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OS ARTIGOS FORAM SUBMETIDOS A ARBITRAGEM CIENTÍFICA.

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Abstract. *Aifang Ye, a non-English speaking woman, was convicted of making a false statement in a passport application. The conviction was based almost exclusively on a 'confession' produced at the end of an investigative interview with an Immigration and Customs Enforcement (ICE) agent that was conducted through an interpreter who was linked by telephone. The written confession was presented to the court solely in English, even though Ms Ye did not understand English and never wrote or spoke any of the words contained in the confession. Despite a request by the defense lawyer, the prosecutor refused to make the interpreter available for cross-examination. The defense, citing the Confrontation Clause of the Sixth Amendment, argued that prosecutorial actions and judicial decisions violated Ms Ye's rights, on the grounds that the prosecution had failed to make the interpreter available for cross-examination. The case revolves around the question of the status, reliability and output of interpreters – is an interpreter simply a mouthpiece or conduit, or does acting as an interpreter necessarily involve the interpreter in the co-production rather than just the conveying of the message? If the latter, then interpreted and/or translated statements like Ms Ye's confession which were produced outside the court must be considered to be* testimonial hearsay statements*, which are inadmissible at trial unless the defense has the possibility to cross-examine the declarant, in Ms Ye's case the interpreter.*

Keywords: *Telephone interpreting, Confrontation Clause, "conduit" theory.*

Resumo. *Aifang Ye, uma mulher não falante de inglês, foi condenada por prestar falsas declarações num pedido de passaporte. A condenação assentou quase exclusivamente numa "confissão" apresentada no final do interrogatório de um agente dos Serviços de Fronteiras,* o Immigration and Customs Enforcement (ICE)*, através de um intérprete, que prestou o serviço via telefone. A confissão escrita foi apresentada ao tribunal exclusivamente em inglês, apesar de Ye não falar inglês e de nunca ter dito nem escrito nenhuma das palavras incluídas na confissão. Não obstante o pedido do advogado de defesa, o procurador recusou chamar o intérprete para contra-interrogatório. A defesa, citando a Cláusula de confrontação da Sexta Emenda, argumentou que a condenação e as decisões judiciais constituíam violação dos direitos de Ye, uma vez que a acusação não tinha colocado o intérprete à disposição para contra-interrogatório. O caso apresentado*

neste artigo gira em torno das questões do estatuto, da fiabilidade e do trabalho dos intérpretes: será o intérprete meramente um altifalante ou uma conduta, ou o trabalho do intérprete implica-o necessariamente na co-produção da mensagem, e não só na sua transmissão? Neste último caso, então as declarações interpretadas e/ou traduzidas, como acontece com a confissão de Ye que foi produzida fora do tribunal, devem ser consideradas testemunho indireto*, sendo assim inadmissíveis em julgamento, a menos que a defesa possa contra-interrogar o declarante – que, no caso de Ye, é o intérprete.*

Palavras-chave: *Interpretação telefónica, Cláusula de confrontação, teoria de "conduta".*

Introduction

After giving birth to her second child, Jessie, in February 2012 in the Northern Mariana Islands, a U.S. territory in the Pacific, Aifang Ye, a Chinese national, sought to obtain a US passport for her newborn daughter. On March 29, 2012 she submitted a passport application for Jessie. A few days later she became the target of an investigation into suspected passport fraud and was questioned by an Immigration and Customs Enforcement agent, Officer Faulkner. As Ms Ye spoke only Mandarin and Officer Faulkner only English, he called the *Language Line*, a service used by the Department of Homeland Security when they need a foreign-language interpreter. The interpreter, Jingyan "Jane" Yin Lee, who will be referred to as Jane from now on, was actually based in the State of New York, some 8,000 miles away from where the interview was taking place.

A speakerphone served as the telephonic connection, but the officer made no audio-recording. Officer Faulkner would ask a question in English and Interpreter Jane would produce a Mandarin version of the question. Ms Ye would then respond in Mandarin and Jane would produce an English version of her response. From this interaction a first person monologic statement in English was produced, but the officer made no written record let alone an electronic recording of the questions and answers on which it was based. According to Officer Faulkner, the reliability of the interpretation/translation process was checked at the end of the interview by having the English text he had created back-interpreted into Mandarin, 'paragraph by paragraph', for Ms Ye to corroborate and initial.

By the end of the interview, Officer Faulkner had created a "confession" written in English, attributed to Ms Ye and ready for use in the subsequent prosecution, even though, of course, Ms Ye had never spoken or written any of the actual words therein.

There are many problems with this kind of verbal evidence. In the first place, in the absence of an audio-recording, there is no way that anyone can check the accuracy and thus the reliability of the interpreting, so one does not know to what extent the answers which the officer received in English were an accurate version of the answers given to the questions he (thought he) had asked. Other researchers have shown that serious mistakes can occur in both translated questions and translated answers (Berk-Seligson, 2002; Ng, 2012). Secondly, one is also unable to compare the answers Jane provided in English with the version the officer actually wrote down. This is worrying because, as Gibbons (2001) clearly illustrates, written versions of interrogations are by no means error free even when all the participants are using the same language. Thirdly, one does not know how much of the statement was contributed directly or indirectly by the officer himself. Coulthard *et al.* (2016: 166) exemplifies how, if a statement is produced by means

of the witness replying to questions, the wording of the statement will necessarily consist in part, and at times predominantly, of the language used by the questioning officer and not the language used by the witness. We can see this from the following extract taken from Officer Hannam's evidence in the 1952 trial of Alfred Charles Whiteway in the UK, where not a single word said by the accused appears in the exemplificatory quoted sentence "On that Sunday I wore my shoes" that was attributed to him.

> I would say "Do you say on that Sunday you wore your shoes?" and he would say "Yes" and it would go down as "On that Sunday I wore my shoes" (Court transcript of Hannam's evidence, p. 156)

Notwithstanding this, Officer Faulkner's written record of (his understanding of) Jane's interpretation of Ms Ye's answers to his questions is presented in the form of a written monologue – there is no record of the actual questions Officer Faulkner (thought he) had asked – yet this constructed monologue was labeled for the court as the *Sworn Statement of Aifang Ye*.

Ms Ye was indicted and tried in the District Court of the Northern Mariana Islands. She objected at trial through her lawyer to the introduction as evidence of her English 'confession', which the prosecutor himself agreed was central to the government's case, unless the interpreter was made available for cross-examination. However, the trial judge overruled the objection and admitted her English statement as inherently reliable evidence. Ms Ye was convicted and sentenced to 12 months imprisonment. She appealed.

All US lower courts are subsumed under one of 13 Circuits for the purpose of appeals. Ms Ye's district was subject to the Ninth Circuit. At appeal her lawyer argued that the district court had erred by admitting the out-of-court translated statement unchallenged, but her appeal was rejected on the same grounds as those used by the District court. Ms Ye was unfortunate because some Circuits do actually allow the cross-examining of interpreters, although the Ninth Circuit didn't and still doesn't. She appealed again, this time to the Supreme Court, hoping to achieve a federal ruling in her favor[1]. The question presented to the Supreme Court was

> Whether the Confrontation Clause permits the prosecution to introduce an out-of-court, testimonial translation, without making the translator available for confrontation and cross-examination. (Petition, 2016)

Disappointingly, on June 13, 2016, the Supreme Court declined to review the judgment of the Court of Appeals of the Ninth Circuit. So, there is still no federal ruling and the individual Circuits can continue to differ. In what follows we will rehearse the arguments for and against the cross-examining of out-of-court interpreters.

Why might a defendant like Ms Ye want to cross-examine the interpreter?

Firstly, out-of-court interpreters' professional competence is not independently tested and they are less regulated than are accredited court interpreters. They can be either employees or merely independent contractors, although telephone and video-remote interpreting is usually provided, as in Ms Ye's case, through private companies who are responsible for recruiting, testing, training, managing their interpreters and selling their services. Thus, there is no quality control exercised by either the police or the courts, yet

even so the interviewee has no say in the choice of the interpreter. As the record of such interviews can have a potentially life-changing effect, it seems reasonable to be allowed at least subsequently to evaluate the competence of the interpreter, especially when neither the suitability of the interpreter nor the quality of the interpreting is guaranteed by the service provider, as is evident from the following Warranty on the *Language Line* website:

> LANGUAGE LINE SERVICES MAKES **NO** REPRESENTATION, **WARRANTY** OR GUARANTEE, EXPRESS OR IMPLIED, **ABOUT** INTERPRETATION SERVICES, INCLUDING BUT NOT LIMITED TO THE AVAILABILITY, **ACCURACY**, **COMPLETENESS** OR TIMELINESS **OF ANY INTERPRETATION**. LANGUAGE LINE SERVICES DOES NOT WARRANT THE AVAILABILITY OF INTERPRETERS FOR ALL LANGUAGE PAIRS AT ALL TIMES, AND LANGUAGE LINE SERVICES SPECIFICALLY **DISCLAIMS ANY WARRANTY** OR CONDITION OF MERCHANTABILITY OR **FITNESS FOR A PARTICULAR PURPOSE**. CUSTOMER RECOGNIZES THAT **INTERPRETATIONS MAY NOT BE ENTIRELY ACCURATE IN ALL CASES** (highlighting in bold added). (GSA Advantage, 2017)

Secondly, none of the other trial participants – judge, attorneys, jury members, the public – were present to monitor the accuracy of the oral interpretation or to request clarification if the meaning of an interpreted utterance (into or out of the interviewee's language) was unclear (see Ng, 2012 for an example where a bilingual lawyer was able to dispute the court interpreter's choice for the interpretation of an ambiguous term). The problems with out-of-court interpreting are exacerbated when interviews are not electronically recorded. The possibility for interpreting error is too great for the courts not to be concerned about the potential harmful impact on the legal cases of many limited English individuals who receive less than acceptable service. Such defendants have a legitimate reason to seek confrontation. When a defendant's lawyers, as in the Ye case, are not given the right to confront the interpreter they cannot raise for the jury what may be reasonable general doubts about the interpreter's abilities, training, experience and biases, nor specific doubts about individual disputed interpretations and/or the lexical encoding of particular items. For example, in the Ye case, there was a doubt about whether the interpreter had understood and/or interpreted accurately what Officer Faulkner typed as "when Immigration first asked me about why I had my husband's Chinese passport, *I lied* and told them that he sent it in the mail to me," or "I know *what I did was wrong*."

Thirdly, there are irremediable problems inherent in all types of interpreting. The reality is that from a cognitive, sociolinguistic and legal perspective, however good the interpreter's training, knowledge, skills, experience and adherence to protocol she may occasionally transmit a message different from the one 'intended' by the speaker. This is because interpreting is an activity inherently subject to inaccurate renditions and even "'[c]ompulsory pre-service training will not guarantee error-free interpretation, just as legal training does not guarantee error-free lawyering" (Hale, 2010: 443).

Also, interpreting accurately, objectively, impartially, faithfully and completely, can only be ideals which interpreters strive to achieve.

> Some veteran court interpreters will acknowledge that they occasionally depart from the strictly neutral role of the judiciary interpreter and offer to provide sug-

> gestions or explanations when communication breaks down or misunderstandings occur. This type of intervention is a slippery slope . . . and it takes expertise to know how to navigate that slope. (Mikkelson, 2008)

As the most qualified senior interpreters will sometimes trip up even in the courtroom, it is to be expected that untrained remote out-of-court interpreters will do so too.

For the above reasons it is not unreasonable for the attorneys for limited English defendants to ask to cross-examine out-of-court interpreters under oath not only about individual assertions in any statement that the prosecutor seeks to introduce as inherently reliable evidence, but also more widely about the interpreter's professional competence. For example, defense counsel could legitimately and productively inquire about:

1. the approach and the reliability of the methods used by the interpreter to produce, preserve and present the linguistic evidence – alleged oral or written self-incriminating statements, confessions, etc.
2. the interpreter's professional background, credentials, experience and declarative knowledge of court interpreting procedures; about legal procedure and community protocol in police station interpretation; about telephone interpreting procedures and policies, and on codes of ethics of legal interpretation.
3. the interpreter's performance on the particular day in question, potential opportunities for mistranslation, interpreting inaccuracies, and about any specific disputed terms in the English text

Even if the interpreter is unfamiliar with certain legal-linguistic constructs, she will be competent to answer questions about the subjective and discretionary decisions that interpreters must constantly make, questions designed to inform the court about the complex nature of producing evidence through interpretation. Likewise the interpreter will be able to confirm that certain terms, utterances, propositions and narratives or discourses can be understood and interpreted in multiple ways and 'colored' with different tones of intention and force. She can be asked to comment on the observation that interpreting requires intralingual (both grammatical and lexical) 'decoding', as well as pragmatic inferential work by the interpreter before she can re-encode her own mental representation of the interviewee's message into the target language.

Judges and jury members capable of grasping these facts will be better able to evaluate the quality and reliability of out-of-court translated statements attributed to limited English proficient defendants – as they hear about the nature and intricacies of interpreting they will learn that it is anything but an exact science. And at the same time they would be able to assess the interpreter's credibility and good faith, as they already standardly do for all other witnesses, and also to get a sense of the interpreter's own linguistic competence. Please refer to Appendix A for a comprehensive list of possible cross-examination questions specific to the Aifang Ye case, but which could form the basis for the cross-examination of any interpreter.

The legal basis for the right to cross-examine

The Sixth Amendment, which protects not only citizens, but also visitors and immigrants (documented or not) in the USA, states that: "In all criminal prosecutions, the accused shall . . . *be confronted with the witnesses against him*" (The Bill of Rights, 2016) (italics added for emphasis). To preserve the integrity of the confrontation requirements, the [U.S. Supreme] Court held in *Crawford v. Washington* (2004) that the prosecution may

not introduce out-of-court statements by non-testifying witnesses (or, to use the legal term, *declarants*), when their statements are "testimonial", that is, when their statements were made primarily to establish facts for the criminal prosecution (Bibas and Fisher, 2016). This decision was reinforced in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), where the Supreme Court reasoned that it is "a violation of the Sixth Amendment right of confrontation for a prosecutor to submit a chemical drug test report without the testimony of the person who performed the test." The Court went on to say that "the original technician who made the certification – not a surrogate – must be made available for confrontation" (Petition, 2016).

Similarly, in the Ye case, the out-of-court interpreter was not called to testify but the prosecutor called Officer Faulkner to testify in lieu, thus creating an additional layer of potential unreliability. The fundamental question is: how was he able to testify about statements made by Ms Ye, when he does not speak Mandarin? The officer could only testify about statements which the telephone interpreter had reported to him *in English* during the interview. In other words he was reporting what he had heard the interpreter say and as such his evidence was literally *hearsay*. Thus, the only grounds on which Ms Ye's lawyer could be denied the right to cross-examine the interpreter would be if the interpreter had already been categorized as a *non-declarant*.

The legal basis for the rejection of the right to cross-examine an interpreter

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The legal basis for the rejection of the right to cross-examine an interpreter

The Aifang Ye rejection revolves around differing conceptions of the act of translation. The basis for rejection is the linguistically naïve and mistaken assumption that an interpreter decodes fixed values from one natural language and then re-encodes them unaltered into another, acting as if she were an "invisible pipe with words entering at one end in one language and exiting – completely unmodified – in another language" (Berk-Seligson (2002: 219) quoting Reddy (1979)). For obvious reasons, this conceptualization of the translation process has been labelled the 'conduit' metaphor. The translator is seen as having no personal input into the translation she produces; she is thought to simply facilitate the communication between the police officer and the defendant by turning a message in Language A into the identical message in Language B. Accordingly, the interpreter is simply acting as an "agent" or an extension of the defendant. Thus, following this line of argument, anything produced in English by the interpreter can, unquestionably, be directly attributed to the defendant. Consequently, there is only one author of the translated message, Ms Ye – the interpreter is regarded as having contributed absolutely nothing, except to transmit it – and consequently there is obviously only one declarant to (cross-)examine: the accused. We will leave on one side, as it is not the direct focus of this article, the other highly questionable assumption that the officer was also acting as a mere conduit, that is that he also contributed nothing to the individual written sentences making up the confession.

Courts have articulated four factors in determining whether an interpreter can justifiably be considered to be a mere language conduit. The four-factor criterion is labelled the "conduit" test and was justified by the Ninth Circuit, in a case involving an accused named Hieng and an interpreter named Lim, as follows:

> In *United States v. Nazemian* we held that under appropriate circumstances, a person may testify regarding statements made by the defendant through an interpreter without raising either hearsay or Confrontation Clause issues, because the statements are properly viewed as the defendant's own, and the defendant cannot claim that he was denied the opportunity to confront himself. A defendant and an interpreter are treated as identical for testimonial purposes if the interpreter acted as a "**mere language conduit**" or agent of the defendant. [...] In making the determination, the district court must consider all relevant factors, "such as which party supplied the interpreter, whether the interpreter had any motive to mislead or distort, the interpreter's qualifications and language skill, and whether actions taken subsequent to the conversation were consistent with the statements as translated" .... The district court properly treated Lim as a mere **language conduit** for Hieng. Under *Nazemian*, Hieng did not have any constitutional right to confront Lim because the interpreted statements are directly attributable to Hieng. (*United States v. Orm Hieng*, (2012) 679 F.3d 1131 (9th Cir. 2012, our highlighting with bold)

The conduit test is a discretionary faculty and an evidentiary tool supposed to determine the reliability and trustworthiness of the interpreter. If the interpreter passes the four-factor test repeated below then their translations into English are deemed to be accurate, reliable and admissible. As indicated in the quotation above the judge is required to examine the following:

> (1) which party supplied the interpreter,
> (2) whether the interpreter had any motive to mislead or distort,
> (3) the interpreter's qualifications and language skills, and
> (4) whether actions taken subsequent to the conversation were consistent with the statements as interpreted. (Petition, 2016: Appendix A)

As is evident this test focuses exclusively on the interpreter not the process of interpreting. Therefore, as long as the interpreter has no reason or motive to distort the speaker's words intentionally and as long as an *ex-parte* statement prepared by the prosecutor and signed by the interpreter is attached to the interpreter's resume, the "conduit" condition will be fulfilled. Once this "conduit" test has established the reliability of the translated/interpreted statements they become admissible without confrontation.

For example, in Ms Ye's case, the Court read the *ex-parte* statement and resume of interpreter Jane, which had been submitted by the prosecutor:

> "The interpretation services I rendered during [the] interview [of Ms Ye] were true, accurate, and to the best of my ability. (Signed, Jingyan "Jane" Yin Lee)" (Petition, 2016)

This was ruled to be sufficient to establish that she was a reliable conduit and therefore her out-of-court statements in English were deemed to be admissible in court without her presence for cross-examination. According to the line of reasoning of the "conduit" theory, it would be fruitless for Ms Ye's lawyer to confront interpreter "Jane" since, as a "conduit", the interpreter would be echoing the defendant's utterances, except doing so in English. By that account, it would be absurd for the defendant's lawyer to cross-examine the defendant! This means that any incriminatory statements, even if the defendant has claimed they were not said, or are not true or were interpreted wrongly, can be directly and rapidly attributed to the defendant under the language "conduit" theory, as long as the four-factor test has been satisfied.

According to Xu (2014: 1509) the Ninth Circuit was the first federal court of appeals to invoke the language conduit theory in relation to the admissibility of out-of-court interpreted statements. In *United States v. Ushakow* (1973) the defendant challenged the admissibility of an interpreter's testimony, but the Court rejected the defendant's argument, characterizing "the interpreter as a language conduit without discussing its reasoning." (Benoit, 2015: 308).

The following year, in *United States v. Santana* (1974), the reliability of out-of-court translations/ interpretations was discussed by the Second Circuit. Two co-conspirators, speakers of different languages had used a third co-conspirator to interpret between them. At the trial of the non-native speaker co-conspirator, the individual who had acted as interpreter did not testify, but the English speaking co-conspirator was allowed to testify as to what the interpreter, allegedly, told him the other had said. The Second Circuit upheld the 'admission' of the interpreted testimony based upon the agency theory.

> While the Second Circuit could have ended its discussion after finding the existence of agency, it chose to follow up with an analysis of the reliability of the translation. The existence of "an external indicium of reliability" was a factor in the court's decision to admit the translation. Ten years later, in *Ohio v. Roberts*, the Court pronounced the "indicia of reliability" concept as the determinative

> factor in deciding whether or not a witness's testimonial, out-of-court statement is admissible without confrontation. Subsequent to the Court's decision in Roberts, this concept of an interpreter as a language conduit continued to gain traction with the courts and has become the prevalent mode of analysis. (Benoit, 2015: 310)

It should be mentioned here that the distinction between the agency and the *language conduit* theories has recently disappeared, because the courts have blended the analysis, making the interpreter a mere conduit. As long as the underlying interpretation is deemed 'reliable', the interpreter can be seen as a language conduit/agent and a "testimonial identity" is established for the defendant and the interpreter.

In *United States v. Nazemian* (1991), the Ninth Circuit held that the Roberts test required the government to prove that the declarant's statements were trustworthy. In order to establish "testimonial identity" between the defendant and the interpreter, the Ninth Circuit again applied the four-factor language "conduit test." With this ruling, if a Court determines that the interpreter is "a reliable conduit" there is no confrontation clause issue. Period. The obvious legal convenience in adopting the conduit theory is that if interpreters are viewed as conduits, that is, as the English voice of the defendant, then the involvement of the interpreter does not create a layer of hearsay.

To sum up this section, the conduit test serves as a gatekeeper for limited English defendants to prevent them invoking the Sixth Amendment's Confrontation Clause, which is in fact the only recourse they have to challenge out-of- court disputed interpretations.

The legal/linguistic basis for challenging the rejection of the right to cross-examine an interpreter

In 2013, in a case very similar to Ye's, *United States v. Charles*, the Eleventh Circuit ruled differently. In the original case, involving a Creole speaker who did not speak English and who had been interviewed through an interpreter, a Customs and Border Protection Officer was allowed to testify in court about the words provided to him *in English* by the interpreter. However, on appeal the Court found that the officer's testimony at the original trial had violated Ms Charles's Sixth Amendment right to confront and cross-examine the interpreter; in its judgement the court "held that the difficulties associated with language translation mean an interpreter **must** be considered a separate declarant for Confrontation Clause purposes." (bold added to original) (Benoit, 2015).

In presenting its judgement the court began by noting that the interpreter —- and not the defendant, Charles – was the "declarant of the out-of-court testimonial" (Petition, 2016). Therefore, the Eleventh Circuit concluded, Charles had a Sixth Amendment right to confront the interpreter, on the grounds that the interpreter was the declarant in English of the out-of-court testimonial statement which the government had introduced through the Customs and Border Protection Officer in live testimony. The court clearly discerned that the Officer had only been able to testify about the words in English provided to him by the interpreter, but not about Charles's words, since she did not speak English but Creole and the Officer did not understand or speak Creole. The Eleventh Circuit concluded that this violated the Confrontation Clause.

The court sustained that Charles had the constitutional right to confront the telephone interpreter in order to dispute the accuracy of her interpreted statements and

concluded that "where the admission of a declarant's testimonial statements is at issue, the Confrontation Clause permits admission only if the declarant is legitimately unable to testify [...]" (Xu, 2014: 1519). So, under this ruling, as long as the translations/interpretations are made during an investigative interview in contemplation of prosecutorial action, limited English proficient people are entitled to invoke their Sixth Amendment's Confrontation Clause right. The Eleventh Circuit observed:

> Even though an interpreter's statements may be perceived as reliable and thus admissible under the hearsay rules, the Court, in Crawford, rejected reliability as too narrow a test for protecting against Confrontation Clause violations. See 541 U.S. at 60 ("This malleable standard [of reliability] often fails to protect against paradigmatic confrontation violations."); id. at 61 ("Where testimonial statements are involved, we do not think the Framers meant to leave the Sixth Amendment's protection to ... amorphous notions of reliability."). Instead, the Court held that the Confrontation Clause "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination." Id.; see also id. at 68–69 ("Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation."). And since Crawford, the Court has emphatically reiterated its rejection of a reliability standard, which may be sufficient under the rules of evidence, but does not satisfy the Confrontation Clause. See Bullcoming, 564 U.S. at —, 131 S. Ct. at 2715 (explaining the Court had "settled in Crawford that the 'obviou[s] reliab[ility]' of a testimonial statement does not dispense with the Confrontation Clause.")

They further noted that the law enforcement officer could not testify about what the defendant had said, but rather could testify only about what the interpreter told him the defendant had said and therefore they did not treat the testimony as the defendant's own statement under Rule 801(d)(2)(A).

This argumentation and conclusion seems pretty clear then.

But no.

In the Ye case, the Ninth Circuit, in a judgment delivered some two years later in 2015, still based reasoning on the precedent of its own earlier rulings and argued that

> In *United States v. Nazemian*, (9th Cir. 1991), we held that, as long as a translator acts only as a language conduit, the use of the translator does not implicate the Confrontation Clause. Ye argues that *Nazemian* is inconsistent with the Supreme Court's decisions in *Crawford v. Washington* (2004), *Melendez-Diaz v. Massachusetts* (2009), and *Bullcoming v. New Mexico* (2011). As Ye correctly concedes, however, we already have held that Nazemian remains binding circuit precedent because it is not clearly irreconcilable with Crawford and its progeny. *United States v. Orm Hieng* (9th Cir. 2012). As a three-judge panel, we are bound by *Orm Hieng* and *Nazemian*. (*United States of America v. Aifang Ye*, 2015)

This is either a misunderstanding or a deliberate misinterpretation by the judges, because, although the Nazemian case of 1991 deals with language issues, that is the interpreter's reliability as a CONDUIT, it does not consider the confrontation issue decided later in *Crawford* in 2004, let alone does it set out to argue against the case made so powerfully by the Eleventh Circuit judges in the recently concluded *Charles* case.

At least the Eleventh Circuit judges have recognized that interpreting is inherently a subjective and discretionary process and that perfect interpreting is an unattainable goal, because no two languages are sufficiently similar to represent the same social reality. For this reason interpreters are frequently faced with situations where a language forces them to either make a distinction not made in the source text or obscure one that does exist. Even the physical world is not divided up identically linguistically, with equivalent labels attached to all physical objects and concepts. For example, English speakers are surprised that Portuguese does not distinguish lexically between *finger* and *toe* and Portuguese speakers that English does not distinguish lexically between a *pretty ear*, a *good ear* and an *ear of corn*.

Thus, any and every interpreter is inescapably a co-author of the resulting interpreted text. And if one sees the interpreter as an active participant who contributes meaning and 'owns' the translated text – a view accepted in the laws of many countries, which assign the copyright of a translation to the translator and not to the author of the original text – then one must also accept that any translated interview has two separate authors or *declarants*. And, if the translator is accepted as a declarant, then the translation itself must be regarded legally as testimonial hearsay, with all the legal consequences involved in the Confrontation Clause of the Sixth Amendment.

Concluding Observations

As noted above, in 2016 the Supreme Court declined to review the judgment of the Ninth Circuit in the Aifang Ye case and so, unless and until the Supreme Court agrees to accept another such case and makes a ruling on the defendant's right to confront the interpreter, the case to convince judges to assign co-author/declarant status to interpreters, with all that implies, will need to be made individually in most of the other Circuits in the US. As the country becomes more and more linguistically diverse, the use of interpreters of all kinds will become more and more frequent, as will cases in which defendants will want to assert their right to confront the interpreter.

In the meantime, we offer some recommendations to improve the current situation:

a) The Government should provide basic interpreter training and accreditation without which interpreters should not be allowed to work in out-of-court legal contexts.
b) There should be a national register listing out-of-court interpreters and indicating their areas of expertise, training, experience, license numbers and contact details.
c) There should be an independent quality-control monitoring system for all out-of-court interpreters.
d) All significant interpreting sessions should at least be audio-recorded, and a copy given to the interviewee at the conclusion of the interview.
e) Interpreters should be encouraged to take notes and to preserve these notes afterwards under the confidentiality privilege.
f) Any case where the cross-examination of interpreters is denied should be standardly appealed.

Finally, as we expect cases to continue to be fought in the Circuit Appeal courts, we hope this article will provide some ammunition for future appeals and so we offer, in an Appendix, a list of suggested cross-examination questions that defense lawyers could draw on to prepare for the cross-examination of an interpreter.

Notes

[1]Pilar Cal-Meyer worked *pro bono* as an expert providing input about interpreting matters to the Anfang Ye *amicus brief* that was sent to the Supreme Court

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Appendix

Possible questions for the cross-examination of an out-of-court interpreter

The following set of questions, while based on the needs of the Aifang Ye case, should provide a good basis for defense lawyers to work from when preparing for the cross-examination of an interpreter. The main purpose for cross-examining the interpreter is to ascertain her interpreting knowledge, experience, training and familiarity with the standards and procedures of legal interpreting. Of course, as we noted above in the body of the article, the added advantage of cross-examining an interpreter is that judges and jurors are incidentally able to assess for themselves both the quality of the English spoken by the interpreter and her own level of understanding of the questions being put to her. Of course, if the interpreter is only a second language speaker of the defendant's language, it may also be necessary to arrange for an independent test of her competence.

- Where were you born?
- What is/are your native language(s)?
- Where did you receive formal education?
- In what language(s)?
- If you were not born in the US, how old were you when you immigrated?
- What is your highest level of education?
- If you have more than one language other than English, in which contexts did you learn them?
- In what contexts do you now use each of your languages?
- Which is your dominant language?
- If you were born in the US with English as your native language, where did you learn your interpreting language(s) and for how many years have you spoken it/them?
- Which language do you normally use with your parents, partner, children, friends?
- Which languages do you interpret into and from? When do you use [the language of the accused] in non-interpreting situations and for what purposes?
- How much of your professional work involves interpreting into and out of [*the language of the accused*]?
- When did you last visit [*country of the language of the accused*]?
- How frequently do you visit?
- How long do you normally stay for?
- How do you keep up with language changes and new sociocultural terms in [*the language of the accused*]?
- What professional qualifications do you have in the areas of translating and interpreting?
- What kind of interpreting training have you received?
- When?
- What types of community, medical and/or legal certifications in interpreting do you have?

- What interpreting tests have you taken?
- Which have you passed?
- Did your current employer set you a language test?
- If so, what did it consist of?
- What kind of training have you received specifically for interpreting in *legal contexts*?
- To what professional associations do you belong?
- Does your association and/or employer require you to spend time each year following retraining or refresher courses and/or attending conferences about interpreting?
- When did you last attend a re-training course and/or conference?
- What journals, newsletters and publications do you subscribe to?
- What professional lists do you belong to and what translation-related blogs do you read?
- Have you ever worked as a *court* interpreter?
- If so, for how long or how many times and for which language(s)?
- Who employed you in this particular case?
- Are you a staff employee or an independent contractor?
- Is your employer a for-profit company?
- Did your employer give you any specifically designed training for legal telephone interpreting?
- If so, what did the training entail and what qualifications did the instructors have?
- If not, do you think you would have benefitted from some such training?
- What do you see as the main difficulties with telephone interpreting?
- Are there ways any or all of these difficulties could be reduced or even removed?
- Is phone interpreting more demanding than face-to-face interpreting?
- If so in what ways?
- Do you work exclusively doing legal telephone interpreting for [*the Agency who employed you in this case*], or does your employer assign you to other government and/or non-governmental jobs?
- Could you give examples of other work you have undertaken?
- Were you conscious at any time during this assignment of problems with the telephone line?
- Were you conscious at any time of the other participants having any difficulties in hearing and/or understanding you?
- Did you have any difficulties in hearing and/or understanding the other participants at any time?
- If so, how did you deal with these difficulties?
- Does the witness/accused speak the same language as you? (*There have been cases when the interpreter only spoke a cognate language.*)
- If so, are you familiar with the particular dialect used by the witness/accused?
- Is it the same, similar to or quite different from yours?
- Were there any words or phrases which s/he used that you did not understand?
- How did you deal with this?
- Were you aware of any words or phrases you used that the witness/accused did not understand?
- How did you deal with this?

- What type of interpretation did you use on the day in question? Consecutive or simultaneous or both? [*this is to test the familiarity of the interpreter with the most basic concepts of interpretation.*]
- Could you explain the difference between the two to the jury and why and when you might use one or the other?
- Did you have a video-link or only audio-link during the interpretation?
- If you didn't have a video-link do you think it would have helped you to interpret better?
- If you did have a video-link, were you able to see both participants?
- Was the image good enough to allow you to observe the participants' facial expressions, body language, reactions and their inter-personal dynamics?
- Did you at any time have visual access, as you were interpreting, to the interviewer's notes as they were being written?
- Did you ever see these notes again at a later time?
- Did the interviewer read out the written notes to you for confirmation?
- Did the interviewer ask you to interpret the notes so that the witness/accused could verify their accuracy?
- If so, was that after every question/answer or only when the interview/statement-taking was over?
- Did you need to correct his notes at all?
- If so what kind of mistakes had the interviewer made? Were they mis-hearings or misunderstandings or both?
- Do you work frequently with this interviewer?
- How long did the interview last?
- Did you feel tired towards the end of the interview?
- Do you agree that (*a list of terms which the accused claims to have used*) could be translated into English as "xx, yy", etc.?
- Were you aware at any point of any times when you had to choose between more than one possible translations of what the interviewee said?
- As far as you know, is it customary to audio-record telephone interviews?
- Do you or your employer ever record interviews for quality control purposes?
- Was this particular interview recorded?
- Do you ever work jointly with a colleague interpreter in order to monitor each other's performance and/or to avoid fatigue?
- Did you in this case?
- If not, in retrospect do you think it would have been useful to have done so?
- Do you normally take notes as an *aide-memoire* while you are interpreting as many interpreters do?
- Did you on this occasion? If not why not?
- Do you normally keep these notes afterwards?
- Did you on this occasion?
- How many interpreting sessions had you already performed that day, before you took the call in question?
- Were you aware of experiencing mental fatigue during the interview in question?
- How did you interpret the interviewer's questions, in the first person or in the form "Mr X asked"? (*Interpreters are usually told to perform as the voice of the interpreted, but many do not and the form "Mr X asked if…" frequently introduces small changes to the message*)

- How did you interpret the defendant's replies, in the first person or in the form "Ms X said"?
- Did you ever need to ask either of the participants to repeat what they had said?
- Did you ever need to ask either of the participants to rephrase or clarify what they had said?
- Do you believe that interpretation is always perfectly transparent if done by a highly qualified and experienced interpreter?
- Are there times when you cannot produce a perfect translation, when you have to choose between giving an accurate translation which is ambiguous or adding extra content yourself to make the answer unambiguous?
- Which option do you choose?
- When you are interpreting, are there times when you need to disambiguate words or expressions depending on the linguistic and pragmatic context? For instance you may need to add information to clarify unspecific reference words and phrases such as "they", "he", "she", "over there", "at that moment", "that night", "she told her to bring her to her car". etc.?
- Are there times when you need to infer meaning in order to understand what the interviewee has said before you are ready to convey it in the target language?
- Are there times when you would really need to ask the interviewee or the interviewer a clarificatory question in order to be able to translate unambiguously into the other language?
- Do you, or do you not see that as part of your role?
- Do you agree that there are numerous terms, expressions, metaphors and proverbs in any language pair for which there is no easy translation or equivalent? What do you do when faced with such a situation?
- What do you do when the client's meaning is implied and not made explicit? [*Question to see if the interpreter will choose to a) produce a translation that is as literal as possible and hope the interviewer will derive the same interpreted meaning; b) transmit the implied meaning; or c) ask the interviewee to clarify.*]
- Are the words you use when interpreting, that is the words on which the official record is based, always the best choices or are they sometimes the best you can find at that moment, but ones on which you could have improved if you had been producing a written transcript with no time pressure?
- Do you regard yourself when interpreting as a shaper of meaning? That is do you believe that your knowledge, intuition, instinct, experience and your personal place in the world shape your understanding of what you interpret?
- Could you list and explain some of the most relevant tenets of legal interpretation, especially the ones related to interpreting during a highly sensitive session?
- What is your understanding of the terms 'impartiality' and 'neutrality'?
- Were you able to be impartial and neutral during this interview?

Making sense of adversarial interpreting

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Abstract. *This article makes an ontological case for 'adversarial interpreting', which occurs in contexts where an interpreter's output is monitored and/or challenged, either during the speech event or subsequently, by another interpreter or individual with knowledge of both languages. In the absence of studies with a specific focus on the phenomenon, the paper introduces adversarial interpreting as a problem in its own right and sets out to answer the question of how the presence of two interpreters, or an interpreter and a monitoring participant, in the same speech event impacts on the communication process. The discussion is informed by the findings of a study based on the analysis of the transcript of an interpreter-mediated police interview and input from practising interpreters with experience of adversarial interpreting. The findings indicate that adversarial interpreting can impact the communication process negatively, but can also help ensure accuracy.*

Keywords: *Adversarial interpreting, police interpreting, courtroom interpreting, forensic linguistics.*

Resumo. *Este artigo defende ontologicamente a "interpretação adversarial", que decorre em contextos nos quais o trabalho do intérprete é supervisionado e/ou questionado, seja durante o evento comunicativo, seja posteriormente, por outro intérprete ou por outro interveniente com conhecimento das duas línguas. Considerando a inexistência de estudos com um enfoque específico nesta área, este artigo apresenta a interpretação adversarial como um problema autónomo e procura responder à questão de como a presença de dois intérpretes, ou de um intérprete e de um participante supervisor, no mesmo evento comunicativo influencia o processo comunicativo. A discussão assenta nos resultados de um estudo baseado na análise da transcrição de um interrogatório policial mediado por um intérprete e na opinião de intérpretes com experiência em interpretação adversarial. Os resultados indicam que a interpretação adversarial pode influenciar negativamente o processo de comunicação, mas também podem contribuir para assegurar a precisão.*

Palavras-chave: *Interpretação adversarial, interpretação policial, interpretação jurídica, linguística forense.*

Introduction

Interactions with non-English speaking individuals in public service contexts in England are normally conducted with the assistance of only one interpreter. Even in situations where team interpreting would be advisable, for example in lengthy courtroom proceedings, practical (chiefly financial) considerations mean that only one interpreter is normally booked. On occasion, however, more than one interpreter, or an individual (or individuals) with knowledge of the languages in question, may also be present during the interpreted interaction, monitoring it and/or volunteering unsolicited input. During police interviews or trials in England this may happen when an interpreter retained by defence counsel to interpret during private consultations with the suspect or defendant is present in the interview room or the courtroom. However, the presence of two independently sourced interpreters is not limited to legal settings. In healthcare contexts, for example, service users sometimes bring along friends or relatives to help them communicate with service providers only to find that a publically funded interpreter has also been booked. On other occasions there could be a mistake in the booking procedure resulting in two professional interpreters turning up to work on the same assignment with one doing the actual job and the other assuming a 'standby' role.

As an analogy with the English legal system, I will label the contexts where an interpreter's output is monitored and/or challenged, either during the speech event or subsequently, as 'adversarial interpreting'. This conceptualisation reflects the fact that interpreters in such encounters are sourced independently, often by the opposing parties, and as a result can rarely be considered to be a team. In this sense adversarial interpreting is in contrast to team interpreting (although, paradoxically, it betrays some characteristics of the latter as will be demonstrated). To refer to disputes regarding alternative translations or alleged mistranslations I will use the term 'adversarial interpreting event'. My focus is on legal contexts, but it can be assumed that some of the findings of the analysis below will apply elsewhere as well.

The aim of this article is to introduce a data-driven typology of interpreter interventions in adversarial interpreting events with a view to answering the question of how the presence of two interpreters, or an interpreter and a monitoring participant, in the same speech event impacts on the communication process. Does adversarial interpreting, because of its dialectic nature, result in a more faithful translation or, conversely, does the presence of and/or interventions by another interpreter mean that the main interpreter's performance is compromised, leading to inaccurate translation? The findings and discussion are informed by data coming from two sources: a transcript of an interpreted police interview with a suspect and the results of a survey with input from practising interpreters themselves.

Research background and examples from interpreting practice

That adversarial interpreting is not an anomaly is evidenced by the many cases where the officially recorded interpreted output was challenged, as described in for example Berk-Seligson (2002, 2009), Hayes and Hale (2010), and Phelan (2011). However, no systematic studies with a specific focus on the nature of adversarial interpreting and its implications for the relevant communication processes seem to exist in interpreting studies or forensic linguistics (but see the reference to Takeda (2010) below). The urgency of the topic has recently been recognised by the US National Association of Judiciary Interpreters

and Translators, which organised a panel discussion devoted to 'Interpreting for Bilingual Attorneys and Judges' at its annual conference in 2015 (for a report see Palma 2015) but adversarial interpreting does not seem to have attracted any significant scholarly attention so far. The overview below includes references to a variety of sources providing evidence, often in passing, of adversarial interpreting as a reality. It is not surprising to see that the majority of the examples come from situations where the accuracy of semantic transfer from one language to another is challenged by the various participants, also passive ones, in the interaction. Given the scarcity of academic research on the topic, non-academic sources are also quoted.

An early example of an adversarial interpreting event comes from an 1838 trial for forgery at the Old Bailey in London. The published record of the proceedings shows a brief exchange between two participants acting as Welsh/English interpreters, who seem to disagree on what a Welsh witness had said in response to a question. The prosecuting counsel encourages the interpreters to 'settle it among [themselves]' and offers to 'put the question again, to save all trouble' [*sic*] (M'Christie, 1838: 156)).

