, when she could not be there in person, she would somehow provide you with a fireball of encouragement and

enthusiasm about the projects or research at hand, by telephone, email or SMS. She always managed to keep coordinating and making sure that her team would carry on progressing. Thus, under Maite's guidance, ForensicLab, IULA and Pompeu Fabra University hosted several international conferences and academic events on forensic linguistics, such as the 2nd European IAFL Conference on Forensic Linguistics / Language and the Law in 2006, the 2nd International Workshop on Forensic Linguistics / Language and the Law in 2010, and the 12th edition of the International Summer School in Forensic Linguistic Analysis in 2012. Moreover, in 2009, the Universitat Pompeu Fabra gave ForensicLab a Knowledge Transfer Award within the field of Social Sciences and Humanities.

Maite was a true professor. All her past students are very lucky to have participated in her classes on an impressive array of topics in the areas of sociolinguistics and forensic linguistics. However, Maite's teaching went much further. Anyone who had the chance to encounter her would learn valuable lessons about professionalism, scientific rigour, passionate devotion to one's work, loyalty and genuine humility; but at the same time they learned the importance of standing up for oneself, of pushing beyond one's perceived mental limits and of facing challenges with excitement, and above all, of courage and vital strength. These lessons will be lifelong.

On April 24th 2014, the first anniversary of Maite's death, the Universitat Pompeu Fabra hosted a one day conference in her memory entitled *1st Conference on Variation and Forensic Linguistics in Honour of Maria Teresa Turell.* During the conference, in a gesture Maite would have very much appreciated, a book was launched that had been edited in her honour by three of her last collaborators, Raquel Casesnoves Ferrer, Montserrat Forcadell Guinjoan and Núria Gavaldà Ferré.

Ens Queda la Paraula:
Estudis de Lingüística Aplicada en Honor M. Teresa Turell

The volume includes contributions from a selection of the national and international academics Maite had worked with, many of whom had contributed to the Master's degree.

Truly, we shall not look upon her like again…

Obituary

Remembering Peter Tiersma

Lawrence M. Solan

Brooklyn Law School

I don't remember just when I first met Peter Tiersma, but it was some time in the early 1990s. I was still practicing law at the time, and we met at a conference. Peter had already made the move from practice to academia in 1990 when he joined the faculty at Loyola Law School in Los Angeles, where he remained for 24 years, until his death on April 13, 2014.

The world of language and law scholarship was a welcoming one then, as it still is. I was working at a New York law firm, doing some academic research during my free time. I would periodically speak at conferences, having been encouraged by people in the field. Typically, at that time, language and law would occupy one or two panels at a large conference, such as meetings of the Law & Society Association, or the Linguistic Society of America. Almost invariably, one of the participants would tell me that I really should get to know Peter Tiersma because we both had the same educational backgrounds (a Ph.D. in Linguistics followed by a law degree), and seemed to share an outlook on language and law scholarship. At one of these conferences he and I did meet, although I can't now recall which one.

What I do remember quite specifically, though, is that my friendship with Peter began shortly before I joined the Brooklyn Law School faculty in 1996. Early that year, after I had accepted the teaching position but before it had started, I had to travel to Los Angeles for a case I was litigating. I didn't know Peter well, but I thought it would be nice to stop at Loyola to say hello to him. I also wanted to meet his then Dean, Gerald McLaughlin, who had earlier taught at Brooklyn Law School for many years. By then I had read some of Peter's work, especially his work on language issues in contract law, and it was absolutely first rate – perhaps the best I had seen in the field. So I was happy to have the opportunity to get to know him a little better.

We spent several hours together – including a very nice meeting with the dean. What I recall from that day was discovering that Peter was very learned in areas about which I knew very little, especially the history of language and the history of law; that he had a good sense of humor; and that our interests were not identical but overlapped a great deal. Perhaps most importantly, we got along well and seemed to like one another. I was just beginning a new career and it meant a lot to me to begin it having a colleague with whom

I would want to share work and ideas, even a colleague who lived and taught 2,500 miles from my home.