Two recent studies providing detailed accounts of challenges to inadequate interpreting are Martinsen and Dubslaff (2010) and Lee (2015). Martinsen and Dubslaff (2010: 159) note that 'criticism of an interpreter's performance [...] is rarely documented', and report on communication issues engendered by an apparently incompetent interpreter during a hearing in a Danish court and how these were solved through a co-operative effort by a number of the court actors (but without contributions by the court-appointed interpreter). Lee's (2015) analysis of interpreter-mediated expert witness testimony in a Korean trial reveals how meaning gets co-constructed in a multi-party interaction involving two interpreters.

Berk-Seligson (2002) reviewed forty-nine US appellate cases where issues of translation and/or interpreting at first-instance courts had been raised, and she identified five recurring themes, of which four correspond with the notion of adversarial interpreting:

> (1) inaccuracies in interpreting, or interpreting errors; (2) bias on the part of the interpreter, and the insinuation that there had existed a conflict of interest on the interpreter's part; (3) the improper use of interpreting procedures and techniques; (4) the intervention of jurors in the course of interpreting. (Berk-Seligson, 2002: 199)

Other studies mentioning the significance of interpreting issues in legal disputes are the above-mentioned Berk-Seligson (2009), Hayes and Hale (2010) and Phelan (2011); what they all make clear is the fact that institutions seem to have no formal procedures in place to address such issues and if there is one reason why adversarial interpreting merits scholarly attention, it is to inform potential solutions from which the administration of justice could benefit.

Adversarial interpreting is mentioned in a Swedish National Police Board (2012) report in connection with a 2011 human trafficking case in Västmanland county:

> The main proceedings [...] were characterised by major problems, for example, in the interpretation and translation of evidence. Two interpreters interpreted the same material in different ways and one injured-party did not understand what was said during the main proceedings despite the fact that interpreters were used. (2012: 43)

It is not clear whether both interpreters were hired by the state, but even if that was the case (which would further complicate the notion of adversarial interpreting), the very fact that the report mentions competing versions of the source text as impeding the proceedings is certainly of note.

Tseng *et al.* (2004) report on an incident in a US murder trial where the defence interpreter questioned the translation of a witness's testimony:

> When a prosecution witness was called and asked by the prosecutor to reveal what he had heard from the defendant [...], the witness said in Chinese, which was translated by the prosecutor's interpreter, that the defendant had told him he had "killed" the boss more than 10 times with a knife. On hearing this translation, the defence interpreter disagreed with the interpretation, pointing out that the witness actually said that the defendant tried to "stab" the boss 10 times. (2004: 33)

In the UK, following the outsourcing of the provision of translation and interpreting services to a sole contractor, Applied Language Solutions (later renamed Capita Translation and Interpreting), operational difficulties involving unqualified or underqualified interpreters have been reported (Justice Committee, 2013). Responding to the large number of complaints from the stakeholders, the UK Parliament's Justice Committee conducted an inquiry the results of which provide further examples of adversarial interpreting. Contributions to the Committee's Report came from, inter alia, interpreters and legal professionals who had witnessed what they thought was incompetence on the part of the court interpreters provided by Applied Language Solutions/Capita. According to a solicitor, one such interpreter 'was utterly incompetent to the extent that she mistranslated the whole of the conversation between Counsels and Judges' (Justice Committee, 2013: 74). The solicitor then decided to intervene to 'alert Counsel that she was misquoting and wrongly translating what was being said in Court' (Justice Committee, 2013: 74). Another contributor told of a situation where the victim's family members, who could speak both languages, were so concerned about the poor quality of the interpreting that they decided to complain to the prosecutor, who nevertheless decided not to take action as he was apparently confident he had enough evidence to present to the jury.

Still more instances of the phenomenon have been reported recently in a number of media outlets around the world. In a trial for attempted murder in Lancaster, Pennsylvania, two members of the jury were overheard during a break 'discussing the female interpreter's translation' (Hambright, 2014: online). The judge declared a mistrial, but it is not clear whether this was because the jurors discussed the case at a time when they were not supposed to do so, or because of the potential problem with the quality of the interpreting. An interesting case of alleged mistranslation was reported in *The Sydney Morning Herald* in 2011. Here, too, a juror who spoke both of the languages used at the trial (English and Indonesian) took issue with the translation provided by the court-appointed interpreter. He alerted the judge to 'some discrepancies in the translation' (Jacobsen, 2011: online) by writing a note in which he gave two examples of translation problems. Interestingly, this interpreter had been contracted after an earlier objection by the defendant's lawyer, following which the original interpreter was dismissed. The human-trafficking trial was eventually aborted.

Finally, a high-profile UK case illustrating adversarial *translation* is the 2005 Emma Caldwell murder, the investigation into which involved covert surveillance of the con-

versations of four suspects, all members of Glasgow's Turkish community. The police obtained hours of audio recordings in which the suspects, conversing in Turkish, apparently incriminated themselves. The recordings were translated into English by Turkish-speaking police officers, but an interpreter hired by a defence lawyer pointed out inaccuracies. The police then turned to Professor Kerem Öktem, a native speaker of Turkish based at Oxford University. He and two PhD students spent 400 hours listening to the recordings and found that the police had mistranslated a number of crucial passages, possibly as a result of mishearing. Professor Öktem concluded that 'it was not possible to make any conclusive statement about [the suspects'] involvement in the murder' (British Broadcasting Corporation, 2015: online). Following his report the charges against the suspects were dropped.

Summary

What the overview above suggests is that adversarial interpreting occurs mostly in situations where a participant in an interpreted speech event challenges the output in the target language produced by another participant (usually, but not necessarily, the institutionally appointed interpreter), and/or advances her own version as more faithful to the source meaning. It would then seem that some kind of intervention is a prerequisite for adversarial interpreting to occur. But what about contexts where a party to the proceedings employs their own interpreter with the express purpose of monitoring the accuracy of the official interpreting, but no interventions are made eventually? There seems to be a case for treating such occasions as relevant to the discussion as well; what is of interest in such 'latent' adversarial interpreting situations is the official interpreter's awareness of the presence of another bilingual speaker or language professional and the potential for that awareness to influence her linguistic decisions. Whether both sides participate actively or passively, adversarial interpreting can in each case be characterised as potentially leading to target outputs that may be dialectically negotiated.

It is important to note the variety of terms used to refer to the monitoring interpreter. In the 1838 trial mentioned above there is a reference to a 'counter interpreter' (M'Christie, 1838: 152), apparently hired by the defence and whose role seems to have been simply that of interpreting some of the proceedings, though one cannot exclude the possibility that he had also been instructed to monitor the output presented by the 'Interpreter for Prosecution' (1838 *passim*). Interestingly, at least one more interpreter is mentioned as working at that trial, but the transcript does not provide explicit information on their status. A reference to the now prototypical role of the counter interpreter is made in the 1969 *Manual for Courts-Martial* published in the US Federal Register (online). According to one of the provisions regulating the use of interpreters, '[t]he accused may, at his own expense, provide a counter-interpreter to test the translation of the detailed or employed interpreter' (U.S. Department of Justice, 1969: 50c 9-16). Performance of this role in a civilian criminal justice context is exemplified in Cronheim and Schwartz (1975) and their qualification of the term 'counter interpreter' as a novelty is worth noting:

> In *Lujan*, the defendant, an American Indian, unsuccessfully objected to the use of an interpreter who was a blood relative of some of the government witnesses. The problem was remedied by the use of a "counter-interpreter" who sat at the defense table and corrected the first interpreter if necessary. (1975: 308)

The terms 'check interpreter' and 'monitor interpreter' are nowadays often used to refer to language professionals with an auditing role in legal proceedings, both in team and adversarial contexts. In a recent NAJIT newsletter, for example, Hermida (2014: online) defines the check interpreter as someone who 'has been hired by the other party to ensure an accurate record'. A position paper by the Association of Visual Language Interpreters of Canada defines the role of the 'monitor interpreter' as being 'to monitor the interpreting, and to advise when there are challenges that arise in the interpretation' (Association of Visual Language Interpreters of Canada, 2011: online). Finally, Lee's (2015: 195) use of the term 'stand-by' interpreter must be noted. In the subsequent sections I will use the term 'check interpreter' as being one that fits best semantically with the conceptualisation of the kind of interpreting reality I describe in this article as 'adversarial' (see the legal perspective of Grabau and Gibbons (1995: 297), who note that '[b]ilingual court officials often serve as the only 'check' on the accuracy of the court interpreter').

Finally, it is also interesting to see the grounds for intervention in the reports above: incompetent interpreting, insufficient grasp of one or both of the languages involved, and lack of familiarity with specialist terminology. Such instances of professionally-wanting practice would be relatively simple to analyse and account for against the background of research in translation and interpreting studies, using for example frameworks developed for translation quality assessment (e.g. House, 2015). Arguably more interesting are situations where the translation, whether coming from a competent amateur or a fully trained, professionally accredited interpreter with proficiency in both languages and cultures, is semantically sound but gets challenged because 1) inevitably, alternative versions are possible, 2) the challenger has incomplete knowledge of the language(s) and/or has insufficient understanding of interpreting, or 3) counsel have their 'tactical' reasons for the interventions.

As a multi-faceted and, it seems, relatively common phenomenon, adversarial interpreting is undoubtedly worthy of targeted study in its own right. It is at this point that mention must be made of Takeda's (2010) account of interpreting at the Tokyo War Crimes Tribunal, where the proceedings against Japanese suspects were interpreted by Japanese nationals but monitored throughout by four second-generation Japanese Americans. In addition, any disputes were referred to the Language Arbitration Board, consisting of three members, one appointed by the Tribunal, one by the defence and the third by the prosecution. Takeda's focus is not specifically on adversarial interpreting (she never uses the term, nor proposes another) but she does provide her own typology of the monitors' interventions during the testimony of one of the defendants. Her four categories are 'corrections of errors (omissions, errors of meaning, additions)', 'rephrasings', direct interactions with the defendant and other participants in the proceedings and 'other types' ('interruptions of the interpreters to finish interpretations, and whispering instructions that are not reflected in the transcripts') (2010: 96). Takeda's seems to be the only attempt to date to make sense of adversarial interpreting events using naturally occurring data but, given the socio-political circumstances leading to the creation of both the Tribunal and the complex three-tiered interpreting system, it is not certain to what extent her findings are generalizable to present-day judicial settings.

The study

To get as detailed a picture of adversarial interpreting as possible, I have triangulated my data collection and used two independent data sets. The first contains a series of adversarial interpreting events in an interpreter-mediated police interview and the second is based on input from practising interpreters who have experienced adversarial interpreting. A single interview transcript is unlikely to yield an exhaustive typology of the possible interventions, but cross-checked against the survey data it should provide at the very least a solid foundation for further research.

Police interview transcript data

The first data set comes from the official transcript of a police interview with a non-English-speaking suspect who was eventually found guilty of manslaughter by a Crown Court in England[1]. Two interpreters were present during the interview: a police-appointed one and another hired by the suspect's solicitor. To use Goffman's (1981) term, the former was ratified, which in this case meant she was institutionally recognised as possessing the relevant qualifications and capable of doing the job. The status of the latter, however, is not entirely clear as no formal regulations exist in England regarding the presence of non-police-appointed interpreters during interviews (which does not mean they are officially barred from being present). What is important is the fact that the ostensibly unratified interpreter challenges the official interpreter's output as well as volunteers her own, apparently in an attempt to rectify perceived mistranslations. Also significant is the fact that at no time throughout the two-hour interview is she prevented from doing so by those present in the interview room, which, paradoxically, could be construed as eventually leading to ratified status. Finally, it needs to be stressed that the nature of the interaction in a police interview means that interpreter interventions can be made, and responded to, instantaneously. This is by contrast with courtroom interaction, which is procedurally much more constrained, meaning that interventions often have to be mediated through the judge and/or between the opposing parties asynchronously. That said, it is not unreasonable to assume that the kinds of adversarial interpreting events presented below could arise in settings other than the police interview as well.

The aim of the analysis was to draw up a typology of unsolicited interventions by the institutionally unratified ('check') interpreter. Given the focus in this article, no specific discourse analytical approaches were used; rather, all of the 31 instances of intervention in the four-hour interview were identified and subsequently grouped according to the effect they, and the reactions they provoked, had on the semantic output the service users eventually received. The categories that resulted are *correction*, *modification*, *confirmation* and *support*, and each is exemplified and discussed below.

Correction

Correction is perhaps the most 'natural' category of interventions in adversarial interpreting (see Takeda's (2010: 96) category of 'corrections of errors'). The check interpreter on occasion challenges the output provided by the official interpreter and offers an alternative translation, as in the following exchange.

Extract 1

PO	How old was [the victim]?
INT1	[interprets]
S	[replies in native language]
INT1	I don't know but I assume he was up to 55.
INT2	35
INT1[2]	Er sorry 35.

In this example the official interpreter mistranslates an important factual detail but, when challenged, accepts the correction and rectifies the mistake. This happens also in another exchange:

Extract 2

PO	On the day of the incident, how much did you have to drink?
INT1	[interprets]
S	[replies in native language]
INT1	Er, two bottles of vodka and three bottles of cider.
INT2	Three litres.
INT1	Three litres of cider.

Again a factual detail is mistranslated but no dispute ensues with the official interpreter accepting the correction immediately instead.

Modification

There is no disagreement about the facts; as exemplified below, the interventions have to do with how those facts are presented. There is a clear correspondence with Takeda's (2010: 96) 'rephrasings'.

Extract 3

PO	Describe the feeling on your hand when you hit him.
INT1	[interprets]
S	[replies in native language]
INT 1	It wasn't erm itchy.
INT 2	It wasn't a burning sensation.

The suspect's reply is important as it concerns the force with which he apparently hit the victim. As the official interpreter's version is challenged and, simultaneously, an alternative is provided it is clear that the interpreters have opted for solutions associated with distinct regions on the spectrum of physical sensation induced by hitting someone with one's hand. Another example of modification is as follows.

Extract 4

S	[speaks in native language]
INT1	And then erm everyone saw er the blood coming out of his head.
INT2	Shooting out of his head.

What needs to be noted is the fact that the two instances of modification introduce accounts whose associative meaning could have potentially serious implications for the overall understanding of the offence at the subsequent stage(s) of the criminal justice process. The hypernymic phrase 'come out' is matter-of-fact and open to possible further interpretation; the refined, hyponymic version of 'shoot out' suggests an altogether more serious injury. What is also important in this context is the official interpreter's lack of reaction to the modifications. As a result it is not clear which of the two versions 'stands' and thus constitutes the official evidence; it is of course possible that neither does and a new meaning gets created in a process of implicit dialectic negotiation.

Confirmation

The category of 'confirmation' is perhaps counter-intuitive in that the concept of adversarial interpreting derives from the potential for differing semantic interpretations to occur. Yet, two exchanges where the check interpreter confirmed as acceptable the official interpreter's target output were identified in the transcript:

Extract 5

S	[speaks in native language]
INT1	He was wearing glasses.
INT2	That's right, he was wearing glasses.

With the relevant aural and visual information missing, one can only guess that the confirmation here was elicited by a non-verbal communicative cue. Perhaps there was hesitation in the official interpreter's voice and/or the police interviewer sought confirmation by looking at the check interpreter. The reasons for the latter's input are clearer in the following example.

Extract 6

Here the official interpreter mistranslates the unit of measurement but because of the context the police officer detects the problem himself. He suggests 'millimetres' as the right translation and the interpreter duly concurs, at which point in a typical interview (i.e. one with just one interpreter present) the translation move would have been completed. In this case, however, the check interpreter still volunteers a confirmation, possibly because by now her participation status, in Bell's (1984) terms, has changed from that of an overhearer, i.e. a non-ratified participant of whom the active participants are aware, to auditor, i.e. a ratified participant of the interaction.

PO	How thick was the pipe?
INT1	[interprets]
S	[replies in native language]
INT1	Okay 20, 20 millilitres.
PO	Millimetres.
INT1	Millimetres.
INT 2	Millimetres yeah.

Support

This category would be an obvious one to find in data originating from team interpreting, but in the context of adversarial interpreting it is perhaps another unexpected one. In a section of the interview the suspect makes a reference to shoplifting that another suspect had allegedly attempted. The official interpreter is trying to retrieve the English equivalent of the term 'security tags' but, as the hesitation marker suggests, is struggling:

Extract 7

S	[speaks in native language]
INT1	They took erm-
INT2	Security tags.
INT1	Security tags off.

The check interpreter then offers her version and, incidentally, the official interpreter's second turn could be considered to constitute an instance of confirmation, suggesting that it need not be unidirectional.

Survey data

The second data source was an online survey of adversarial interpreting. The aim here was to supplement the findings above by obtaining information from interpreters who have had first-hand experience of adversarial interpreting; it was felt this additional perspective would provide a better understanding of the interventions and their impact on the communication process.

The contributors were asked to complete a semi-structured questionnaire (see Appendix) commenting on their experience of either challenging another interpreter or being challenged themselves. A link to the survey was advertised on social media among members of the Chartered Institute of Linguists in the UK and the US National Association of Judiciary Interpreters and Translators, and on a forensic linguists' online discussion group[3]. While it is impossible to quote any definite figures, it is safe to assume that at least several hundred interpreters have seen the notice. Of those, thirty-three completed the questionnaire and answered the following questions between early May and mid-July 2015:

- Who was the person challenging your interpreting (e.g. another interpreter, client, solicitor, judge etc.)?
- Why do you think they challenged your interpreting?

- What were your reasons for challenging another interpreter's output in the target language?
- Do you think the presence of another interpreter at an assignment affects the quality of interpreting? If so, in what ways?

The replies were analysed qualitatively with a view to identifying common themes, which turned out to be several for each of the questions.

Types of actors challenging interpreter output

The most frequently mentioned actors challenging the respondents' output were, perhaps predictably, other interpreters (presumably working for the opposing side, although there was one reference to a team interpreter) and solicitors (but it is uncertain which side these worked for). The other categories cited were service provider (e.g. 'a psychologist at a counselling session'), judge, member of the jury, relative (presumably of defendant or witness), bystander, and client. The spectrum is thus quite wide, although a large proportion of the actors are associated with court settings.

Perceived reasons for interventions

Three themes have been identified to do with the apparent reasons why the respondents felt their interpreting had been challenged. Firstly, the challengers appear to have attempted self-ratification, or, in one respondent's words, they felt 'they ha[d] to say something to justify their presence'. Secondly, 'tactical' interventions were mentioned. According to another respondent the challenges were made to discredit 'the quality of interpreting and at the same time move the goalposts to gain control of what the other party said, and/or to restrict the damage of a crime.' Thirdly, some of the interpreters thought the interventions had occurred because the other interpreter had access to crucial background information and was in fact able to offer a more accurate translation.

Respondents' reasons for interventions

The answers to the question about the respondents' own reasons for intervention correspond significantly with the types of intervention identified in the police interview data above. The two most frequently cited reasons, *viz.* problems with factual accuracy and lack of stylistic sophistication, can clearly be subsumed under the categories of 'Correction' and 'Modification', respectively. Perceived incompetence on the part of the active interpreter was also raised, in particular their lack of familiarity with legal discourse and/or terminology. A few interpreters have spoken of feeling the urge to intervene but deciding not to do so ('I didn't find the guts to intervene as my colleague is more than twice my age'), or to provide their comments following the proceedings ('the challenge was done privately [to correct the record']).

Frequency of adversarial interpreting events

Two questions requiring only a short answer were also asked about the number of times the interpreters had experienced adversarial interpreting events, either in an agentive capacity or as the challenged party. For the latter category between 65 and 80 instances were provided; the number ranged from 'none' to 'seven', with some respondents replying with 'several' or 'a few' (both of which were coded arbitrarily as being between three and six). As regards the agentive scenario, between 140 and 180 interventions were quoted, with some of the interpreters saying they never made any and one saying

'more than fifty times'. It needs to be noted that two respondents referred to the 'latent' mode mentioned in 'Summary' above, with one saying they had never challenged another interpreter publicly but had made comments to a colleague in private, and the other replying with 'I always challenge them in my head' and a smiley emoticon. There are two important findings for both scenarios: firstly the fact that interventions seem to occur more frequently in sign-language interpreting (which is understandable given the fact that monitor interpreters are often used in sign-language contexts), and secondly the fact that while some interpreters' experience of adversarial interpreting incidents is considerable, others have reported no experience at all.

Perceived impact on interpreting quality

Four respondents said they did not find the presence of another interpreter during an assignment affected the quality of the interpreting. The others all answered with a 'yes' and collectively offered a wide array of explanations that could be grouped into three themes. The first has to do with the active interpreter performing under pressure, which can have a negative impact on their confidence and so lead to compromised performance. That said, a few respondents pointed out that the extra pressure could in fact enhance the quality of the output (see 'I usually render a better interpretation when I know someone is observing me').

The type of professional relationship between the two interpreters and its impact on quality was the second theme that emerged. It was felt that monitoring by 'professional' (in the sense of 'impartial') interpreters could be 'a source of support, and peace of mind for the [active] interpreter'. Likewise, being monitored can help improve quality as 'skilled professionals, regardless of experience, can perform well and welcome feedback'. Conversely, 'if the other interpreter is there simply to find fault, you don't trust their judgement (…), then it can affect your performance – put you on edge'. The lack of personal familiarity with the check interpreter has also been mentioned: 'another interpreter who is a stranger can make an insecure interpreter feel self-conscious, nervous and defensive.' It looks like what this theme is about is to an extent the way in which either the professed or the implied status of both interpreters frames their perceptions of one another. Finally, this theme, too, contained some indirect references to the categories of 'Correction' and 'Modification' as outlined in the sections 'Correction' and 'Modification', respectively; according to one respondent, 'those who tend to embellish or omit information become resentful and on alert when another interpreter is observing'.

Thirdly, the issue of professional experience was mentioned. The idea here was that the longer an interpreter practises, the less susceptible they are to the stress associated with the presence of the check interpreter (but note the quote about the ability of skilled professionals to perform well regardless of experience above).

Discussion

Adversarial interpreting is clearly an ontological reality. The figures derived from input by practising interpreters and reported in section 'Survey data' are in a way a tangible manifestation of the various cases mentioned in both the academic literature and the media, as reported in section 'Research background and examples from interpreting practice'.

The findings derived from the police interview transcript suggest input from check interpreters can be subject to four types of intervention (correction, modification, confirmation and support). Overall, it appears to have a positive bearing on the communication process, at least insofar as accuracy is concerned. Yet, a qualification is in order. Accuracy is a key criterion in assessing the quality of semantic transfer between languages. If, as was the case in the police interview, the check interpreter's interventions ultimately improved it, adversarial interventions do not seem to be an unwelcome addition to the interpreting process. It should be noted, however, that the police-appointed interpreter in the transcript does not take issue with the corrections and/or modifications advanced by the check interpreter. But what about cases where following an intervention, a dispute does arise? In extreme cases this could conceivably lead to situations where opposing versions are offered and argued throughout the interaction, slowing it down and causing confusion for the monolingual participants. Frequent and/or seemingly weighty interventions can have a negative impact also on the way the official interpreter is perceived, potentially leading to mistrust and communication breakdown.

An important issue is therefore arbitration in cases where incompetent interpreting is identified or a third-party opinion sought in relation to an adversarial interpreting event of significance to a legal dispute. An example here is the above-mentioned Language Arbitration Board at the Tokyo War Crimes Tribunal, but it seems that nowadays no statutory regulations providing a framework specifically for translation quality assessment exist, although it is clear that justice systems do use arbitration. One of the respondents to the survey, an interpreter with 18 years' experience of interpreting based in the United States, has this to say:

> I am frequently used as an expert witness to verify the transcription and translation of wiretapped calls prepared by other interpreters. I have challenged many interpreters' output due to literal translations in the target language.

As the present author's experience, as well as the above-mentioned Emma Caldwell case, suggests, law-enforcement agencies and solicitors tend to turn to academics on such occasions. But the situation in Australia, for example, is different, as Hayes and Hale (2010) describe:

> [I]n most of the appeals analysed where such information is recorded, the only qualification stated for interpreters employed as "experts" to listen to the tapes or go through the transcripts of the trial or hearing is NAATI [National Accreditation Authority for Translators and Interpreters] accreditation. This seems to be the only criterion taken into account nationally. And yet, as has been argued, NAATI accreditation at any level does not provide the specialist knowledge required of a competent legal interpreter, even less as an expert who can comment on the performance of another. (2010: 129)

Hayes and Hale, in referring to the specialist knowledge necessary to conduct expert assessments, raise an important point. They suggest the need for 'a protocol on expert witnesses for interpreting performance' (2010: 129) and it is interesting to consider what such a protocol should entail. A set of procedures for handling and approaching the data, an analytical framework based on research in the area of translation quality assessment, and a standard for presenting the findings to non-linguists all seem necessary. Protocols of this kind, though generally not formalised, are already used by forensic linguists working on cases of authorship analysis, disputed meanings and language proficiency

assessment, and forensic linguists with expertise in interpreting studies and knowledge of the languages relevant to the case in hand might be well placed to carry out the evaluation of interpreting quality. A judicially recognised register of forensic linguists, similar to the interpreter registers maintained by courts in some jurisdictions, would certainly be a welcome development preventing questionable ad-hoc solutions.

An important finding supra is also that of the complex interplay between adversarial interpreting events and a range of professional and interpersonal factors. Of note is how interpreters' status, institutional or self-imposed, can affect their decisions as to whether and when to intervene. With no institutional or legal recognition of adversarial interpreting as a reality, interpreters are left to their own devices and sense of ethics in making such decisions. Service providers, however, tend to sidestep isolated instances of adversarial interpreting events if the communication process seems to be progressing well, with little awareness of the 'algorithmic' nature of e.g. police interviews, where a suspect's answer may dictate the subsequent line of questioning (and so even a semantically close alternative answer could result in a different question being asked). This in turn might discourage interpreters from making interventions even where these seem warranted. What counts as a 'warranted' intervention may of course be a source of further confusion. To begin with, the check interpreter's knowledge of the background details of the case may be different from that of the official interpreter. Interpreters working in lawyer-client consultations will for example get exposure to information protected by legal privilege and their monitoring of the target outputs at a subsequent police interview or trial may be subject to bias engendered by their increased sensitivity to particular semantic elements. On the other hand, before starting work on an assignment the officially appointed interpreter may receive a briefing on the essential facts of the case from the service provider and obtain information the other interpreter does not have. In any case, such asymmetric access to the wider context can result in a different understanding of pragmatic meanings in particular and lead to both felicitous and misjudged interventions.

Conclusion

In traditionally monolingual public service settings interpreting is a disruptive practice both linguistically and institutionally. There is ample research highlighting a variety of problems to do with interlingual transfer in such settings, and media reports or academic publications such as Phelan (2011) suggest institutions often struggle to accommodate interpreters and second language speakers. If check interpreters, professional or otherwise, are added to the equation, it would seem that the interaction might prove unmanageable and ultimately result in communication failure. Yet, as I have shown in this article, this need not necessarily be the case. Although active or passive participation in legal proceedings of individuals with knowledge of both languages can have a negative impact on the official interpreter and thus lead to inaccurate translations, third party semantic interventions, whether during or after the interaction can in fact help ensure accuracy. Just how significant the trade-off can be is a matter for future studies investigating both the nature of adversarial interpreting itself and more specific issues such as the impact of stress on interpreters' performance in adversarial settings. One way or another, there can be little doubt that, although not necessarily a new phenomenon, in the times of superdiversity (Vertovec, 2007) adversarial interpreting is beginning to have a greater importance and deserves more scholarly attention.

Acknowledgments

I am grateful to the anonymous interpreters who have contributed to the study by filling in the online questionnaire.

Notes

[1]To ensure anonymity all details regarding the interview actors' identities have been withheld.

[2]The abbreviations stand for the following actors: PO – police officer, S – Suspect, INT1 – official police interpreter, INT2 – check interpreter.

[3]https://www.jiscmail.ac.uk/cgi-bin/webadmin?A0=FORENSIC-LINGUISTICS

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Appendix – Adversarial Interpreting Survey

The survey was created using Google Forms and can be accessed at tinyurl.com/AdvInt-Survey. The version below has not preserved the original html formatting.

On what basis do you work as an interpreter?

- Full-time
- Part-time
- Only occasionally

How many years' experience do you have?

In which of these settings do you work most regularly? Please tick all that apply.

- Police station
- Court of law
- Probation office
- Prison
- Health care
- Job centre
- Social services
- Other

In your experience, how often does it happen that another interpreter is present at 'your' assignment (for example, because of a double-booking, because a solicitor brings his/her own interpreter to a police interview etc.)

- Never
- Very occasionally
- Sometimes
- Often

On approximately how many occasions have you experienced a situation where your output in the target language was challenged during the assignment? (If none, skip the next two questions)

Who was the person challenging your interpreting (e.g. another interpreter, client, solicitor, judge etc.)?

Why do you think they challenged your interpreting?

On approximately how many occasions have you challenged another interpreter's output in the target language? (If none, skip the next question)

What were your reasons for challenging another interpreter's output in the target language?

Do you think the presence of another interpreter at an assignment affects the quality of interpreting? If so, in what ways?

Please use the space below if you would like to add anything. If not, please click the 'submit' button below.

Juvenile courts: creating (an atmosphere of) understanding

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Abstract. *In this paper we examine Dutch court proceedings according to juvenile criminal law. Several international treaties and agreements such as the 'Beijing Rules' (1989) acknowledge the different status of juveniles and emphasize that legal professionals have special obligations in case adolescents become a suspect. An important task for the legal system is to create an atmosphere of understanding and facilitate adolescents understanding the proceedings. This seems clear, but how do legal professionals orient to the task in real interaction and how is this interactionally constructed? In order to answer these questions, we take a qualitative approach and analyze videotapes of Dutch criminal trials in which the suspects are adolescents. Based on extracts from these court proceedings, we show how judges can orient to the special status of juveniles while interacting with them and specifically how they create (an atmosphere of) understanding.*

Keywords: *Conversation analysis, juvenile court, minors, interaction, understanding.*

Resumo. *Neste artigo, analisamos processos judiciais do tribunal holandês à luz da legislação penal juvenil. Diversos tratados e convenções internacionais, como as "Regras de Pequim" (1989), reconhecem a situação de exceção dos jovens e realçam que os profissionais judiciais possuem obrigações especiais no caso de adolescentes que se tornam suspeitos. Uma tarefa importante so sistema jurídico consiste em criar um ambiente de compreensão e em ajudar os adolescentes a compreenderem o processo. Pode parecer óbvio, mas como é que os profissionais jurídicos poderão desempenhar esta função na verdadeira interação e como é que essa função se constrói na interação? Para responder a estas questões, adotamos uma abordagem qualitativa para analisar gravações de vídeo de julgamentos criminais na Holanda nos quais os suspeitos são adolescentes. Com base nos excertos destes processos, mostramos de que modo os juizes poderão ter em conta a real situação dos jovens na interação com eles e, especificamente, de que modo criam (um ambiente de) compreensão.*

Palavras-chave: *Análise conversacional, tribunal juvenil, menores, interação, compreensão.*

Introduction: the atmosphere of understanding as a task for legal professionals

> The proceedings should be conducive to the best interests of the juvenile and should be conducted in an *atmosphere of understanding*, which will allow the juvenile to participate therein and to express herself or himself freely. (emphasis is ours)

This quote is taken from article 14.2 of the UN Standard Minimum Rules of the Administration of Juvenile Justice adopted by the United Nations in 1985, which are also known as the Beijing Rules. This article expresses the idea that governments must facilitate criminal trials in such a way that juvenile suspects ('verdachte'[1]) can understand what is happening during the trial, which would then allow them to participate in a meaningful way. Rap (2013) mentions two other reasons why understanding is important. First, because it contributes to the suspect's feeling that the trial has been fair. This is referred to as 'procedural justice' and several researchers have found that procedural justice promotes acceptance of the verdict (Jackson *et al.*, 2012; Murphy and Tyler, 2008). Second, she refers to European jurisprudence. In the case *T. v. United Kingdom*, the European Court of Human Rights considers that an effort should be made to ensure understanding by the minor suspect in order to meet the requirements of a fair trial as prescribed in article 6 § 1 of the European Convention of Human Rights (ECHR December 19, 1999).

Also, understanding probably facilitates one of the goals of juvenile courts, which is to rehabilitate the juvenile (e.g. article 40 § 1 UN Convention on the rights of the Child). Juvenile suspects should at least be prevented from repeating criminal behavior (e.g. Bartels, 2011: 3; De Jonge and Van der Linden, 2013: 77); it would not be realistic to expect the trial to lead to a change of behavior if the juvenile does not understand what the trial is about.

The practices of juvenile courts have been studied from several perspectives. For instance, the seminal study of juvenile justice by Cicourel (1968), which comes from the perspective of the theory of social organization, shows, among other things, how prejudices based on socio-economic status, race and residence influence the outcome of the juvenile procedure. Kupchik (2006) uses both qualitative and quantitative methods to compare how youth are tried in the USA, inspired by a development that juvenile delinquents are transferred to criminal courts. He compares the actual practices in juvenile courts with criminal courts. He focuses on three dimensions: 1) the formality of the case processing, 2) the evaluation of the defendants and 3) the sanctioning goals and the severity of the punishment (2006: 8). The first dimension is most relevant for the current paper. Kupchik finds that juvenile courts generally are less formal than criminal courts. 'Less formal' indicates here, for example, that the veracity of statements can be discussed orally, rather than through written motions. Furthermore, interruptions and side talk may be treated as non-problematic, as well as in a less formal tone by lawyers. He also refers to family members that are actively involved in the juvenile court proceedings (2006: 50–65). Criminal courts tend to be more formal. That is, until the juvenile has been found guilty and the court needs to consider the sentence, when the juvenile may become actively involved in the proceedings and the tone may change into 'admonishment'.

More recently, Rap and Weijers (2011) adopt a pedagogical and international-comparative approach. They find that Dutch juvenile courts generally give the juvenile

enough opportunity to participate, but also that courts differ greatly in how they show that they are taking the suspect's contribution seriously (for example by asking follow up questions). Moreover, they conclude that judges generally lack a 'good conversational technique' and as a result talk too much and listen too little. Rap and Weijers also point out that juveniles often have great difficulty understanding what is happening and that often there are no explanations about the events and roles in court, that a lot of legal register is still used, and that the verdicts are not always comprehensible.

What has received less attention so far is how the notion that understanding is an important value of juvenile justice is shaped and dealt with turn by turn in actual courtroom interaction. This is important because interactional turns are the building blocks of the interaction. Values prescribed in international conventions, such as 'understanding' and 'participation', have to be brought to life through the turns that the participants produce (we will elaborate on this in section 3). In this paper we explore the linguistic resources that judges can employ to contribute to the required 'context of understanding' and 'atmosphere of understanding'. By doing so, we also illustrate how interaction analysis can give content to national and international tasks for legal professionals. We would like to point out that our focus on juvenile courts does not imply that understanding is of less importance in cases with adult suspects. Rather, it seems that participants in juvenile courts, mostly the judge, make this issue salient themselves in the interaction in a way that maps on the prescriptions provided by international conventions. Before we move on to the data description and analysis, the next section provides some background information about juvenile criminal courts in the Netherlands.

The Dutch juvenile court: inquisitorial procedures

In the Netherlands, juveniles can be brought to court for crimes they have committed from the age of twelve. The maximum age for the juvenile court is somewhat flexible. Depending on the personality of the juvenile offender and the nature of the crime, 16- and 17-year-old suspects can be tried according to criminal law for adults (article 77b). And the other way around, if the court and prosecution find it appropriate, those who were 18-22 while (allegedly) committing the crime can be tried by a juvenile court (article 77c Criminal Code). This has been changed recently. Before April 2014, only suspects who were 18 or 19 during the crime could be tried by a juvenile court. In this paper, we focus on adolescents who are tried by a juvenile court.

Juvenile courts are chaired by one juvenile judge when the offense committed is minor. In more severe, or more complex, violations of the law, the juvenile judge is accompanied by two other professional judges. There is no jury, nor are there lay judges. The proceedings are not open to the public. The overall organization in Dutch juvenile court proceedings can be summarized as follows (Tak, 2008: 100-101; expanded by us, including some details specific for juvenile courts):

1. Identification of the suspect by the judge;
2. Cautioning of the suspect;
3. Reading of the charge(s) by the public prosecutor;
4. Examination of the suspect, witnesses and experts by the judge, followed by additional questions of the suspect and witnesses by the public prosecutor and defense lawyer;
5. Discussion of the suspect's personal situation (including education, housing, possible addiction, day-time activities, relation with parents, etc.). Parents, parole

officers and behavioral scientists can be consulted by the court (followed by the prosecutor and defense lawyer);
6. Closing statements by the prosecutor and defense lawyer;
7. Final statement by the suspect;
8. Delivery of the verdict and sentence in open court – immediately or within two weeks.

The Dutch system is mostly inquisitorial, which means that judges have an active role in examining the evidence (phase 4). It is their task to decide about the charge and sentence. This means that there is not a separate 'case processing phase' and a 'sentencing phase' as can be found in e.g. Anglo-American systems (e.g. Kupchik, 2006). The court decides once, both about guilt and sanction (and both the nature and the length).

Most of the investigation regarding the accusations happens *before* the trial. The police interview suspects and witnesses and write up the statements in a report.[2] The written statements become part of the case file together with other reports, e.g. about observations by the police, wiretapping, fingerprints, DNA. Those pieces of evidence that are considered relevant must be read out loud (or at least mentioned) in court, otherwise the court cannot use the documents for its decision (article 301: 4, Code of Criminal Procedure).[3] The written statements can be introduced to the court in various ways, by summarizing or paraphrasing the gist, by indirectly reporting from it, or by reading directly from the statement (Van der Houwen, forthcoming). These various ways of introducing written reports have different effects (Van der Houwen, 1998, 2000, 2012, forthcoming) and direct reports, rather than summaries or indirect reports, are used specifically when they directly relate to the charge, as we will see in some examples below. The court reads the case file before the court hearing, and then confronts the suspect with its content. Witnesses generally do not give evidence in court, rather their written statements are used. The suspect's statement made at the police station is treated as their primary evidence; when suspects tell a different story in court, they are reminded of their earlier statement to the police (Van der Houwen, 2013; Van der Houwen and Jol, 2016). The prosecution and defense lawyers also refer frequently to the case file, both embedding and quoting from it (Sneijder, 2011; Van der Houwen and Sneijder, 2014; D'Hondt and Van der Houwen, 2014).[4] Hence, the statements are important 'written voices' that can be reanimated in court and limit the suspect's freedom to tell a different story.

Furthermore, the case file forms the basis for the indictment as drawn up by the prosecutor. The indictment states what the suspect is charged with. This is the point of departure for the judge who checks whether it is correct and complete (Kronenberg and de Wilde, 2005). It is therefore a story of guilt rather than innocence that is behind the judge's line of questioning. The fact that all the evidence must be put to the court and that the indictment is the point of departure might have consequences for the creation of an (atmosphere) of understanding. These procedures have a significant effect on the judge's line of questioning (Van der Houwen, 2013) which markedly differs from 'everyday' interaction. Furthermore, these procedures limit the suspects' freedom to tell their story in court because the written documents tend to override the suspects' oral story during the proceedings (Van der Houwen and Jol, 2016).

Now that we have given some background information about how Dutch (juvenile) courts are organized, we will move on to how the core purposes and values of youth courts (as described in the first section of this paper) are shaped and negotiated inter-

actionally. The next section describes the data and method that we use to answer this question.

Data and Method

The data come from a corpus of Dutch criminal trials video recorded in 2008. In three of these the suspects were minors and all three cases were chaired by the same judge and tried as a juvenile court case. This judge told one of the authors that he is well aware of the vulnerable status of juvenile suspects and that he avoided using difficult words, for instance.[5] Special permission was obtained from the Ministry of Justice to be able to attend and video tape the trials. The condition was, however, that only the judge and public prosecutor could be on camera and not the suspects (nor, as a result, their lawyers because they sit close to them). Most of the examples that we use in the analyses come from phase four and five in which the judge examines the charges and discusses the suspect's personal situation. The exchanges are mostly between the judge and the suspect. All materials have, of course, been anonymized. The video material of the trials was transcribed drawing on the system developed by Gail Jefferson (e.g. Jefferson, 2004; see the Appendix for the transcription conventions). Because the transcripts have been translated, some of the details have been omitted if there was no satisfactory way to represent them in English.

The techniques of Conversation Analysis (e.g. Sidnell and Stivers, 2012) were used for collecting and analyzing the court proceedings. Conversation analysis is an inductive method especially suited to analyzing the sequential organization of talk. From a conversation analytical point of view, institutional interaction is not institutional because of its physical setting; rather, the institutionality of the interaction is constructed and maintained in and through the turns the participants take. In these turns they orient to particular (institutional) norms, roles, and goals and thus 'talk these into being' (Heritage and Clayman, 2010: 20). Because conversation analysis focuses on the interaction itself, the method is very useful for analyzing how participants in juvenile court interaction orient to the task of creating an 'atmosphere of understanding'. Although we do realize that judge(s) and suspect(s) are not the only relevant participants, we will focus on their interaction because judges do most of the interacting with suspects during the proceedings.

Creating understanding in a juvenile court

In this section and the next we present our findings. We discuss how professionals and especially the judge interact with juveniles in court and create (an atmosphere of) understanding. In section 4 we focus on how understanding of the trial is created by examining how difficult words and questions (4.1), difficult instructions such as the caution (4.2) and the overall procedures (4.3) are explained. In section 5 we focus on how an atmosphere of understanding is created.

Explaining difficult words and giving sample answers

An obvious way to facilitate the juvenile's understanding of the procedures is by using 'everyday vocabulary' and avoiding the more difficult or infrequent words that they may not be familiar with. Extract 1 comes from a case in which there are two juvenile suspects. They are accused, among other things, of using violence when stealing an iPod. The extract comes from phase 5 (discussing the suspect's personal situation). J is the Judge.

Extract 1: Explaining difficult words: trivializing
(Case 2b, starting at 2:05:18)

```
1   J:  wat wat de psycholoog opvalt
        what what strikes the psychologist
2       is dat jij
        is that you
3       ja uh
        well uh
4       je bagatelliseert je aandeel
        you trivialize your share
5       dat wil zeggen van he
        that means like well
6       je bent er wel bij maar eigenlijk heb ik niet zoveel
        gedaan
        you are there but actually I didn't do that much
7       (..)
8       ik zou zeggen dat zie je hier op zitting
        I would say that you can see that here during the
        trial
9       stel je voor dat jij wel meer gedaan heeft
        imagine that you did do more
10      dan je zelf zegt
        than you say/admit yourself
```

Extract 1 is an example of how the judge orients to what may be vocabulary the juvenile is not familiar with. Going over the suspect's personal situation the judge goes over the report of a psychologist who examined the suspect. The judge reports the psychologist's finding (line 1-4) that the suspect 'trivializes' his part in the crime. In line 3 we can already see some of the judge's orientation to the upcoming word 'trivialize'. He halts using a hesitation marker 'well uh'. The hesitation marks 'trouble' for the judge. This trouble marker may demonstrate awareness of an upcoming face threat (Brown and Levinson, 1987) for the juvenile. It may also already project expected difficulty in understanding a not so frequent word as 'bagatelliseren' (*trivialize*) might cause. That this is at least part of what is going on is visible in lines 5-7 in which the judge reformulates the term 'bagatelliseren'(*trivialize*). The judge then further explains what he means by giving a hypothetical example (lines 8-10 and on, not further included).

We find this type of orientation to the suspect's presumed level of understanding not only at the word level but also at the level of utterances. The next example illustrates how the judge (J), after the suspect (S) gives a dispreferred answer, repeats the question followed by sample answers.

Extract 2: Giving sample answers
(Case 5, starting at 0:24:58)

```
1  J:  ja
       yes
2      maar dat is niet het antwoord op mijn vraag
       but that is not the answer to my question
3      want jij zegt
       because you say
```

4 dat komt door mijn gedrag
that is because of my behavior
5 maar mijn vraag is nou juist
but my question exactly is
6 waarom gedraag je je zo
why do you behave like that
7 der zijn jongens die doen het omdat ze er een kick van krijgen
there are boys who do it because they get a kick out of it
8 der zijn jongens die doen dat omdat ze bij een groep willen horen
there are boys who do that because they want to belong to a group
9 der zijn jongens die doen dat omdat ze meelopers zijn
there are boys who do that because they are followers
10 der zijn jongens die doen het voor het geld
there are boys who do it because of the money
11 der zijn jongens die zijn gewoon crimineel
there are boys who just are criminal
12 uh
uh
13 naja uh noem maar op
well yeah uh you name it
14 (3)
15 maar waarom doe jij het?
but why do you do it
16 (6)
17 S: (dat weet ik eigenlijk niet)=
(I actually don't know)=
18 J: =want eigenlijk is dat zorgelijk
=because that is actually worrying

Before extract 2 the judge had asked the juvenile why he had been expelled from school and why he had committed two serious crimes. The suspect answered that it was 'because of his behavior'. Although this answer would 'match' the question why the juvenile has been expelled, the judge acknowledges this answer only minimally (line 1) and then disqualifies the answer explicitly (line 2). He first repeats the suspect's answer, demonstrating that reception of the answer is not the problem, and thus making clear that the problem lies in the content of the answer. He restates his question (line 5-6) and prefaces it with 'but', marking the suspect's answer as not the projected answer (see Jol and Van der Houwen, 2014). In lines 7-11, the judge exemplifies how his previous question should have been understood by giving sample answers. These sample answers seem to be designed to reduce possible resistance: they are formulated to be about other boys and not the suspect. This allows the participants to take a brief break from directly questioning the suspect. This conversational design may be less personal and less face threatening than asking 'did you do it because you get a kick out of it' etc. Additionally, the sample answers are designed to give the suspect the freedom to come up with other alternatives. The answers are constructed as examples (rather than forced choice options) in two ways. First, line 10 does not end with 'or'. This would be expected if line 11 was going to provide the final option. Second, in line 13, the judge

proceeds with 'well yeah uh you name it'. This implies that there are many other reasons for criminal behavior, giving the suspect freedom to come up with another answer. The suspect, however, does not respond to the examples (line 14), and the judge repeats his question again (line 15). The suspect, after a long 6 second pause, says he doesn't know (line 17). The judge then evaluates the suspect's 'I don't know' answer and explains why that is problematic: if the suspect does not know the causes of his behavior, he cannot work on these causes (not included in this extract). The judge thus warrants his previous question as a relevant institutional question: he needs 'something to work with'.

The judge, hence, shows an orientation to designing his vocabulary and utterances explicitly to match the presumed level of understanding of the suspect. In extract 1 the judge pre-empted potential trouble with the word 'bagatelliseren' (*trivialize*). In extract 2 the dispreferred answer by the suspect prompted the judge to model what type of answers are potentially 'good' answers.

Explaining a legal right: Cautioning a juvenile suspect

Anyone being tried has several rights. But for lay people, and especially juveniles, it may be difficult to fully comprehend the meaning of these rights. The first opportunity that the judge has to explain is at the very beginning of the trial. In the Dutch system suspects are cautioned not only before they are interrogated by the police but also when they are examined in court by the judge. The caution is prescribed in article 29:2 of the code of criminal procedure and states that 'before the examination the suspect is told that he [sic] is not obliged to answer' ('Voor het verhoor wordt de verdachte medegedeeld dat hij [sic] niet verplicht is tot antwoorden.'). Judges are however free in how they inform the suspects of their rights and the formulation may vary (see Van der Houwen and Jol, 2016). Extract 3 shows how the juvenile judge uses the flexibility in the formulation of the caution.

Extract 3: Explaining the suspects' rights
(Case 2a, starting at 0:03:16)

1	J:	nou goed.
		well okay.
2		jongens voor jullie allebei geldt,
		boys for both of you holds,
3		op vragen hoef je geen antwoord te geven,
		you don't have to answer questions,
4		dat mag natuurlijk wel,
		that is of course allowed,
5		maar je moet wel goed opletten,
		but you have to pay careful attention,
6		als je iets niet begrijpt,
		if you don't understand something,
7		of het gaat te snel,
		or things are going too fast,
8		dan moet je het zeggen,
		then you should say so,
9		dan zeggen we het nog een keer,
		in that case we repeat it,

```
10    of zeggen we het anders.
      or we say it in a different way.
11    ja?
      yes?
12    nou eerst nog officier van justitie uh,
      now first still the public prosecutor eh,
13    vertellen wat de verwijten zijn aan jullie adres,
      will tell what accusations are made against you,
```

Extract 3 shows that the judge gives the juvenile suspects the basic caution 'you are not required to answer questions'. However, instead of proceeding immediately to give the floor to the prosecutor to inform the court what the suspects are accused of, the judge elaborates and explains in quite a bit more detail than we would see with adult suspects (Van der Houwen and Jol, 2016) what is expected of the m (lines 4-10). He specifically mentions two potential problems, namely, understanding (line 6) and the speed of what goes on (line 7) and how these might be remedied (line 8-10). The judge thereby acknowledges that this is a potentially difficult interaction but he gives the suspects options to adopt to ensure they understand what is going on: the professionals can be asked to repeat what they have said or to phrase it differently (line 9, 10); this shows a clear orientation to ensuring the suspects' understanding. At the same time, we would argue that the judge makes the suspects co-responsible for their understanding of the proceedings by instructing them to say so if these problems occur (line 8). Hence if they do not say anything the judge can assume that things are clear and not going too fast.

Explaining what is going on during the trial

Another way for the judge to make the trial more accessible is to explain what is going on and explicitly mark different courtroom activities. Such explanations can be done in sequentially different positions. We found that judges can announce what the next step(s) will be before the new activity starts, or summarize what has happened *afterwards*. An example of the first variant is shown in extract 4.

Extract 4: Then we are really going to start now
(Case 2b, starting at 00:51:00)

```
1  J:  goed nou dan gaan we nu uh
       good well then we will now eh
2      dan gaan we nu ↑echt beginnen,
       then we are really going to start now,
3      uhm
       ehm
4      en ik ga met jullie bespreken;
       and I'm going to discuss with you;
5      uh
       uh
6      waarvan de officier jullie beschuldigt;
       what the public prosecutor accuses you of;
7      •hh ik ga:  dat niet helemaal in detail-
       •hh I will not do that in a very detail-
8      heel uitgebreid bespreken,
       very comprehensively,
9      en ik hoor wel van:  de raadslieden;
       and I'm sure that I will hear from the lawyers;
```

```
10    of de officier;
      or the public prosecutor;
11    als die straks vinden;
      if they think later on;
12    als ik het met jullie per feit besproken heb;
      when I have discussed it with you per accusation;
13    of alles wel besproken is of niet;
      if everything has been discussed or not;
14    he,
      right,
15    maar ik (doe ut/moet) een beetje op hoofdlijnen
      but I will (have to) discuss the broad outlines
16    met jullie uh bespreken.
      with uh you.
17    en de ervaring leert dat de officier
      and experience tells us that the public prosecutor
18    en de advocaten
      and the attorneys
19    zometeen in hun pleidooi
      later on in their final statements
20    ook nog wel een keer op in gaan.
      will also say something about it once more
```

In extract 4, line 1-2, the judge introduces the next activity with 'good then we are really going to start now'. By formulating it this way the judge treats the exchanges (about procedural issues, not included in the extract) thus far as not the 'real' beginning, and the upcoming events are marked as a new activity or phase. The explanation that follows makes clear what will happen next. The explanation is construed as an explanation to the suspects by addressing them with 'you' in lines 4, 6, 12 and 16. Moreover, the judge corrects himself in lines 7 and 8: instead of finishing 'in detail' (line 7), he chooses an easier option (in the Dutch original) by saying 'heel uitgebreid' ('very comprehensively'). Which shows again orientation to the juvenile's understanding. Thus, the judge construes the suspect as addressee; the public prosecutor and the attorneys are 'the overhearing audience' of the explanation.

Interestingly, the judge also orients to this 'overhearing audience'. First of all, he provides information that can be interpreted as instructions for both the public prosecutor and the attorneys that – after discussing the accusations – they should say if 'everything has been discussed' (line 13). This type of content can hardly be directed to the lay suspects because it refers to article 301: 4 of the Code of Criminal Procedure which states that evidence must (at least) be referred to during the trial, otherwise it cannot be used for the decision (see also footnote 5). The suspects cannot be expected to understand the full meaning and implications of this remark. In addition, when the judge mentions the public prosecutor in line 10, he seems to look in her direction and thus constructs her as an addressee (see e.g. Rossano, 2012 for a discussion of the role of gaze). For the purpose of this paper it is important that the judge primarily addresses the suspect and trusts the legal professionals to pick up the subtle instructions, and not the other way around (which also could have been the case). The judge therefore does active interactional work that orients to the suspects' understanding of what is happening during the trial and to their involvement in the courtroom interaction (as an addressee of the explanation), while at the same time instructing the legal professionals about how to proceed.

Now we will turn to an extract in which the judge explains the proceedings by giving a summary afterwards. What we find particularly interesting in the context of this article is the utterances in lines 11 and 12. DL is the defense lawyer.

Extract 5: Summary afterwards
(Case 2b, starting at 00:05:34)

1	J:	nee dan hebben we dat ook eh helder (om te ?)
		no then we have clarified that too eh (for?)
2		bij de rechtbank het vermoeden (.) was dat er nog een •h
		with the court there was the presumption (.) that another •h
3		eh over drie dagen ofzo nog een zaak behandeld zou uh gaan worden
		eh within three days or so yet another case would be tried
4	DL:	*ja dat was die tul die oorspronkelijk [een bezwaarschrift werd*
		yes that was the tul[6] that originally [would become an appeal
5	J:	[o:kee
		[o:kay
6	DL:	oorspronkelijk over drie dagen behandeld
		originally tried within three days
7	J:	[(oh)]
		[(oh)]
8	DL:	[maar] ut leek natuurlijk wat praktischer om dan [hier];
		[but] it of course seemed somewhat more practical to do it [here]
9	J:	[oke]
		[okay]
10		oke
		okay
11		dan issut helder
		then it's clear
12		staat er in iedergeval niks uh voor jou uh voor jou open,
		there are in any case no open cases uh for you eh for you,
13		•h uhh en ja en dan;
		•h uhh and yes and then;

In lines 1-9 there is a discussion about the status of other procedures. The participants in the interaction are the judge and the lawyer. Unlike in the previous example, the suspect is not an addressee, neither is there any evidence of orientation to the suspect as an overhearing participant. In lines 9 and 10, the judge starts closing the topic provided by the attorney with 'okay okay' (Beach, 1995: 278–282,Gaines, 2011: 3298–3301). Next, he looks back at the previous sequence by evaluating it with 'then it's clear' (line 11). At the same time, the utterance already announces the summary in line 12, which explains more precisely what exactly is clear now and what the evaluation in line 11 refers to. In his summary, the judge leaves out the procedural details that were part of the previous negotiation and he limits himself to giving the outcome that is most likely to be rele-

vant for the suspect. In this sense, the utterance shows similarities with 'formulations' (Heritage and Watson, 1979: 126). Formulations summarize the gist of the talk thus far and usually preserve, delete and transform information (Heritage and Watson, 1979) in order to serve institutional goals (e.g. Van der Houwen and Sliedrecht, 2016; Sliedrecht and Van der Houwen, 2016; Sliedrecht *et al.*, 2016; Sliedrecht, 2013; Van der Houwen, 2005, 2009; Phillips, 1999). In this case, the formulation also shows what is relevant for the institution: there are no other procedures that need to be dealt with.

However, this formulation does something extra. Whereas formulations are generally between two interlocutors or only address a third party implicitly (e.g. formulations for the overhearing audience in news interviews, Heritage, 1985), the judge explicitly addresses the third party, the juvenile, by adding 'for you eh for you' at the end of his utterance. The judge thus explicitly changes the addressee of his talk from the attorney to the suspect, and thus acknowledges the juvenile's presence. This is significant as the preceding exchange was between the judge and the attorney. Combined with the gist of the previous interaction, the judge demonstrates an orientation to the fact that the suspect was not a part of the previous exchange and that he may not have understood the content of that exchange. Moreover, he shows an orientation to the norm that the suspect should understand the trial.

Extracts 4 and 5 show that judges can do interactional work at different levels, in order to accommodate the juvenile in understanding the trial. First the judge provides explanations of the procedure at content level. Second, he construes these explanations as directed to the juvenile. By doing so he acknowledges the presence of the juvenile and shows alertness to a possible lack of understanding about the procedures at hand. Furthermore, extract 4 shows how the judge can, at the same time, instruct the legal professionals in a subtle way so that the focus stays on the suspect. This section as a whole shows how the judge can assist the juvenile suspect in understanding the trial, in terms of words, rights and procedures. So far, the emphasis has been on 'rational' understanding. In the next section we will turn to the more abstract and, possibly, more 'emotional' aspect: the atmosphere of understanding.

Creating an *atmosphere* of understanding

The Beijing Rules state that it is not only important that juveniles understand what happens during the trial, but also that there is an *atmosphere* of understanding. In this section we show how different practices by the judge can contribute to such an atmosphere of understanding and might prevent the suspect from feeling alienated from the courtroom interaction. First we discuss how the court addresses the suspect (5.1), and then we demonstrate how the court can show sensitivity to the suspect's feelings (5.2).

Addressing the suspect

One salient aspect in juvenile courts is how participants address one another. This is best understood when contrasted with (adult) criminal trials. The courtroom in the Netherlands, as in most places, is a formal setting and this formality is reflected and reinforced by the use of formal terms of address. The participants are not normally addressed on first name terms and so address each other either by their role or by Mr. or Mrs. followed by their last name. Dutch is a V/T language, which means that formality can also be expressed by the second personal pronoun 'you' (see table 1).

Second person pronouns	Informal	Formal
Singular 'you'	jij (emphasized informal form) je (less emphasis on informality)	U
Plural 'you'	Jullie	U

Table 1. Forms of the 2nd personal pronoun 'you' in Dutch according to number and formality.

For the legal professionals it is custom to address one another with formal 'you' 'u' and also the suspect is addressed with 'u'. Furthermore, the judge is often addressed as '(geachte) voorzitter' (literally (dear) chairman/woman) or 'meneer/mevrouw de politierechter' (literally: Mr. or Mrs. Police judge). The prosecutor is addressed as 'meneer/mevrouw de officier' (Mr/Mrs. Prosecutor), and the lawyers are generally addressed as Mr. or Mrs. followed by their last name. When not addressing lawyers directly but talking about them they may be referred to as 'lawyer' or 'counsel'. Similarly, adult suspects are normally addressed as Mr. or Mrs. followed by their last name or when being talked about they can also be called 'suspect' (verdachte).

In juvenile court these terms of address do not change for most players, except for the suspect when addressed directly. Extract 2 is an example that comes from the case in which two juveniles stand trial on suspicion of robbery and making threats. The judge verifies the name and residence of the first suspect, as is standard at the beginning of a criminal trial (see phase 1 in section 2).

Extract 6: Informal 'you'
(Case 2b, starting at 0:00:49)

```
1  J:      Uh Dyson Sam Karson
           Uh Dyson Sam Karson
2       →  dat ben jij he
           that is you [informal 2nd p.  sg] right
3       →  Uh je bent geboren in Rotterdam
           Uh you [informal 2nd p.  sg] were born in Rotterdam
```

The judge, without asking, addresses the suspect with informal 'you' (jij/je) and the suspect accepts this without protest. Extract 7, coming from the same case, is a little longer, and illustrates various forms of address and how participants actively characterize the relationship with other professionals different from the relationship with the suspect. In the trials that we studied, however, we have found two exceptions in which the judge addresses the juvenile suspect with 'u' (lines 7 and 13):

Extract 7: Switch from formal to informal 'you'
(Case 2b, starting at 0:42:02)

```
1  J:    u::h dan:
         u::h then:
2        Kevin
         Kevin
```

3			Kevin Stafman *Kevin Stafman*
4			8 september 1990 *September 8 1990*
5			in Harderwijk geboren *born in Harderwijk*
6			e:n uhm: *a:nd uhm:*
7		→	waar woont u nu op dit moment *where do you* [2nd p. sg formal] *now currently live*
8	S2:		Bezemertraat 235 *Bezemertraat 235*
9	J:		ja↑ (.) , *yes ↑ (.)* ,
10			maar (2) *but (2)*
11		→	waar zit je nu (juist) in een gesloten jeugdzorg he *where are you* [2nd p. sg informal] *now in a closed youth care institution right*
12	S2:		J.O.C.[7] *J.O.C.*
13	J:		in het J.O.C zit u
		→	*in the J.O.C. are you* [2nd p. sg formal]
14			ok *okay*
15			ja *yes*
16			ok *okay*
17	J:	→	goed uh jongens voor jullie allebei geldt, *okay uh boys for both of you* [2nd p. pl. informal] *holds*,
18		→	dat jullie [2nd p. pl informal] op vragen geen antwoord hoeven te geven, *that you do not have to answer questions*
19		→	maar dat je wel goed op moet letten. *but that you* [2nd p. sg informal] *do have to pay attention*
20			nu zijn we al meerdere keren bij elkaar geweest? *now we have already been together various times*
21			uhh uh, uhh uh,
22			maar ik zou toch de officier willen vragen, *but I would still like to ask the prosecutor*
23			zij het wat mij betreft in een samengevatte vorm, *albeit in as far as i am concerned summarized form*
24			dat ze nog een keer vertelt, *that she tells one more time*
25			u:h *u:h*
26			waarvan jullie uh worden verdacht. *what you* [2nd p. pl. informal] *are suspected of*
27	P:		dank u wel *thank you*

```
28        meneer de voorzitter
          Mr.  chair
29        voorzitter leden van de rechtbank
          chair members of the court
30    →   guildo gaas en Kevin Stafman worden deels van
          hetzelfde verdacht
          guildo gaas and Kevin Stafman are partly suspected
          of the same
```

While in the first extract the judge consistently addressed the first suspect informally, when the judge verifies the name and place of residence of the second suspect, he is not consistent in how he addresses him. In lines 7 and 13 the suspect is addressed with the formal personal pronoun 'you' ('u') but in line 11 the judge switches to the informal pronoun (but not emphatic) 'je'. And when both suspects are addressed, from line 17 both are addressed informally as 'boys' and with the informal plural pronoun 'jullie'. It could be that the age of the suspects plays a role. The first suspect was born in 1993, but the second suspect, born in 1990, is three years older. Standing trial in 2008 the second suspect may have turned 18 at this point, legally an adult. Whatever the reasons may be, the judge does show that addressing can be an issue that matters in juvenile courts and that can cause a struggle for the judges (although the suspect does not react to or protest against the changes, at least not in an observable way).

It also becomes clear that, although the suspect can be addressed less formally if they are a juvenile that does not mean that the whole interaction becomes less formal. In line 27, the prosecutor uses formal 'u', followed by a formal, formulaic way of addressing the court (lines 28-29); by doing so the professionals maintain the formal setting. In addition, they construe the suspect's position, and their relation to the suspect as clearly different from – and less formal than – the other participants.

Extracts 6 and 7 illustrate how juvenile suspects are addressed in a less formal way. The informal 'you' is not normally reciprocal and shows hence a difference in hierarchy (power dimension). We would argue that there is also another, more positive, dimension to this. Children under 18 in the Netherlands are rarely addressed with formal 'you' (parents, school teachers, sports coaches etc. will use informal 'you'). To be addressed with formal 'you' in court would be marked for the juvenile and probably alienating. Addressing the juvenile suspect with informal 'you' could hence lower the threshold for participating and contribute to an atmosphere of understanding.

Addressing the juvenile suspect's feelings

Another strategy judges might use to create an atmosphere is to show understanding and orient to how juvenile suspects might experience their day in court and how they feel about the courtroom proceedings. As we will see, this attention for the suspect's feelings also serves institutional goals. Extract 10 comes from the examination phase. The judge examines the evidence and relies on the various police statements in the case file. The issue is whether the suspect threatened a victim with a knife to prevent him from leaving.

Extract 8: Nervousness of the suspect as an excuse for inconsistencies (Case 2b, starting at 0:58:57)

1	J:	dat is wat je bij de politie zegt
		that is what you say at the police
2		(3)
3		en bij de politie dan lijkt het toch alsof je zegt
		and at the police it does appear as if you say
4		van nou ja
		like well yes
5		ik wilde indruk op hem maken door met dat mes
		I wanted to impress him with that knife
6		hij wilde weg maar dat mocht niet
		He wanted to leave but that was not allowed
7		(2)
8	S1:	(nee ik heb niks met dat mes gedaan)
		(no I didn't do anything with that knife)
9	J:	je hebt niks met dat mes gedaan
		you didn't do anything with that knife
10		(5)
11		uhm
		uhm
12		nu kan het zijn dat het een tijdje geleden is he
		now it can be that it has been a little while right
13		nu kan het zijn dat je het ook spannend vindt he
		now it can be that you also find it exciting right
14		zo'n zitting
		a trial
15		je weet niet wat he wat wij gaan vinden
		you don't know right what our opinion will be
16		eh dat je misschien zenuwachtig bent
		eh that you maybe are nervous
17		(2)
18		dat zou kunnen
		that could be
19		ben je zenuwachtig?
		are you nervous?
20	S1:	(xx) [klopt
		(xx) [correct
21	J:	[ja nou ja
		[yeah well yeah
		((4 lines omitted))
26		maja dan vind ik het raar he dat je mij (.) dan zulke antwoorden geeft he
		but yeah then i find it strange right that you give me (.) answers like that right
27		want wat je bij de politie verklaart
		because what you state[8] *to the police*

The judge, just before extract 10, puts to the suspect what he reportedly told the police on an earlier occasion. The judge then formulates the gist of what he has just read from the police record (lines 3-6) to check with the defendant if this is indeed how things happened (see Van der Houwen, 2005, 2009; Stommel and Van der Houwen, 2013). The suspect first denies that he has 'done anything with that knife'. The judge repeats this answer (line 9), changing the perspective from 'I' to 'you', showing reception of the suspect's utterance but no commitment to it (Svennevig, 2004; Jol, 2011). After an ex-

tensive pause (line 10) the judge forms two hypotheses about what could be going on: it could be that it has been a little while (line 12), and it could be that the suspect finds the court hearing exciting (line 13). Here, the judge shows understanding and temporarily switches from examining the evidence to addressing the suspect's feelings. The suspect acknowledges he is nervous (line 20) only after the judge specifically asks him (line 19).

However, that the suspect might be telling the truth is *not* one of judge's hypotheses. The judge's reaction thus treats the suspect's denial (line 8) as insufficient and not acceptable (see Van der Houwen, 2013) and caused by something other than that the suspect faithfully recounts what happened. The written statement is still construed as a more important source of information (line 26-27) and given precedence over the suspect's oral story in court (see also Van der Houwen and Jol, 2016)[9]. The showing of understanding hence is used to give the suspect an excuse for giving answers that are not in line with what the police have written down, giving no space for alternative storylines from what the police wrote down and making it very difficult for the suspect to come up with alternative storylines. Contrasting versions in legal context are often associated with being 'inconsistent' and therefore 'being unreliable' (e.g. Drew, 1992; Shuy, 1993) or at least challenging (Jol and Van der Houwen, 2014; Sliedrecht *et al.*, 2016). The display of understanding in this sequence, however, presumes that the inconsistent answers must be due to some external factor such as it being some time ago (hence the suspect's memory might not be so good) or the suspect is nervous, rather than due to a potential error or lack of subtlety in the police statement.

In extract 9 the judge is still examining the evidence with the same suspect as in the previous extract. This time the suspect's lawyer does the showing of understanding and blames the judge for being too 'strict' in the way he questions the suspect. Preceding the extract the suspect gives answers which are inconsistent with what the judge has learned from the statements in the case file. The extract starts with the judge suggesting that the suspect talks to his lawyer about his procedural attitude.[10]

Extract 9: The judge being open for correction
(Case 2b, starting at 1:14:44)

```
1  J:  i-ik wil je niet ergens toe dwingen,
       I-I do not want to force you into something,
2      maar (ik zie/misschien) dat je advocaat even met jou
       moet uh
       but (I see/maybe) that your lawyer should briefly
       discuss
3      even overleggen
       with you
4      over de proceshouding van jou.
       about your procedural attitude.
5      kijken of dat zo (..)  besproken is maar;
       see if that has been (.)  discussed like this but;
6      (..)
7  J:  ik weet niet wat er me-
       I don't know what wi-
8      ik weet niet of uw client of dat of da-
       I don't know if your client if that if tha-
9      (xxxx) beetje (xxx) weet niet of dat
       (xxxx) little (xxx) don't know if that
```

10 nou ja
well
11 •hh u vOOrbereid bent
•hh you are prepared
12 op een uh op een proceshouding zoals nu
for a procedural attitude like now
13 hh
hh
14 of dat –
or that –
26 DL1: nou ja,
well,
15 ik denk dat–dat Kevin heel erg zenuwachtig is ,
I think that that Kevin is very nervous ,
16 maar dat ie op zich wel een open proceshouding
hee:[ft
but that as such he does have an open procedural attitude
17 J: [ja
[yes
18 DL1: en dat heeft ie ook van te voren aangekondigd,=
and that he has also announced in advance,=
19 J: =ja
=yes
20 DL1: dat heeft ook (.) op tot heden ook gehad,=
that is what he has had until now,=
21 =ik denk dat u een beetje de vragen heel <streng
stelt>=
=I think that you a bit you ask the questions in a very strict way=
22 =•h
=•h
23 J: ja=
yes.
24 DL1: =>en dat hij een beetje dicht klapt<=
and that he shuts down a bit
25 J: =ah ok dus ik moet ze minder streng –
=ah okay so I should ask them less strictly =
26 >nee nee< dat hoor ik graag hoor
>no no< I'm happy to hear that
27 DL1: [maar uh;
[but uh
28 J: [als het aan mij ligt dan dan ligt het aan mij
[if it is me then then it is me
29 he dan uh
right then uh
30 DL1: ik denk dat u de vragen een beetje streng stelt;
I think you ask the questions a bit strictly
31 J: ok.
okay.
32 ok
okay
33 >ik weet niet goed
>I don't know exactly

```
34        hoe ik dan hoe ik dan minders streng
          how then I how I should ask them
35        zou moeten stellen,
          less strictly
36        maar eh;
          but eh;
37  S2?   :hm
          hm
38  J:    >laat ik het zo zeggen
          >let me say it like this
39        vertel es wat is er gebeurd Kevin
          tell us what happened Kevin
```

After some troublesome interaction between the suspect and the judge (not included), the judge suggests to the suspect that he talks to his lawyer (lines 1-2). The judge identifies the suspect's procedural attitude as the problem. The judge addresses the lawyer indirectly but when she does not respond (line 6) the judge (after a false start) addresses her directly and asks if the suspect's procedural attitude is what she and her client had agreed on. The lawyer first makes the suspect's feelings relevant (line 15) in a wording similar to what the judge himself had used earlier in the interaction (see extract 10) and counters the judge's potentially face threatening act of not having prepared her client 'well' for the examination (lines 16, 18, 20). The lawyer hence does not go along with the judge in blaming the suspect's procedural attitude for the faltering examination and points out his open procedural attitude up to now (line 20).

From line 21 on, the lawyer returns the complaint. She puts the blame on the judge for asking his questions 'a bit very strictly' (line 21). She manages the face threatening character of this move with the design of her utterance. She starts off with hesitations ('I think', 'a bit') but does end more forcefully with 'in a very strict way', putting stress on both the intensifyer and *strict* and slowing her speech. The choice of the word 'strict' (rather than 'aggressive', for instance) puts the judge's behavior in an educational or parental domain rather than in a legal domain of a cross examiner, which would not fit with the role of a judge which is to be impartial. Hence, she carefully cancels the judge's view that the suspect is being deliberately antagonistic (see also line 18) and instead points to a problematic 'atmosphere of understanding': the suspect is nervous (line 15) and shuts down (line 24) because of the strict manner of questioning by the judge.

The judge treats the lawyer's response as 'news' ('ah') and seemingly unproblematic ('ok') and reformulates the gist as a task for himself (line 25). The 'no no' (line 26) waves aside apologies, the 'I'm happy to hear that' appears to treat the lawyer's comment as a welcome message; a message he can act upon. The judge reformulates the messages ('if it is me it is me') stressing that the problem lies with him (and not, say, the suspect) without saying so explicitly (line 28). The judge demonstrates he wants to do something with the comment but does not know how to (line 33-35), showing that a less strict way of asking questions is not obvious, implicitly justifying his earlier way of questioning and making his earlier line of questioning accountable. The judge, hence, makes a lot of effort in his response to the face threatening act by the lawyer and indeed then ends with an open invitation to the suspect formulated informally (*vertel es*, where 'es' is short for *eens* ('once')) (line 39).

In this extract we see how the judge appeals to the lawyer to get the suspect to change his line of answering. The judge treats the suspect's line of answering as prob-

lematic and puts the blame on the suspect. The lawyer does not go along with this and with some hesitations (line 21) points out that the suspect is very nervous and shuts down because of the judge's way of questioning and hence puts the blame on the judge. The judge appears to go out of his way to accept this and to show himself accountable 'on record' for the emotional impact his questions might have. He treats this as sufficient reason to alter his line of questioning, possibly acknowledging the importance of having an 'atmosphere of understanding' (see also extract 8 where the judge acknowledges the potential stressful situation for the suspect as well as the fact that the trials tend to come long after a crime was committed).

The extracts in this section show that the judge and lawyer take into account the fact that the suspect is a minor and might be nervous or easily intimidated (orientations we have not found in our larger corpus of adult trials). The moves showing of understanding, however, are embedded in the institutional tasks of examining the truth (extract 8 and 9) as well as defending the suspect (extract 9) and hence serve decidedly institutional functions.

Creating both understanding *and* an atmosphere of understanding

Orienting to both the juvenile's understanding of the trial and to an *atmosphere* of understanding are of course not mutually exclusive. If there were no orientation to the understanding of lexicon, utterances and their pragmatic force, and procedures, there would be no basis for creating an atmosphere of understanding. The elaborate explanation of the suspect's rights in court (4.2), for instance, not only aims to explain these rights but also creates an atmosphere of understanding in the sense that it states explicitly that the suspect can ask questions for instance and that the court will repeat and explain where necessary (even though, as discussed, this does make the suspect co-responsible for the understanding). Also the next and last example, extract 10, shows how the judge orients to both the understanding of the procedure which leads to a postponement of the case as well an understanding of what that means for the juvenile.

Extract 10: Explaining procedures while empathizing with the implications for the suspect
(Case 2a, starting at 41:25:2)

1	J:	en daarna willen we eigenlijk de zaak gewoon toch aan gaan houden
		and after that we actually just want to postpone the case
2		uh dan is het de bedoeling dat ergens in september
		uh then it is the idea that somewhere in September
3		uh de zaak wordt behandeld
		uh the case goes to court
4		jullie alle drie dan weer tegelijk
		all three of you then at the same time again
5		ik hoop dat het dan eindelijk wel een keer echt lukt
		I hope that it then finally will go through for once
6		he uhm
7		maar heeft ook wel een beetje als bijkomend voordeel
		but it does have a little bit of an added advantage
8		dat jij wat langer de tijd hebt om beter je best te doen
		that you have some more time to try harder

9 om te laten zien
to show{us}
10 in september dat het echt goed uh gaat
in September that you really are doing well
11 ja
yes
12 misschien is dat vervelend voor jou
maybe that is annoying for you
13 dat je nu niet weet waar je aan toe bent
that you do not know now where you stand
14 he uh
15 maar aan de andere kant
but on the other hand
16 uh moeten wij ook een beetje efficiënt met onze tijd omgaan
uh we also need to be a bit efficient with managing our time

The judge explains that the proceedings will be postponed (line 1-5) and what the time frame will be, making sure that the suspect understands the procedure. Postponement of the case is usually bad news for all involved, but the judge reframes the bad news of postponing the trial as a potential advantage (line 7-10) for the suspect, which also might be seen as urging the suspect to behave himself. The judge shows he is aware of the implication that the suspect then still does not know where he stands (line 13) and shows understanding that the suspect might find that 'annoying' (line 12). And again we see an orientation to the suspect's feelings as well as an orientation to institutional aims (being efficient, line 16). So in this extract, the judge demonstrates an orientation to both understanding and the atmosphere of understanding, as well as the institutional goals. As in extracts 8 and 9 the judge shows that he has a 'double duty' in attending to the suspect's feelings, namely both to come to one version of what happened and to make the judgment in an efficient way.

Conclusion

For most Dutch juvenile suspects courtroom interactions are new or relatively rare types of interaction (Van der Laan *et al.*, 2010) where they have not found routine as they would have with their friends, parents or teachers. Judges, therefore, have an important task, as required by the Beijing Rules, to create a courtroom atmosphere that is conducive to have juveniles understand the proceedings.

In this article we have shown a number of ways in which understanding and an atmosphere of understanding in juvenile courts can be constructed and oriented to by the court. Judges can make the trial understandable for the juvenile suspects by anticipating potentially difficult words and explaining these, providing sample answers when the juvenile appears to misunderstand a question, explaining the suspect's legal rights, explaining courtroom procedures and giving instructions to those present at the trial. Aside from making the procedures understandable for the juvenile suspects, we have also shown how judges can create an atmosphere of understanding, which is subtly present in the various interactional moves, such as the way of addressing juvenile suspects and questioning them. Furthermore, we have shown how this atmosphere of understanding is oriented to by the judge in defending his line of questioning while also acknowledging its potential emotional impact on the juvenile. Our analyses have

shown how the judges (and lawyer) can manage 'understanding' and how this is, in its turn, intricately linked with their institutional tasks.

By analyzing the interaction at a turn by turn level we have shown how 'understanding' is talked into being at a detailed level (e.g. Heritage and Clayman, 2010: 20–32) and how the interlocutors actively create the juvenile courtroom interaction.

Creating understanding and an atmosphere of understanding in interaction is not self-evident. As our analyses have shown, this is done at the micro level of interaction. The juvenile court judge we studied in this article felt strongly about trying to make the proceedings understandable for juveniles and was aware of their vulnerable status. Of course, we are well aware that it is possible that the judge's orientation to understanding may have been influenced by the fact that the trial was being recorded (the observer's paradox). Similarly, it may be possible that judges who agree to be filmed are not a representative sample. However, there was no way around the observer's paradox in this case. Attending a juvenile court case, let alone filming the proceedings, was not possible without informing participants. More importantly, our aim was to explore different ways of attending to 'understanding'.

The question arises of whether this orientation to 'understanding' in actual juvenile criminal trials is a reflection of thoughtfulness and caring on the part of the judge who wants to do "the right thing" or if it is an implementation of less formal ways of talking to more effectively accomplish other institutional goals such as gathering evidence and producing a verdict.[11] Our analyses suggest it is both. The judge proactively and retrospectively addresses issues that have to do with understanding (potentially difficult words, questions and procedures). The judge furthermore orients to an atmosphere of understanding (forms of address, orientations to the suspect's feelings). Both these orientations are linked up with institutional interactional goals and the design of the judge's utterances appear to be such as to minimize adverse response from the juvenile suspect which could complicate and slow the procedures.

Notes

[1]In the Netherlands the term 'verdachte' ('suspect') is used throughout the criminal procedure, including the court proceedings. Although a person is no longer referred to as "suspect" in Anglo-American systems once they are in court (where they are "the defendant" or "the accused"), we use 'suspect' to reflect Dutch inquisitorial system we are describing here (see also Van der Houwen and Jol, 2016).

[2]The statements should be written in 'the suspect's own words' (section 29: 3 Code of Criminal Procedure) but the nature of the interrogation means that this is not necessarily the case. Several authors describe the different stages of development in the process of being elicited, written down and referred to in court (e.g. Jönsson and Linell, 1991; Coulthard, 2002; Komter, 2002, 2003; Van Charldorp, 2011).

[3]Section 301: 4, Code of Criminal Procedure states: Chargeable to the suspect, no attention will be paid to documents that have not been read out loud or of which the short content has not been stated in conformance with section 3. (*Ten bezware van de verdachte wordt geen acht geslagen op stukken, die niet zijn voorgelezen of waarvan de korte inhoud niet overeenkomstig het derde lid is meegedeeld.*)

[4]This way of working has both advantages and disadvantages. One advantage is that it is efficient, because witnesses are not interviewed during the trial. Furthermore, because it can take a while before a case is presented to the court, the police interview is usually faster and witnesses' memories are probably more reliable at that time. A disadvantage is that the legal professionals often do not see the witnesses themselves and therefore need to place a lot of trust in police officers. It also provides them with a lot of (paper) work.

[5]Field notes by Van der Houwen.

[6]'tul' is an acronym for 'vordering ten uitvoerlegging'. This means that the public prosecutor claims/demands that an earlier probationary sentence should be executed after all (section 14g Code of Criminal Procedure). The reason for such a claim is often a new criminal case.

[7]*JOC* is an acronym for 'Jongeren Opvang Centrum' (Youth Rescue/Detention Center). This is a detention center for boys, generally from the age of 12 to 18. Usually they are suspect of a crime or already sentenced.

[8]The use of the present tense in Dutch seems to be similar to the historical present. While the judge is not telling a story, the present tense seems to be used strategically, making what the suspect stated ('states') current to the proceedings. Similar to how articles might be invoked using the present tense to support the argument the author is making (e.g. Johnsen, 1973 finds ….)

[9]A few minutes before this extract, the other suspect in this case offers the first hypothesis (long time ago) on his own account:

S2: nou gewoon
well just
wat ik (xxx) eigenlijk verteld gewoon
what I (xxx) actually just told
(xxx)
(t is ook) zo lang geleden voor mij ennuh
(it's also) been such a long time ago for me and uh
J: ja
yes
S2: ik heb daar niet meer zoveel aan gedacht
I haven't thought of that so much anymore
dus
so
J: ja
yes
nu heb ik t heb ik t natuurlijk van het weekend wel weer zitten
lezen he
now I have of course been reading it again over the weekend right

[10]'Procedural attitude' is a literal translation of 'proceshouding'. It refers to the overall attitude of a suspect during the criminal procedure: does he/she confess/deny/remain silent/show remorse, and is he/she cooperative, willing to work on him/herself, etc. The judge can pay attention to the procedural attitude when deciding on a sentence.

[11]We would like to thank an anonymous reviewer for bringing this up and suggesting we elaborate on this further.