Once I started teaching, we began to attend the same conferences, and often spoke on the same panels. It was during that time that the number of conferences devoted to one or another aspect of language and law began to proliferate, increasing our opportunities to spend time together. Before long, we would make sure we had dinner together when we were at these events, and soon began to be seen as a kind of pair. We laughed at similar things and would banter, often entertaining others and enjoying it. Peter was a charismatic figure, reflected in his captivating talks and his off-the-charts teaching evaluations at Loyola year after year. For many years, when we travelled to academic events, I don't think anyone would even have thought of inviting one of us to have dinner without the other, and I don't think either of us would have considered it. "Larry, do you want to join us for dinner?" "Sure, I'll get Peter." And the same, no doubt, in the other direction. Yet in other respects, Peter was quite private, not quick to share his feelings except with a few people.

As we grew closer, we decided to write a book together. Peter was just finishing his important 1999 volume, *Legal Language*, published by the University of Chicago Press. We wrote to our editor, John Tryneski (I had also published a book with Chicago), and suggested a book dealing with topics on language and law. Tryneski was enthusiastic, and the project later became our 2005 book, *Speaking of Crime*. But something happened in between. I had suggested to Peter that we spend some time together at the January 1998 AALS (Association of American Law Schools) meeting planning out the book. He responded that my idea was great, but that he would not be able to do that because he had just been diagnosed with leukemia. Round 1.

Peter fought his way through the leukemia over the next couple of years, and then we fought our way through the book. Well, we never did fight, but we had different styles and we needed to learn when to give the other space. That came very easily for the most part. Some of the chapters were for him to draft, others for me. We then would edit each other's drafts, questioning details, tightening up the arguments. The book was better than either of us would have been able write alone, and it was much more fun. The only difficulty we had was over the chapter on perjury. Both of us had written about that. Our analyses differed in technical respects that seem small, but which had consequences and were hard to reconcile. We argued for weeks over the details (sometimes stubbornly, I'm sorry to have to admit), and eventually came up with a solution of which we were both proud. We regarded that as a major achievement.

One of my favorite stories arose early in the development of *Speaking of Crime*. At a conference, we were meeting with John Tryneski to run through the process of completing the manuscript. John liked what he heard – he was always very supportive of us. At the end, though, he said that one of us would have to take charge of a final stylistic edit so that the book would read with a single, coherent voice. I thought, "That's it. There is no way I want to do that." Peter thought, "That's it. There is no way I want to let Larry do that." Somehow, John picked up on our facial expressions, and asked Peter to take on the role. He agreed, sounding reluctant. It wasn't more than an hour later, over a glass of wine, that Peter and I shared our reactions and had a long laugh together. Even recently, Peter and I talked about writing a sequel to that book, and had he lived, no doubt we would have done so.

During the first decade of the century, we were quite a team. We wrote not only *Speaking of Crime*, but we also wrote eight articles together as we wrote other things on our own. Two of Peter's were his wonderful book, *Parchment, Paper, Pixels* and his article "The Textualization of Precedent," which I continue to think is the best piece he ever wrote. It is filled with excellent contributions to legal theory, made all the more creative through its insights about the relationship between the history of technology and the history of law.

We also had become the best of friends. We didn't talk much on the phone, but we were never out of touch for long, and saw each other several times a year, at least most years. We visited each other, continued to attend the same conferences sometimes taking short trips together at their end, arranged to meet in Europe when we both happened to be there, taught together in China. On one of his trips east, he shoveled snow with me. It was his first time. Not mine. In California, we would visit beautiful historic sites, and go to wineries where we would sample Pinot Noir. He and his wife, Thea, were always extremely hospitable, and I came to regard their guest room as my own, knowing it wasn't true, but not caring very much.