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Appendix I: transcription conventions

Adapted from Jefferson (2004)

(1.5)	silence of 1.5 seconds
(.)	silence shorter than 0.2 seconds
(..)	silence longer than 0.2 seconds
=	no noticeable silence between two sequentially following speaker's turns or between intonation units by the same speaker
over[lap [overlap	square brackets indicate stretches of speech that overlap with stretches of speech in after a bracket in the next line
.	Stopping fall in tone at the end of an intonation unit
;	Slightly falling intonation at the end of an intonation unit
,	Rising, 'continuing' intonation at the end of an intonation unit, not necessarily the end of a sentence
?	Strongly rising intonation (at the end of an intonation unit, not necessarily a question)
Sto-	sharp cut-off to the prior word or sound
stre:tch	The speaker has stretched the preceding sound or letter.
emphasis	the speaker has emphasized the underscored sound, syllable or letter
L̄OUDER	stretch of speech that is produced noticeably louder
>quicker<	stretch of speech that is produced noticeably quicker
<slower>	stretch of speech that is produced noticeably slower
↑↓	marked rise or falling intonational shift within an intonation unit
·h	hearable inbreath
h	hearable outbreath
((comment))	comments by the transcriber
→	specific part that is discussed in the text
(unsure)	the transcriber is not sure about what the speaker says
Translation	translations in English are in italics
{translate}	words between {brackets} have been added to improve the translation

“Apenas encaminhado”: categorizações como estratégias discursivas de (in)efetivação de garantias fundamentais em uma decisão do Supremo Tribunal Federal

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Abstract. *As demonstrated by the recent decision of a Federal Judge to coercively bring former President Lula da Silva to give a testimony before the Federal Police, judicial decisions can bring about a big controversy in the legal community, even when the normative parameters for deciding are considered uncontroverted. This paper investigates the discursive strategies for constructing the basis for judicial decision, with a focus on one decision by the (Brazilian) Supreme Federal Court, which served as precedent for decisions such as that in the former President case. Using as an analytical tool the concept of Membership Categorization Devices, originally created by Harvey Sacks, this paper spots how the discursive creation of these devices legitimates strategies for meaning negotiation of legal norms in – and for – the specific case to be decided. Implications of the analysis for other cases and cross-referencing of this data with that of other studies in judicial decisions in Brazil are discussed.*

Keywords: *Fundamental rights, coercive bringing, judicial decision, categorization, Language and the Law.*

Resumo. *Como demonstrado pela recente decisão da Justiça Federal no caso da condução coercitiva do ex-Presidente Lula para prestar depoimento na Polícia Federal, decisões judiciais podem atrair grande controvérsia no meio jurídico, mesmo quando os parâmetros normativos da decisão são tomados como incontroversos. O presente trabalho investiga as estratégias discursivas de construção de fundamentações para decisões judiciais, com foco em uma decisão do Supremo Tribunal Federal (brasileiro), que serviu de precedente para decisões de condução coercitiva como a do ex-Presidente. Usando como ferramenta analítica o conceito de Dispositivos de Categorização, originalmente criado por Harvey Sacks, o trabalho identifica como a criação discursiva desses dispositivos legitima estratégias de negociação do significado de normas jurídicas no – e para o – caso concreto a ser*

decidido. Implicações da análise para outros casos e cruzamento de dados com outros estudos sobre decisões judiciais no Brasil são discutidos.

Palavras-chave: *Direitos fundamentais, condução coercitiva, decisão judicial, categorização, direito e linguagem.*

Introdução: O que o ex-Presidente Lula não entendeu (e muitos juristas também não)

Numa sexta-feira, dia 4 de março de 2016, enquanto aguardava os desdobramentos do processo de impeachment da então Presidente da República, a sociedade brasileira acordou com um susto. Agentes da Polícia Federal entraram no prédio do ex-Presidente Lula, às 6h da manhã, para conduzi-lo a prestar depoimento na delegacia de polícia federal do Aeroporto de Congonhas, em São Paulo. Segundo uma notícia do dia, "Lula reagiu bem quando a PF bateu à sua porta. [...] [O] petista estava 'tranquilo' dos momentos iniciais até a condução coercitiva" (Fávero *et al.*, 2016).

Como todos viriam a saber também pela imprensa, a ordem para conduzir Lula coercitivamente partiu do Juiz Federal Sérgio Moro, titular da 13ª Vara Federal de Curitiba, Paraná e principal responsável pela operação Lava-Jato. Essa operação é um conglomerado de processos judiciais e inquéritos policiais que investiga e processa diretores de grandes empreiteiras, de empresas estatais, agentes políticos e intermediários em uma grande narrativa cujo enredo é o pagamento de vantagens indevidas para que agentes públicos e gestores de estatais mantivessem facilidades a grandes empresas na contratação com essas mesmas estatais.

Na comunidade jurídica, a condenação à decisão do referido juiz foi imediata. No mesmo dia da condução coercitiva, Lenio Streck (2016) foi contundente:

> Vimos um espetáculo lamentável na sexta-feira, 4 de março. Este dia ficará marcado como 'o dia em que um ex-presidente da República foi ilegal e inconstitucionalmente preso por algumas horas', sendo o ato apelidado de 'condução coercitiva'.
> [E]m um país que não cumpre a própria Constituição, o que é mais uma rasgadinha no Código de Processo Penal, pois não?

Como veremos abaixo, a condenação dos juristas à condução coercitiva de Lula se baseia em que a decisão teria violado os parâmetros normativos do Código de Processo Penal para a decretação da medida (cf. Rover and Souza, 2016).

Este trabalho, inspirado na leitura da decisão do caso Lula, procura olhar a questão de um ângulo diferente. Ao invés de assumir que as normas jurídicas – mesmo aquelas categorizadas dogmaticamente como "regras" – têm significados "óbvios", "literais" ou, de qualquer modo, semanticamente claros, assumimos que o significado das normas é, ao mesmo tempo, o pressuposto e o resultado de um trabalho discursivo contextualmente situado. Por isso, esse significado nunca pode ser abstrato ou dado *a priori*. Ele só pode ser fixado na análise de materiais locais que dão sentido a essas normas, a fim de resolver problemas práticos.[1]

Assim, o objetivo deste trabalho é identificar as estratégias discursivas pelas quais atores concretos do sistema de justiça constroem retoricamente suas decisões e, ao fazê-lo, instruem o leitor dessas decisões sobre como (re)construir as suas justificativas. Para

isso, utilizaremos como dado uma decisão do Supremo Tribunal Federal. Essa é a decisão usada como fundamento (isto é, como precedente[2]) para a decisão do caso Lula e para as demais decisões em que a Justiça Federal determina a condução coercitiva de investigados.

Para analisar esse dado, utilizaremos conceitos teóricos e protocolos metodológicos da análise do discurso escrito de base interacionista e etnometodológica (Smith, 1978; Watson, 2009; Wolff, 2011), no quadro da Linguística Aplicada das Profissões (Sarangi, 2012) e da Linguística Forense (Coulthard and Johnson, 2007). Especificamente, utilizaremos o conceito analítico de Dispositivos de Categorização (*membership categorization devices – MCDs*), criado originalmente por Harvey Sacks (1966; 1972; 1989) e depois expandido e trabalhado empiricamente (Fitzgerald and Housley, 2015).

Começaremos apresentando a visão dogmática dos juristas sobre a condução coercitiva. Em seguida apresentaremos o conceito de Dispositivos de Categorização e sua relevância para a análise de dados de linguagem escrita em contextos jurídicos. Depois, apresentaremos os dados e analisaremos dois excertos para demonstrar como os membros (co)constroem dispositivos de categorização para justificar e ao mesmo tempo demonstrar suas interpretações das normas jurídicas. Finalizaremos com uma discussão sobre os resultados e sobre suas implicações teóricas e práticas para o entendimento da interpretação de normas jurídicas.

A condução coercitiva, para os juristas

O Código de Processo Penal trata do instituto da condução coercitiva em dois artigos. Ambos mantêm a redação original de 1941 (isto é, não foram modificados por leis posteriores). O art. 218 se aplica a testemunhas:

> Art. 218. Se, regularmente intimada, a testemunha deixar de comparecer (grifo adicionado) sem motivo justificado, o juiz poderá requisitar à autoridade policial a sua apresentação ou determinar seja conduzida por oficial de justiça, que poderá solicitar o auxílio da força pública.

Já o artigo 260 se aplica ao acusado:

> Art. 260. Se o acusado não atender à intimação (grifo adicionado) para o interrogatório, reconhecimento ou qualquer outro ato que, sem ele, não possa ser realizado, a autoridade poderá mandar conduzi-lo à sua presença.

A leitura desses textos demonstra que ambos se iniciam por oração condicional, com estrutura sintática similar. A condição estabelecida é o não comparecimento a algum ato para o qual foi previamente chamado – embora a formulação da condição seja distinta ("deixar de comparecer" v. "não atender à intimação")[3].

Essa leitura coincide com o fundamento das críticas dos juristas à condução coercitiva de Lula, citadas na introdução. No entanto, sobra a pergunta: como os juízes – e o juiz que decretou a condução de Lula, em particular – encontraram base para decretar essa medida, mesmo quando os únicos textos legais que autorizam a condução coercitiva são os dois artigos acima?

Como instituto do processo penal, a condução coercitiva nunca recebeu muita importância dos dogmáticos do processo penal – isto é, da "doutrina", para usar o jargão. Os manuais mais conceituados não lhe dão muito espaço. Alguns (Badaró, 2016; Pacelli de Oliveira, 2016) sequer falam do instituto. Lopes JR. (2015: 569) e Nicolitt (2016: 682)

tratam dele, mas para criticá-lo e apontar sua eventual inconstitucionalidade quando aplicado ao interrogatório do acusado. O instituto só passou a receber maior atenção justamente depois do caso Lula.

Porém, o uso da condução coercitiva desse modo não começou nesse caso. Em 2013, em um texto publicado em seu blog pessoal, o Procurador da República Vladimir Aras procurou sistematizar dogmaticamente o uso da condução coercitiva fora das hipóteses legais dos artigos 218 e 260 do Código de Processo Penal. Ele começa distinguindo "duas espécies" de condução coercitiva. A primeira seria a baseada nos artigos citados e seria cabível "sempre que vítimas, peritos, testemunhas ou declarantes [ou acusados], regularmente intimados (ou notificados), não comparecem ao ato (em geral, uma audiência) nem justificam sua ausência" (Aras, 2013) (grifos omitidos).

Mas o instituto não se exauriria aí:

> A segunda espécie de condução coercitiva é mais moderna e deriva do poder geral de cautela dos magistrados, sendo uma cautelar pessoal substitutiva das prisões processuais. Esta providência não se acha inscrita no rol exemplificativo do art. 319 do CPP.
> A condução coercitiva autônoma – que não depende de prévia intimação da pessoa conduzida – pode ser decretada pelo juiz criminal competente, quando não cabível a prisão preventiva (arts. 312 e 313 do CPP), ou quando desnecessária ou excessiva a prisão temporária, sempre que for indispensável reter por algumas horas o suspeito, a vítima ou uma testemunha, para obter elementos probatórios fundamentais para a elucidação da autoria e/ou da materialidade do fato tido como ilícito. (Aras, 2013) (grifos omitidos).

Para fundamentar essa "segunda espécie" de condução coercitiva, Aras invoca não só o "poder geral de cautela dos magistrados", mas também, mais adiante, um precedente do Supremo Tribunal Federal: o HC 107.644/SP. Esse precedente também foi citado na decisão da 13a Vara Federal do Paraná que decretou a condução de Lula.

A análise da construção discursiva desse precedente vai nos fornecer pistas importantes sobre como os juízes utilizam estratégias discursivas para justificar decisões aparentemente heterodoxas do ponto de vista legal.

Os dispositivos de categorização como mecanismos textuais de construção de sentido

O conceito de Dispositivos de Categorização[4] foi criado por Harvey Sacks. Sacks procurava lidar com "a generalidade do problema da categorização" (Sacks, 1972: 32), isto é "a metodologia e relevância das atividades dos Membros de categorizar Membros" (Sacks, 1972: 32).

Embora, na literatura sobre o tema, os dispositivos de categorização tenham ficado mais associados à interessante análise que Sacks fez sobre duas orações simples – *The bay cried. The mommy picked it up* – (Sacks, 1966), originalmente, a questão das categorizações e dos dispositivos de categorização parecem ter chamado a atenção de Sacks quando ele estava analisando conversas telefônicas entre pessoas que ligavam para um centro de prevenção ao suicídio de Los Angeles e os funcionários que atendiam essas ligações. Especificamente, Sacks procurava demonstrar nas conversas telefônicas gravadas e depois transcritas como os dois interlocutores chegavam à conclusão de que "não havia ninguém a quem recorrer [para ajudar o chamador]" (*no one to turn to*). Sacks

demonstrou que a maneira como os interlocutores construíam as referências a pessoas durante a ligação obedeciam a padrões reproduzidos sistematicamente. Tanto as pessoas que ligavam para o serviço quanto os funcionários que as atendiam procuravam referir pessoas típicas que deveriam ajudar alguém em tristeza ou desesperança, assim como a ações tipicamente ligadas a essas pessoas – tais como consolar, ir à casa ou chamar ao telefone. Ele também demonstrou que essas pessoas e ações eram acionadas segundo regras reproduzíveis pela análise – tais como uma distinção entre coleções de pessoas para as quais é apropriado pedir ajuda e coleções de pessoas para as quais não é; ou hierarquias entre os membros dessas diferentes coleções, tal que, se um indivíduo de uma categoria pode ser acionado (por exemplo, um "pai" ou uma "mãe") outro de outra categoria não pode (por exemplo, "um amigo") (Sacks, 1972: 40–45).

Essas características dos dispositivos de categorização identificadas por Sacks a partir dos dados o levaram a formular a seguinte definição:

> Por dispositivo de categorização queremos dizer uma coleção de categorias [*a collection of membership categories*], contendo ao menos uma categoria, que pode ser aplicada a alguma população, contendo ao menos um Membro, de tal forma que pelo uso de algumas regras de aplicação, se possa fazer um par com ao menos um Membro da população e um membro do *dispositivo* de categorização. Um dispositivo é, então, uma *coleção* mais regras de aplicação. (Sacks, 1972: 32) (grifos no original)

Em outro trabalho, além dos componentes "coleção de categorias" e "regras de aplicação", Sacks adicionou um novo componente: as "máximas para os ouvintes" (*hearer's maxims*), que ele apresentou como um "corolário" das regras de aplicação (Sacks, 1966: 242). Máximas para os ouvintes são maneiras demonstráveis pelas quais os ouvintes (ou leitores) podem reconstruir os métodos de fazer sentido embutidos nos próprios dispositivos.[5]

O conceito de dispositivos de categorização formou, junto com o conceito de regras sequenciais (para a análise da conversa), o par pelo qual Sacks reformulou, em parte, a etnometodologia de Garfinkel e a focou no estudo de dados de ocorrência natural de linguagem (Depperman, 2011). Por isso, diversos estudos ao longo do tempo usaram esse conceito e seus métodos para aclarar estratégias discursivas em uma variedade de contextos diferentes (cf. Fitzgerald and Housley, 2015).

A vantagem desse conceito é tornar um conceito analítico originalmente ligado à psicologia – e portanto, à análise solipsista do psiquismo de cada indivíduo (cf. Billig, 1984[6] – em um conceito adequado para a análise sociológica de comportamentos de participantes de interações sociais. Em outras palavras, Sacks estruturou um conceito de categorização predominantemente social, não psicológico (Watson, 2009, 2015).

Assim, se concebemos textos como manifestações sociais de sentido, embora com particularidades próprias do meio escrito (Smith, 1974, 1978; Watson, 2009; Wolff, 2011), o conceito de dispositivos de categorização pode ser um poderoso meio para desvendar práticas de sentido embutidas em textos, como instruções de leitura (Watson, 2009). Os textos escritos devem ser concebidos não como meros receptáculos de sentido, mas como "fenômenos reflexivos [...], que buscam ativamente sua aceitação e compreensibilidade [Verständlichkeit]" (Wolff, 2011: 256):

> Leitores [...] ativamente "interpretam" textos, mas não podem interpretá-los de qualquer jeito que eles desejem. Os textos-como-lidos contêm instruções que

> podem gerar leituras fortemente preferidas. Há um processo dialético, de vai-e-volta envolvido. O texto torna vários esquemas interpretativos disponíveis e o leitor ativa esses esquemas em instâncias particulares, trazendo seu trabalho de sentido [*sense-making work*] para a linha de frente. (Watson, 2009: pos. 392)

Essas instruções de leitura de um texto podem ser descobertas através da análise dos mecanismos de construção de sentido usados por participantes em outras situações sociais – incluindo outros textos. Aqui entra em jogo a noção de Dispositivos De Categorização, cuja pertinência analítica já foi apontada na literatura de análise etnometodológica de textos escritos. Wolff (2011), por exemplo, demonstra como a utilização de categorizações e ações tipicamente associadas com determinadas categorias faz com que leiamos a manchete "Marido comete suicídio, mulher acorda de um coma" como um resumo de uma estória em que um marido desencantado com o coma da sua mulher resolve, por isso, cometer suicídio, ironicamente antes da mulher acabar acordando do coma ou como um marido que pensa que a mulher já estava morta e por isso resolve cometer suicídio – e não, por exemplo, como dois fatos não relacionados entre si, ou como simplesmente uma coincidência.

Ao analisarmos os dados, a seguir, veremos como a criação de dispositivos de categorização serve a propósitos retóricos em decisões judiciais, a fim de construir o sentido de normas jurídicas e instruções para a sua leitura.

A análise dos dados

Nota metodológica

O texto que funciona como dado para este trabalho é o inteiro teor do acórdão do HC 107.644/SP, relator Min. Ricardo Lewandowski, julgado em 06/09/2011, pela Primeira Turma do Supremo Tribunal Federal. No campo do Direito, "inteiro teor do acórdão" é o nome dado a um conjunto sistemático de textos, que incluem a ementa (resumo do caso, da decisão do tribunal e do seu fundamento), o acórdão propriamente dito (a decisão tomada, p. ex. negar o pedido), o relatório (um resumo do processo) e os votos do relator e de outros ministros que tenham pedido vista ou que divirjam do voto do relator. O documento completo tem pouco mais de 13 mil palavras no total e foi totalmente lido e analisado antes de separados os dois excertos focais.

O caso

Em 2007, em São Paulo, um homem tentou descontar um cheque, mas não conseguiu, porque ele foi recusado pelo banco. Esse cheque pertencia ao talão de outro homem, vítima de um crime de latrocínio (roubo envolvendo morte) pouco tempo antes. O banco avisou à mulher da vítima. A mulher da vítima, então, conseguiu marcar um encontro com o homem que tentou receber o cheque. Nesse encontro, ela levou alguns agentes de polícia. Os agentes fizeram perguntas ao homem do cheque e à mulher da vítima e optaram por conduzir o homem à delegacia para outras inquirições.

Ao chegar à delegacia, segundo depoimento dos policiais presentes, o homem do cheque teria confessado, informalmente, que ele matara a vítima do latrocínio e subtraíra o talão de cheques que depois tentou usar. Nos interrogatórios formais que prestou, no entanto, o homem do cheque negou envolvimento no latrocínio.

A Justiça de São Paulo condenou-o a 26 anos de prisão em primeira instância, reduzidos para 20 anos em segunda instância. A defesa foi até o Supremo Tribunal Federal, via

habeas corpus, com diversas alegações. A única alegação que interessa a este trabalho[7] é a de que a condenação seria baseada em prova ilícita, já que a confissão informal do acusado teria sido obtida após prisão ilegal sua.

A ilegalidade da prisão derivaria da violação à seguinte norma constitucional:

> Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes: [...] LXI – ninguém será preso senão em flagrante delito ou por ordem escrita e fundamentada de autoridade judiciária competente, salvo nos casos de transgressão militar ou crime propriamente militar, definidos em lei;

Segundo o argumento da defesa a condução do acusado à delegacia para prestar esclarecimentos seria uma prisão ilegal. Somente em flagrante delito ou com mandado judicial alguém poderia ser conduzido, contra sua vontade, à presença de qualquer autoridade do Sistema de Justiça Criminal.

Para entender como o Supremo Tribunal Federal rechaçou esse argumento, temos de analisar o dispositivo de categorização criado pelo texto dos votos que fundamentam a decisão daquele tribunal.

"Apenas encaminhado"

O dispositivo de categorização que funcionou como método de construção de sentido para a norma constitucional citada, no HC 107.644, é formulado em uma pequena parte do voto do relator – que, nesse excerto, está na verdade reportando diretamente parte do voto do relator do processo no Superior Tribunal de Justiça, de onde o caso veio para o Supremo Tribunal Federal:

> O recorrente em momento algum foi detido ou preso, tendo sido apenas encaminhado ao distrito policial para que, tanto ele, quanto os demais presentes, pudessem depor e elucidar os fatos em apuração.
> Vale ressaltar, quanto ao ponto, que o recorrente trazia consigo folhas de cheque que teriam sido subtraídas da vítima na data em que fora morta, o que, tal como destacado pelos agentes de polícia, indicaria que teria tido ao menos contato com o suposto autor do latrocínio, justificando, desse modo, o seu encaminhamento à delegacia para fornecer maiores informações (grifos adicionados).

A estratégia retórica envolvida nessa parte do texto evidencia a busca por afastar a aplicação da norma constitucional do art. 5º, inciso LXI. Coulthard and Johnson (2007) apontaram que os discursos jurídicos se constroem com uma intertextualidade latente com os textos das normas jurídicas relevantes – que, em última análise, definem a aplicação da norma ao caso. Neste caso, a intertextualidade se dá com o item lexical "preso" e a estratégia para afastar a aplicação da norma ao caso vem da desconsideração da situação em análise como alguém sendo "preso".

Para fazer isso, o texto constrói um dispositivo de categorização de eventos[8] que pode ser sintetizado no quadro a seguir:

Coleção "prisão"	**Coleção "encaminhamento"**
"detido", "preso"	"encaminhado", "custódia", "retenção"

Há duas coleções de categorias nesse dispositivo. Uma categoria, que suscita a intertextualidade com a norma constitucional, é a coleção que chamamos "prisão". O texto constrói como categorias-membro dessa coleção "detido" e "preso". A segunda coleção é a que chamamos de "encaminhamento". No excerto acima, retirado do voto do ministro relator, apenas uma categoria da coleção, "encaminhado", foi utilizada. Mais adiante, vamos ver que um ministro pediu vista do processo e fez um voto em separado, no qual ele colabora com o Dispositivo, expandindo a coleção "encaminhamento".

Para criar o Dispositivo de Categorização, o texto precisa, além das coleções de categorias, de regras de aplicação. A construção do texto e, especialmente, o uso do modificador "apenas" para introduzir uma categoria da coleção "encaminhamento" permitem esboçar algumas regras.

Porém é no voto-vista[9] do ministro Dias Toffoli que as regras são mais claramente elaboradas. Num primeiro momento, o ministro Dias Toffoli se alinha à posição do ministro relator, reafirmando as duas coleções de categorias e a sua utilização como método discursivo de construção de sentido sobre a norma constitucional em discussão:

> Alinho-me, no caso, ao entendimento do eminente Relator, no sentido de que a condução coercitiva do paciente à presença do Delegado de Polícia – visando à apuração de uma infração penal gravíssima (latrocínio), em vista da posse pelo paciente de objetos (no caso, folhas de cheque) que estavam em poder da vítima antes de sua morte e que foram objeto de subtração – deu-se de forma válida e legal, inserindo-se dentro das atribuições constitucionalmente estabelecidas à polícia judiciária (CF, art. 144, parágrafo 4o; CPP, art. 6o, incisos II a VI). (grifos adicionados)

Logo em seguida o mesmo ministro coconstrói o Dispositivo de Categorização iniciado pelo relator, elaborando mais minuciosamente as regras de distinção entre as duas coleções:

> Alguns doutrinadores, inclusive, classificam esse proceder, que não tem o significado de prisão, como custódia ou retenção. Denominam custódia o ato: a) – para averiguação, enquanto se esclarecem dúvidas, ou para garantia da incolumidade de pessoas ou coisas, ou b) – para investigação sumaríssima, mantendo-se o custodiado em cela separada ou sob algemas pelo tempo estritamente necessário. Por sua vez, a retenção ocorreria: c) – para averiguação de dúvidas ou garantia de incolumidade (itens de custódia), mas com a diferença de que não se utiliza, em casos como esse, cela nem algemas, em face da não existência de perigo aparente e da não gravidade dos fatos a serem esclarecidos. (grifos adicionados)

Temos, então, um Dispositivo de Categorização completo, cujas regras podem ser reconstruídas da seguinte maneira:

REGRAS:

1. Coleção "prisão" é mais grave (juridicamente) que coleção "encaminhamento".
2. "Encaminhamento" tem finalidade de apuração de informações (subcategorizado como: "averiguações" ou "investigação sumariíssima").
3. Onde se puder ver fatos como "encaminhamento", vê-los dessa maneira (regra/máxima para o leitor).

A máxima para o leitor registra o escopo do Dispositivo em questão, que é afastar o efeito da norma constitucional do art. 5º, inciso LXI – de tornar ilícitos processos inteiros desde o início – sempre que possível. Ou seja: o escopo retórico desse Dispositivo é evitar a declaração de ilicitude de provas e nulidade de processos. Esse escopo é indicado, no primeiro excerto do voto-vista pela referência, topicamente desnecessária, ao caráter "gravíssimo" da "infração penal" em "apuração".

É interessante notar como, nesse caso, a construção do Dispositivo de Categorização se deu de forma colaborativa entre pelo menos dois participantes da situação social que gerou o texto do acórdão analisado. Isso indica, em primeiro lugar, que Smith (1974) estava certa ao apontar que há uma construção social de uma "realidade documentária", no sentido de que textos escritos são fruto e objeto de práticas sociais que medeiam e são mediadas por esses textos – mesmo quando, ao contrário desse caso –, não temos acesso a evidências dessas práticas. Em segundo lugar, isso indica que os participantes compreendem as instruções de leitura embutidas nos textos que leem e, por isso, podem colaborar na construção do sentido desses textos, quando a situação social permite. Isso explica por que participantes de interações sociais mediadas por textos escritos podem se alinhar às técnicas/métodos/dispositivos de construção de sentido do texto, ou rechaçá-las e propor outras no lugar, no mesmo texto ou em textos diferentes.

Nesse caso, não só o ministro Dias Toffoli se alinhou ao Dispositivo de Categorização do ministro relator, mas colaborou na sua sistematização e expansão.

Discussão

O Dispositivo de Categorização demonstrado acima é uma reconstrução de estratégias discursivas de construção de sentido embutidas no próprio texto escrito analisado e para as quais se orientaram os participantes da situação de construção desse texto. A evidência dessas estratégias pode trazer nova compreensão sobre mecanismos jurídicos de tomada de decisão judicial e, implicadamente, de interpretação – isto é: construção de sentido das próprias normas jurídicas.

Essa constatação, em primeiro lugar, reforça o caráter prático e localizado dos procedimentos de interpretação de normas jurídicas. Em outras palavras, o sentido das normas jurídicas só pode ser determinado pela análise das práticas dos órgãos que aplicam essas normas, não por uma leitura abstrata das normas, a partir de situações hipotéticas ou experimentos mentais.

Dupret and Ferrié (2008), reespecificando um conceito gráfico de Garfinkel (2002), propõem que normas/regras jurídicas sejam sempre lidas como implicando um par "'[regras]<cumprimento de regras>". As regras são textos que embasam decisões de aplicação. Por sua vez, essas decisões são tomadas com base em – e a partir de – práticas de "cumprimento de regras". São essas práticas que demonstram, empiricamente, qual o sentido das regras de base. E o sentido das regras de base fundamenta as práticas de modos demonstráveis pelas próprias práticas. Pádua (2016) sugeriu que esse fenômeno justificaria ver o direito como um "sistema de práticas", não como um "sistema de normas", como ele é tradicionalmente visto pelos juristas.

Toda essa discussão sobre práticas de construção local do sentido das normas jurídicas (versus sua análise em abstrato), bem como os dados deste e de outros trabalhos (cf. Padua, 2013; Pádua, 2016; Pádua and Oliveira, 2015) fornecem evidências independentes e coincidentes com trabalhos etnográficos que apontam que as decisões judiciais

são produtos de percepções dos juízes e demais órgãos de decisão sobre conceitos moralmente carregados tais como "gravidade dos fatos", "equidade", "justiça", "verdade", "mérito/merecimento", "culpa", etc. (Lupetti Baptista, 2012; Prates Fraga, 2013, entre outros).

Nos dados deste trabalho, essa mútua dependência entre normas e práticas de aplicação (ou cumprimento) de normas fica clara. Uma leitura do art. 5º, inciso LXI, da Constituição parecia sugerir que o ato de um agente de polícia de levar um suspeito para a delegacia contra a sua vontade, fora das hipóteses de flagrante delito e sem mandado judicial, seria exatamente o tipo de ato proscrito pelo mesmo artigo. No entanto, a criação do Dispositivo de Categorização demonstrado acima permitiu que um evento deste tipo fosse construído como fora do escopo da norma, que atingiria apenas categorias da coleção "prisão".

A criação e validação, do Dispositivo de Categorização nesse caso permitiu a sua extrapolação para outros casos. Como vimos, na decisão de condução coercitiva do ex-presidente Lula, a decisão do Supremo em análise foi invocada para permitir que um juiz determine a condução coercitiva para um suspeito ser forçado a comparecer a uma delegacia para prestar depoimento.

Essa extrapolação da decisão do Supremo para um caso tão distinto parece ser permitida justamente pelos elementos do Dispositivo de Categorização que fundamentou a mesma decisão. Especialmente, a distinção entre a categoria "prisão" e a categoria "condução", bem como as regras "1" e "2" parecem ser os motes para essa condução coercitiva como "medida cautelar": uma medida distinta da prisão, menos grave, e com propósitos informativos.

O que os juristas que criticaram a decisão de condução coercitiva do ex-Presidente parecem não ter entendido, é justamente que a condução coercitiva foi inserida em um Dispositivo de Categorização distinto daquele que eles mesmos estavam usando para criticá-la. O Juiz que determinou a medida assumiu que a condução coercitiva se inseria em um Dispositivo que adotava um escalonamento de gravidade entre as coleções de categorias, de modo que a condução coercitiva estaria justificada para casos em que a gravidade dos fatos investigados e a quantidade de provas coletadas não autorizaria a aplicação da coleção "prisão".

Daí as referências às regras "1" ("prisão" mais grave que "encaminhamento" ou "condução") e "2" ("condução" tem finalidade informativa, de busca de provas) do Dispositivo de Categorização. Daí, também, a utilização da decisão do Supremo Tribunal Federal como precedente também na de condução coercitiva de Lula – o que importa na decisão do Supremo não é o caso em si, mas o Dispositivo de Categorização construído como instrução de leitura para as normas constitucionais e legais aplicáveis à condução coercitiva.

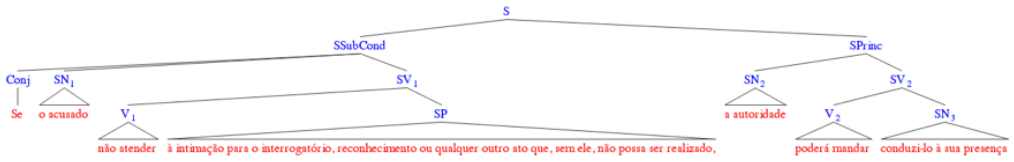
Nada disso quer dizer que precisamos "validar" ou "ser a favor" da decisão. Mas esses dados podem lançar nova luzes sobre como as práticas de tomada de decisões judiciais funcionam empiricamente. A crítica ou adesão a essas práticas só pode vir depois que essa análise descritiva for feita. Do contrário, estaremos, como os juristas citados acima, comparando fenômenos distintos e criticando um pelo outro.

Notas

[1]Outros juristas dogmáticos, especialmente no âmbito da chamada “teoria da interpretação”, parecem também defender concepções similares, através de concepções tais como a da “hermenêutica concretizadora”, ou da “tópica”, entre outras. No entanto, a concepção desses juristas é sempre essencialmente teórica e o que eles fazem é procurar trabalhar novos parâmetros teóricos para suplantar os parâmetros antigos, tidos por ultrapassados. Esse trabalho, ao contrário, procurar tratar decisões judiciais como fonte de dados sobre práticas empíricas na interpretação de normas jurídicas e procura explicitar como os atores concretos do campo do direito trabalham com parâmetros construídos ad hoc para chegar ao resultado a que de fato chegam. Para uma apresentação crítica desses modelos interpretativos teóricos, vide Afonso da Silva (2005).

[2]Usei aqui o termo “precedente”, não o mais comum “jurisprudência”, porque me parece que o termo “jurisprudência” tem sido usado nos discursos jurídicos brasileiros para situações nas quais as decisões judiciais – especialmente de tribunais superiores – se acumulam em determinado sentido. Esse caso do STF é único e não parece ter sido repetido, inclusive por ser o único que é expressamente referenciado em decisões que decretam conduções coercitivas em condições similares à do ex-Presidente Lula. De qualquer forma, o importante é notar que é a decisão do STF que será analisada a seguir que serve de fundamento de autoridade para permitir o uso da condução coercitiva tal como ela vem sendo usada nesses casos. Agradeço a/o revisor/a anônimo por me apontar uma possível incompreensão desta parte.

[3]Uma análise sintática despreocupada da superfície textual, apenas para ilustrar o ponto, pode ser a seguinte:



[4]O nome original, em Inglês, é *membership categorization devices*, que traduzido literalmente seria algo como “dispositivos de categorização de participação como membros”. O problema aqui é que o adjetivo “membros” não tem nominalização vernácula, então ou usaríamos o desconfortável sintagma “participação como membros” ou um neologismo como “membresia”. Por isso, preferimos usar “dispositivos de categorização”, mais simples e que, como veremos no texto, capta bem a ideia do conceito. O próprio Sacks (1966: 241) propôs o uso “abreviado” falando em “apenas dispositivo de categorização”.

[5]Veremos abaixo, na análise de dados, como isso pode se dar em ocorrências naturais de linguagem.

[6]Billig, na realidade, procura criticar o caráter solipsista do conceito de categorização e seus correlatos, “esquemas cognitivos”, propondo uma reinterpretação retórica do conceito. No entanto, Billig não deu o passo adiante de propor maneiras de utilizar um conceito renovado desse modo para a análise de materiais empíricos.

[7]Se bem que, do ponto de vista jurídico, é igualmente interessante e digna de análise a questão de uma confissão “informal”, negada repetidamente pelo acusado prevalecer sobre a palavra formal do mesmo acusado. Por questões de foco, no entanto, não trataremos disso, aqui.

[8]Sacks originalmente criou o conceito de Dispositivos de Categorização para pessoas e parece tê-lo sempre utilizado com pessoas. A literatura que expandiu o uso do conceito, no entanto, tem-no utilizado também para eventos e outros objetos não-pessoas. Cf. Fitzgerald and Housley (2015) para uma revisão.

[9]Nos tribunais, que são órgãos colegiados de juízes, as decisões são tomadas por voto entre esses juízes, a partir de um documento de base, que é o relatório e voto do juiz designado relator. Os regimentos internos de todos os tribunais permitem que algum juiz além do relator peça vista do processo, para mais bem analisá-lo, tendo em vista que, em regra, apenas o relator teve tempo e obrigação de fazer essa análise. Quando um juiz pede vista, normalmente ele traz o processo pouco tempo depois com um voto em separado, que é chamado de voto-vista.

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Sacks1972

Constructing guilt: The trial of Leopoldo López

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Worte können verletzen, auch mich.[2]

Abstract. *Leopoldo López is a prisoner of conscience. The prosecution, relying on two forensic linguists' expert reports, claimed that the politician's discourse was the direct cause of the violence on February 12, 2014 in Caracas. I analyzed the Condemnatory Sentence issued by the prosecution following Shuy's "Inverted Pyramid" heuristic (2013; 2014). I found opposing agendas and schemas as well as conflicting representations of speech acts. Linguistic analysis of his allegedly criminal speeches also demonstrates a wide divergence between the ways they are perceived by the prosecution and defense. Lopez's discourse indicates that he considered these speech events as political discourse (Chilton, 2004); examination of the language he actually used does not support the government's accusation that Lopez was encouraging public violence.*

Keywords: *Speech acts, political discourse, Leopoldo López, expert witness, inverted Pyramid.*

Resumo. *Leopoldo López é um prisioneiro político. A acusação, assente nos relatórios periciais de dois linguistas forenses, argumentou que o discurso do político foi a causa direta da violência no dia 12 de fevereiro de 2014, em Caracas. Neste trabalho, analisei a sentença de condenação produzida pela acusação à luz da heurística da "Pirâmide Invertida" de Shuy (2013, 2014), tendo encontrado planos e esquemas divergentes, bem como representações contraditórias de atos de fala. A análise linguística destes discursos alegadamente criminais também revela uma grande divergência na forma como aqueles são percebidos pela acusação e pela defesa. O discurso de Lopez indica que este considerava os eventos de fala como discurso político (Chilton, 2004); a análise da linguagem que ele utilizou, efetivamente, não sustenta a acusação do governo de que Lopez estava a incitar à violência pública.*

Palavras-chave: *Atos de fala, discurso político, Leopoldo López, testemunha pericial, Pirâmide invertida.*

Introduction

Leopoldo López was the mayor of the district of Chacao in Caracas, but because of alleged corruption charges he was disqualified by Chávez to run for public office until 2014. In 2014, as a result of the violence that took place after a demonstration supporting him as leader of Voluntad Popular, a party in opposition to the government he was indicted on charges of arson and conspiracy. After López left the surroundings of the office of the Prosecutor General, a group of angry students, infuriated by deaths that had been provoked earlier by government forces, threw stones at the building. With no material evidence against López, the government focused on his alleged convening power in order to indict him (cf. Internacional, 2014; Coronel, 2015; Hernández, 2015b,a; Patilla, 2015).

The trial of Leopoldo López was based on opposing interpretations of the language found in his public speeches and his testimony at trial. The prosecution claimed that his discourse had led to street violence on February 12, 2014, alleging that it created a cause-effect relationship between the words of the speaker and the events of that day, the impact of which led to several deaths. Lopez's "doing of things with words" was used as an argument in order to claim that his discourse had been the direct cause of the violence. The reports of two forensic experts working for the prosecution were the only linguistic analyses used at the trial, one consisting of Lopez's public speeches and another one consisting of his tweets, i.e. one expert for each set of texts. Both reports, but particularly the analysis of his speeches, were cited in the declarations of the prosecutors and in the judge's sentence. The report on López's tweets is not considered in the present study (on this matter, confront chapter 5 of Álvarez Muro 2016). The judge ruled that the defense was not permitted to brief their own experts at the trial.[3]

In order to study the meaning of the leader's words in context, I analyze the speech acts of Leopoldo López, issued on three occasions: in his public speeches of January 23 and February 12, 2014, as well as in his testimony at trial.[4] I also analyze the speech acts attributed to him by the prosecutors and Judge Barreiros, in order to compare the ones used by the accused with those attributed to him by the prosecution and to understand the meaning of what he actually said.

Literature review

Brewer Carías, in a study of the Condemnatory Sentence of Leopoldo López, affirms that:

> The accusation was stated in order to prosecute a "crime of opinion", dedicating a large amount of the text to cite a forensic expertise of a linguist [...] who analyzing Leopoldo López's "discourse" could affirm —- only as a hypothesis – that "according to the findings of the analyzed texts, the speeches of the citizen Leopoldo López (on the days before February 12th of the present year) could prepare his followers to activate what he called #LaSalida on February 12 and on the following days". (Brewer Carías, 2015: 4).

This jurist underlined the assertion of the prosecution, saying that "the speaker (Leopoldo López), by cultivating anger in his discourse and arguing against the national government, could have transferred this feeling to his public [followers" (Brewer Carías, 2015: 4–5)]. The prosecution understands that López's use of "conventional and alternative social media in order to enforce his speeches of violent content, reveals his only

purpose of liquidating public tranquility, when calling for a group of people in agreement with his words to ignore the legitimate authorities and the law" (Brewer Carías, 2015: 6).

The Venezuelan Constitution of 1999 guarantees freedom of expression and honors international treaties on the issue, such as the International Covenant on Civil and Political Rights. Guarantees for freedom of information, freedom of expression, the right to access public information, the right to honor and reputation are established in articles 51, 75, 60, 61, 143 and 337 of the Constitution. They correspond with the issues of Articles 19 and 20 of the International Covenant on Civil and Political Rights. In this trial, both linguistic experts focus on the issue of incitement to violence in López's discourse (CS: 223, 262).

Beyond the circumstances of the conviction and incarceration of Leopoldo López for the crime of opinion, which constitutes the motive for trial of this Venezuelan politician, the linguistic issue is to unpack the sense of his words and discourse, before and during the trial, and compare these findings with the prosecution's version.

Latin Americans have studied the language of political violence due to the continued existence of dictatorships in the continent. The following is only a brief review of some of the publications about the issue, especially of those focusing on political insults in Venezuela and on the reconstruction of the violent past in Argentina.

Bolívar (2001) analyzed insults in the Venezuelan press. Insults are a strategy for disqualifying the opponent in political discourse and very common in Chávez's government style. The factors taken into consideration are: the political moment, because while it can be disqualifying during a campaign, it can be authoritative or even abusive when the speaker has power; the actors, because the perlocutionary effect is larger if the speaker is a politician in office; the reaction of the audience, because the act of insulting is evaluated by both parts; and social effects because insults can bring about violence and physical aggression (2001: 55).

Álvarez and Chumaceiro (2011a,b) study political insults in the Chávez era and consider them as expressions of verbal intolerance. Due to the speaker's power the insults of a person in charge can have strong perlocutionary effects. In the case of President Chávez, his speech acts brought about the moral destruction of the adversary and of his followers. He repudiated others and submitted them to public scorn. The analyzed insults are those issued against the Church who had given a student political asylum, as well as against a political candidate opposing the President, the Nuntius, and Angela Merkel. In all cases, except for that of the German Chancellor, the insulted were at a disadvantage. Justice did not act in any of the insults to Venezuelans; there was also no official reaction to the insult against the German chancellor. Cardinal Urosa Sabino accused Chávez of not respecting the constitution. In his religious role he asked for conciliation and peace and justice; as a Venezuelan, he argued the President had no right to insult him. Political insults were considered not an emotional expression, but a political strategy creating intolerance and searching to create social representations related to a certain ideology as well as to confront and delegitimize adversaries. Insults of this kind can demolish institutions and transform the status quo of the republic, and they are geared to weakening religious faith, institutions such as the freedom to vote, political asylum and diplomatic relationships.

Achugar (2008) and Martin (2012) study the "theory of the two demons", both guerrillas and armed forces, taking responsibility for the crimes of the dictatorships in Uruguay and Argentina. According to Martin (2012), the "theory" states that rebel terrorist groups, as well as those led and supported by the State, carried out many acts of extreme violence against one another that were equally reprehensible and demonised. The terms were provided by President Raul Alfonsín's words explaining that the intention had been to fight the demon with the demon". Official reports also explained that Argentina was torn apart by terror from "both the extreme right and the far left". Martin states that unlike the dual discourse of blame and the innocent victim, this "theory" acquits the government and Argentine society of all responsibility.

Achugar (2008) studies the discursive manifestations of the conflict about how the actions of the military during the last dictatorship in Uruguay are remembered and interpreted, and traces the ideological struggle over how to reconstruct a traumatic past. Considering memory a discursive practice, the author identifies the semiotic practices and linguistic patterns deployed in the construction of memory. She explains how the institution's construction of the past is transformed and maintained to respond to outside criticism and create an institutional identity as a lawful state apparatus. Achugar *et al.* (2013) focus on the memory of the same historical period in younger generations in a group interview with Uruguayan teenagers. There are four main arguments used by the youth to explain the dictatorship period as: reaction to guerrillas, authoritarianism, regional ideological war and intolerance.

Linguistic expertises are rare in the Venezuelan justice system; I know of only two: Espar and Mora (1992) analysing the trial of two Spanish women accused of drugtrafficking; Bolívar and Erlich (2011) studying the conflict following an expertise requested by the government to the authors of the article. They had to decide if the TV Channel Globovision had envisaged the assassination of the President. The experts were harassed by the government after delivering their analysis.

To my knowledge, only Álvarez Muro (2016) studies the trial of Leopoldo López from a linguistic point of view. The book analyses the speeches which were considered in the trial as inciting violence, and focuses on the structure and function of the speeches, their polyphony, the conflicting discursive contexts of the accused and his accusers, and the analysis of the linguistic expertises of the prosecution; it aso studies the forensic report on López's tweets. I propose that the real accused in the trial is freedom of expression and opinion, which is forbidden in totalitarian states, since concentration of power cherishes monolithic thinking.

Method

The idea that language should be studied in a broader framework that includes the situational and cultural context, taking into consideration an emic point of view can be considered ethnographic, as in Hymes (1972). Shuy (1996, 2008, 2010, 2012) has adapted the anthropological approach to the language used in trial situations in order to go from the broader elements of speech, such as the speech event, down to smaller units such as words and even features of intonation. He has depicted an "Inverted Pyramid" which situates the issues to be considered on a continuum from macro to micro. This pyramid shows, in decreasing order of scope for discovering the meaning in the discourse, communicative events, schemes, agendas, speech acts, strategies, sentences, phrases, words

and sounds, as observed in Figure 1. This should guarantee a more accurate view of judicial proceedings.

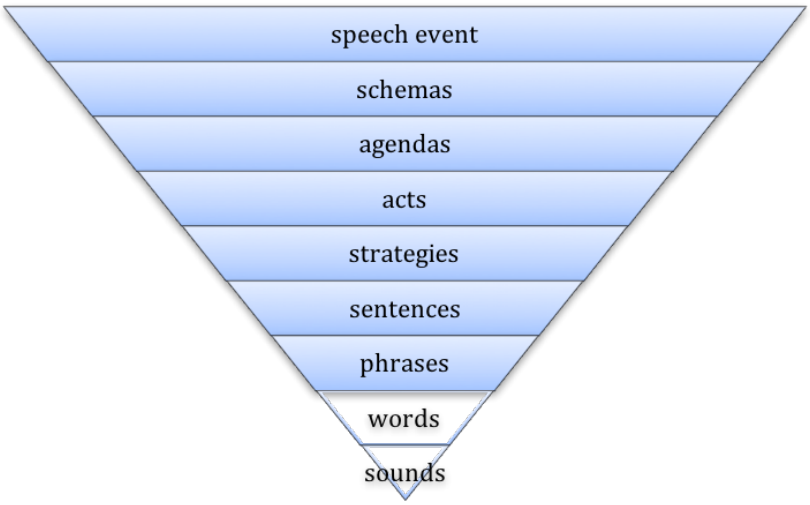

Figure 1. The inverted pyramid according to Shuy (2013: 8).

Although all of the elements of the pyramid are important, the nature of the language evidence determines which of them are most relevant for the analysis. The crucial issue is to describe the use of language in a way that deals with all phenomena from the largest context to the smallest.

1. *The speech event* (Hymes, 1972) is defined in terms of the cultural insiders. According to Shuy (2013: 44), "Speech events are identifiable human activities in which speech plays a central role in defining what that speech event is". Shuy (2013: 44) cites van Dijk when stating that such events cannot take place effectively without the language that defines them (van Dijk, 1985: 201). They show "tacitly understood rules of preference, unspoken conventions as to what counts as valid and what information may or may not be introduced" (Gumperz and Cook-Gumperz, 1990: 9).
2. *Schemas* refer to mental plans that serve as guides to the speaker's actions, words, and thoughts (Shuy, 2013: 56). Participants apply their own knowledge, attitudes, ideas, beliefs and values to the recently acquired new information. Shuy (2013: 55) observes that schemas are used as linguistic tools, although they were originally defined as psychological constructs.[5]
3. *Discourse agendas*. What people say and want to say constitutes their conversational agenda (Shuy, 2013: 56). An important clue to a person's agenda can be found in the topics that the person introduces and recycles during an interaction; another clue to an agenda can be found in the person's responses to the topics introduced by one or more of the other participants in the same interaction or in a series of related interactions (Shuy, 2013: 59). Agendas relate to three legal concepts that involve the perceived intention of those accused of committing a crime. These are:
    a) *Premeditation*, which according to Shuy (2014: 51) is important because evidence of premeditation brings more severe penalties than unpremeditated

crimes. It refers to a crime carried out with wilful deliberation and planning that is consciously constructed beforehand (Shuy, 2014: 35).

b) *Voluntariness*. Shuy (2014: 118) cites *Black's Law Dictionary*: "Voluntary means something done by design or intention, unconstrained by interference; not impelled by outside influence." From this definition Shuy notes that voluntariness is a mental state that relates directly to predisposition ("by design") and intentionality. This is an important concept in the analysis of López's trial.

c) *Intent*, or intentionality is the mental resolution or determination to carry out an action such as a crime (Shuy, 2014: 35).

4. *Speech acts* are utterances, units of language that carry out an action by being said. They are subject to relevance conventions. Also called illocutionary acts (Austin, 1962), they occur when their utterances constitute the act. In other words, the act is performed by saying something. If I say "please excuse me for what I said", the act of saying this constitutes the speech act of an apology. A speech act has three levels; the locutionary, what is said, and the illocutionary, what is understood by the listener with a pragmatic force and certain required felicity conditions. In the preceding example of an apology, the required felicity condition is sincerity of knowing that I said something that offended the person. The third level, the perlocutionary force, refers to the consequences of the utterance.

   Speech acts can be classified according to their perceived intention or purpose. Searle (1969) distinguishes between representative or assertive acts *–Sam is a smoker*, directives *Can you pass the salt?*, commissives *–I promise to come–*, expressives *–I am sorry you are sick–* and declaratives *–I pronounce you husband and wife–*.

5. *Conversational strategies* are, according to Shuy (2013), strategies that speakers implement, according to the situational context they are in, with the purpose of persuading a listener so that speakers can more effectively achieve their goals.

   In light of these five larger language elements, the lower levels of sentences, phrases and sounds are relatively smaller units whose function is to implement the larger elements. I will identify these elements as they are used in the analysis. Because there is no "conversation" in this corpus I prefer to use "discourse". Therefore the study does not focus on interactive conversational strategies but rather on the positioning of the speakers on the opposing discourse sides of the trial. In this analysis I follow a modified version of Shuy's method (2013: 8–9) which includes the following:

   (a) Identify the speech event represented by the language evidence.
   (b) Identify the schemas of the participants as revealed by the language they use.
   (c) Identify the discourse agendas of the participants [...]
   (d) Identify the speech acts used by the participants and determine whether or not they are felicitous.
   (e) Identify the discourse strategies used by the participants [...]
   (f) Identify the semantic, grammatical, and phonological ambiguity and complexity in the language of the participants in order to determine whether and how the context provided by the larger language elements can resolve that ambiguity and complexity.

The corpus takes into account declarations of different discursive genres: declarations in trial, interrogation by a prosecutor, the final sentencing by the judge, all taken from the published Condemnatory Sentence (República Bolivariana de Venezuela, 2014). I transcribed the public speeches by López which were cited by the forensic linguist. I looked at declarations by the Prosecution as an institution (when no name was assigned to, for example, the introduction to the Condemnatory Sentence) and by those introduced by prosecutors Nieves, Silva and Sanabria. Finally, I studied the conclusive sentence dictated by Judge Barreiros.

All transcripts of the trial are taken from the official Condemnatory Sentence (República Bolivariana de Venezuela, 2014). This is a 282-page .pdf document, an official (presumably edited) transcript of the trial against Leopoldo López and three students accused of inciting violence on February 12, 2014. The Condemnatory Sentence is divided into chapters and ordered accordingly. The reader has no idea in which order the declarations were issued. For example, the declaration of the expert in linguistics starts on page 161, but López refers it to previously on page 37, so does Sanabria on page 62, and Nieves on page 76. It consists of the following parts:

I. *Identification of the accused (Identificación de los acusados).* It is preceded by the list of the accusers, accused, defense attorneys, and secretaries of the Prosecution.
II. *Outline of the facts and the circumstances object to trial (Enunciación de los hechos y circunstancias que fueron objeto del juicio).* It contains the words of the prosecutors Franklin Nieves, Miguel Silva and Narda Sanabria; of the defense lawyers; the questioning of Leopoldo López by prosecutor Sanabria, several technical reports; testimonies and depositions of the authors of the linguistic analyses requested by the Prosecution: Rosa Amelia Asuage, who analysed López's speeches, and Mariano Alí, who analysed his tweets; and declarations of all the accused.
III. *Precise and verified determination of the facts that the prosecution estimates to be proven (Determinación precisa y circunstanciada de los hechos que el tribunal estima acreditados).* This part contains declarations by the public officials, among them the linguistic experts interpreting López's words; also depositions of 55 witnesses and finally the concluding sentence by Judge Barreiros.

To represent the prosecution's discourse, I use the official transcript cited above (from now on CS) and study the statements of the prosecutors and Judge Barreiros, as well as prosecutor Sanabria's interrogation.

As to the speeches by López himself, I analyzed the televised speech of January 23, 2014; the public speech February 12, 2014, his declaration at the trial and his answers to Narda Sanabria. I produced my own transcriptions of the two emblematic speeches by Leopoldo López, on January 23, and February 12, 2014 considered as *corpus delicti* by the prosecution; they can be found on YouTube and are cited in the reference section. I use the scribe's transcription of Lopez's testimony given at the trial and his answers to prosecutor Sanabria as they were reported in the text of the Condemnatory Sentence issued by the judge.

In order to understand the difficulties in making any analysis of this trial, it must be clarified that the public did not have access to the hearings. The defense was not allowed to call witnesses or forensic experts. There are no publicly available video recordings of the trial. The public has access only to the above mentioned Condemnatory Sentence.

Analysis

The analysis relates to each of the elements as outlined by Shuy (2013) and is based on the data that were made publicly available.

Speech events

There are several speech events here: López's speech of January 23rd, speech on February 12, his answers to prosecutor Sanabria and his testimony at trial. The first two are eminently symbolic, due to the dates they were carried out.

The speech of January 23rd (https://youtu.be/NXxRzgoMECg) commemorates the overthrow of Pérez Jiménez, a dictator who had governed the country for a decade (1948-1958); in this speech López calls for a solution to the crisis. Venezuela is under an authoritarian regime where no democratic division of powers exists. He denounced the dubious legitimacy of the government, since elections in the country are not transparent and fair. He accused the government of emasculating the national patrimony, and using it to maintain similar ideologies. After fifteen years of "chavismo", Venezuelans are suffering shortages of food, medicine, electricity and water. The young have no future.

> (1) What a contradiction, sisters and brothers! // In midst of the largest oil boom in Venezuelan history/ we have the highest inflation rates// in midst of this boom we have the largest shortages/ in midst of this oil boom we have the highest unemployment rates for the young//

The televised January 23, 2014 speech (Text1) can be considered a proclamation of his opposition. López is surrounded by a group of people who represent diverse organizations that oppose the current government. Lopez's speech is a public notification of the foundation of a movement called *La Salida* that proposes street meetings in order to discuss the possibilities offered by the Venezuelan constitution to change the government.

His second speech (Text2), on February 12, 2014, also televised and video-recorded (https://youtu.be/zV1Qj4rf3Cg), is a political harangue uttered during a public demonstration that took place before the protest march on Youth Day commemorating the battle of La Victoria, when the youth led by José Félix Ribas urged opposition to Spanish domination.

The third speech considered here is Lopez's testimony at his trial (Text3), when he was accused of causing the violence on February 12, after the march during which three people died at the hands of government forces. Of this speech we have only the scribe's transcript published in the Condemnatory Sentence. Toward the end of that day, the protesters threw stones at the court building and requested the presence of the Public Prosecutor of the Republic, who did not heed their pleas. Instead, she chose to remain inside her office building.

I also take into consideration the interrogation of López by prosecutor Sanabria. It is a series of responses to questions. Of this dialog we have the scribe's transcription in the Condemnatory Sentence.

The accusations made about these speech events were repeated by three prosecutors, Nieves, Silva and Sanabria, as can be read in the Condemnatory Sentence. They argue against the accused, and hold him accountable for manipulating the protesters, his words, purportedly leading to the ensuing violence. The sentence of Judge Barreiros

was the final ruling, and it constitutes her definitive sentence as a trial judge, based on the accusations she heard the prosecutors present at trial. She sentenced the accused to fourteen years in prison.

Schemas

Schemas refer to the mental plans that function as guidelines for a speaker's actions and thoughts (Shuy, 2013: 55). As in most trials, there were opposing schemas, those of the prosecution and those of the defense. The prosecution proposed a schema that assumed López's guilt for supposedly having used his discourse to stimulate the violence February 12. We see this repeatedly in the accusations by prosecutor Nieves (2-3), and in the interrogation of López by prosecutor Sanabria (5).

> (2) You can see for yourself how this citizen, Leopoldo Enrique López Mendoza, expressing himself through different social media, social networks and especially through his twitter account, influencing his followers, issued a series of messages and this unleashed an uncontrolled attack of this group of persons that he himself called on February 12. (Nieves, CS: 5-6)

> (3) He tends to always blame the government for the violence (Nieves, CS: 7)

López denies the accusation that violence was caused by his words, stating that the cause of the violence on that day was the assassinations by government forces on the same day (4).

> (4) [...] We know what has been clarified about the deaths caused by Venezuelan government officials; we sure know that and I am convinced, because I was there on February 12 that the reaction of throwing those four stones, was a reaction of the young people because a classmate had been killed [...] that was the booster of the violence on February 12. I find it extraordinary that the Prosecution does not link the facts. It is as if there were two different worlds: the conviction of López and the students is one universe, and the other universe is the homicide of Montoya and Bassil Da Costa: as if they were not related. Of course they are related. Now, the Prosecution is not interested in establishing the relationship. Why is it not interested in establishing the relationship? It is not interested in establishing the relationship because that was the origin of the young people's actions. (LL, CS: 35)

In particular, the interrogation by prosecutor Sanabria wants to associate the deaths to López's call to demonstrate.

> (5) Sanabria: **Did it occur to you when planning La Salida that there could be dead and wounded here in Venezuela? He** [López] **answered:** Look I answer you responsibly: the dead and the wounded are the responsibility of the government, do you hear me? The assassin of Bassil Da Costa has a uniform, he has a badge and the weapon with which he killed Bassil Da Costa is property of the Venezuelan State (CS: 42, bold in the original).

López's personal defense lawyer, Juan Carlos Gutiérrez, objects to the question, but the prosecution insists on the risks that López could have foreseen, among them, the deaths:

> (6) The prosecution authorities ask if it effectively occurred to him during the planning that there could be death, dead people and wounded because of the convocatory they made. That is the question of the prosecution authorities (CS: 43).

López stresses the fact that the deaths were caused by government forces. The citizens have the right to demonstrate and the only risk in the country lies in the state.

> (7) López: There should be no risk. Now, where does the risk come from? It comes from an official gun, from an identification badge. Where is the cause of the deaths? In a uniformed guy receiving an instruction, and he killed Bassil Da Costa, which is the truth. Where is the origin of the risk, the origin of the risk is in the Venezuelan state [...] the state is the risk, yes, yes, the state is the risk (López, CS: 44).

Discourse agendas

What people want and try to say constitutes their conversational agenda (Shuy, 2013: 56). According to Shuy, an important clue to a person's agenda can be found in the topics the person introduces and recycles during a conversation. Another clue can be found in a person's responses to the topics introduced by one or more of the other participants in the same conversation or in a series of related conversations (Shuy, 2013: 59).

In the prosecutor's and the judge's declarations there are three central topics: that of violence against state property, López's capacity as a leader, and the resulting rupture of the constitutional process.

The prosecution repeats, throughout the trial, the topics of street violence, the damage caused by students, unjustifiable attacks against state property and the loutish acts during the unrest. These events were unleashed, according to the prosecution, by López's words.

> (8) It is evident that he [López] sent disqualifying messages through his speeches, unleashing violent actions and eminent damage to the headquarters of the Prosecution and Research Institution, in virtue of the speeches transmitted through the media; when as a leader he should have called for calm, tranquility, peace and used the correct mechanisms established by law to express his discontent about the government (Judge Barreiros, CS: 251).

The passionate discourse of the leader allegedly moved the masses to violence, due also to the existing violent context (9).

> (9) [...] here, during the year and two months of the trial, his quality as a leader was always acknowledged, even the linguistic analyst [...] and the media expert [...] manifested specifically that citizen Leopoldo Eduardo López Mendoza was a great leader and he convoked and moved masses.

The prosecution accuses López of being the determiner for the commission of the crimes of arson, damage, public incitement and criminal association (SC: 2). The words of the prosecutors account for this accusation (10):

> (10) Of course he did not say with these words that the outcome *(La Salida)* should be violent, but [he said it] in a context of violence. (Sanabria, CS:62).

According to the prosecution, Lopez sought power through inadequate and incorrect actions that were not authorized by the constitution. His discourse aimed at inciting violence in the streets, calling for insurrection through his references to people such as Rómulo Betancourt (11).[6] The prosecution maintained that the accused disqualified the president, inculpated the government, and intended to overturn Maduro by breaking the existing constitutional order (12).

> (11) Leopoldo López does it well, because he says: let us remember Rómulo Betancourt in the fifties when he called to the streets in order to fight for democracy in this country [...] Rómulo Betancourt, from Costa Rica, called for an uprising. (Judge Barreiros, CS: 262).

> (12) These speeches are passionate, violent and hostile, in order to enter the minds of his followers and convince them and correspond with his hostile manners and his talk of ignoring the legitimate authorities and the law, and attain power. (Nieves, CS:6).

Agendas are also related to premeditation, voluntariness and intention. These legal questions are raised in the prosecutors' words: a) premeditation – "This all was carried on in a premeditated manner as all these acts were prepared previous to the days of their execution" (Nieves, CS: 5); b) voluntariness – "This is a previously prepared speech, rehearsed, learned and given, since he himself makes his speech, again and again, without any text to lean upon" (Nieves, CS:6); and c) intention – "In this speech, his intention was that the people went to the streets as it actually happened" (Nieves, CS:5). (See 13).

López denies responsibility for the street violence and having set buildings on fire, for which he was indicted. This, however, does not prevent him from assuming responsibility for his denouncement of the government during his trial as he argued for his constitutional right to protest and his freedom of speech.

> (14) [...] I am innocent of all the crimes that the Public Ministry accuses me of. I am innocent. I did not invite violence, I did not burn anything, I did no harm, and I am not a member of any criminal structure as the Prosecutor claims, any criminal association, that is all false. Now, I do assume my responsibility for having called this march, I do assume my responsibility of denouncing the Venezuelan state as corrupt, inefficient, antidemocratic, I do assume my responsibility of wanting to promote changes for Venezuela, I do assume my responsibility for asserting that the street, the protest, is a right that we cannot forgo, I assume that responsibility. (LL, SC: 38).

López had asked for changes towards a better Venezuela. *La Salida* chose the streets as a place to discuss ideas about the way to sort out the issues, but he insisted that the changes he advocated must be carried out in a constitutional, popular, and democratic manner. His compromise was to create a democracy and with the goal of emerging from the current disaster and to find a constitutional way of changing the government's recent actions.

> (14) La Salida means to formulate a popular outcome, a democratic and constitutional one, to the present leadership of the Venezuelan state. We have raised the need to go to the origin of the problem [...] the problem we have in social, economic, political and military grounds have the same origin, and that is the system, the colonization of the Venezuelan state by the government party, it means burying the constitution every day [...] and we have raised the need of substituting that way of conducting the state by a democratic approach, respectful of the constitution. (LL, SC: 40).

López advocated a democratic view of institutionalism, which included the risk of potential loss of his own freedom, since he demanded justice from the currently "unjust judiciary system".

> (15) February 12 at night a detention order was issued. This order was without doubt previously written and given to the Public Ministry [...] In this context of persecution, in this context of injustice I decided to voluntarily face a justice system that from my perspective, from my experience and from my analysis of what is happening in the country is unjust; an unjust justice. But I decided to present myself because I have no intention of leaving the country, because I have no intention to hide from anyone, and because I assume my responsibility of having convoked a march on February 12, a peaceful, not a violent march, in the context of a national protest following the indignation of the people [...]. (LL, CS: 33-34).

López's defense attorney, Juan Carlos Gutiérrez, characterized the trial as biased: "bias is the magical word in this trial" ("sesgo, palabra mágica de este juicio") (Gutiérrez, CS: 28).

The speech acts

Speech acts are utterances, units of language. This section places special attention on the speech acts as the focal point of this study. In table 2, I present the speech acts found in the texts by López and those attributed to him by the prosecution.

TYPES OF ACTS	SPEECH ACTS	LÓPEZ	PROSECUTION
Commissives	Swear	x	x
	Take responsibility	x	
Directives	Invoke	x	x
	Determine		x
	Incite		x
	Persuade		x
	Solicit	x	
	Demand rights	x	
Expressives	Laud	x	
	Express thanks	x	
	Encourage	x	
Assertives	Denounce	x	x
	Give opinions	x	x
	Oppose	x	x
	Propose (offer options)	x	x
	Report	x	

Table 1. Types of speech acts in the discourse of Leopoldo López and the prosecution.

Commisives

Among López's commissive acts are oaths and *taking responsibility*. The speaker offers to fulfil the proposition of the utterance. The first one is found in the speech of February 12, when López reprises the national hero Jose Felix Ribas, and harangues the crowd in order to engage them in the struggle for democracy (16). The crowd then expresses its own agreement with the cause. It represents also a commitment on his side, demanding

the same from his followers. Prosecutor Silva in the text of the Condemnatory Sentence acknowledges this oath.

> (16) Well I would like/ I would like/ Yes we can!/ yes we can! I would like to ask all the people present here to assume the commitment of multiplying/ of growing/ of moving forward to conquer the political change we own// And I ask you to raise our right hand and say: "We/ Venezuelans/ committed with our history/ of fighting for freedom/ committed today on National Youth Day/ with the future of our children/ assume the obligation to pursue change/ with dedication and determination/ until achieving the political change/ the social change/ Venezuela deserves// Long live Venezuela"!// Long live the future of Venezuela!// Long live our youth!// And let us walk/ let us walk with strength/ with force/ let us assume non violence// our domain/ the streets/ our struggle/ non violence/ May God bless you! //Thank you very much//. (López, Text 2)

Directives

When issuing directive speech acts, the speaker directs the hearer to do something. Among those are *invoke*, *incite*, *persuade*, *request*, and *demand* their rights. There are calls or invitations for actions in the utterances by López, recognized as such by the prosecution. Example (17) is taken from the speech of January 23. Example (18) is from judge Barreiros.

> (17) And for this reason we invite the Venezuelan people/ all those who want change/ all those who think Venezuela can improve/ all those who dream of a peaceful Venezuela/ of a prosperous Venezuela/ of Venezuela developing/ all Venezuelans who know that we can do better/ all Venezuelans who know that we can have a land of opportunities/ a land of employment/ and progress/ a land of democracy/ of equality before the law/ a land of justice/ [...] A Venezuela where democracy is the essence of rights for all people/ all rights for all people/ not some rights for some people//. (López, Text 1).

> (25) [...] Citizen Leopoldo López, expressing himself through different media made calls to go to the streets that produced a series of violent events, repudiation of the legitimate authorities and disobedience of the law [...]. (Judge Barreiros, CS: 256).

In the context of the trial, López *requests* and *demands rights*. He requests the liberation of the students who are being tried along with him (19), and claims his right to freedom of expression (20).

> (19) Finally, citizen Judge, due to this circumstance, citizen Judge, as far as I understand that this is political, that you evaluate the possibility of releasing the young Coello and Holdack. If, in order to detain me, you need them as proof that there was a determinant and a determined, I would ask you to leave me to assume the burden of the political penalty [...]. (López, SC: 37).

> (20) You may not like what I am saying, but I have all my right to speak, because if not we would not live in democracy, because that is the essence of democracy. (López, SC: 37).

The speech acts of *determining*, *inciting* and *persuading* or *manipulating* are present in the text of the prosecution. Prosecutor Nieves defines what he considers "determining" (21) and reports how, according to the forensic experts, Leopoldo López incited the population to violence.

> (21) Determined is not who determines, it is who executes the deeds and coincides with the material authors of these deeds. The participation of citizen Leopoldo Eduardo López Mendoza consisted not in throwing the stones himself, those pieces of concrete. But this determination led these people, provoked by those messages, to react to those events. The expert [...] indicated here that discourse leads to an action, and can lead to the violence as it happened that day; provoked by those messages, because of those speeches, protesters attended that day. (Nieves, CS: 73).

The prosecution claimed that López had the power to move masses, similar to that of any judge to issue a sentence. A way he was alleged to do this is by speaking about his ability as a leader. In order to prove his alleged power to incite the audience to violence, the prosecution asserts that López knows his audience very well because he has studied it, and that his followers are young malleable people that he manipulates, an argument made in the trial by the prosecution's linguistic experts – both professors at the Universidad de Los Andes, overtly committed to *chavismo* – was borrowed by both prosecutor Sanabria (22) and Judge Barreiros (23) in her final decision.

> (22) In this sense, the expert assured clearly that the leader of Voluntad Popular did not make a call to violence. He did not say let's burn the tribunal, let's throw stones. It is obvious that he did not say it, he did not make this irresponsible call to violence, but she did make clear that Leopoldo Eduardo López Mendoza, is a leader, she did state that he is an excellent leader, that is, he moves masses, as the students and the youth that were manipulated by the call this person made [...]. (Prosecutor Sanabria, CS: 119).

> (23) They are a people he knows very well, they are a people he has studied, they are mostly young people. (Judge Barreiros CS:261, citing the linguistic expert verbatim, CS: 165).

Expressive acts

Expressive acts express the emotional state of the speaker. In López's public speeches there are acts characteristic of a speaker who is in front of an audience, such as acclaiming, giving thanks, and encouraging. We can see this in examples (24), (25) and (26).

> (24) Let Venezuela live!/ Let Venezuela live, and let the women and men live who today are convinced that Venezuela has to change//. (López Text2).

> (25) And I want to begin by acknowledging the Venezuelan young// the Venezuelan young people that are today on the streets/ but very specially those who have been repressed/ those who are in jail/ those who were wounded by bullets/ those who have been repressed by the national guard/ by the army/ by the police and by irregular government groups//. (López, Text 2).

> (26) We want to tell those young people that they are not alone//Their parents/ their grandparents and all Venezuela is with the young Venezuelans//. (López, Text 2).

Assertives

Assertives or representatives manifest certainty about the belief asserted by a proposition. They commit to something being the case. These are speech acts like *reporting*, *admitting*, *counseling*, and *preventing*. I found speech acts such as *reporting* only

in López's examples, and acts such as *denouncing*, *expressing opinion* and *proposing* in López's texts, as well as in those reported by the prosecution. López reports a fact, in this case his decision of facing the judicial system (see example 15).

The following examples are assertive speech acts found in López's speeches and his testimony at trial, compared with the speech acts reported by the prosecution.

López proposes the creation of *La Salida* and explains its goals. In this case, he proposes options (27), the "different tools offered to us by the constitution".

> (27) And what is the solution we are proposing? We are conscious that *La Salida* has to be first of all popular/ popular with the people/ people/ people wanting *La Salida*/people who want to be the force of a population looking for change// Second, a democratic solution and third/ a solution within the constitution// *There are different tools offered to us by the constitution and we will debate with the people about which of those tools is the most timely*/ which of those tools can lead us towards a change as soon as possible/ towards a profound change/ a democratic change/ that permits us to advance towards a better Venezuela// (López, Text 1).

In (28) we have the same proposal, as it was interpreted by the prosecution in the sentencing of Judge Barreiros. It is worth noting that here the Judge again cites the words of the forensic expert verbatim, even when the linguist speaks in first person – "I explained", "to my understanding". This is a curious case of reported speech where the judge and the linguistic expert are blurred together as one person.

> (28) The topic of change of system and change of government is very important because this would be in the beginning of the rhetorical machine of the citizen Leopoldo López. It is necessary to raise the issue of change *here the concept of negative programs I explained comes perfectly into play*, that is, a transformation is necessary. Now how is that transformation going to occur, well it can be done by means of mechanisms that in this conceptual proposal by citizen Leopoldo López was called *La Salida. To my understanding*, this would be like the necessary change for that transformation, the change of system. There the negative program is very clear, it is necessary to change the present system for another one, a more democratic one, those are words of citizen Leopoldo López, where justice is for all. (Judge Barreiros, CS: 262, citing linguistic expert verbatim CS: 173).

The same occurs with the act of expressing an opinion. In the following examples we can see both sides, that of the accused in the trial (29) when López opines that there is no democracy in Venezuela, and that of the prosecution's opinion that López, by proposing the notion an evil state composed of a subjugated population, contributes to uprising and violence (30).

> (29) Now, I do think that, I do believe that we do not live in a democracy in Venezuela, I do believe that Nicolas Maduro is not a democratic president, I do believe that in Venezuela public powers are not autonomous, I do believe that sadly in Venezuela, the justice system has been colonized and penetrated by the domination of the governmental party, I do believe this. And I believe that lamentably Venezuelans today, even though we sometimes ask on our knees for justice, we do not have access to justice because the Venezuelan state is falling apart. I am convinced that in Venezuela public powers are abducted, I am convinced that regrettably the management of military policy is contrary to the

> constitution. There is the constitution and all what is said about autonomy of the public powers, about freedom, about the function of the national army and all that is violated). (López, CS: 34).

> (30) [...] This is the distinction that citizen Leopoldo López carries out throughout his statement and there is a very clear distinction between the people and the government. One must very clearly distinguish between the people and the government; people are good, the government is not, the people are humiliated, the people are being subjected to violations of their human rights but the government is not. There is then something like a gap between *what I, without being a lawyer*, but knowledgeable of the constitution as any other Venezuelan female, understand as constitutive and constituent power, that is, on the one side there is a clear distinction, where the people are against the government, also the people consider it to be legitimate to disavow an illegitimate government. This is an argument that is repeated, a topos that is repeated. The illegitimate government is repeated. If we start from the premise of illegitimacy it is evident that we disavow it. *If I lose authority as a mother I cannot demand that my daughter tomorrow does something against the norms I have given her then if you discredit the government* and you say clearly that this is an illegitimate government, well then to go onto the streets to conquer democracy by constitutional means, today, constitutionally, that is very complicated. *I mean, discursively that is a titanic task. I do know from a logical standpoint argumentatively, how to speak about uprising, about going in the streets, illegitimate government, drug trafficking, to gain democracy fast and by constitutional means, well. That is only a remark that has to do with my analysis but evidently it is not my word against his simply it is what I found in my analysis, the prosodic analysis of that discourse.* (Judge Barreiros, CS: 263, citing The linguistic expert verbatim, CS: 177; my italics).

Notice again, in this last example, the reported speech in the text of the prosecution, when Judge Barreiros cites the words of the linguistic expert textually and confuses the subjects by strangely affirming that she is not a lawyer. This shows the relevance of the expertise on the final sentence in the trial. Barreiros also speaks as if she were the mother of the child who she has given norms to, which is evidently the expert and not the judge, and as if she as judge had carried out a prosodic analysis of López's discourse – "without being a lawyer, but knowing the constitution as any Venezuelan woman"; "if I lose my authority as a mother I cannot demand that my daughter do something against the norms that I have given her"; "I mean, discursively that is a titanic task"; "I know it from a logical point of view, an argumentative one"; "well this is not a remark that has anything to do with my analysis but evidently it is not my word against his, it is simply what I found in the analysis, the prosodic analysis of that speech".

López criticizes the current government repeatedly, and even reveals its irregularities and inconsistencies in this same trial (31):

> (31) I couldn't believe, I cannot believe that we are going to trial without being able to present a single proof, an alternative witness to the approach of the Public Ministry [...] With what alternative evidential element to the semiologic analysis made by a member of PSUV; with what alternative proof are we going to present ourselves if we cannot present them. We are here in front of an execution wall, not only as persons, it is democracy, justice, the constitution, the

> Organic Code of Criminal Procedure, it is this building, it is the cloaks you are wearing, it is your investiture as a judge. (López, CS: 38).

Declarations

Declarative speech acts evidence a direct connection between the utterance and the action, because the speaker has the ability to change a state of events. They are generally the acts of normative systems, such as the law courts or the church. The simplest performative example is "I declare you husband and wife" said by a judge or a religious authority, that joins two people in wedlock. In the legal context, only the judge has the authority and power to perform the final sentence, and this was the only speech act that can be considered a performative declaration. It is the judge's final statement, and the core of the macro-communicative event, the text of the Condemnatory Sentence.

In (32) Judge Barreiros does not seem to realize that the prosecution's linguistic expert argues from her status as a citizen "without legal status and authority", pointing out that her words are unable to generate actions. The judge's words do have an illocutionary force, precisely during the trial when condemning the accused to serve almost fourteen years in prison. Her only declaration in the trial was when her words, as a judge, accomplish the performative speech act of sentencing Lopez to prison.

> (32) If you say that the government traffics with drugs you have to prove it, more that stating ABC news where anything can be said. Those are induced referents, they are anchoring references that have lots of interlocutive force, especially in a leader *because I can now tell you anything, but it is difficult that I generate an action.* But when a leader speaks to a mass that believes in him, and a mass that trusts him, well one has to have a discursive responsibility in order to assume this compromise. (Judge Barreiros, CS: 263, citing the linguistic expert verbatim, CS: 177).

The constant references and verbatim citations of the prosecution's expert witnesses made by both the prosecutors and the judge illustrate Brewer Carías"criticism of the role of the linguistic expertise in the indictment of the accused. This validates linguistically his assertion that the accusation was stated in order to prosecute a "crime of opinion" (Brewer Carías, 2015: 4).

Discourse strategies

The fact that the available resources for the study of speech acts in the trial are written transcriptions made by judicial scribes does not guarantee an accurate or complete study of the oral interaction. As said before, the trial was not open to the public. Therefore, the focus of this section is to evidence the reported strategies of both parties relating to their political beliefs, their positioning in the trial, and to disclose some reported details of the interrogation of López by prosecutor Sanabria. As was noted above, discourse strategies are plans that speakers implement according to the situational speech event they are in, with the purpose of communicating and achieving a goal.

López's central discourse strategy in all of his speeches is to bluntly oppose the government, as he says very directly on January 23, 2014. He opposes the current government and critizes the authoritarian system that it has gradually implanted. López worries about what is happening for two main reasons: anti-democracy embodied in the lack of division of powers and the ensuing economic crisis creating unemployment,

a shortage of food and medicine, the lack of opportunities for the youth, and the ensuing corruption in government circles. Opposition is one of the functions of political discourse and it prevails even during the trial, where his defense is also his declaration of legitimately opposing the current practices of the present government.

The discourse strategy of the prosecution is clearly to find reasons to condemn the accused, which it achieved through different linguistic tactics. These are to charge him: a) with seeking personal power; b) with having prepared his speeches; c) with manipulating his followers irresponsibly; and d) with generating the violence in others, including causing the deaths of Bassil Da Costa and Juancho Montoya.[7]

a) López is accused of seeking power with premeditation through *La Salida*. According to the prosecution, an attempt to oust the president even through constitutional means is illegal, since it is held that the president has been elected and that his constitutional mandate is not yet finished. According to prosecutor Sanabria (33), López wanted to destroy the constitutional order. Silva claims, once again using the linguistic expert's exact words, that López speaks inappropiately in the name of all Venezuelans:

> (33) She mentioned that the citizen Leopoldo Eduardo López Mendoza used the word Venezuela as if he were representing the national territory. (Sanabria: CS: 76).

b) The prosecution accuses López of preparing his speeches in advance without any help from others, and of rehearsing and learning them with a criminal state of mind, as Nieves claims. This also allegedly demonstrated his voluntariness to create the ensuing violence.

c) The prosecution attempts to establish a causal link between López's discourse and the violent events, which is necessary in order to accuse him of the ensuing street violence. Even though he mitigated his accusation by admitting that Lopez did not make an express call to violence, Sanabria claims López used the social media to make "this irresponsible call to violence" and that he made improper use of the right to freedom of expression. According to Nieves, López is accused of intending to influence his followers by his words that revealed his intention and his predetermination to accomplish this, and he allegedly achieved this goal through the passionate, violent and hostile manner of his speeches – "de manera apasionada, violentos y hostiles".

d) It was important for the prosecution to try to prove that López's speeches caused a negative impact on public assets, that his calls led to violent events, repudiation of the government and disobedience of the law, and the outburst of the attack. The prosecution makes López accountable not only for his own speech acts, but also for the apparent perlocutionary force of his words, in other words for their supposed consequences. Therefore, the prosecution tried to establish a link of causality between his words and the events that followed. Nieves once again cites the prosecution's linguistic expert in order to prove the power of López's words, repeating that discourse leads to action that can also lead to violence (34).

> (42) "The Expert [...] indicated that discourse leads to action, it can lead to violence as occurred on that day". (Nieves, CS: 73).

The interrogation of Leopoldo López by prosecutor Sanabria offers a closer insight into the interaction in the trial, since other declarations in the transcript do not seem to be in the order in which they occurred. My aim in this section is therefore to show the

prosecution's discourse strategies to indict López of the violence and even of the deaths of February 12.

The prosecutor asks a series of questions about the demonstration on February 12, its goals, the meaning of the document that was to be handed out to the Prosecutor General, and the planning and timetable of *La Salida*. These questions, that can be considered objective, lead to another series in which objectivity is set aside and the prosecutor aims at inculpating López not only for the "risks" of planning the protest, but also for the dead and injured that day: "Did it occur to you that the planning of *La Salida* could lead to deaths and wounded here in Venezuela?" (Sanabria, CS: 42) and its reformulation: "In the planning of *La Salida* did you or did you not imagine risks?" (Sanabria, CS: 43).

López responds directly to these issues, saying that the convocation had been done by word of mouth and through the media, and that the idea was to produce and submit a document that would request the release of the detained students and initiate a process that could lead towards a solution to the issue of state leadership. He defines *La Salida* as a popular, democratic and constitutional way to bring the current political and economic crisis to an end.

> (35) [...] And above all, I am grateful that this is my trial and that the trial is about my speeches, because then we would have to analyze the speeches, that is, you would not be able to focus on anything other than the speeches I said, because you have incarcerated me because of my speeches, let's analyze the speeches [...] (López, CS: 41).

To the insinuation that he participated in the deaths, López responds by charging the government for the dead and wounded.

> (36) [...] Look I answer with all responsibility, the dead and wounded are the fault of the government, and do you hear? The murderer of Bassil Da Costa has a uniform, a badge and the weapon he used to kill him belongs to the Venezuelan state. The same happened with the majority of the murders throughout these months. It is irresponsible for you to try to establish a link between the protest and the responsibility for the killings. (López, CS: 42).

The defense objects, arguing that these questions are imprecise and capricious. López nevertheless responds, affirming that there should be no risk at all in the right to discuss such issues in any place and before any public entity. The risk comes, according to him, from the current Venezuelan state: "el origen del riesgo está en el Estado venezolano". (López, CS: 44).

The prosecutor asks about his plans to overthrow the government:

> (37) Could you indicate to us if there is effectively a speech where you say that Maduro is your opponent and that your goal is to get rid of the public officers? (Sanabria, CS: 44).