These trips were especially easy for me because there is nothing that Peter enjoyed more than being a tour guide, even of places he had never before been. He would always read extensively before a visit and have a very good eye for the cultural and historical sites that were the most interesting. And he was knowledgeable about all kinds of things, especially natural phenomena, everything from birds to rocks. After one conference in Amsterdam, we drove to Friesland, the northern part of the Netherlands where Peter was born in 1952, and saw the old farm house where he spent his early childhood before his family emigrated to the United States, eventually settling in Central California. They were dairy farmers, and, for that matter, some still are. Peter was always happy to let people know that Frisian was his first language. Actually, he spoke many languages: Dutch was his second. English, Spanish and German came later, his proficiency in German coming in college at Stanford. (He later earned his Ph.D. from the University of California, San Diego, and his law degree at Berkeley.)

We also shared our friends with each other. Some readers of this remembrance know me because of Peter, others knew Peter because of me. In retrospect, that part of our relationship is perhaps the most important to me.

In 2009, we started working on the *Oxford Handbook of Language and Law*, which was published in 2012. Peter took the lead. He was more disciplined than I am, and it was a very big project in which discipline was the key. But we ultimately shared the work fairly and published the book, which contains many very good articles. Two are ones that he and I wrote together, the last two pieces that we co-authored. It was during this time that Peter was diagnosed with pancreatic cancer, in early 2012. I saw him about a month before the diagnosis when I went out there for us to finish technical aspects of the *Handbook*. Peter was in a great deal of pain, the disease, though not yet detected, was already having an effect. I also saw him a number of times as he fought heroically against the cancer, sometimes suffering, sometimes feeling much better as the result of medication and surgery. We continued our visits to the wineries and to local restaurants, although the lengths of the outings were shortened by his reduced stamina. He knew where pancreatic cancer was likely to lead, but he continued doing the best he could, recognizing each day as a precious gift.

Over the past year or so, I have had occasion to reread a lot of Peter's work in connection with a book in his honor that I am co-editing with Janet Ainsworth and Roger Shuy. He made such contributions to so many areas, including the history and nature of legal language, defamation, perjury, consent in rape cases, the tension between literal language and pragmatic inference in legal interpretation, the formation and interpretation of contracts, criminal procedure, substantive criminal law, statutory interpretation, and jury instructions.

I initially got know Peter very well by virtue of our having independently developed similar careers based on similar academic interests. Our paths were bound to cross. All the rest was my good fortune.

Notes for Contributors

1. The editors of **Language and Law / Linguagem e Direito** (**LL/LD**) invite original contributions from researchers, academics and practitioners alike, in Portuguese and in English, in any area of forensic linguistics / language and the law. The journal publishes articles, book reviews and PhD abstracts, as well as commentaries and responses, book announcements and obituaries.

2. Articles vary in length, but should normally be between 4,500 and 8,000 words. All other contributions (book reviews, PhD abstracts, commentaries, responses and obituaries) should not exceed 1,200 words. Articles submitted for publication should not have been previously published nor simultaneously submitted for publication elsewhere.

3. All submissions must be made by email to the journal's email address llldjournal@gmail.com. Authors should indicate the nature of their contribution (article, book review, PhD abstract, commentary, response, book announcement or obituary).

   Before submitting an article, visit the journal's webpage (http://www.linguisticaforense.pt/llldjournal-en.html) to access further information on the submission process, authors' guidelines and journal templates.

4. Contributions must be in English or Portuguese. Authors who are not native speakers of the language of submission are strongly advised to have their manuscript proofread and checked carefully by a native speaker.

5. All articles submitted for publication will be refereed before a decision is made to publish. The journal editors will first assess adherence both to the objectives and scope of the journal and to the guidelines for authors, as well as the article's relevance for and accessibility to the target audience of the journal. Articles will subsequently be submitted to a process of double blind peer review. For this reason, the name of the author(s) should not appear anywhere in the text;

self-referencing should be avoided, but if used the author(s) should replace both their own name and the actual title of their work with the word 'AUTHOR'.

6. The articles should be accompanied with a title and an abstract of no more than 150 words in the language of the article and, if possible, in the journal's other language as well. The abstract should also include up to five keywords. Contributions should indicate in the body of the accompanying email the name, institutional affiliation and email address(es) of the author(s).