López clarifies the phrase "ir por las cabezas", where the word "cabeza" ('head') means either a body part or public leaders, and claims that he obviously uses the word metaphorically. What he proposes is to replace all the heads of the government, because the system is corrupt. He acknowledges his use of twitter but asserts that he has never made a call to violence.

> (38) [...] We have never raised a call to violence. Here are the speeches as evidence. (López, CS: 45).

She then enters the hypothetical field and asks López if he considers that had he not "convoked the march and the concentration [the students] would have [not] thrown stones, and set the public building and the police vehicles on fire on February 12, 2014?" And further if Bassil Da Costa and Juancho Montoya – the victims of the shootings – had not attended the march. López then confronts the prosecutor's strategy of trying to link the speeches to the violence directly:

> (39) [...] At the end, doctor, what you are trying to create is a link between what we were planning to do and the stones thrown by some youngsters because a peer had been killed in front of them. The public ministry is looking for a relation where there is none. (López, SC: 45).

Discussion

The idea of studying speech events in the legal context emerges from Shuy's work (Shuy, 1996, 2008, 2010, 2012, 2013, 2014). I analyzed the corpus following his "Inverted Pyramid" and found three different speech events: a proclamation in a television station, a harangue in a public square, and a declaration at a trial where López is the accused. As said before, even though I use the Inverted Pyramid approach here, the speech acts are the most crucial in this study.

I observed that the agendas of both sides are opposed. The prosecution intends to demonstrate that the politician used words inciting violence and seeking to break with the constitutional order. Furthermore it seeks to ascribe to Lopez voluntariness by revealing that he was the lone author of this allegedly criminal speech. On his side, López insists that he was trying to find a compromise in a democratic manner and that his intention was to oppose the government within the boundaries of the constitution. He furthermore takes full responsibility for the entire content of his speech.

The schemas of López and the prosecution are also opposed. The accused protests his innocence, making clear that his protest is in compliance with the Venezuelan constitution and the rights recognized by democratic states. The prosecution claims, on the contrary, that as a skilled orator Lopez through his words has transmitted anger into the minds of young people that he knows very well, and that he is capable of manipulating and leading them to commit violent acts. The prosecution considers *La Salida* movement to be illegal, and assumes that there is neither freedom of expression, nor other citizen rights. It even considers the simple mention of president Rómulo Betancourt as a stimulus to the crowd to become violent.

Likewise, the speech acts found in López's public speeches and his declaration at trial diverge from those that the prosecution ascribes to him. The reason for this divergence lays not so much from failure to recognize different types of speech acts, but rather from the prosecution's failure to properly understand and assess them.

It should be mentioned that the illocutionary force of the speech acts of López merge with his *discursive ethos*, in other words, with his capability as a leader. What is condemned is the supposed perlocutionary force of his speech acts, that is, the consequence that his words could have had, according to the accusers. To be able to demonstrate this relationship, the prosecution would be required to prove the cause-effect link of Lopez's words to the ensuing violence, which proof remains unsubstantiated and merely inferred. Inferences are always a poor substitute for any factual evidence of intentionality or predisposition to promote violence.

López's language does not suggest that he is defying the constitutional dimensions of the government and at no point does he suggest violence. He maintains that the only substantiated link to violence is that of the past murders of three persons by governmental forces. More importantly, López does not have either institutional or personal power in the communicative discourse of the trial. In a government where powers are not divided and shared fairly, and when all of this power is in the hands of the executive, López has prestige, but not power (Bourdieu, 2012).

I found some persuasive discourse strategies in the different speech events. López opposes the government throughout as he protests and tries to convince the court. This is one of the functions of political discourse (Chilton, 2004). This is evident even in his testimony at the trial, where he adds only the strategy of powerlessly requesting the liberation of the students who stood accused along with him. The strategy of the prosecution, as accuser, was to blame López for the ensuing street violence that he had actually argued against and for being an irresponsible leader. Moreover, the prosecution also blames him for the deaths that occurred after the demonstration.

I found some persuasive discourse strategies in the different speech events. López opposes the government at all times as he protests and tries to convince the court, which is one of the important and well-accepted functions of political discourse (Chilton, 2004). This is evident even in his testimony at the trial, where he adds only the strategy of requesting the liberation of the students who stood accused along with him. The discourse strategy of the prosecution, as accuser, was to blame López for the street violence and for his irresponsibility as a leader. Moreover, the prosecution seems to blame him for the deaths that occurred after the demonstration.

The final question, which is important but not central to this particular study, concerns the role of linguistic experts in a trial. The prosection's linguistic experts came to conclusions about his guilt that fall outside the proper scope of linguistics and therefore were not appropriate or relevant. Linguists should speak only about what the language tells us and leave the ultimate legal questions to the triers of fact. This is a subject that must be dealt with if the practice of using language experts continues in Venezuela. As Shuy (2006: 124–125) advises, expert linguists cannot become advocates for either side. Their role is simply that of examining and presenting their analysis of the language in evidence as objectively as possible. This analysis should be the same for either the prosecution or the defense. As illustrated above, the government's linguistic experts failed to achieve this objectivity throughout their reports.

Notes

[1]I am indebted to Roger Shuy for his interest in my study, which he has followed closely. The errors of the article are of course only my responsibility.

[2]'Words can injure, me too'. http://www.soziale-manieren.de/54433.asp.10/08/2010.

[3]The prosecution has experts in the police corps (CICPC, SEBIN & GNB) as well as in its Office for Technical Scientific Assistance. The prosecution can also appoint other experts from public universities or professional colleges, and pay for their fees as well. The defense may hire a police expert or a private one; experts who are not public servers must take an oath.

In the penal process, each side offers the testimony of their experts as a evidence. If the prosecution and/or the victim (when the accusation is private) contracts an expert, the defense may present another one for a counterexpertise, or viceversa. When police officers serve as experts, the party cannot choose them; they just ask for an expertise at the police office or the corresponding institution (Information given by Juan Carlos Gutiérrez, Leopoldo López's defence counsel personal communication).

[4]Tweets were subject to a second linguistic report, which also incriminated López.

[5]'Schema' refers to an active organization of past reactions, or of past experiences, which must always be supposed to be operating in any well-adapted organic response (Bartlett, 1995: 201).

[6]Rómulo Betancourt was a Venezuelan statesman, author of emblematic books, who fought the Perez Jimenez dictatorship. The government considers Betancourt an enemy.

[7]Robert Redman was also killed that day, but he is not mentioned in the trial.

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Appendix: Spanish original citations

(1) ¡Qué contradicción/ hermanas y hermanos! En medio de la bonanza petrolera más grande que ha tenido la historia de Venezuela/ tenemos la más alta inflación// En medio de esta bonanza petrolera tenemos la más alta escasez/ en medio de esta bonanza petrolera tenemos el más alto desempleo para nuestros jóvenes//. (LL, Text 1).

(2) [...]usted misma podrá apreciar como este ciudadano Leopoldo Enrique López Mendoza expresándose a través de los distintos medios de comunicación sociales, así como las redes sociales, y en especial a través de su cuenta Twitter, influyendo en sus seguidores emitió una serie de mensajes lo que desencadenó, un ataque desmedido de este grupo de personas que él mismo convocó para el 12 de Febrero [...] (Nieves, CS-6).

(3) [...] él tiende a culpabilizar siempre en todo momento al Gobierno de la violencia. (Nieves, CS:7).

(4) [...] de las muertes sabemos que las que se han esclarecido son [causadas por] funcionarios del Estado venezolano, eso sí lo sabemos y yo estoy convencido por que estaba allí el 12 de febrero que la reacción de las 4 piedras que tiraron los jóvenes, era una reacción a que habían matado a un compañero de ellos [...] ese fue el detonante de la violencia el 12 de febrero, a mi me parece realmente insólito que la Fiscalía [no] reúna (sic) los hechos, es como si son dos mundos apartes, la condena de López y los estudiantes es un universo y otro universo es el homicidio de Montoya y Bassil Da Costa como si no tuviesen relación, claro que tienen relación, ahora la Fiscalía no le interesa establecer la relación, por qué no le interesa establecer la relación, no le interesa saber la relación porque allí está el origen de lo que fue la acción de estos jóvenes. (LL, CS:35).

(5) Sanabria: **¿Se le presento (sic) usted con la planificación de la salida que pudiera haber muertos y heridos aquí en Venezuela?** [López] **Respondió:** mire yo le respondo con toda responsabilidad los muertos y los heridos son responsabilidad del gobierno oyó, el asesino de Bassil Da Costa tiene uniforme, tiene credencial y el arma con la que mato a Bassil Da Costa es un arma del estado venezolano (CS: 42) (Bold in the original).

(6) El Ministerio Público se pregunta si efectivamente él en esa planificación se presento que podía haber muerte, personas muertas y heridas en base a esa convocatoria que realizo (sic), esa es la pregunta del Ministerio Público. (CS: 43).

(7) [...] no debería haber riesgo, ahora de donde viene el riesgo, de una pistola oficial, de una credencial, cual es el origen de la muerte, de un hombre uniformado que recibió una instrucción y asesinó a Bassil Da Costa esa es la verdad, donde esta el origen del riesgo, el origen del riesgo está en el Estado venezolano [...] el estado es el riesgo, si, si, el estado es el riesgo. (López, CS: 44).

(8) Es evidente que a través de sus discursos envió mensajes descalificativos que desencadenaron las acciones violentas y eminentes daños a la sede Fiscal y cuerpo de investigaciones, en virtud de los discursos emitidos por los medios de comunicación, cuando lo correcto en su posición de lider es la de llamar a la calma, la tranquilidad, la paz, y a la utilización de los mecanismos adecuados establecidos en la Ley, para plantear su descontento con el actual gobierno. (Judge Barreiros, CS: 251).

(9) [...] aquí en el año y dos meses que tuvimos de juicio siempre, se destaco su calidad de líder, incluso la analista lingüista Rosa Asuaje y el Experto en redes sociales Mariano Ali, manifestó que si, que específicamente el ciudadano Leopoldo Eduardo López Mendoza era un gran lider, y convocaba y movía masas de personas [...] (Sanabria, CS: 62).

(10) [...] claro el no lo dijo con esas palabras que la salida debía ser violenta, pero en un contexto de violencia. (Sanabria, CS:62).

(11) Leopoldo López lo hace muy bien porque el dice, recordemos por allá en los años cincuenta a Rómulo Betancourt quien hacía un llamado a las calles a luchar por la democracia de este país, [...] Rómulo Betancourt desde Costa Rica, en su exilio el llama a la sublevación. (Judge Barreiros, CS: 262).

(12) [...] estos discursos son de manera apasionada, violentos y hostiles a los fine de caer en la mente de esta misma persona de sus seguidores con el fin de convencerlos y que tengan correspondencia con su manera hostil y su alocución para desconocer a las autoridades legítimas y las leyes y así lograr alcanzar el tan anhelado poder. (Nieves, CS: 6).

(13) a. [...] todo lo cual esto se llevó de una manera premeditada en virtud de que todos estos actos estaban preparados previamente a los fines de su ejecución. (Nieves, CS: 5).

b. [...] en este discurso los fines que pretendía era que el pueblo saliera a la calle como ocurrió. (Nieves, CS: 5).

c. [...] discurso éste previamente preparado, ensayado, aprendido y puesto en práctica en virtud de que él mismo emite su discurso y todo se repite, sin ningún tipo de texto que tenga donde apoyarse. (Nieves, CS: 6).

(14) [...] soy inocente, de todos los delitos que dice el Ministerio Público, soy inocente, yo ni llamé a la violencia, yo no incendié nada, yo no hice ningún daño, y no soy parte de una estructura delictiva como plantea el Fiscal para asociados para delinquir, todo eso es falso, ahora yo si asumo mi responsabilidad de haber convocado a esa manifestación, yo si asumo mi responsabilidad de denunciar al estado venezolano como corrupto, ineficiente, antidemocrático, yo si asumo mi responsabilidad de querer promover cambios para Venezuela, yo si asumo mi responsabilidad de asumir que la calle, que la protesta es un derecho al cual nosotros no podemos renunciar, yo asumo esa responsabilidad. (LL, SC:38).

(15) [...] la salida es articular una salida popular, democrática y constitucional a la conducción actual del estado venezolano, nosotros hemos planteado la necesidad de ir al origen del problema [...] el problema que tenemos en lo social, en lo económico, en lo político, en lo militar tiene un mismo origen que es el sistema, que es la colonización del estado venezolano por el partido de gobierno, es enterrar la constitución todos los días [...] y nosotros hemos planteado la necesidad de sustituir esa forma de conducir el estado venezolano por una aproximación democrática, respetuosa de la constitución. (LL, SC: 40).

(16) El 12 de febrero en la noche [...] se emite una orden de aprehensión esa orden estaba escrita esa orden estaba dada al Ministerio Público sin ninguna duda [...] en ese contexto de persecución, en ese contexto de injusticia yo decidí presentarme voluntariamente ante una justicia que desde mi perspectiva, desde mi vivencia y desde el análisis que hago de lo que ocurre en el país es injusta, injusticia injusta pero tome la decisión de presentarme voluntariamente porque no tengo intenciones de irme del país, porque no

tengo intenciones de esconderme de nadie y porque asumo mi responsabilidad de haber convocado a una manifestación el día 12 de febrero pacifica no violenta en el contexto de una protesta nacional de la indignación de un pueblo [...]. (LL, CS: 33-34).

(17) [...] mire yo le respondo con toda responsabilidad los muertos y los heridos son (21) responsabilidad del gobierno oyó, el asesino de [...] jamás hemos planteado nosotros un llamado a la violencia y menos al que están los discursos como elementos probatorios. (López, CS: 45).

(18) "¿Usted nos podría indicar si efectivamente hay un discurso suyo que indique que su adversario es Maduro y vamos por las cabezas de los poderes públicos?" (Sanabria, CS: 44).

(19) [...] jamás hemos planteado nosotros un llamado a la violencia y menos al que están los discursos como elementos probatorios. (López, CS: 45).

(20) "¿Ese cambio que usted plantea para Venezuela usted esta consiente (sic) si constitucionalmente están dadas las condiciones para que en el momento en que usted convoco (sic) la marcha y la concentración efectivamente se diera ese cambio constitucionalmente?" (Sanabria, CS: 46).

(21) ¿Usted considera que si usted no hubiera convocado a esa marcha hubiesen habido los muertos que hubo en toda Venezuela?

(22) Bueno yo quisiera/ yo quisiera//¡Sí se puede/ sí se puede! Yo quisiera pedirles a todos los que estamos acá a que asumamos el compromiso de seguir multiplicando/ de seguir creciendo/ de seguir avanzando en la conquista de ese cambio político que nos pertenece// Y les pido que alcemos nuestra mano derecha y digamos: "Nosotros/ venezolanos y venezolanas/ comprometidos con nuestra historia / de lucha por la libertad/ comprometidos hoy Día de la Juventud/ con el futuro de nuestros hijos/ asumimos el compromiso de tener vocación de cambio/ la entrega y la determinación/ hasta lograr el cambio político/ el cambio social/ que se merece Venezuela//¡Que viva Venezuela! ¡Que viva el futuro de Venezuela!//¡Que vivan nuestros jóvenes!// Y salgamos hoy/ salgamos/ salgamos a caminar con firmeza/ con fuerza/ asumamos la no violencia/ nuestro terreno/ la calle; nuestra la lucha/ la no violencia// Que Dios los bendiga! Muchas gracias//". (López, Text 2).

(23) Y es por eso que nosotros invitamos al pueblo venezolano/ a todos los que quieran cambio/ a todos los que quieran que Venezuela pueda mejorar/ a todos los que sueñen con una Venezuela de paz/ con una Venezuela de bienestar/ con una Venezuela de progreso/ a todos los venezolanos que saben que podemos estar mejor/ a todos los venezolanos que saben que podemos tener un país de oportunidades/ un país de empleo/ de progreso/ un país de democracia/ de igualdad ante la ley/ un país de justicia/ [...] Una Venezuela en donde la democracia sea la esencia de los derechos para todas las personas/ todos los

derechos para todas las personas/ no parte de los derechos para parte de las personas//. (López, Text 1).

(24) [...] El ciudadano Leopoldo López, expresándose a través de los distintos medios de comunicación hizo llamados a la calle los cuales produjeron una serie de hechos violentos, desconocimiento de las autoridades legitimas y la desobediencia de las leyes[...] (Juez Barreiros, CS: 256).

(25) Finalmente ciudadana Juez yo quisiera solicitarle que dada esa circunstancia ciudadana Juez yo si quisiera entendiendo que esto es político que usted evalúe la posibilidad de dejar en libertad a los jóvenes Coello y Holdack, si para dejare (sic) preso a mí los necesita a ellos como prueba de que hubo un determinador y un determinado yo pediría que el peso del castigo político lo asuma yo completo [...]. (López, SC: 37).

(26) A usted puede que no le guste lo que yo le estoy diciendo, pero yo tengo todo mi derecho de decirlo porque si no, no viviríamos en democracia, porque esa es la esencia de una democracia. (López, SC: 37).

(27) Determinados (sic) no es quien determina, es quien ejecuta los hechos y coincide con los autores materiales de esos hechos, la participación del ciudadano Leopoldo Eduardo López Mendoza, no consintió (sic) en el mismo lanzar esas piedras, hormigones, sino que esa determinación provoco (sic) que esas personas provocadas por esos mensajes fueron los que reaccionaron por esos hechos. (Nieves, CS: 73).

(28) En este sentido la experta aseguro claramente que el dirigente de voluntad popular no hizo llamado a la violencia, el (sic) no dijo vamos a quemar la fiscalia (sic), vamos a lanzar piedras, con esas palabras es obvio no lo dijo, no hizo ese llamado irresponsable de la violencia, pero dejo claro que Leopoldo Eduardo López Mendoza, es un líder de hecho ella fue conteste en decir que el (sic) es un excelente líder, es decir mueve masas, como los estudiantes y las personas jóvenes fueron manipulados por ese llamado que hizo este señor [...] (Prosecutor Sanabria, CS: 119).

(29) Es un pueblo a quien el conoce muy bien, es un pueblo a quien él ha estudiado, es un pueblo que esta conformado en su mayoría por jóvenes) –. (Judge Barreiros p. 261, citing the linguistic expert verbatim, p. 165).

(30) Que viva Venezuela! Que viva Venezuela y que vivan las mujeres y hombres que hoy estamos convencidos de que Venezuela tiene que cambiar// (López, Text 2).

(31) Y yo quiero comenzar haciéndole un reconocimiento a los jóvenes venezolanos// A los jóvenes venezolanos que hoy están en las calles/ pero muy especialmente a los que han sido reprimidos/ a los que hoy están presos/ a los que han sido heridos de bala/ a los

que han sido reprimidos por la guardia/ por el ejército/ por la policía y por los grupos irregulares del gobierno// (López, Text 2).

(32) Le queremos decir a esos jóvenes que no están solos// Sus padres/ sus abuelos y toda Venezuela está con los jóvenes venezolanos//. (López, Text 2).

(33) Yo decidí presentarme voluntariamente ante una justicia que desde mi perspectiva, desde mi vivencia y desde el análisis que hago de lo que ocurre en el país es injusta, injusticia injusta pero tome la decisión de presentarme voluntariamente porque no tengo intenciones de irme del país, porque no tengo intenciones de esconderme de nadie y porque asumo mi responsabilidad de haber convocado a una manifestación el día 12 de febrero pacifica no violenta en el contexto de una protesta nacional de la indignación de un pueblo con respeto (sic) a lo que está ocurriendo. (López, CS: 33).

(34) ¿Y qué salida estamos proponiendo nosotros?// Nosotros estamos conscientes que la salida tiene que ser primero que nada popular/ popular con la gente/ gente/ gente/ gente que quiera la salida/ gente que quiera ser la fuerza de un pueblo que busque cambio// Segundo una salida democrática y tercero/ una salida dentro de la constitución// Existen distintas herramientas que nos ofrece la constitución y nosotros debatiremos con el pueblo cuál de esas herramientas es la más oportuna/ cuál de esas herramientas nos podrá encauzar hacia un cambio lo antes posible/ hacia un cambio lo más profundo/ lo más democrático/ y que nos permita avanzar hacia una mejor Venezuela// (López, Text 1).

(35) Ese topos de cambio de sistema y cambio de gobierno es muy importante porque ese sería el inicio de la máquina retórica del ciudadano Leopoldo López, es necesario plantear el cambio aquí el concepto de programas negativos que yo expliqué entra perfectamente, o sea, es necesario una transformación, cómo se va a dar esa transformación, bueno se puede dar mediante unos mecanismos que en esta propuesta conceptual del ciudadano Leopoldo López se denominó la salida, a mi entender ese sería como el cambio necesario para que se de esa transformación de cambio de sistema allí en el programa negativo esta muy claro, es necesario cambiar el actual sistema que hay por otro sistema que sea más democrático, palabras del ciudadano Leopoldo López, donde la justicia sea para todos. (Juez Barreiros, CS: 262; verbatim quote CS:173).

(36) Ahora yo sí creo eso, que yo creo que en Venezuela no vivimos en democracia, yo sí creo que Nicolás Maduro no es un Presidente demócrata, yo si reo (sic) que en Venezuela no hay autonomía en los poderes públicos yo si reo (sic) que en Venezuela lamentablemente el sistema de justicia esta colonizado y penetrado por la dominación del partido de gobierno, yo sí creo eso yo sí creo que lamentablemente hoy los venezolanos a pesar de que pedimos a veces de rodillas justicia no tenemos acceso a la justicia porque el estado venezolano se está desmoronando yo estoy convencido que los poderes públicos en Venezuela están secuestrados, yo estoy convencido de que lamentablemente el manejo de la política militar es contraria a la constitución, allí está la constitución lo que establece

con respeto a autonomía en poderes Públicos, de libertades, de la función de la Fuerza Armada Nacional y todo eso se violenta. (López, CS: 34).

(37) es la distinción que hace el ciudadano Leopoldo López y qu(sic) se repite a lo largo de toda la exposición que el hace y es la distinción muy clara entre pueblo y gobierno hay que diferenciar muy bien el pueblo del gobierno, el pueblo es bueno, el gobierno no, el pueblo es humillado, el pueblo esta siendo objeto de violaciones a sus derechos humanos en cambio el gobierno no entonces hay como una distanciación entre lo que yo sin ser abogado pero conocedora de la constitución como toda venezolana entiendo entre poder constitutivo y poder constituyente, es decir, por un lado está una clara diferenciación el pueblo está en contra del gobierno, el pueblo ademas (sic), el pueblo considera legitimo desconocer a un gobierno ilegitimo porque ese es un argumento que se repite es un topos que se repite, el de gobierno ilegítimo se repite, si nosotros partimos de la premisa de lado ilegitimo e evidente que lo desconozcamos, no solamente s evidente es razonable que lo desconozcamos, si yo pierdo la autoridad como madre no puedo exigir que el dia (sic) de mañana mi hija haga algo en contra de las normas que yo le he dado entonces si se deslegitima el gobierno y se dice claramente que esto es un gobierno ilegítimo pues salir a la calle a conquistar la democracia por medios constitucionales, en el dia (sic) de hoy constitucionalmente, es muy complicado, o sea discursivamente es una tarea titánica, yo lo se desde el punto de vista lógico, argumentativo, como hablar de lucha de sublevación de salir a las calles, de gobierno ilegítimo, de narcotraficante, de salir constitucional la democracia rápido, bueno eso no es una acotación que tiene que ver con mi análisis pero evidentemente no es mi palabra contra la suya simplemente es lo que yo conseguí en ese análisis, el análisis prosódico de ese discurso. (Juez Barreiros, CS:263; verbatim quote of the linguistic expert CS: 177).

(38) Yo no podía creer ni puedo creer que nosotros estemos yendo a un Juicio sin que podamos presentar una prueba, un testigo alternativo a lo que es el planteamiento del Ministerio Público [...] con que (sic) elemento probatorio alternativo del análisis semiológico está haciendo una militante del PSUV, con que (sic) prueba alternativa vamos a presentar nosotros si nosotros no las presentan, estamos aquí frente a un paredón de fusilamiento que no solamente es a nosotros como personas, es a la democracia, es la justicia, es a la constitución, es al Código Orgánico Procesal Penal, es a este edificio, es a las togas que ustedes se ponen, es a su investidura como Juez. (López, CS: 38).

(39) Leopoldo utiliza, que muchos de ellos pueden estar justificados, no son ciertos, por ejemplo si uno va a hablar y aquí el concepto de verosimilitud es importante porque se dicen muchas verdades y unas que no es tan ciertas y entonces solo entra en el mismo renil (sic) de la gobernación decir que es un estado narcotraficante, eso hay que probarlo hay que tener las pruebas en la mano más allá de una noticia de ABC donde se diga cualquier cosa entonces son referentes inducidos, son anclajes referenciales que tienen mucha fuerza interlocutiva sobretodo en un líder porque yo puedo en este momento decirle a usted cualquier cosa pero es muy difícil que lo que yo diga genere una acción determinada, pero cuando un líder habla a una masa que además cree en él, y una masa que le ha entregado su confianza buenos (sic) hay que terne (sic) una responsabilidad

discursiva para asumir ese compromiso. (Juez Barreiros, CS: 263, verbatim quote of the linguistic expert, CS: 177).

(40) Ella menciono (sic) que el ciudadano Leopoldo Eduardo López Mendoza utilizaba la palabra Venezuela, como si fuera representante del territorio nacional. (Sanabria, CS: 76).

(41) "La Experta [...] indico (sic) aquí que el discurso conduce a una acción, puede llevar a la violencia como lo que ocurrió ese día" – (Nieves, CS: 73).

(42) [...] y yo dentro de todo agradezco que mi Juicio sea y este Juicio sea sobre mis discursos, porque entonces tendríamos que analizar los discursos, es decir ustedes no se van a poder salir de lo que son los discursos que yo mismo dije, porque ustedes me metieron preso por los discursos, analicemos los discursos [...] (López, CS: 41).

(43) [...] mire yo le respondo con toda responsabilidad los muertos y los heridos son responsabilidad del gobierno oyó, el asesino de Bassil Da Costa tiene uniforme, tiene credencial y el arma con la que mato a Bassil Da Costa es un arma del estado venezolano (CS: 42) (Bold in the original).

(44) "'¿Usted nos podría indicar si efectivamente hay un discurso suyo que indique que su adversario es Maduro y vamos por las cabezas de los poderes públicos?" (Sanabria, CS: 44).

(45) [...] jamás hemos planteado nosotros un llamado a la violencia y menos al que están los discursos como elementos probatorios. (López, CS: 45).

(46) "[...] al final doctora lo que usted lo que está tratando de crear es una vinculación de lo que nosotros estamos planteando con unas piedras que lanzaron unos jóvenes porque habían atado a un compañero en su cara frente a ellos, el Ministerio Público está buscando una relación donde no la hay". (López, SC: 45).

Online grooming: moves and strategies

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Abstract. *Using transcripts of chatroom grooming interactions, this paper explores and evaluates the usefulness of Swales' (1981) move analysis framework in contributing to the current understanding of online grooming processes. The framework is applied to seven transcripts of grooming interactions taken from perverted-justice.com. The paper presents 14 identified rhetorical moves used in chatroom grooming and explores the broad structures that grooming conversations take by presenting these structures as colour-coded visualisations which we have termed "move maps". It also examines how some individual linguistic features are used to realise a single move termed "Assessing and Managing Risk". The findings suggest that move analysis can usefully contribute in two key ways: determining communicative functions associated with 'grooming language' and the visualisation of variation between grooming interactions.*

Keywords: *Online grooming, child sexual abuse, move analysis, moves, strategies.*

Resumo. *Utilizando transcrições de interações de aliciamento em salas de conversa online, este artigo explora e avalia a utilidade do quadro de análise de passos proposto por Swales (1981) e o seu contributo para compreender os atuais processos de aliciamento online. Este quadro é aplicado a sete transcrições de interações que constituem aliciamento, retirados do website perverted-justice.com. O artigo apresenta a identificação de 14 passos retóricos em situações de aliciamento em salas de conversa e explora as estruturas genéricas das conversas de aliciamento, apresentado estas estruturas como visualizações codificadas a cores que designamos como "mapas dos passos". Analisa, ainda, de que modo se utilizam alguns traços linguísticos específicos para implementar um único passo, a que se designa "Avaliar e Gerir o Risco". Os resultados deste estudo indicam que a análise dos passos pode fornecer um contributo essencial de duas formas: determinar as funções comunicativas relacionadas com a "linguagem de aliciamento" e fornecer a visualização da variação entre interações de aliciamento.*

Palavras-chave: *Aliciamento online, abuso sexual de menores, análise de passos, passos, estratégias.*

Introduction

Studies of the prevalence of online sexual conversations between adults and children show it to be a growing social problem. These conversations occur most commonly in chatroom and instant messaging environments (37% and 40% respectively) (Wolak *et al.*, 2006). Although figures vary, one study found that one in three children in the US between 10 and 17 years old had been exposed to sexual material online, and one in seven had received online sexual solicitations (Wolak *et al.*, 2006). While the prevalence of online sex abuse and grooming in the UK is currently under-researched (Whittle *et al.*, 2013), UK charity Childline found that 60% of those young people surveyed had been asked for a sexual photograph or video (Foundation, 2013). This is particularly worrying with regard to an apparent growing trend in sexual extortion; a process by which offenders coerce victims into providing sexual imagery or engaging in sexual acts, by threatening to disseminate previously obtained imagery (Europol, 2014). Furthermore, of the reported 14% increase in the number of child sexual abuse (CSA) reports in 2013 from the previous year, 16% of these concerned online environments (Exploitation and Centre, 2013). Perhaps even more worrying is that advice and tips pertaining to child grooming are being shared in online hidden internet networks collectively known as the 'dark net' (Davidson and Gottschalk, 2011; McCartan and McAlister, 2012; Payne, 2014) and Briggs et al.'s (2011: 81) clinical study mentions "one subject possessed deviant material titled "how to solicit minors online"". This suggests that in the same way that some groups of offenders create and participate in groups to exchange sexual abuse imagery, so too groomers may be grouping together online to exchange grooming advice and guidance. With increasing awareness about underground networks, and the ever-growing online population (now 40% of the world and counting (Internet Live Stats, 2015) it seems inevitable that these serious problems will continue, despite various combative measures implemented by law-enforcement agencies, educational authorities and internet communication companies.

The fast-growing literature on this topic is largely dominated by psychology and criminology. This is perhaps unsurprising, but considering that online sexual abuse interactions occur almost entirely through a process of written communication, very little of our understanding is linguistically informed. This paper therefore aims to demonstrate the utility of a single linguistic method in contributing to the current understanding of online child sexual abuse interactions: Swales' (1981) move analysis.

Research aims and approach

This paper explores how Swales' (1981) move analysis might usefully contribute to our understanding of chatroom grooming. Specifically we have the following aims:

1. To identify the common rhetorical moves used by sex offenders in online sex abuse conversations
2. To examine some individual linguistic features of a single move and explore how they are used to realise broader goals of the move
3. To establish whether online sex abuse interactions follow a typical move structure
4. To evaluate the usefulness of move analysis in the context of online grooming conversations

Online child sexual abuse: psychological and criminological perspectives

As online child sexual abuse is a relatively new phenomenon, academic research in the area is still in its infancy, and most that does exist expectedly emerges from psychological and criminological perspectives. However, a small handful of linguistic studies have been conducted, and resultant typologies of online sex offenders and grooming and sex abuse processes have been suggested (see O'Connell, 2003; Williams *et al.*, 2013; Black *et al.*, 2015).

Early models of CSA focussed on offenders' psychology (Finkelhor, 1984), and tended to neglect the processes involved; particularly the gradual and considered approaches associated with grooming (Craven *et al.*, 2006; Ward *et al.*, 2006). It has been recognised that the presence of grooming significantly impacts whether abuse actually occurs, leading researchers to give it greater attention (Whittle *et al.*, 2013) and develop models describing the process (e.g. Craven *et al.*, 2006; Webster *et al.*, 2012. One of the most widely accepted models for grooming comes from Craven *et al.* (2006: 297) who established three forms of grooming:

1. self grooming
2. grooming the environment and significant other
3. grooming the child

This model responded to concerns that previous research had focused only on the children, neglecting the attention paid by groomers to children's families, communities, and local criminal justice systems in providing a supportive context for sexual abuse to occur (McAlinden, 2006).

Craven's model derives from work on offline grooming, but each of the three identified grooming types are found in research of online grooming (e.g. O'Connell, 2003; Williams *et al.*, 2013; Black *et al.*, 2015. We take our definition of grooming from Craven *et al.* (2006):

> A process by which a person prepares a child, significant adults and the environment for the abuse of this child. Specific goals include gaining access to the child, gaining the child's compliance and maintaining the child's secrecy to avoid disclosure. This process serves to strengthen the offender's abusive pattern, as it may be used as a means of justifying or denying their actions. (p. 297).

One issue here is that all sexualised online conversations between adults and children are typically captured by such a definition. We find this unsatisfactory as a general descriptor as "grooming" implies a preparatory act. Both the research literature and our wider data sets demonstrate that many "grooming" interactions include sexual acts themselves. The interactants may discuss sexual fantasies and plans but it is also typical of these conversations that the adult may command or request the child to perform sexual acts to be viewed via webcam. We do freely use the term "grooming" and we recognise that engagement in less severe sexualised activity can groom a child for more severe actions but where possible we restrict our use of the term grooming to its preparatory meaning. For interactions involving sexual activity we also refer to "child sexual abuse conversations" and similar constructions.

While online and offline grooming and child sex abuse strategies often overlap (Marcum, 2007; Wolak *et al.*, 2010; Black *et al.*, 2015), it is apparent that online environments encourage and enable a distinct set of techniques (O'Connell, 2003; Williams *et al.*, 2013;

Black *et al.*, 2015), and even new types of sex offender (Briggs *et al.*, 2011). This is partly a function of the anonymity offered by chatrooms (O'Connell, 2003; Berson, 2003; Ospina *et al.*, 2010; Briggs *et al.*, 2011), which enables offenders to repeatedly modify their identities in order to maximise their appeal to victims, as well as initiate the grooming process with multiple potential victims at once (Berson, 2003).

Online grooming and sexual abuse is inherently predatory and manipulative in nature (Berson, 2003; Malesky, 2007). Offenders are known to search for potential victims in chatrooms (Berson, 2003; Malesky, 2007) and build rapport with their targets using personal information gathered (Berson, 2003), promises of love and compassion (Marcum, 2007) and flattery (Ospina *et al.*, 2010; Williams *et al.*, 2013; Black *et al.*, 2015). Part of the process of grooming is an attempt to desensitise victims to sexual content by introducing sexually explicit conversation (Ospina *et al.*, 2010; Briggs *et al.*, 2011) and pornographic imagery, sometimes including nude pictures of groomers themselves (Berson, 2003; Malesky, 2007; Briggs *et al.*, 2011). Groomers often attempt to evaluate their target's willingness to engage in sexual contact and maintain secrecy (Craven *et al.*, 2006; Wolak *et al.*, 2010; Briggs *et al.*, 2011) before arranging offline contact (Webster *et al.*, 2012; Whittle *et al.*, 2014). It is worth noting, however, that not all chatroom groomers share the ultimate goal of meeting their victims offline (see Briggs *et al.*, 2011 for discussion on the differences between contact- and fantasy-driven offenders).

Language analyses of online sex abuse

One of the most influential studies of the linguistic interaction comes from O'Connell (2003), who consolidated the aforementioned grooming strategies into a unified typology of online grooming to highlight how communication technologies have impacted the grooming process. Working as a psychologist and posing as young females online, O'Connell gathered and analysed around 50 hours of chatroom conversations between herself and would-be child groomers. Using what appears to be a thematic content analysis—which she describes as "sociolinguistic profiling techniques" (2003: 8) —- she established a six-stage model of online grooming, purporting that groomers may progress through the following stages:

1. Friendship forming. Offender attempts to foster a relationship with the child by inquiring about personal details, information regarding other social networks frequented by the child, and asking for non-sexual photographs of the child.
2. Relationship forming. Offender attempts to extend the friendship stage by "creating an illusion of being the child's best friend" (2003: 7). This involves inquiring about the child's family, school life, friends and hobbies.
3. Risk assessment. Offender attempts to gauge the likelihood of detection by gathering information about the child's surroundings, computer location and possible monitoring of household internet activity.
4. Exclusivity. Offender attempts to establish mutual trust and dependency by alluding to the sharing of special bonds and understanding, and suggesting secrets can be shared with trust.
5. Sexual. Offender attempts to accustom the child to sexualised conversation by introducing sexual language and topics, and modifying sexual language in a way that best ensure a child's continued engagement.
6. Fantasy enactment. Offender attempts to engage the child in online or offline sexual activities using gentle persuasion and overt coercion.

This model was pioneering in terms of demonstrating the usefulness of analysing the language used in chatroom grooming conversations to determine common patterns in the process, and has significantly influenced subsequent research (e.g. Gupta *et al.*, 2012; Williams *et al.*, 2013; Black *et al.*, 2015. Unfortunately, O'Connell's methods are not explicitly described, so it is difficult to see exactly how the proposed stages were identified.

A further commonly cited criticism is that this model portrays grooming as a gradual process. While online grooming has been likened to a gradual seduction (Berson, 2003; Craven *et al.*, 2007; Ospina *et al.*, 2010), more recent studies suggest that the strategies involved are employed rapidly, and typically do not occur in the suggested sequence (Webster *et al.*, 2012; Williams *et al.*, 2013; Black *et al.*, 2015). Black et al.'s (2015) analysis of 44 chatroom transcripts employed both Linguistic Inquiry Word Count (LIWC) and Content Analysis methods, and found overlapping but different techniques used by groomers and whilst some of these were consistent with O'Connell's (2003) model, it was found that strategies of assessing risk, introducing sexual content and arranging physical contact were employed extremely early on in conversations.

In similar a vein Williams *et al.* (2013) found each of O'Connell's (2003) grooming stages to be present in their data, however, every one occurred within the first hour of conversation. One response might be that O'Connell's (2003) findings accurately reflected chatroom grooming at the time of her data collection, but that grooming practices have indeed evolved in the intervening years to become much more accelerated.

A final criticism of O'Connell (that also applies to Williams *et al.*, 2013, Black *et al.*, 2015, and indeed this paper) is that the analysis of transcripts between groomers and adults posing as children may differ from sexual abuse conversations with actual children. Williams *et al.* (2013: 150) point out that undercover researchers are likely predisposed to "act the fantasy victim" and maintain conversation despite content being uncomfortable. This may also be true of the decoys used by online vigilante groups studied in current data. Unfortunately, we found no academic literature regarding decoy language or its impact on grooming strategies. Additionally, Perverted Justice (PVJ) – the organisation who train online decoys and provide most of the data used in this line of research – offers no specific details regarding their training methods and practices. The problems of working with naturally occurring abuse conversations are discussed in detail by Grant and MacLeod (2016) and it has to be noted that this limitation is common to most studies in this area. But although the interactions examined in this paper do not involve 'genuine victims', they do involve convicted offenders, and in this sense it is fair to assume that the grooming strategies are in themselves authentic. Preliminary analysis of moves in genuine sex abuse conversations, being carried out in related work, is suggesting some additional moves compared with the PVJ data in the analysed in this paper.

Genre theory and move analysis

Swales' (1981) move analysis arises from genre studies and aims to describe the generic structures of texts that typically comprise a given genre (Biber *et al.*, 2007; Upton and Cohen, 2009). The current study however, does not examine grooming conversations as a genre per se, although it would be interesting to address the issue of whether it is possible to identify a genre or related genres of online grooming and sexual interactions by using an analysis of rhetorical moves. Rather, it takes move analysis for its pragmatic uses,

aiming primarily to determine some of the conversational goals of online grooming and how these can be achieved (or at least attempted), and whether the identified grooming moves follow any sort of sequential process.

A move, as Biber *et al.* (2007: 23) put it, "…refers to a section of a text that performs a specific communicative function". Individual moves work to achieve the broader communicative purpose of the genre (Swales, 1981, 1990), and may encompass individual steps which realise the move (Swales, 1981). It is the identified move set that gives a genre its "typical cognitive structure" (Bhatia, 1993: 30). To illustrate, Table 1 details Swales' (1981) proposed move structure of research article introductions.

Moves	**Steps**
1. Establishing research field	1. asserting centrality of the topic, or 2. stating current knowledge, or 3. ascribing key characteristics
2. Summarising previous research	1. using strong author-orientation and/or 2. using weak author-orientation and/or 3. using subject orientation
3. Preparing for present research	1. indicating research gap(s), or 2. raising questions about previous research, or 3. extending finding(s)
4. Introducing present research	1. stating purpose of present research, or 2. outlining present research

Table 1. Swales' (1981) move structure of research article introductions (adapted from Bhatia, 1993).

Common or conventional moves may be considered obligatory, while others are optional, and moves and steps may vary in length and order, and be repeated (Swales, 2004; Biber *et al.*, 2007; Tardy, 2011; Solin, 2011). Such variations are thought to reflect the intentions of the author, and to account for this element of choice, some (e.g. Bhatia, 1993 prefer the term strategy instead of step (Biber *et al.*, 2007). We too adopt the term strategy for the same reason. Once a move structure has been established, moves and strategies are described in terms of their typical linguistic characteristics (Bhatia, 1993; Baker, 2006; Biber *et al.*, 2007; Upton and Cohen, 2009). Thus in this paper we take the position that moves may be achieved through different linguistic strategies and that within each strategy a number of linguistic features may be found which help identify that strategy.