7. The author(s) may be required to revise their manuscript in response to the reviewers' comments. The journal editors are responsible for the final decision to publish, taking into account the comments of the peer reviewers. Authors will normally be informed of the editorial decision within 3 months of the closing date of the call for papers.

8. Articles should be word-processed in either MS Word (Windows or Mac) – using one of the templates provided – or LaTeX. The page set up should be for A4, with single spacing and wide margins using only Times New Roman 12 pt font (also for quotations and excerpts, notes, references, tables, and captions). PDF files are not accepted. Where required, the following fonts should be used for special purposes:

    - Concordances and transcripts should be set in courier;
    - Phonetics characters should be set in an IPA font (use SIL IPA93 Manuscript or Doulos);
    - Special symbols should be set in a symbol font (as far as possible, use only one such font throughout the manuscript);
    - Text in a language which uses a non-roman writing system (e.g. Arabic, Mandarin, Russian) may need a special language font;
    - Italics should be used to show which words need to be set in italics, NOT underlining (underlining should be used as a separate style in linguistic examples and transcripts, where necessary).

9. The article should be divided into unnumbered sections, and if necessary sub-sections, with appropriate headings. Since the journal is published online only, authors can include long appendices, colour illustrations, photographs and tables, as well as embed sound files and hyperlinks.

10. Figures, tables, graphics, pictures and artwork should be both inserted into the text and provided as separate files (appropriately named and numbered), in one of the main standard formats (JPEG/JPG, TIFF, PNG, PDF). They should have a resolution of at least 300 dpi, be numbered consecutively and contain a brief, but explanatory caption. Captions should be placed after each table, figure, picture, graphic and artwork in the body of the text, but not in the artwork files. Where applicable, tables should provide a heading for each column.

11. Transcript data should be set in a Courier typeface, numbered by turns, rather than lines, and should be punctuated consistently. Where elements need to be

aligned with others on lines above or below, use multiple spaces to produce alignment. Transcripts should be provided as separate image files (e.g. JPEG/JPG, TIFF, PNG, PDF), named according to the transcript number.

12. Abbreviations should be explained in the text, in full form. They should be presented consistently, and clearly referred to in the text. Times New Roman 12 pt should be used whenever possible, unless a smaller size font is necessary.

13. Endnotes are preferred to footnotes but even so should be kept to a minimum. When used, they should be numbered consecutively and consistently throughout the article, starting with 1, and listed at the end of the article, immediately before the References.

14. Manuscripts should clearly indicate the bibliographic sources of works cited. The authors must ensure that the references used are accurate, comprehensive and clearly identified, and must seek permission from copyright holders to reproduce illustrations, tables or figures. It is the responsibility of the author(s) to ensure that they have obtained permission to reproduce any part of another work before submitting their manuscript for publication. They are also responsible for paying any copyright fees that may be charged for the use of such material.

15. Citations in the text should provide the surname of the author(s) or editor(s), year of publication and, where appropriate, page numbers, immediately after the quoted material, in the following style: Coulthard and Johnson, 2007; Coulthard and Johnson (2007); Coulthard and Johnson (2007: 161). When a work has two authors, both names should be referenced each time they are cited. When there are more than two authors, only the first author followed by *et al.* should be used (Nolan *et al.* (2013)). The author, date and page can be repeated, if necessary, but 'ibid.' and 'op. cit.' must **not** be used. When citing information from a particular work, the exact page range should be provided, e.g.: Caldas-Coulthard (2008: 36–37), NOT Caldas-Coulthard (1996: 36 ff.).

16. Quotations should be clearly marked using quotation marks. Long quotations should be avoided. However, when used, quotations of over 40 words in length should be set as a new paragraph; the extract should be left and right indented by 1 cm and set in a smaller font size (11 pt). The citation should follow the final punctuation mark of the quotation inside brackets. No other punctuation should be provided after the citation, e.g.:

> The linguist approaches the problem of questioned authorship from the theoretical position that every native speaker has their own distinct and individual version of the language they speak and write, their own idiolect, and the assumption that this idiolect will manifest itself through distinctive and idiosyncratic choices in speech and writing. (Coulthard and Johnson, 2007: 161)

If author and date are used to introduce the quote, only the page number(s) preceded by 'p.' will appear at the end of the quotation:

As was argued by Coulthard and Johnson (2007):

> The linguist approaches the problem of questioned authorship from the theoretical position that every native speaker has their own distinct and individual version of the language they speak and write, their own idiolect, and the assumption that this idiolect will manifest itself through distinctive and idiosyncratic choices in speech and writing. (p. 161)

17. Quotations must be given in the language of the article. If a quotation has been translated from the original by the author(s), this should be indicated in an endnote where the original quotation should be provided.

18. A list of References should be placed at the end of the article. The References section should contain a list of all and only the works cited in the manuscript, and should be sorted alphabetically by the surname of the (first) author/editor. Multiple publications by the same author(s) should be sorted by date (from oldest to newest). If multiple works of one author in the same year are cited, these should be differentiated using lower case letters after the year, e.g. 1994a, 1994b, and not 1994, 1994a. Book publications must include place of publication and publisher. Page numbers should be provided for chapters in books and journal articles. In addition, the volume and issue number must also be given for journal articles, and the name of journals must not be abbreviated. Reference URLs should be provided when available. When cases and law reports are cited, these should be provided in a separate list following the References.

19. To summarise the following style guidelines should be followed, including the capitalisation and punctuation conventions:

Books
Coulthard, M. and Johnson, A. (2007). *An Introduction to Forensic Linguistics: Language in Evidence*. London and New York: Routledge.

Mota-Ribeiro, S. (2005). *Retratos de Mulher: Construções Sociais e Representações Visuais no Feminino*. Porto: Campo das Letras.

Chapter in a book
Machin, D. and van Leeuwen, T. (2008). Branding the Self. In C. R. Caldas-Coulthard and R. Iedema (eds) *Identity Trouble: Critical Discourse and Contested Identities*. Basingstoke and New York: Palgrave Macmillan.

Journal article
Cruz, N. C. (2008). Vowel Insertion in the speech of Brazilian learners of English: a source of unintelligibility?. *Ilha do Desterro* 55, 133–152.

Nolan, F., McDougall, K. and Hudson, T. (2013). Effects of the telephone on perceived voice similarity: implications for voice line-ups. *The International Journal of Speech, Language and the Law* 20(2), 229–246.

Dissertations and Theses
Lindh, J. (2010). *Robustness of Measures for the Comparison of Speech and Speakers in a Forensic Perspective*. Phd thesis. Gothenburg: University of Gothenburg.

Web site
Caroll, J. (2004). Institutional issues in deterring, detecting and dealing with student plagiarism. *JISC online*, http://www.jisc.ac.uk/publications/briengpapers/2005/pub_plagiarism.aspx, Accessed 14 November 2009.

20. The main author of each contribution will receive proofs for correction. Upon receiving these proofs, they should make sure that no mistakes have been introduced during the editing process. No changes to the contents of the contribution should be made at this stage. The proofs should be returned promptly, normally within two weeks of reception.

21. In submitting an article, authors cede to the journal the right to publish and republish it in the journal's two languages. However, copyright remains with authors. Thus, if they wish to republish, they simply need to inform the editors.

Normas para apresentação e publicação

1. A direção da revista **Language and Law / Linguagem e Direito** (**LL/LD**) convida investigadores/pesquisadores, académicos e profissionais da área da linguística forense / linguagem e direito a apresentar trabalhos originais, em português ou em inglês, para publicação. A revista publica artigos, recensões de livros e resenhas de teses, bem como críticas e respostas, anúncios de publicação de livros e obituários.

2. A dimensão dos artigos pode variar, mas os artigos propostos devem possuir entre 4,500 e 8,000 palavras. As restantes contribuições (recensões, resenhas de tese, comentários, respostas e obituários) não deverão exceder 1200 palavras. Os artigos enviados para publicação não devem ter sido publicados anteriormente, nem propostos a outra publicação científica.