Although move analysis has been well demonstrated in the literature and the process for the identification of moves is described by Biber *et al.* (2007) there appears to be a significant issue in determining the reliability of move analyses. The question arises whether or not another researcher would identify different move sets for particular genres or texts and this needs to be addressed.

Data

Seven transcripts were obtained from the Perverted Justice (PVJ) website (http://www.perverted-justice.com) and detail interactions between online sex offenders and

their targets (the term 'target' is used deliberately, as the offenders' interlocutors in these cases were not children or genuine victims). PVJ is an American organisation that uses adult volunteers, or "decoys" who pose as minors in chatrooms and converse with would-be child groomers (Perverted Justice, 2008). Decoys pass the acquired information on to law-enforcement agencies, and where cases lead to conviction, full transcripts are displayed on perverted-justice.com. The declared aim of PVJ is that knowledge of the presence of PVJ decoys is intended to reduce the number of genuine grooming instances, by instilling an "extra bit of paranoia" in the minds of adults seeking to groom children online (Perverted Justice, 2008).

Ethical considerations

All transcripts are publicly available on the PVJ website. Where phone numbers or addresses appear in transcripts, these are removed by PVJ and replaced with "*edit number/address*". Thus the acquisition or use of this data might generally be considered acceptable; even so, all transcripts were further anonymised in that all participants' formerly displayed usernames were removed and replaced with O1, O2, etc. for offenders, and D1, D2, etc. for decoys.

With University ethical approval transcripts were acquired from the "Random Convictions" section of the PVJ site, and selected according to the following criteria:

1. That they demonstrate at least some grooming behaviour, i.e. transcripts whereby offenders immediately attempt to initiate sexual interaction were excluded. This was to ensure the study remained focused on grooming interactions as distinct from other possible forms of online sexual abuse conversations.
2. That all interactions occurred within a short time period (2006-2009). This was to minimise the chance that technological developments could cause significant variation in the grooming strategies identified.
3. That they demonstrate (as far as possible) full interactions, i.e. transcripts indicating a significant amount of offline or unpublished communication (e.g. text messages, emails, telephone conversations) were excluded. This was to ensure that the interactions could be explored to the fullest extent.

The above criteria reduced the number of appropriate available transcripts to seven. Full transcripts are available in Appendix C.

Table 2 displays transcript characteristics. Transcripts, offenders and decoys are hereafter referred to by number, e.g. T1, T2, O1, O2, D1, D2, etc.

Transcript/ Offender/ Decoy	Gender of offender	Offender age at time of offence	Offence location	Year of offence	Perceived target characteristics	Interaction span
T1/O1/D1	M	27	USA	2009	14 year old female	2 weeks
T2/O2/D2	M	30	USA	2007	13 year old female	3 days
T3/O3/D3	M	36	USA	2009	12 year old female	1 day
T4/O4/D4	M	27	USA	2009	14 year old female	2 days
T5/O5/D5	M	36	USA	2009	13 year old female	1 day
T6/O6/D6	M	26	USA	2006	12 year old female	6 days
T7/O7/D7	M	25	USA	2009	13 year old female	16 days

Table 2. Transcript characteristics from perverted-justice.com.

As demonstrated, all offenders are males between 25 and 36 years old and committed their offences in the US between 2006 and 2009. Offenders believed their targets to be females between 12 and 14 years old. Separate conversations were determined either by a significant lapse of time, or where parties clearly indicated their departure/re-entrance in a conversation.

Identifying moves

The procedure for identifying the moves loosely followed the 10 steps of conducting move analysis as outlined by Biber *et al.* (2007) but it rapidly became apparent considerable linguistic intuition and judgement were required in the identification and naming of possible moves from within the corpus and then in the tagging of these moves to specific sections of text.

This process involved identifying the broader communicative purposes of chatroom grooming which were in part derived from the previously noted definition of grooming of Craven *et al.* (2006). Each offender utterance was characterised as performing a particular or primary rhetorical function (e.g. building rapport, introducing sexual content) before being grouped according to functional and semantic themes. Unsurprisingly, there was some overlap with the themes identified by O'Connell (2003), Williams *et al.* (2013) and Black *et al.* (2015), but several additional themes were observed. Each theme was then identified as either a broad-purpose move or a lower-level strategy working to achieve a move. A pilot test was conducted whereby a single transcript was colour-coded for the presence of each identified move, which led to the adjustment and fine-tuning of move definitions, in attempt to ensure a clear set of criteria for the identification of moves.

All transcripts were then colour-coded according to the identified moves. Reliability of coding was reinforced by having a second coder independently analyse 10% of the data according to the preliminary move set. For lines 78-420 of Transcript 1 this second coder was tasked with categorising each offender utterance (150 in total) as realising one or more of the 14 identified moves, but the reliability analysis focussed on what was identified by each coder as the the *primary* move of each utterance. This analysis showed an 82% agreement between the two coders in the first instance. Further examination of the results showed some overlap between the categories *Building Rapport* and *Maintaining current interaction* and also overlap between *Immediate Sexual Gratification* and *Maintaining/escalating sexual content.* After some discussion it was decided that these were useful distinctions to maintain and the descriptors for each were edited to clarify the distinctions between categories. Other discussions around the reliability test led to further refinements of the move descriptions and the addition of three new moves. The most significant alteration of the initial move set came from the realisation that many grooming utterances fell somewhere between the moves identified as *Building Rapport* and *Maintaining/Escalating Sexual Content*; such utterances seemed better accounted for as a newly identified move: *Sexual Rapport.* Once all transcripts were coded according to the new move set, the move structures were compared, and patterns and differences identified. Finally, one move – *Assessing and Managing Risk* – was selected for a closer analysis of the linguistic features observed. At this stage, all utterances pertaining to *Assessing and Managing Risk* were isolated and examined for common linguistic patterns and or any individual linguistic features of note. The small quantity of data allowed this

to be achieved through an informal analysis and comparison of the selected moves and so more formal corpus methods were unnecessary.

Reflections

Our principal reflection on this process is that move analysis can be hard.

Although communicative purpose is generally considered to be a stable measure (Bhatia, 1993; Fairclough, 2003; Solin, 2011), distinctions can be fine-grained, and difficult to discern (Bhatia, 1993). A further issue is that a single utterance can achieve several distinct moves simultaneously, and identical utterances can serve contrasting functions. The coding process therefore relies largely on linguistic sensitivity and intuitive decision-making. Online transcripts are of course original datasets (as opposed to transcripts of spoken conversations) and thus show full interactions. The researcher can therefore read all the contextual information available to the participants in the chat and hope to infer the most likely communicative purpose. This is a tentative process though. In related work we are exploring whether identified moves can be closely associated with specific speech acts which in turn might rely on associated sets of verbs. Although beyond the scope of the current paper this may provide a method of deriving lexical cues to the identification of specific strategies and moves.

For the current study the piloting, redrafting and then the reliability testing was intended to provide as much rigour as possible in the identification of moves and the tagging of the texts.

Describing moves and strategies

The analysis described above revealed 14 common rhetorical moves and 87 strategies that contributed to achieving these moves across the seven transcripts. These are presented in full in Appendix A. The following section discusses only the most prominent strategies serving each move. Examples provided are taken directly from the transcripts unedited (so any typos are original), and all emphasis added is explicitly stated. It will become apparent that examples for each move may in fact work to realise a range of moves, therefore a certain degree of overlap will be seen.

The moves

Greetings are simply defined as words or phrases used to initiate conversations with targets, and are realised by common forms such as “hi” (T1, line 1) and “hi there” (T2, line 1).

Building Rapport is defined as attempts to establish and maintain a friendship/relationship with a target. Strategies include giving compliments, e.g. “pretty pic of u” (T1, line 91), inquiring about targets’ age, sex and location, e.g. “asl” (T3, line 6), and hobbies and current activities, e.g. “what do u listen to” (T1, line 131). Other strategies include using and eliciting statements of trust and reassurance, e.g. “ok I promise” (T7, line 145) and sympathy, e.g. “she was cheating on me” (T2, line 86), as well as positive evaluations e.g. “wow that’s cool” (T5, line 162) and attempts to impress in a non-sexual manner, e.g. “won a couple hundred at the casino” (T1, line 430). Additional strategies include requests for email addresses, and photographs and video calls which are not explicitly sexual.

Sexual Rapport is defined as the process of establishing and maintaining a positive sexual connection or relationship with a target. Strategies include giving sexual compliments, e.g. “sexy voice” (T2, line 324), portraying sex as pleasurable or beneficial to

targets, e.g. "u may like" (T4, line 175), and teaching/guidance regarding sexual issues, e.g. "do u know about the birds and the bees" (T4, line 96). Another strategy involves offering perceived control of sexual topics, e.g. "ask me something, anything goes" (T2, line 173). Additionally, this move involves diminishing targets' sexual anxieties, e.g. "yes offcourse [I'll bring condoms]" (T5, line 242), retracting sexual questions and comments, e.g. "never mind" (T4, line 268) and attempting to mitigate the severity or intensity of sexual content e.g. "have u masterbate before lol" (T4, line 132, emphasis added).

Maintaining Current Interaction is defined as attempts to ensure the continued flow of conversation. Strategies include backchanneling, e.g. "k", "ya", "i c" (T7), checking a target's presence in a conversation, e.g. "u still there" (T4, line 272), and explaining technical communication difficulties, e.g. "I got booted" (T5, line 156).

Assessing Likelihood and Extent of Engagement is defined as attempts to gauge a target's level of willingness to engage in sexual activity and/or offline contact, as well as the likely extent of sexual engagement and level of target pliability. Strategies include eliciting responses to hypothetical or proposed sexual scenarios, e.g. "would u get naked if i was there" (T7, line 54), probing ideas for sexual activities, e.g. "tell me what you wanna do when we hang out" (T2, line 257), and inquiring about previous sexual experiences and partners, e.g. "how old was the guy u had sex with?" (T6, line 18). Other strategies include checking consent to engage sexually and/or meet offline and giving/eliciting statements of seriousness, e.g. "i'm serious ifyou are" (T2, line 272). Also included are references to inappropriateness of behaviour/situation, e.g. "i can go to jail" (T7, line 57) and age gaps, e.g. "ohh, ur almost half my age" (T5, line 21), and inquiring about a target's practical ability to send photographs and engage in video calls.

Assessing Accessibility is defined as attempts to establish a target's physical distance from the offender, and other barriers which may prevent or disrupt access. Strategies include requesting general location, e.g. "so where u live at" (T1, line 147), checking targets' and parents' schedules, e.g. "when will u be home from school" (T7, line 163), "ur mom goes away on weekends" (T1, line 312) as well as checking targets' immediate surroundings, e.g. "is ur dad home?" (T6, line 243). Other strategies include inquiring about targets' relationship status, e.g. "u got a bf" (T7, line 24), and friends and family members, e.g. "do u have any bros or sisters" (T6, line 246). Strategies used to assess accessibility can initially look like rapport building.

Assessing and Managing Risk is defined as attempts to gauge and manage the types and levels of risk associated with detection, as well as accusation and conviction. Assessment-specific strategies include inquiring about a target's home life and relationship status, referring to age gaps and inappropriateness of behaviour, and giving/eliciting statements of privacy and secrecy, e.g. "it would have to b very privte" (T3, line 79). Management-specific strategies include diminishing the seriousness of sexual comments, e.g. "would u like to taste lol" (T4, line 170, emphasis added), designating topic control, e.g. "what would U like to do" (T5, line 175) and assigning blame or responsibility to a target or others, e.g. "don't want u getting caught", (T4, line 68). In addition to this, offenders may request photos, phone calls and voice messages in attempt to verify a target's identity or attempt to implement safety measures regarding a planned offline meeting, e.g. "put a flower on the door if all is clear" (T3, line 293). Assessment strategies are generally fairly conspicuous, but Management strategies are often subtle.

Assessing Personal Criteria Fulfilment is defined as information gathering to determine whether targets fulfil the personal requirements of offenders (i.e. young and female in all cases here), as well as physical preferences. Strategies include requesting age, photographs, videos and phone calls, as well as sexual and non-sexual physical descriptions, e.g. "how tall" (T3, line 318), "how big r ur tits" (T3, line 324). Other strategies include inquiring about a target's virginity and sexual orientation, e.g. "ru straight or ru not sure" (T4, line 266).

Assessing Own Role is defined as attempts to gauge the type of teaching and guidance, as well as the level of encouragement or coercion needed to achieve target compliance. Strategies include inquiring about sexual experience and knowledge e.g. "do u know about the birds and the bees" (T4, line 96), and indicating own experience levels, e.g. "i might b alil to advanced 4 u" (T3, line 39).

Introducing Sexual Content is defined as any contributions which introduce sexual topics.

Immediate Sexual Gratification is defined as attempts to achieve or satiate immediate sexual arousal. Strategies include requesting and sharing sexual photographs and videos, as well as phone and video calls. Other strategies include giving and eliciting sexual physical descriptions, e.g. "r u shave" (T7, line 126), eliciting hypothetical sexual scenarios, e.g. "if you were here with me right now, what woul dyou do?" (T2, 401) and instructing targets to perform sexual acts, e.g. "touch ur pussy" (T3, line 381).

Maintaining/Escalating Sexual Content is defined as efforts to ensure the continued discussion of sexual topics. In addition to the sexually-oriented strategies already noted, this move also includes fantasy planning, e.g. "would u wear a skirt with no panties under it" (T7, line 174), expressing sexual desires, e.g. "i wanna lick your pussy" (T2, line 147) and normalising sexual behaviours, e.g. "I met a girl on here the other day and we met last night and she sucked my cock and I licked her pussy" (T2, line 222).

Planning/Arranging Contact is defined as attempts to organise physical contact. In addition to fantasy planning, implementing meeting-related safety measures and suggesting offline meetings, strategies include offering and eliciting timing details, e.g. "i need to b at work bout 11pm" (T3, line 370) and contact information.

Sign Off is defined as contributions which indicate an offender's imminent exit from the conversation. It is realised by common forms such as "bye" and "night" (T3).

Only two identified moves (*Planning/Arranging Contact* and *Sign Off*) did not appear in all transcripts (5/7 and 6/7 respectively), and are therefore considered 'optional' (Swales, 2004). Because the study considers only 7 transcripts, it seemed unreasonable to term those moves occurring in every one 'obligatory' (Swales, 2004) and it is proposed that the remaining moves are best thought of instead as 'conventional'. This is with the exception of *Building Rapport*, which was identified as critical to the selection of interactions demonstrating grooming and can therefore be considered 'obligatory' (Swales, 2004).

Reflections on identified moves

As will be appreciated some of these moves such as *Greeting* and *Sign Off* would be expected in any online chat but others seem very topic specific. Previous researchers (e.g. O'Connell, 2003) have performed content analyses of different types to produce their typologies of grooming behaviours and it is possible that topic rather than struc-

tural features are the defining characteristic of online grooming conversations. There are however moves within these interactions which might also be found in other forensic and non-forensic contexts. Thus moves which are aimed at assessing the extent of interest and maintaining the current interaction may feature, for example, in sales interactions, as might arranging contact. There might be different forensic contexts where assessing risk is an observable move in an interaction and so on.

It may be the case that a particular collection of moves hints at a grooming genre, and if this could be demonstrated with a bigger and more diverse data set this in turn might be used to explore the idea of the existence of communities of practice.

The identified move set indicates that the grooming processes seen here are largely based around victim selection, various types of assessment, rapport-building and sexual content; perhaps surprisingly, no explicit 'persuasion' move was identified. This might be explained by the fact that the offenders' interlocutors were adult decoys tasked with the job of allowing such conversations to continue. As such, they may have demonstrated their compliance easily enough that the offenders were not motivated to increase the level of force asserted.

A further point is that moves do not occur with equal frequency in the corpus. While this was to some extent unsurprising (i.e. *Greetings* and *Sign Offs* were expected to occur fairly infrequently), we were interested in the frequency of the more substantive moves because this might indicate the more prominent communicative purposes involved in online grooming. Figure 1, for example, shows the relative frequency of moves across the seven texts and demonstrates that the most frequent move is that of *Building Rapport*. This may reflect our deliberate selection of transcripts exhibiting at least some grooming behaviour. It is notable therefore that the second most frequent move is that of *Maintaining and Escalating Sexual Content*. This demonstrates that even in transcripts specifically selected as examples of grooming, sexual abuse activity is frequently occurring.

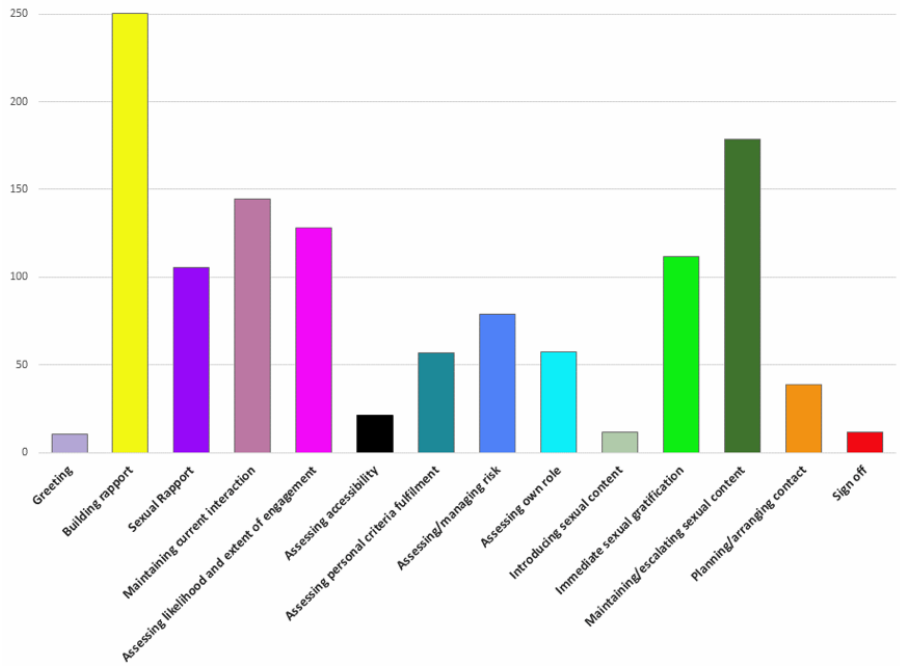

Figure 1. Frequency of identified moves across transcripts.

Finally, it should be noted that while this move analysis identified a number of shared communicative goals, the range of strategies used to achieve them is fairly broad. This suggests that chatroom groomers exercise a considerable amount of linguistic freedom in pursuing their aims, and that chatroom grooming interactions are not bound by rigid conventions as traditional genre types are. This, however, is a widely acknowledged characteristic of internet genres more generally (Erickson, 2000; Giltrow and Stein, 2009). The wide range of grooming strategies observed could be reflective of groomers tending towards individual 'styles' of grooming. As well as exploring whether this analysis can support the idea of a grooming genre, it would also be interesting to explore the level of consistency in grooming moves and strategies across transcripts featuring the same offender and compare this against other offenders.

Analysing a single move – *Assessing and Managing Risk*

In this section we examine the single move, *Assessing and Managing Risk*, and explore the relationship of some of the strategies and linguistic features which realise this move. This move is arguably one of the most crucial in the grooming process, working to minimise the possibility of the offenders' probable worst case scenario: being apprehended and found guilty of child grooming. This move encompassed no 'typical' linguistic features as such, but a point for consideration is whether moves which are realised consistently by a fairly limited set of linguistic strategies should be considered to have more validity than moves where this is not the case.

Some of the linguistic features found in *Assessing and Managing Risk* are unsurprising, for example the use of WH-questions referring to people close to the victim:

136. O3. (11:35:02 PM): who u gonna b wit
230. O3. (12:14:22 AM): what time is moms leaving
123. O5. (5:46:31 PM): when is she comein bak

Such strategies are fairly well documented in existing research (see O'Connell, 2003; Williams *et al.*, 2013 and Black *et al.*, 2015). However, management and mitigation strategies are less well explored. The following examples show how one offender attempts to manage the risks associated with his impending offline meeting with a target. The utterances are made towards the end of the interaction, and the offender believes he will be meeting the target the following day:

228. O3. (12:13:42 AM): hey give me ur address and ph #
306. O3. (1:12:13 AM): send me some pics
432. O3. (1:59:04 AM): dont tell any1 about this
439. O3. (2:00:38 AM): give address again

As demonstrated, *Assessing and Managing Risk* for this offender is often realised by imperative commands, which aim to elicit or confirm information regarding the target's contact details, identity, specific location and promises of secrecy. The imperative form expresses a sense of importance and urgency, suggesting that obtaining the requested information is crucial to the offender at this point in the interaction, and that his intention to meet the target offline is sincere.

These examples have illustrated some of the ways in which offenders *Assess and Manage Risks* associated with detection, but the risk of conviction requires slightly different strategies, the linguistic realisations of which are often subtle and complex. For

example, a commonly occurring strategy used to this end is the elicitation of sexual content, which sometimes involves asking questions about what the target wants:

25. O2. (11:34:34 PM): so, what do you wanna know about me?
92. O2. (11:55:37 PM): where do you want it?
269. O2. (11:21:02 PM): where wul dyou want me to cum then?
94. O3. (11:18:26 PM): so how far do u want to go?

Posing questions using the second person pronoun "you" or "u" shifts responsibility away from the offender, putting the onus of creating sexual content directly onto the target. Also, the use of the WH-question type (see Cheng, 1997) presumes the target's positive and immediate desire; there is no question if the target wants anything, just "where" and "how far". This makes it harder for the target to deny harbouring a sexual desire, than if questions were posed as polar interrogatives, i.e. 'do you want…'. Additionally, the use of "want" projects a stronger sense of inclination onto the target than other available choices, i.e. 'would you like…', which also lessens the target's ability to deny a sexual interest. These features might also serve to sustain an offender's inaccurate cognition that his target actually does wish to engage sexually (Hall and Hirschman, 1992). They may also later allow offenders to more easily assign responsibility to targets and deny their own.

Another feature which serves to diminish responsibility is found in Transcripts 4 and 6, and is termed here the 'mitigating lol':

132. O4. (12:41:03 AM): have u masterbate before lol
154. O4. (12:49:41 AM): if u get another cam will u show to me lol
166. O4. (12:56:21 AM): do u think my dick is big lol
64. O6. (8:25:08 PM): geez my dick is really hard right now lol
292. O6. (10:40:01 PM): u should make a nude vid and send it to me lol

Short for 'laughing out loud', this acronym is a well recognised feature of computer-mediated communication and text messaging (Tagliamonte and Denis, 2008; O'Neill, 2010). While *lol* has been seen to serve as a form of punctuation (Provine *et al.*, 2007; O'Neill, 2010), the above examples suggest a more deliberate function. The end position use here implies something vaguely playful or unserious about these contributions, which could mitigate the perceived sincerity of what are in reality, highly sexualised questions and statements. Possibly, the mitigating *lol* is used to protect the offenders' self-esteem, guarding against anticipated rejection. It could also serve to indicate offenders' own discomforts at the high-risk situation. But it may also have slightly more devious functions, like working to make targets feel more comfortable talking about sexual topics (which would also make lol a possible feature of *Sexual Rapport*). It could also feasibly serve to support apprehended offenders or defence lawyers in claiming that these sexual propositions were not sincere. It should be noted that this linguistic feature is so prevalent in O4's transcript (featuring 15 times), it almost seems like a habitual 'nervous laugh'. But importantly, it is largely found in his explicitly sexual contributions, and never in non-sexual *Building Rapport*, which is what suggests it might have a risk management function, as opposed to being a mere habit.

This portion of analysis has shown just a few of the linguistic devices used to *Assess and Manage Risk*, and how these choices might indicate an offender's personal motivations and intentions.

Analysing move structures within and between texts

Data visualisations

Colour-coded data visualisations were produced to depict the move structures of offenders' conversational contributions within each transcript. Through this paper we wish to introduce these visualisations and pick out some key points of interest to answer our specific data questions but it is our belief that these move visualisations or "move maps" provide a powerful method for exploring these and other similar texts. The visualisation for Transcript 1 is provided as Figure 2 but links to these transcripts can be found in Appendix B.

Each move map represents a transcript that details an entire interaction between one offender and one decoy from beginning to end. They are read from top to bottom, as a transcript would be read. Each coloured bar indicates a specific conversational turn associated with a specific type of move. The topmost bar in each therefore represents the first offender utterance made, and the bottom most bar the last. A 'tall' bar shows that the same move has been identified in a number of consecutive utterances, and colours appearing in-line horizontally show where single utterances have served multiple moves simultaneously. Each interaction may involve one or more conversations, breaks in which are indicated by horizontal grey lines. The move map in Figure 2 therefore shows that O1 and D1 had seven conversations, with the second being the longest. We can also see that unlike the other conversations, the second conversation contains a number of green blocks indicating sexualised content. While it would be interesting to isolate and compare particular parts of the interactions, for example the initial conversations for each offender/decoy pair (as in Williams *et al.*, 2013, who considered just the initial hour of conversation from the point of first contact), we wanted at this exploratory stage to examine these grooming processes in their entirety, whether they occurred over a single conversation or many. Considering each interaction holistically can also help indicate those in which offenders introduced sexual topics fairly quickly, compared with those in which offenders preferred to spend more time establishing a relationship beforehand.

From this visualisation a number of further observations can be made of the overall interaction. The first conversation contains no sexualised moves and might therefore be considered a grooming conversation in the restricted sense. It contains no overt criminal activity and it is only in light of what occurs in the second conversation that it becomes of interest. Fairly early in the second conversation there is the *Introduction of Sexual Topics* and the sexualised chat is then maintained through much of the conversation, but this is interspersed with the *Assessing and Managing Risk* and *Assessing Likelihood and Extent of Engagement* moves, as well as general maintenance of the conversation. In the final third of the conversation a new theme is introduced with a series of utterances pertaining to *Planning/Arranging Offline Contact*. These moves too are interspersed with sexualised conversation. The move map therefore helps reveal the structure of the interaction as being multi-tracked with moves being developed together rather than sequentially one after the other. Other transcripts, such as Transcript 3, show much more sequentially organised conversational structure with sexualised topics being separated out from other moves.

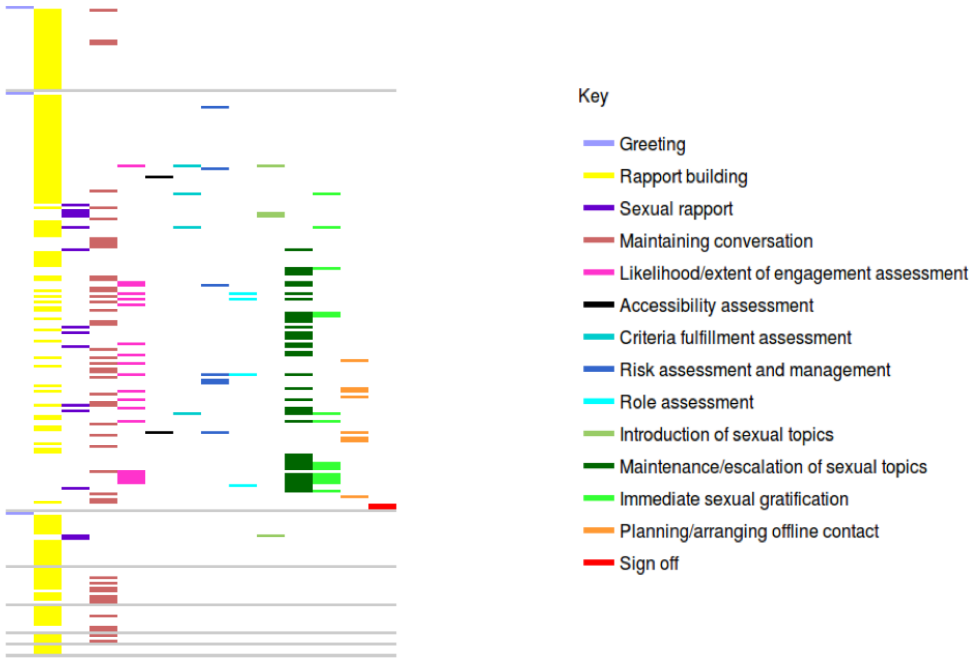

Figure 2. Move map for Transcript 1.

Figure 3 shows the comparison in use of moves across the transcripts and can help in contrasting the interactions. It is interesting to note, for example, that while Offenders 4 and 6 make no attempt at *Planning/Arranging Contact*, there are no other remarkable disparities between their use of moves compared with other offenders. For offenders who make no attempt to meet it might perhaps have been reasonable to expect more focus on *Immediate Sexual Gratification* than the rest of the group but this was not the case.

The move maps can be used to explore interactions in this way but also allows for analysis across different interactions.

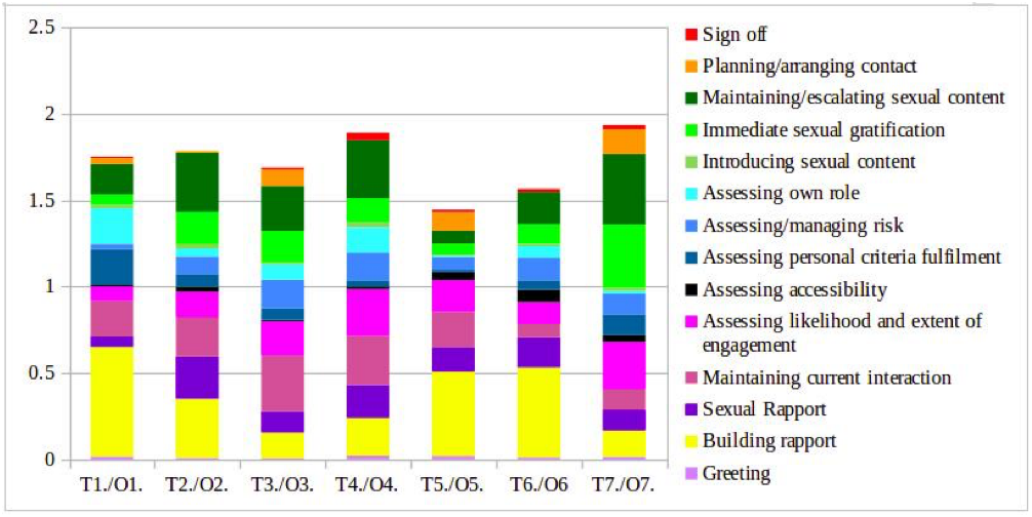

Figure 3. Percentage of offenders' conversational turns contributing to each move.

Preliminary comparisons show that more detailed analysis between transcripts is most useful when focussing on specific themes. Here we focus on three key areas of interest: Early Moves, Sexual Content and Planning Contact.

Early moves

Figure 4 below shows that Offenders 2 and 4 began their interactions with a *Greeting* (light purple), shortly followed by a period of *Building Rapport* (yellow) alongside a range of other moves. Unsurprisingly, all offenders in the sample began the grooming process in this way.

Figure 4. Initial sections of move structures of selected transcripts: Transcript 2 and Transcript 4.

Building Rapport is the most frequently observed move across the transcripts (see Figure 1), and is generally used throughout entire interactions, suggesting it is deemed important not just to establish a friendship/relationship with targets, but to maintain it.

Most offenders introduce a range of moves early on in their interactions, either immediately after or while *Building Rapport* (see Figure 4). *Assessing Likelihood and Extent of Engagement* (bright pink) and *Assessing Personal Criteria Fulfilment* (turquoise) occur within the first 25 lines of all interactions, except in T1; O1 spends a comparatively long time *Building Rapport* before introducing other strategies. *Assessing Accessibility* (black) also features early on, appearing in the first 25 lines of interactions, with the exceptions of Offenders 1 and 3, who were provided with general location information from their targets unprompted, and therefore likely less motivated to perform this Assessment. *Assessing and Managing Risk* (dark blue) and *Sexual Rapport* (dark purple) are also introduced quickly, appearing within the first 50 lines; again, with the exception of O1.

The general early introduction of combined Assessment strategies (*Likelihood*, *Criteria*, *Access* and *Risk*) appears to amount to a wider, more general communicative purpose: a *Risk-Reward Ratio Assessment*. These offenders tended to establish quickly whether a chosen target is a) likely to engage sexually, b) young and female, c) accessible and d) likely to pose risk. This is unsurprising, as offenders unfortunately have ample chatroom targets from which to choose, and this *Risk-Reward Ratio Assessment* enables them to determine whether the time and efforts spent grooming a particular target are 'worth it'. The early attempts to build *Sexual Rapport* indicate that sexual gratification is the primary goal of the interaction for most offenders; they generally do not appear to be looking for a genuine friendship as well as a sexual relationship, except possibly in the case of Offender 1.

With the exceptions of Offenders 1 and 5, Introducing Sexual Content (light green) also occurs early on in most interactions, within the first 55 lines (or first quarter).

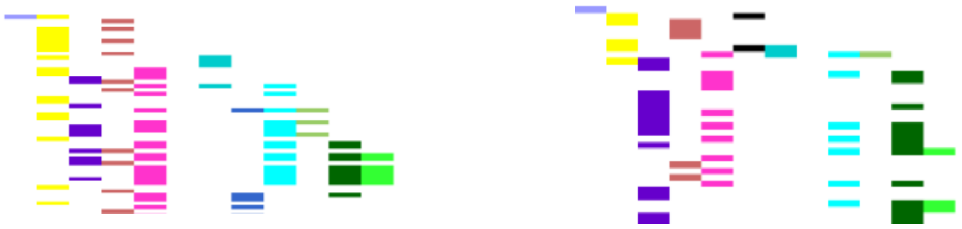

Figure 5. Initial sections of move maps of Transcripts 4 and 6 depicting strategies used before and after *Introducing Sexual Content*.

Figure 5 illustrates that even with the early *Introduction of Sexual Content*, this move is generally used after some combination of the aforementioned Assessment strategies. This is true in all cases, suggesting that these offenders expectedly prefer to 'test the water', before revealing their sexual intentions.

Sexual Content

In all cases, *Introducing Sexual Content* is immediately followed up by *Maintaining and Escalating Sexual Content* (dark green), which frequently coincides with *Immediate Sexual Gratification* (bright green). The latter two moves often co-occur in somewhat defined phases. These phases sometimes represent cybersex attempts, whereby offenders actively try to engage targets in sexual activity and elicit their experiences. Interestingly, offenders also commonly use *Sexual Rapport, Assessing Likelihood and Extent of Engagement* and *Assessing and Managing Risk* within these defined sexual phases. This pattern is illustrated in Figure 6:

Figure 6. Sections of move structures of selected transcripts depicting defined sexual phases concurrent with other moves - Transcript 5 and Transcript 6.

The combinative use of these strategies with sexual phases shows how these offenders attempted to ensure their targets' consent, increasing engagement and trust, at the same time as achieving sexual gratification. The frequent and erratic nature of these strategies throughout the transcripts shows how they continuously check such considerations throughout the entire grooming process, rather than trusting their targets' assurances implicitly. Conversely, *Assessing Accessibility* tends to occur at the beginnings of interactions, and is the least frequently revisited Assessment strategy (see Figure 1), suggesting that offenders generally accept this information fairly easily.

Planning Contact

Where the *Planning/Arranging Contact* (orange) move occurs, it generally does so throughout the latter two thirds of interactions, and only after all assessment moves have been employed. It frequently co-occurs with *Assessing and Managing Risk* and *Assessing Likelihood and Extent of Engagement.* This is to be expected; we can reasonably assume

that offenders would want to (as far as possible) confirm that their targets are sexually compliant and safely accessible while attempting to organise a high-risk physical encounter. *Planning/Arranging Contact* rarely occurs alongside sexually explicit content, but rather tends to feature in between and around sexual phases, as illustrated in Figure 7:

Figure 7. Sections of move structures of selected transcripts depicting sexual phases and *Planning/Arranging Contact*: Transcript 1, Transcript 5 and Transcript 7.

Figure 7 illustrates instances whereby offenders pause from a sexual phase to suggest an offline meeting, then continue with sexual content, then inquire further about the planned meeting, and so on. This pattern suggests that despite their ultimate goal, contact-driven offenders (Briggs *et al.*, 2011) remain motivated to engage in cybersexual activities. In fact, it seems that sexually gratifying conversation further motivates these offenders to achieve offline contact, rather than satiating their sexual desires. Focusing on particular combinations of moves in this way also allows us to consider individual offender tendencies; the above figure highlights that O1 switches frequently between sexual moves and *Planning/Arranging Contact*, whereas O5 approaches these moves in more defined phases. O7 seems to fall somewhere in between. Of course this is just one observed pattern; the move maps allow us to explore the relationships between any number of different move combinations.

These findings indicate that chatroom grooming interactions follow only a loose generic move structure. While we could perhaps predict some of the moves that occur pre- and post- *Introduction of Sexual Content*, the majority of moves are not confined to either phase, and there is a great deal of variation in the order and frequency at which moves are distributed across each transcript. As such, no single move structure identified could feasibly be described as typical of the dataset. Visualising the data as move maps usefully allows us to see how moves work together in complex networks to build the structures of the texts, and observe patterns and variation between each interaction. It is worth reiterating that both the moves and structures presented are likely highly influenced by the decoys' responses; grooming genuine victims might involve different sorts of strategies than those observed here. Thus a model of online grooming moves is only tentatively proposed:

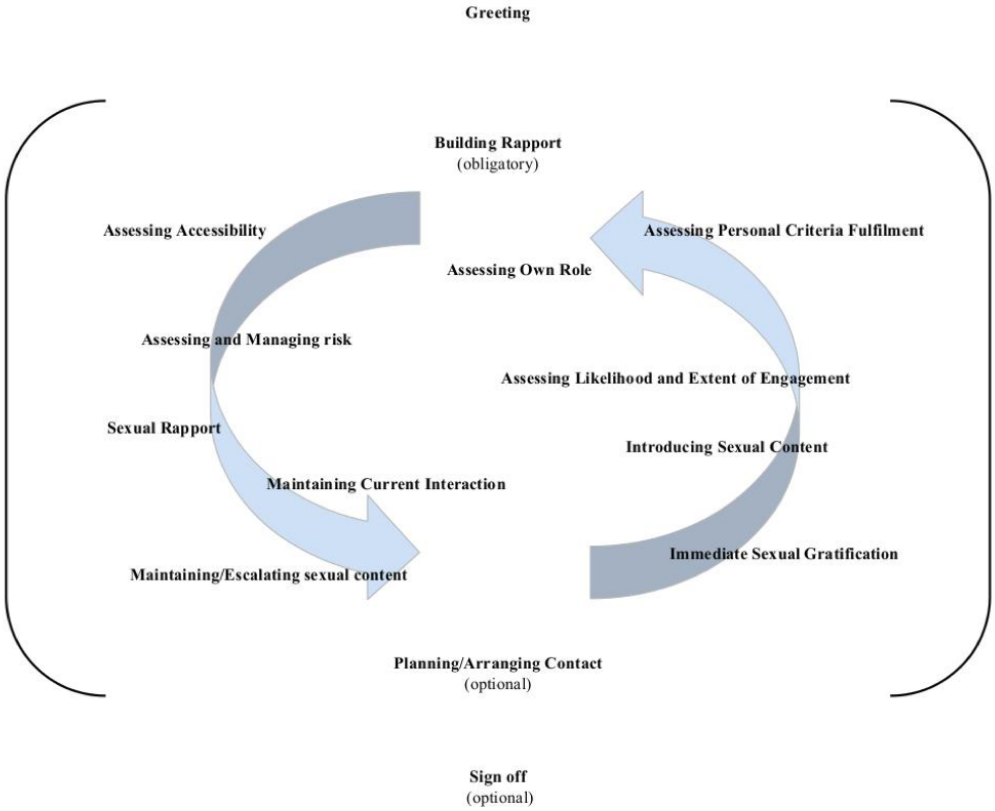

Figure 8. Rhetorical moves of online grooming conversations.

This model aims to demonstrate the rhetorical moves observed in chatroom grooming and at the same time highlight the fluid and shifting nature of these conversations. *Greeting* and *Sign Off* moves lie outside of the main group to signify their fixed positions at the beginnings and endings of conversations. Those moves inside the brackets are presented according to the loose structure seen across the transcripts, i.e. *Building Rapport* and Assessment strategies tended to appear first and before the *Introduction of Sexual Content*, which is then followed by more sexual moves and sometimes *Planning/Arranging Offline Contact* towards the latter end of conversations. However, these moves are presented in this scattered fashion rather than linearly to emphasize that the portion of conversation in between each *Greeting* and *Sign Off* may find any of these moves occurring and reoccurring at any time.

Labels are provided for optional moves (those move which do not occur in every transcript) and the obligatory move (*Rapport Building* – which was the basis for data selection). All other moves are considered conventional (in that they occur in all transcripts but would not individually be necessary to identify a grooming conversation).

Evaluating move analysis

The analysis firstly identified a set of common rhetorical moves used by the seven offenders, as well as a large number of strategies and low-level linguistic features working to achieve those moves. This showed that chatroom grooming is not always an obviously persuasive process, but involves a wide and complex network of strategies working to engage a target in sexual conversation and simultaneously assess their suitability.

It also suggested that chatroom grooming can be more reliably characterised by topic than structural features, and showed that sexual abuse occurred with a high frequency in conversations selected to illustrate instances of grooming. Secondly, we have seen a range of both conspicuous and subtle linguistic features used to *Assess and Manage Risk*, and explored how these might reflect individual attitudes and motivations of offenders. Finally, we have demonstrated a method of displaying move structures as 'move maps', from which we can see that grooming appears here not to be a strongly staged or formulaic process, although some loose structure was observed. The large variation in strategies and move structures suggests that grooming processes are largely guided by individual offender tendencies and styles, and the loose similarities observed seem likely a result of common goals associated with online grooming.