3. As propostas para publicação devem ser enviadas por email para o endereço de correio eletrónico da revista llldjournal@gmail.com. No corpo do email, os autores devem indicar a natureza do seu texto (artigo, recensão, resenha de tese, comentário, resposta, anúncio de publicação de livros ou obituário).

   Os autores devem consultar a página da revista na Internet (http://www.linguisticaforense.pt/llldjournal-pt.html) antes de enviarem os seus textos para obterem mais informações acerca do processo de submissão, instruções e modelos de formatação da revista.

4. São aceites textos para publicação em português ou em inglês. Aconselha-se os autores cujo texto se encontre escrito numa língua diferente da sua língua materna a fazerem uma cuidada revisão linguística do mesmo, recorrendo a um falante nativo.

5. Todos os textos enviados para publicação serão sujeitos a um processo de avaliação com vista à sua possível publicação. A direção da revista efetuará, em primeiro lugar, uma avaliação inicial da pertinência do texto face à linha editorial da revista, do cumprimento das normas formais de apresentação estipuladas neste

documento, bem como da relevância e acessibilidade do artigo para o público-alvo da revista. Posteriormente, os artigos serão submetidos a um processo de arbitragem científica por especialistas, em regime de dupla avaliação anónima. Por esta razão, o nome do(s) autor(es) não deverá(ão) ser apresentado(s) em qualquer parte do texto. Os autores devem evitar citar-se a si mesmos; porém, quando citados, devem substituir, quer o seu nome, quer o título do(s) trabalho(s) citado(s) pela palavra "AUTOR".

6. Os artigos devem ser acompanhados por um título e por um resumo até 150 palavras no idioma do artigo e, se possível, também no outro idioma da revista. Deve incluir, também, até cinco palavras-chave. Os textos enviados para publicação devem incluir, no corpo do email de envio, o nome, a afiliação institucional e o(s) endereço(s) de correio eletrónico do(s) autor(es).

7. Se necessário, aos autores poderá ser solicitada a revisão dos textos, de acordo com as revisões e os comentários dos avaliadores científicos. A decisão final de publicação será da responsabilidade da direção da revista, tendo em consideração os comentários resultantes da arbitragem científica. A decisão final sobre a publicação do texto será comunicada aos autores será comunicada até três meses após a data final do convite à apresentação de propostas.

8. Os artigos devem ser enviados em ficheiro MS Word (Windows ou Mac) – utilizando um dos modelos disponibilizados pela revista – ou LaTeX. Os textos devem ser redigidos em páginas A4, com espaçamento simples e margens amplas, tipo de letra Times New Roman 12 pt (incluindo citações e excertos, notas, referências bibliográficas, tabelas e legendas). Não é permitido o envio de ficheiros PDF. Sempre que necessário, em casos especiais, devem ser utilizados os tipos de letra seguintes:

    - Em concordâncias e transcrições deve utilizar-se Courier;
    - Os carateres fonéticos devem utilizar um tipo de letra IPA (SIL IPA93 Manuscript ou Doulos);
    - Os símbolos especiais devem utilizar um tipo de letra Símbolo (se possível, utilizar apenas um tipo de letra especial ao longo do texto);
    - No caso de textos escritos em idiomas com um sistema de escrita diferente do romano (e.g. Árabe, Mandarim, Russo), pode ser necessário um tipo de letra especial para essa língua;
    - Para assinalar palavras em itálico, deve utilizar-se itálico e NÃO sublinhados (os sublinhados estão reservados a exemplos e transcrições linguísticas).

9. O artigo deve ser organizado em secções e, se necessário, subsecções não numeradas, com títulos adequados. Uma vez que a revista é publicada apenas online, o(s) autor(es) pode(m) incluir anexos e apêndices longos, ilustrações, fotografias e tabelas a cores, e integrar ficheiros de som e hiperligações.

10. Figuras, tabelas, gráficos, imagens e desenhos devem ser inseridos no respetivo local no texto e enviados como ficheiro separado (utilizando o nome e o número

correspondente como nome de ficheiro), num dos principais formatos de imagem existentes (JPEG/JPG, TIFF, PNG, PDF). Os ficheiros de imagem devem apresentar uma resolução de pelo menos 300 dpi, ser numerados sequencialmente e estar acompanhados por uma legenda curta, mas descritiva. As legendas devem ser colocadas a seguir às tabelas, figuras, imagens, gráficos ou desenhos correspondentes no corpo do texto, mas não devem ser incluídas no(s) ficheiro(s) em separado. Sempre que necessário, as tabelas devem apresentar os títulos das colunas.

11. As transcrições devem ser apresentadas em tipo de letra Courier, numeradas por turnos e não por linhas, e utilizar pontuação consistente. Sempre que for necessário alinhar elementos com outros elementos em linhas anteriores ou seguintes, deve utilizar-se vários espaços para efetuar o alinhamento. As transcrições devem ser fornecidas como ficheiros de imagem individuais (e.g. JPEG/JPG, TIFF, PNG, PDF), devendo o nome dos ficheiros corresponder ao número da transcrição.

12. As abreviaturas devem ser explicadas no texto, por extenso, apresentadas de modo consistente e mencionadas claramente no texto. Deve utilizar-se o tipo de letra Times New Roman 12 pt sempre que possível, exceto se for necessário um tipo de letra mais pequeno.

13. Deve evitar-se o recurso a notas; porém, quando utilizadas, é preferível utilizar notas de fim. Estas devem ser numeradas sequencialmente ao longo do artigo, começando por 1, e colocadas no final do artigo, imediatamente antes das Referências bibliográficas.

14. Os textos devem indicar claramente as fontes e as referências bibliográficas dos trabalhos citados. O(s) autor(es) deve(m) certificar-se de que as referências utilizadas são precisas, exaustivas e estão claramente identificadas, devendo obter a devida autorização dos respetivos autores para reproduzir ilustrações, tabelas ou figuras. O(s) autor(es) é(são) responsável(eis) pela obtenção da devida autorização para reproduzirem parte de outro trabalho antes de enviarem o seu texto para publicação. A **LL/LD** não se responsabiliza pelo incumprimento dos direitos de propriedade intelectual.

15. As referências no próprio texto devem indicar o apelido do(s) autor(es) ou organizador(es), ano de publicação e, sempre que necessário, os números de página imediatamente após o material citado, de acordo com o estilo seguinte: Coulthard e Johnson, 2007; Coulthard e Johnson (2007); Coulthard e Johnson (2007: 161). Sempre que um trabalho possuir dois autores, deve indicar-se os dois apelidos em todas as citações do mesmo. Os trabalhos com mais de dois autores citam-se indicando o apelido do primeiro autor, seguido de *et al.* (Nolan *et al.* (2013)). O autor, a data e o número de página podem ser repetidos, sempre que necessário, não devendo utilizar-se "ibid.", "ibidem" ou "op. cit.". Ao citar(em) informações específicas de um determinado trabalho, o(s) autor(es) deve(m) indicar o intervalo de páginas respetivo, e.g.: Caldas-Coulthard (2008: 36–37), NÃO Caldas-Coulthard (1996: 36 ff.).

16. As citações devem ser claramente assinaladas, utilizando aspas. Deve evitar-se a utilização de citações longas; porém, quando utilizadas, as citações com mais de 40 palavras devem ser formatadas como um novo parágrafo, o texto deve ser indentado 1 cm à esquerda e à direita das margens, utilizando um tipo de letra mais pequeno (11 pt). A referência bibliográfica deve ser apresentada entre parênteses a seguir ao sinal de pontuação final da citação. Não deve utilizar-se qualquer pontuação após a citação, e.g.:

    > As palavras usadas para expressar o direito, nas várias línguas indo-européias, têm sua formação na raiz "dizer". Dizer a verdade. Do ponto de vista da concepção de língua, que subjaz à concepção de direito, os profissionais do direito operam com uma noção de verdade fundada na relação entre a linguagem e o mundo, com base num conceito de seleção biunívoca e quase de especularidade ou, pelo menos, de correspondência. (Colares, 2010: 307)

    Se o autor e a data forem apresentados na introdução à citação, deve apresentar-se apenas o(s) número(s) de página no final da citação, antecedidos de "p.":

    Conforme descrito por Colares (2010):

    > As palavras usadas para expressar o direito, nas várias línguas indo-européias, têm sua formação na raiz "dizer". Dizer a verdade. Do ponto de vista da concepção de língua, que subjaz à concepção de direito, os profissionais do direito operam com uma noção de verdade fundada na relação entre a linguagem e o mundo, com base num conceito de seleção biunívoca e quase de especularidade ou, pelo menos, de correspondência. (p. 307)

17. As citações devem ser apresentadas no idioma do texto enviado para publicação. Se a citação tiver sido traduzida do original pelo(s) autor(es), deverá apresentar-se a citação original numa nota de fim, com a indicação do tradutor.

18. As referências bibliográficas devem ser colocadas no final do texto. A secção de Referências deve incluir uma lista de todas as referências citadas no texto, e apenas estas, ordenadas alfabeticamente por apelido do (primeiro) autor/editor. Quando existirem várias publicações do mesmo autor, estas devem ser ordenadas por data (da mais antiga para a mais recente). Se forem citadas várias obras de um mesmo autor, publicadas no mesmo ano, estas devem ser diferenciadas utilizando letras minúsculas a seguir ao ano, e.g. 1994a, 1994b, e não 1994, 1994a. As referências a livros devem incluir o local da publicação e a editora. As referências a capítulos de livros e artigos publicados em revistas devem incluir os respetivos números de página. No caso de artigos publicados em revistas, deve indicar-se, ainda, o volume e o número, não devendo o nome das revistas ser abreviado. Sempre que aplicável, devem ser indicados os URL de referência. As referências correspondentes a casos e boletins jurídicos devem ser indicadas numa lista própria, após as Referências.

19. Em suma, deverá observar-se os exemplos que se seguem, incluindo as convenções relativas a maiúsculas, minúsculas e pontuação:

Livros
Coulthard, M. e Johnson, A. (2007). *An Introduction to Forensic Linguistics: Language in Evidence*. Londres e Nova Iorque: Routledge.

Mota-Ribeiro, S. (2005). *Retratos de Mulher: Construções Sociais e Representações Visuais no Feminino*. Porto: Campo das Letras.

Capítulos de livros
Machin, D. e van Leeuwen, T. (2008). Branding the Self. In C. R. Caldas-Coulthard e R. Iedema (org.) *Identity Trouble: Critical Discourse and Contested Identities*. Basingstoke e Nova Iorque: Palgrave Macmillan.

Artigos de revistas
Cruz, N. C. (2008). Vowel Insertion in the speech of Brazilian learners of English: a source of unintelligibility?. *Ilha do Desterro* 55, 133–152.

Nolan, F., McDougall, K. e Hudson, T. (2013). Effects of the telephone on perceived voice similarity: implications for voice line-ups. *The International Journal of Speech, Language and the Law* 20(2), 229–246.

Dissertações e Teses
Lindh, J. (2010). *Robustness of Measures for the Comparison of Speech and Speakers in a Forensic Perspective*. Tese de doutoramento. Gotemburgo: Universidade de Gotemburgo.

Websites
Caroll, J. (2004). Institutional issues in deterring, detecting and dealing with student plagiarism. *JISC online*, http://www.jisc.ac.uk/publications/briengpapers/2005/pub_plagiarism.aspx, Acesso em 14 de novembro de 2009.

20. As provas para verificação e correção serão enviadas aos primeiros autores dos textos. Após a receção das provas, os autores deverão verificar a eventual existência de erros introduzidos durante o processo de edição. O conteúdo dos textos não deverá ser alterado nesta fase. As provas revistas devem ser enviadas tão brevemente quanto possível, normalmente no prazo de duas semanas após a receção.

21. Ao enviarem artigos para publicação, os autores cedem à revista o direito de publicar e republicar o texto nos dois idiomas da revista. Porém, os autores mantêm os direitos sobre o texto, pelo que, se desejarem republicar o artigo, terão apenas que informar a direção da revista.