The study has shown that applying move analysis to chatroom grooming transcripts enables us to view grooming interactions from broad, structural perspectives, as well as identify some of the subtle and intricate functions performed by individual linguistic devices. In doing this, it seems that move analysis can usefully contribute to our understanding of grooming processes in two important ways:

1. Identifying specific grooming goals and determining how these are linguistically achieved (or attempted)

Through move analysis we can start to describe how grooming strategies are carried out and develop a discourse around the topic which is both detailed and accessible. Close examination of the various functions of grooming language can inform the way that instances of online grooming are detected by law-enforcement professionals, but also might inform teachers, parents, care-givers involved in child protection and education and, perhaps most importantly, help inform children and adolescents.

2. Visualising variation between grooming interactions

The move maps show that move analysis can enable us to see fairly quickly the variation in discourse structures across a set of grooming interactions. This is important because being able to clearly see the differences in structure, we can begin to explore the possible reasons for and sources of variation. It is possible that the same analysis applied to conversations between single groomers and their multiple targets might allow us to individuate groomers' particular styles and techniques. In this sense, move analysis is arguably worth exploring for purposes of online identity assumption; better understanding of grooming discourse structures may enable trained police officers to more convincingly assume the broader discourse-level features characteristic of their target offenders. It could also help to predict which moves or strategies will likely occur at given points in an interaction.

Future research

This move analysis naturally raises the question of whether chatroom grooming conversations might be considered a genre. Traditional conceptions of genre seem to require that they arise out of a "professional or academic community in which they occur" (Bhatia, 2004: 23), whose members share common communicative goals (Swales, 1990; Bhatia, 1993, 2004; Biber *et al.*, 2007). It is a real question as to whether this might be the case with online grooming interactions. It is possible that some offenders operate

in isolation, whereas others engage with like-minded offenders, exchanging strategies and indeed manuals for online grooming (Briggs *et al.*, 2011; Davidson and Gottschalk, 2011; McCartan and McAlister, 2012). The very existence of grooming manuals demonstrates that this sort of advice is being shared between people with similar goals. In this way, such manuals would form part of the intercommunication necessary for a discourse community to be deemed as such (Swales, 1990), and contribute one artefact to a "genre ecology" (Spinuzzi, 2003: 49) associated with online sexual abuse. All online groomers can be said to share similar goals, but specifically those operating collaboratively and sharing guidance through grooming manuals might be considered a discourse community. It would be interesting to examine grooming interactions involving members of an established grooming ring to see if their strategies indeed converge in any way. While the prospect of online grooming discourse communities is undoubtedly disturbing, it may in some ways be easier to detect larger groups of offenders who are benefiting from the experience of others, and whose strategies and language are likely to converge, than several individuals working alone. It would also be interesting to apply move analysis to large corpus of online sexual abuse conversations not specifically demonstrating grooming behaviour, to explore whether any sub-genres of online abuse interactions might arise. Description of genres and sub-genres of child sex offence activity and better understanding of the sources of variation in this linguistic activity may therefore throw some light on the question of discourse communities of online sexual abusers. This raises a general question of interest across a variety of forensic texts; for text types as diverse as suicide notes and threatening communications it is not obvious that there are discourse communities from which generic structures might arise. For these texts, any similarities would probably be explained in terms of the overarching discursive functions of the text type.

While it seems clear that move analysis has the potential to offer extremely useful contributions to our understanding of online grooming, it is not a perfect framework. One important issue yet to be resolved concerns the central notion of communicative purpose; how it is identified, and what criteria should be used to define and describe it. The robustness and reliability of move analyses would likely be improved by some conceptual development of the definition of communicative purpose as well as operational developments regarding the formalisation of the process of defining moves and strategies.

Conclusion

Understanding online abuse conversations better could significantly impact and refine the strategies used by law-enforcement bodies to detect and apprehend online sex offenders. Such research would also increase our knowledge about the nature of the advice and guidance shared among groomers, and therefore better inform the educational programmes which aim to teach children about internet safety. We have demonstrated here that detailed linguistic analysis can make a valuable contribution to this research and knowledge.

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Appendix A: Moves and strategies identified in grooming interactions

Move	Purpose/description	Strategies	Example linguistic realisations (undedited from transcripts)
Greeting	To initiate conversation with target.		hi', 'hey', 'sup'
Building Rapport (obligatory)	To establish and maintain friendship/relationship with target.	giving compliments/flattery	cutie', 'pretty pic of you', 'ur very cool'
		stating/eliciting asl (age, sex, location)	25/m/la', 'asl?'
		stating/eliciting hobbies and interests	what do u listen to', 'I play football'
		using positive emoticons (non-sexual)	:)
		stating/eliciting recent and current activities	i went to the tigers game yesterday', 'what u doing today',
		using/eliciting statements/promises of trust	ok I promise', 'trust me'
		giving/eliciting sympathy	aw that suks', 'she was cheating on me'
		expressing positive evaluations/approval/acceptance	wow that's cool', 'nice', 'thats fine'
		enticing/impressing target (non-sexual)	my brother and I have a band' 'won a couple hundred at the casino'
		offering reassurance	no prob', 'its fine'
		offering/requesting photographs and/or video calls (non-sexual)	u got a pic', 'u got a pic or a cam'
		requesting email address	whats ur email'
		offering gifts	maybe ill give u my cam'
Sexual Rapport	To establish and maintain positive a sexual relationship with target.	giving/eliciting sexual compliments	ur really hot', 'u have a very sexy voice'
		using positive emoticons in sexual context	:) ;) :p
		offering sexual ‘favours’	ill let u keep goin'
		portraying sex as fun/pleasurable/beneficial to target	really cool', 'u may like'
		suggesting ways to improve target’s sexual enjoyment/lessen target's anxieties towards sex	im very gentle' 'no it aint wrong', 'yes offcourse [I'll bring condoms]'
		enticing/impressing target in sexual context	did u think ur 1st cock would be so big', 'im 7 3/4'
		retracting sexual questions and comments	never mind'
		teaching/guiding target regarding sexual issues and actions	im gonna show u wear ur clit is', 'honey id love to teach u

		checking target's enjoyment of sexual conversation/actions	u like it', 'what do u think'
		offering target perceived control over sexual activities/topics	have your way with me', 'ask me something, anything goes'
		expressing approval/acceptance of sexual activities/topics	cool', 'mmm nice'
		mitigating severity of sexual questions and presented scenarios	lol', 'hehe', 'haha'
		politeness in sexual context	have u had sex before or no i fu dont mine me asking'
		approving/accepting target's portrayed lack of sexual experience	ok', 'ok no prob'
		showing/eliciting jealousy (in sexual context)	lucky him', 'I met a girl on here the other day'
		anticipating/accepting target's rejection	if u cant, its ok',
Assessing Likelihood and Extent of Engagement	To gauge target's level of willingness to engage in sexual activity and/or offline meeting. To gauge likely extent of target's sexual engagement and level of pliability.	eliciting response to hypothetical/future sexual scenarios (explicit or implicit)	would u get naked if i was there', 'would u do something for me right now'
		checking consent to meet/engage in sexual interaction	do you wannameet up sometime?', 'can iseduce u'
		eliciting opinions about offender's physical attractiveness and body parts	do u think my dick is big', 'u like it'
		stating/eliciting statements of seriousness about meeting and/or sexual activity	i'm serious ifyou are', 'for real would u like to'
		eliciting likely extent of target's sexual interaction	i just dont kn how far u r willing 2 go', 'do u think u would like that?'
		referring to age-gap (explicit or implicit)	im way older', 'ohh ur almost half my age',
		referring to inappropriateness of behaviour	i can go to jail', 'i am a bad boy'
		eliciting sexual questions from target (explicit or implicit)	what do youwann aknow about me?' 'ask me one more...and make it a GOOD ONE'
		eliciting ideas for activities	tell me what you wanna do when we hang out'

		inquiring about age of target's previous partners	how old was he', 'how old was the guy u had sex with?'
		inquiring about previous sexual experience	so, when was the last time you did something sexual?', 'did u play wit his cock'
		eliciting information regarding target's practical ability to send pictures, videos, engage in video chat	u got a cam', 'will u ever buy a cam'
		inquiring about target's feelings regarding alcohol and drugs	do u drink' 'how else do u party'
Assessing Accessibility	To determine target's physical distance and potential barriers to target.	requesting general location	asl', 'so where u live at'
		checking parents' schedules	ur mom goes away on weekends'
		checking target's schedule	when will u be home from school'
		checking target's immediate surroundings	u home alone', 'is ur dad home'
		inquiring about target's relationship status	u got a bf', 'do u still fuck the 18 yr old?'
		inquiring about other family members and friends	do u have any bros or sisters?'
Assessing Personal Criteria Fulfilment	To determine if target fits preferred criteria (young, female and other physical preferences).	requesting physical descriptions (sexual and non-sexual)	how tall', 'how big r ur tits'
		requesting photos, videos, phone calls for ID verification	do u have a pic', 'do u have any other vids?', 'call me in like 15 mins'
		requesting age of target	asl', 'when will you be 14?'
		inquiring about target's sexuality and gender preferences	ru straight or ru not sure', 'r u into guyz?'
		inquiring if target is a virgin	r u a virgin?'
Maintaining Current Interaction	To ensure continuation of the current conversation with target.	checking target presence in chatroom	u still there'
		backchanneling	ok, 'yeah', 'i c', 'ya', 'k'
		explaining current technological difficulties	cam crashed', 'i got booted', 'it happened again'
Assessing Own Role	To gauge type of teaching/guidance needed to manipulate target into compliance. To gauge level of encouragement/coercion needed to achieve target	inquiring about previous sexual experience of target	what all haveyou done sexually?', 'is this the first time'

	compliance.		
		Indicating own level of sexual experience	i might b alil to advanced 4 u'
		eliciting target's knowledge of sex and masturbation	do u know about the birds and the bees'
Introducing Sexual Content	To introduce sexual topics into conversation.		getting me horny', 'r u a virgin'
Immediate Sexual Gratification	To achieve/satiate immediate sexual arousal.	providing/requesting sexual photographs, phone calls, video calls	u got nude pics', 'wouldyou take a naked pic of yourself for me?', 'call me ok"
		giving/eliciting physical descriptions	r u shave', 'how big r ur tits'
		attempts to engage in cyber sex/instructing target to perform sexual acts	would u do something for me right now', 'just do it plz'
		eliciting hypothetical sexual scenarios/ reactions to hypothetical sexual scenarios	if you were here with me right now, what woul dyou do?', '
		inquiring about target's clothing	what u wearing', 'what color'
		inquiring about target's sexual feelings	how do u feel now'
		inquiring about target's previous sexual experiences including masturbation	what do u use', 'tell me again, what haveyou done seuxually?'
Maintaining/Escalating sexual content	To desensitise target to sexual topics. (In addition to those noted here, all previous sexually-oriented strategies fall within this move).	proposing/eliciting ideas for sexual activities (fantasy planning)	tell me what you'd want', 'would u wear a skirt with no panties under it'
		expressing wish for sexual interaction and particular sexual activities with target (online/offline)	i wanna lick your pussy', 'i wanna cum 4 u'
		designating topic control to target in sexual context	your turn to ask', 'make it good and dirty'
		planning future sexual engagement, including offline, phone sex, cybersex	we will try tomorrow when u call'
		normalising sexual behaviour	i met a girl on here the other day and we met last night and she sucked my cock'
Assessing and Managing risk	To gauge the level of risk of actions being detected. To manage and reduce the risk of actions being detected.	inquiring about target's home environment and family	is ur dad home?', 'got a dog'
		inquiring about target's relationship status	u have a bf'
		assuring/eliciting assurance of	it would have to b

		secrecy/privacy	very privte', 'promise?'
		referring to inappropriateness of behaviour/situation (explicit or implicit)	i can go to jail', 'i am a bad boy'
		diminishing seriousness of sexual comments	lol', 'hehe', 'haha', emoticons
		assigning blame/responsibility to target and others	don't want u getting caught', 'my friend lauren wants to see something that contains nudity'
		designating topic control to target	ask me anything', 'what would U like to do'
		requesting photos, videos, phone calls, voice messages to verify target identification	if i dont hear a young girls voice i wont say a thing and hang up'
		ensuring safety measures regarding offline meeting	put a flower on the door if all is clear',
		referring to age gap (explicit or implicit)	im way older'
Planning/Arranging Contact (optional)	To achieve offline contact with target.	suggesting offline meeting	i should cum over tomarrow',
		requesting/giving general location, address, phone number	give address again', 'ill call b4 i cum over'
		requesting/suggesting timing details	i have to work around 11pm', 'what time is mom leaving'
		planning specific activities for meeting (sexual or non sexual)	i want u to wear just ur bra and panties', 'open the door just like that'
		ensuring safety measures regarding offline meeting	put a flower on the door if all is clear',
Sign off (optional)	To indicate imminent end of current conversation.		bye', 'night', 'till tomarrow'

Appendix B: Data visualisations

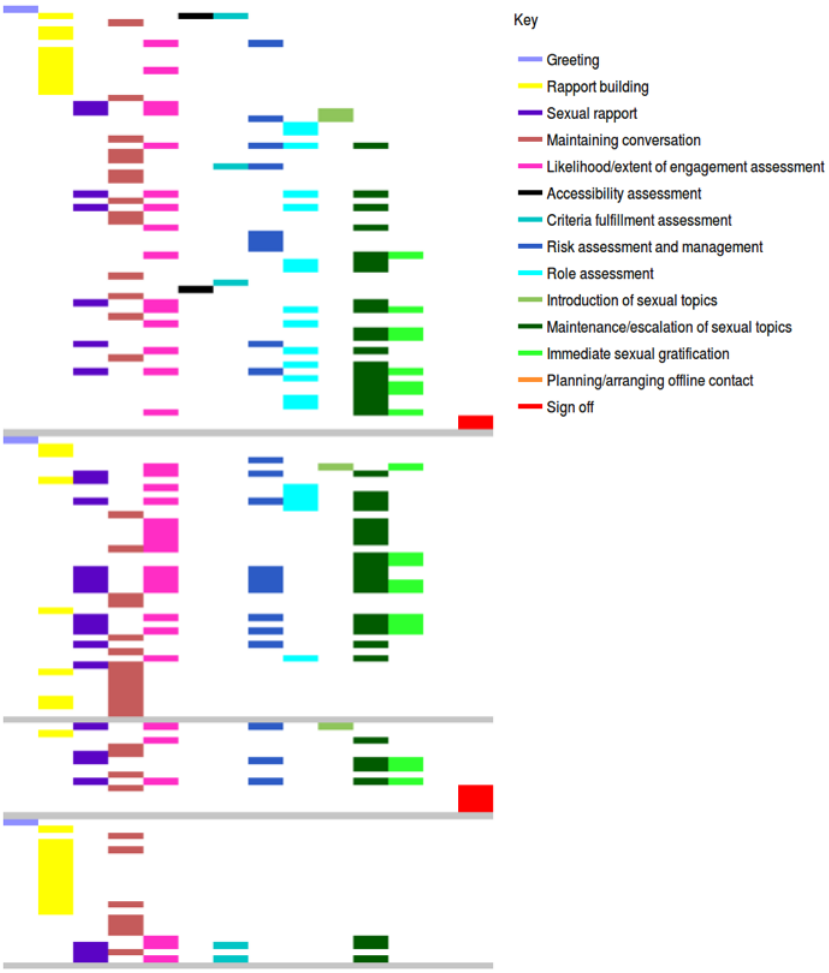
(Note: data visualisations represent the transcripts from beginning to end, and are read from top to bottom, as a transcript would be read. The topmost block in each therefore represents the first utterance made, and the bottommost block the last. Colours appearing in-line horizontally show where single utterances or strategies have served multiple moves simultaneously. A 'tall' block shows that the same move has been identified in a number of consecutive lines, or contributions. Horizontal grey lines separate individual conversations).

Transcript 1: Move structure

Transcript 2: Move structure

Transcript 3: Move structure

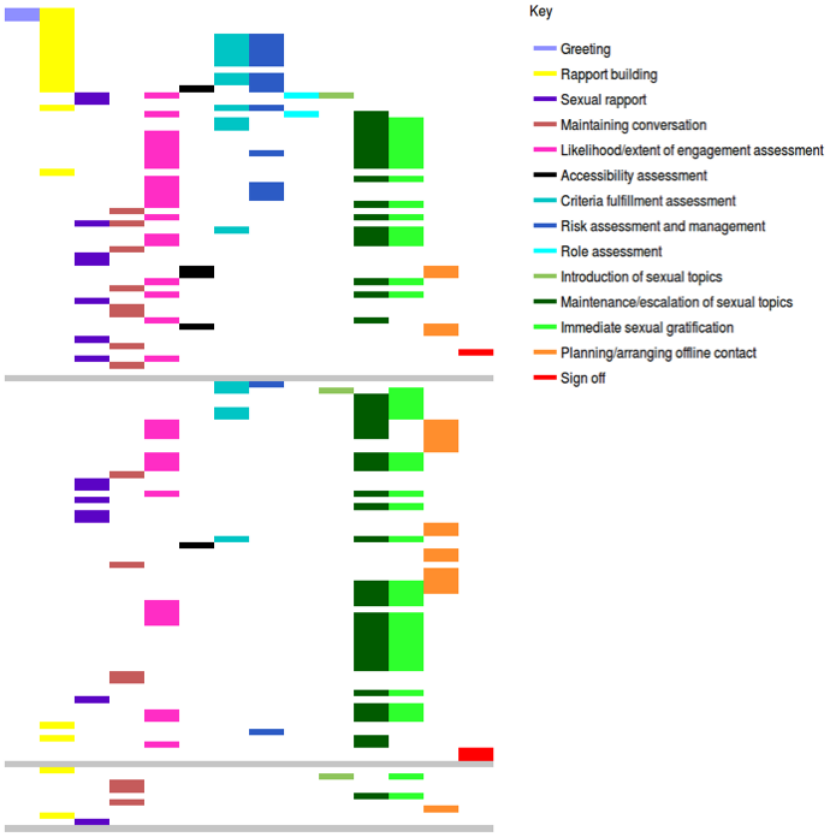
Transcript 4: Move structure



Transcript 5: Move structure

Transcript 6: Move structure

Transcript 7: Move structure



Appendix C: Links to transcripts of grooming conversations from pervertedjustice.com

Transcript 1: http://perverted-justice.com/?archive=bmichigan69

Transcript 2: http://perverted-justice.com/?archive=movieman2397

Transcript 3: http://perverted-justice.com/?archive=hunglowilove69

Transcript 4: http://perverted-justice.com/?archive=recon101_2000

Transcript 5: http://perverted-justice.com/?archive=shaka_k2000

Transcript 6: http://perverted-justice.com/?archive=nhbfullcontact21

Transcript 7: http://perverted-justice.com/?archive=darkprince666_2006

Towards Clearer Jury Instructions

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Abstract. *In court cases involving juries, an important Forensic Linguistic issue is that the judge needs to communicate to jurors the law that applies to the case, and instruct them on the way they should view evidence and witnesses, the procedures they must use, confidentiality, etc. However, there is a second audience for these 'Jury Instructions' - the Courts of Appeal. If the jury have not been correctly instructed, this can form the basis for an appeal. This second audience has led to complex Jury Instruction processes that may be poorly understood by jurors. To avoid miscarriages of justice, we need a Jury Instruction process that leads to maximal juror understanding. This paper discusses an attempt at revising instructions, by giving an example of instructions, showing the thinking that led to their revision, and the process and product of revision.*

Keywords: *Jury instructions, jury directions, specimen directions, plain language, plain legal language.*

Resumo. *Uma questão importante para a Linguística Forense, em casos judiciais com recurso a júri, é que o juiz necessita de comunicar aos jurados a legislação aplicável ao caso e de os instruir sobre a forma como devem ter em conta a prova e as testemunhas, os procedimentos a utilizar, questões de confidencialidade, etc. Contudo, estas "Instruções para o Júri" possuem um público secundário: as instâncias de recurso. O facto de o júri não ter sido instruído corretamente poderá dar origem a recurso. Este público secundário conduziu a complexos processos de Instruções para o Júri, que podem ser mal compreendidas pelos jurados. Para evitar erros judiciais, é necessário um processo de instruções para o júri que conduza à máxima compreensão por parte do jurado. Este artigo discute uma tentativa de revisão de instruções, fornecendo um exemplo de instruções e mostrando o raciocínio conducente à sua revisão, bem como o processo e o produto da revisão.*

Palavras-chave: *Instruções para o júri, orientações para o júri, espécime de orientações, linguagem clara, linguagem jurídica clara.*

Introduction: What is a Jury?

In Common Law systems a general principle is that a person accused of a serious crime is found guilty or not guilty by a team of ordinary citizens called a jury. The jury gives

the verdict – that is, the jurors decide what crime has been committed, and whether the accused is guilty or not guilty. The judge decides on the penalty. In reality, things are more complicated, but this gives the general situation.

At various stages in a jury trial (particularly at the beginning and at the end), the judge must explain to the jurors the law that applies to their particular case, and instruct them on the way they should view evidence and witnesses, the procedures they must use, confidentiality, etc. This can be challenging when jurors know little about the law or legal procedure. (An important difference between American courts and most other Common Law jurisdictions is that – simplifying again – US judges are limited to instructing the jury about the law and trial procedure, while elsewhere the judge is required to link the instructions to the facts and issues in the case.)

What are Jury Instructions?

In most Common Law jurisdictions, judges are provided with possible wordings for their explanations of the law and courtroom procedure. I will follow American practice, and call these model wordings 'Pattern Jury Instructions', although they go by various other names.

In the State of Victoria, Australia, where I live, they are officially called 'Jury Directions' (http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#30229.htm) and are part of the 'Charge Book', which is issued to judges. These are the jury instructions which will be discussed later. My attention was drawn to them when I joined, as a consultant, the Charge Book Committee that has responsibility for Jury Instructions in Victoria. This Committee is composed of judges. (I am bound by confidentiality not to reveal the Committee's discussions, so I will limit myself to general issues, and my recommendations.)

In the UK these Jury Instructions are known as 'Specimen Directions', and are part of the 'Benchbook': http://www.jsbni.com/Publications/BenchBook/Documents/BenchBook.pdf. However, these specimen wordings have recently been replaced in many cases by guidelines about what to tell the Jury rather than specific wordings (https://www.judiciary.gov.uk/wpâĂŞcontent/uploads/JCO/Documents/eLetters/Bench+Book+Companion_revised+complete+march+2012.pdf). An example of a set of US Jury Instructions is the recent California set: http://www.courts.ca.gov/partners/documents/caci-2016-complete-edition.pdf.

Why are Jury Instructions important?

Juries need to understand Instructions in order to ensure a fair trial. If the jury does not understand the instructions, they may reach the wrong verdict; in other words, there is an increased likelihood of a miscarriage of justice which could result in an innocent person going to prison (or even being executed in systems where there is a death penalty). Equally it could lead to a guilty person being released to carry out more offences. Miscarriage of justice is by definition unjust, may be damaging for the participants, and reflects poorly on the justice system.

What is the problem with Jury Instructions?

The underlying problem with Jury Instruction is what I call the 'two audience dilemma'. The primary audience for Jury Instructions is of course the jury. However, there is a secondary audience – appeal court judges. One ground for appealing a conviction is

that the jury was not correctly instructed. Judges are highly sensitive to this secondary audience, as they dislike seeing their decisions overturned, particularly where there are vulnerable complainants and witnesses who do not wish to go through another trial.

Tiersma (2001) writes:

> The philosophy of much of the original pattern jury instruction movement was to search for language to which a court or legislature had given its stamp of approval. This approved language was found, for the most part, in judicial opinions and in statutes. …Copying verbatim the language of statutes – and, to a somewhat lesser extent, judicial opinions – was a virtually fool-proof method of insulating the instructions from legal attack on appeal.

However, the language of judicial opinions and statutes was written specifically for lawyers, and is far distant from everyday conversational language. Historically, the secondary purpose, to avoid appeals, has come to dominate and undermine the principal purpose, to inform the jury. Throughout the Common Law world, the perceived imperative to make Jury Instructions legally watertight has resulted in them becoming less and less intelligible to jurors. This is perverse. It cannot be overemphasised that if the Instructions are hard to understand **they may not fulfil their primary purpose – that of instructing the jury**.

Furthermore, appeal courts have tended to focus on the legal aspect, and ignore the comprehension aspect. Few appeals are made on the grounds that some jurors may not have understood the Instructions – the majority are on legal grounds. This is also unfortunate. We might have clearer Instructions if appeal courts considered comprehension as well as content. It should be possible to produce Jury Instructions which meet the requirements of both audiences more adequately than existing Instructions.

The Auntie Doris Test

My criterion when examining material directed to a jury is the 'Auntie Doris Test'. My Auntie Doris was a lovely person, but not very bright and not highly literate. However, she did serve on a jury. The 'Auntie Doris Test' is: "Would Auntie Doris understand?". If she would not understand a particular jury instruction, it is not fulfilling its primary purpose: to communicate with the jury. Satisfying the Appeal Court may be necessary, but it is not sufficient – it is a secondary purpose.

The Issue

In summary, to avoid miscarriages of justice, we need a Jury Instruction process that leads to maximal juror understanding. It is important not to sacrifice comprehension by the primary audience for the sake of the secondary audience – an appeal court.

This Paper

This paper discusses an attempt at revising instructions, by giving an example of instructions, showing the thinking that led to their revision, and the process and product of that revision. (An effort, often unsuccessful, has been made to practice what is preached, and write this paper in clear everyday language.)

An example

The following is an example of not particularly bad Jury Instructions, given at the start of a trial. These instructions had already been reworded and clarified by the Charge Book Committee, so they lack the extreme complexity documented by Dumas (2000). They concern evidence.

1.5 - Decide Solely on the Evidence

1.5.2 - Charge

Introduction: What is Evidence?

I have told you that it is your task to determine the facts in this case, and that you should do this by considering all of the evidence presented in the courtroom. I now need to tell you what is and what is not evidence.

The **first** type of evidence is what the witnesses say.

It is the answers that you hear from the witnesses that are the evidence, and not the questions they are asked. This is important to understand, as sometimes counsel will confidently include an allegation of fact in a question they ask a witness. No matter how positively or confidently that allegation is presented, it will not form part of the evidence unless the witness agrees with it.

[*Add the following shaded section if the judge believes it is necessary to further explain this point*.]

Let me give you a simple example that has nothing to do with this case. Imagine counsel says to a witness "The car was blue, wasn't it?", and the witness replies "No, it wasn't". Given that answer, there is absolutely no evidence that the car was blue.

Even if you do not believe the witness, or think he or she is lying, there is no evidence that the car is blue. Disbelief of a witness's answer does not provide evidence of the opposite. To prove that the car was blue, there would need to be evidence from some other source, such as a photograph or the testimony of another witness.

Of course, if the witness had instead replied "yes, it was", there would be evidence that the car was blue. In such a case, the witness has adopted the suggestion made in the question. However, if the witness does not agree with that suggestion, the only evidence you have is that the car was not blue.

The **second** type of evidence is any document or other item that is received as an "exhibit". The exhibits will be pointed out to you when they are introduced into evidence. When you go to the jury room to decide this case, some of the exhibits will go with you for you to examine. Consider them along with the rest of the evidence and in exactly the same way.

I believe that these instructions fail the Auntie Doris test. What follows shows the reasoning behind this conclusion.

Current Possible Sources of Miscommunication

Communication Theory

Summarising inadequately part of the enormous field of communication theory (see for example Knapp and Daly, 2011), the following factors are often seen as critical:

- the circumstances of the communication (the context – immediate and wider/ physical, social and psychological).
- the medium, particularly the mode and directionality of communication.
- the linguistic, cognitive and knowledge capacity of the target audience.
- the linguistic, cognitive and knowledge demands of the communication.

Therefore, for successful communication, we need to ask whether, in the circumstances that prevail, there is a match between the demands made by the language sample, and the capacity of the target audience, using the current means of communication. I will now expand on these four factors.

The circumstances of the communication

The judge instructs the jury in the context of the court. This is an intimidating context, with many indicators of power, including forms of dress among the court staff and the judge (judges are beginning to give up wearing wigs in Victoria, but many lawyers still do, in imitation of English formal dress of 300 years ago). The physical context of the court, with its coats of arms, the organisation of the participants, the judge's elevated position and so on are all power laden. Also the social relationship between judge and jurors is one of considerable differences in power. These factors mean that the social construction that many jurors will place on the situation is one of intimidation and unwillingness to communicate with the judge, even in Australia with its common disrespect for authority. Thus, the formal and sometimes arcane procedures of the courtroom will be unfamiliar and uncomfortable for some jurors – indeed some may poorly understand what is happening.

We must also take into account the ideology of judges. Heffer (2015: 290–2) provides some important examples where judges have failed to provide adequate responses to questions from juries. As he states:

> What we find again and again in these exchanges between judge and jury is a genuine attempt by the lay jury to accommodate to the legal-institutional context, while judges often remain locked into a discourse of authority that prevents them from hearing and actively responding to the voice of the jury. (2015: 292)

In other words, there is an unwillingness by some judges to encourage jurors' clarification questions and to answer them thoughtfully.

The mode and directionality of communication

The normal **mode** of communication is that a judge directs the jury **orally** – through speech, but in fact this is often achieved by reading aloud prewritten material, particularly the model directions provided in the Charge Book. However many judges provide further advice and information. In Victoria written material is provided to jurors, but currently the written forms of most Jury Instructions are not provided, partly from

tradition, and partly because not all instructions are relevant to all cases. Judges may exercise their discretion and supply written versions. There are procedures and a new "Jury Guide" which are being adopted to address this issue, but the process of making the Instructions available in written form is still far from complete. Unlike reading, listening happens in real time, and if a piece of information is missed or misunderstood, there is no second chance. The written mode could provide the individual jury member with the chance to revise and reread.

The *direction* of communication is predominantly one-way from judge to jurors. Section 1.4.2 of the Charge Book reads:

> If at any time you have a question about anything I say, please feel free to ask me. It would be best if you did this by writing it down, and passing it to my tipstaff, [insert name], who will hand it to me.

There are also strict limitations on jurors asking questions of witnesses. The system assumes that jurors will be passive recipients and observers in the trial and, where jurors wish to be involved, they must write out their question, hand it up to the judge and let the judge decide what to do with it. This does not provide jurors with the opportunity to ask clarification questions at the time they have a doubt, and places a barrier on the sort of spontaneous two-way communication which enhances informal oral communication. Communication is more effective if meaning is negotiated and transferred through an interactive process.

The linguistic, cognitive and knowledge capacity of the target audience

Juror Education and Literacy

In principle, Juries are randomly selected. However, in practice, jurors are selected in part on the basis of availability for service. People who work in the professions are less likely to be available (for example I have been excused jury service because I was teaching postgraduate courses that demanded my particular expertise). Despite some changes in legislation to reduce exemptions, there may still be a bias in jury selection against the more educated and literate members of society. Unfortunately, I have been unable to find recent statistics on exemptions.

Cognitive issues

Familiarity

With regard to the knowledge base of jurors, many will be unfamiliar with the law and the workings of the court system. Psychological studies attest to the role of knowledge in comprehension. If two people share a knowledge base in a particular area, their communication is greatly facilitated. Sometimes a great deal can be communicated very concisely, since so much can be assumed. Cognitive psychology (Sweller, 1988) has demonstrated that it is more difficult to process information in working memory if the subject matter is unfamiliar, since most processing operates at a shallow level, working with familiar matter. Processing which requires attention is far more demanding, and the human mind is limited in its capacity to handle large amounts of unfamiliar material.

If knowledge is particularly specialised, full communication about it with a person who does not share that knowledge may be difficult, or even impossible. Even if the public understand every individual word of a Jury Instruction, the lack of a shared 'frame'

or conceptualisation of the world may lead to communication problems. There is supporting research that shows that unfamiliar language (such as legal jargon) increases the cognitive load (Sweller's (1988) 'extraneous cognitive load').

Capacity and Duration

There is a large cognitive psychology literature on the processing constraints imposed by the human brain. Note particularly the work of Pinker (2013), and researchers such as Pienemann (1998) who use processing constraints to understand second language development. There are cognitive limits on **attention**, **capacity** and **duration**. Comprehension tasks may overwhelm either cognitive processing capacity, or the ability to sustain attention. Our 'neural hardware' imposes limits on both the speed and accuracy of processing new information; for example Kahneman (1973) discusses the notion that perceptual and cognitive operations draw on limited attention resources. See also the overview in Gibson and Pearlmutter (1998). Cognitive complexity in Jury Instructions will increase cognitive load.

Mother Tongue Effect

In Australia, according to the 2012 census, 18% of Australian residents spoke a language other than English in the home. Such second language speakers appear on juries and therefore Jury Instructions need to be constructed with this in mind. Research literature (Pavlenko, 2011; Abrahamsson and Hyltenstam, 2009) shows that those who learn a second language after the age of 12 rarely attain full native like automated proficiency. Particularly interesting is "non-perceivable non-nativeness" (Abrahamsson and Hyltenstam, 2009) where people can "pass" as native speakers. This increases the cognitive demand of jury instructions, and may reduce the likelihood of comprehension.

The linguistic, cognitive and knowledge demands of the communication

Cognitive Demands

Familiarity

Many jurors will have limited knowledge of the legal system and courtroom processes. They may be intimidated, confused and overwhelmed.

Capacity and Duration

Jury instructions are often long, and the process of jury instructions usually takes at least an hour, and sometimes several hours (the website referenced at the beginning of this paper reveals just how many instructions there are, even if not all are used on any given occasion). Furthermore jury instructions are often cognitively complex, and their conceptual structure may be obscure.

Overall there is a strong possibility of a mismatch between the cognitive demands of jury instructions, and the cognitive capacity of jurors.

Linguistic Complexity

A useful but incomplete way to summarise some of the *language structure* aspects of complexity is to see these as a result of: (a) the number of, and (b) the relationships between:

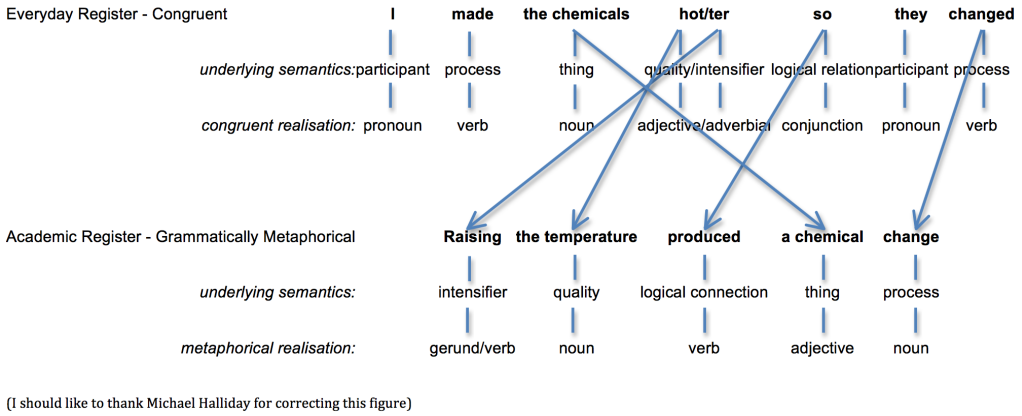
- the morphemes in a word;

- the words in a phrase;
- the phrases in a sentence;
- the clauses in a complex sentence;
- the sentences in a section of text;
- the sections of a text

There is a substantial psycholinguistic literature on the linguistic challenge posed by Jury Instructions – for surveys and references see English and Sales (1997) and Lieberman and Sales (1997). The following is a list of features which experimentation proved can cause difficulty (partly based on an early and extremely influential study by Charrow and Charrow, 1979: 1360).

- nominalisations/grammatical metaphor;
- technical vocabulary;
- doublets, triplets and longer 'lists of words';
- 'as to' prepositional phrases (e.g. "The order in which the instructions are given has no significance as to their relative importance.");
- unusual positioning of phrases;
- whiz and complement deletion;
- negatives, particularly multiple negatives;
- passives, particularly in subordinate clauses;
- subordination, particularly multi-layered subordination;
- use of a noun phrase to replace a clause (rank shifting);
- poor genre structure;
- poor formatting – particularly numbering.

The first of these features, 'nominalisations', comes from an out-dated understanding. Halliday and Matthiessen (2004: 613–658) have proposed the notion of 'ideational grammatical metaphor', which explains nominalisation, and greatly extends it to other parts of speech. There is a basic semantics to word classes. I was taught in primary school that *nouns* are things or entities; *verbs* are 'doing' words, used to refer to processes; *adjectives* are words that modify nouns, showing certain attributes of the entity; *conjunctions* are words used to show relationships between sentences and clauses, etc. Obviously my primary school teacher was oversimplifying, but she had a point. However, what Halliday and Matthiessen showed was that as languages become more written and more technical, these basic relationships are often distorted. The following example consists of two sentences with very similar meanings, but one is expressed in a form where the word classes are used with their basic meanings intact – therefore they are in Halliday's terms 'congruent', and a second sentence where those basic word class meanings are changed, and become 'metaphorical'. The first sentence is the sort of language a child doing a classroom experiment might use, while the second sentence is the way a scientist might describe the same phenomenon.



(I should like to thank Michael Halliday for correcting this figure)

Table 1. Example of Grammatical Metaphor.

The difficulty of grammatical metaphor has several sources. First, grammatical metaphor involves a distortion of the relationship between the basic meaning of parts of speech such as verbs, adjectives and nouns (processes, attributes and things), and their meaning when used metaphorically. This increases processing load, which partly explains their lower frequency in spontaneous speech, child language, pidgins, and languages that do not have a literate tradition.

Another source of difficulty is that metaphorical forms are often morphologically complex, even in a comparatively common example such as *leadership* (lead+er+ship) (verb to noun to abstract noun), as well as technical terms such as *unimpeachability* (un+im+peach+abil+ity). Additionally, in English we tend to construct grammatical metaphor using words from Greek or Romance sources (*impeach* is from French), rather than the often more commonplace Germanic forms.

Another aspect of grammatical metaphor is that it enables the construction of complex noun phrases containing chains of nominalisation to package complex concepts. The complex noun phrase increases the cognitive processing load, or as Charrow and Charrow (1979: 1321) state, "shortening a whole subordinate clause into a single nominal usually increases the complexity of the deeper grammatical and semantic structure. The meaning of the sentence becomes less clear, and the mind must work harder to decode it." For example, *drug abuse* is normally understood as misusing narcotics (abuse *of* drugs) – it could however also mean the bad language found in the drug culture (abusive language *associated with* drugs) – the noun phrase deletes the nature of the relationship between the two concepts. Furthermore this packaging of information into complex noun phrases increases the 'density' of the information, and there is research evidence that this in turn increases comprehension difficulty (Felker *et al.*, 1981: 43).

All these aspects of grammatical metaphor make language harder to understand, and increase the cognitive load, particularly when some grammatically metaphorical terms may be less familiar to less literate people. Essentially, we need to use language that is as congruent as is practical.

Other aspects of the difference between formal written language and conversational language can lead to complexity. (For many linguists, conversational language is the yardstick.) For example, a written instruction might say "Insert a two dollar coin in the upper slot"; someone leaning over your shoulder might simply say "Put the money in

there". Some legal texts use language that is more distant from everyday conversation than almost any other form of language. Writing also permits long complex sentences. As we noted, these have been proven to be more difficult to understand, particularly when written language is presented orally.

Technicality

Some jury instructions include legal jargon (see the examples that follow), which is by definition not known to all lay people. Plain language advocates suggest avoiding it where possible and when it is absolutely necessary providing a definition. In legal language we also find everyday words used with specialist meanings; for example, looking at non specialist and specialist definitions, we find:

	Legal Definition (The Law Handbook)	**Common Definition** (Cobuild Dictionary)
"exhibit"	A document or thing tendered as evidence in a court hearing ...	Something that is put on show to the public in a museum or art gallery

Table 2. An Example of Specialist and Non-Specialist Meanings.

There are related considerations including 'word frequency'. The more common a word is, the more likely it is that people will encounter and know it.

Discourse Insights

An important aspect of communication is conceptual organisation above the level of the sentence. There is ample evidence that communication is enhanced if:

- ideas are presented in a *logical sequence*;
- the *organisation* of the ideas is made *explicit*;
- the *connections* between the ideas are made *explicit*;
- *redundant* information is removed.

Procedure

Work on lay-legal communication (particularly Rock, 2007) has suggested that the interaction of the participants can play a crucial role in understanding. Rock (2007: 253) states in her work on improving the police communication of cautions: although "providing a standardised scripted explanation is enticing ... This book demonstrates that making meaning is not one-size-fits-all". The findings from her research demonstrate convincingly that meaning needs to be negotiated, and that it is desirable that comprehension be checked by asking jurors content questions about the meaning, to test whether they have understood, and then following up with further direction if necessary.

Similarly, recent recommendations concerning the comprehension of police cautions (Communication of Rights Group, 2015) suggest "To demonstrate ... understanding, we recommend the adoption of an in-your-own-words requirement that is already used in some jurisdictions. After each right has been presented, police officers should ask suspects to explain in their own words their understanding of that right".

However desirable, in fact an in-your-own-words procedure in court is probably impractical, because it would entail a number of difficulties. Is the judge to ask each individual juror? What if some, but not all, jurors have understood? It may also be unfair

for jurors who have poor levels of confidence or verbal capacity. The fear of being put on the spot and being asked to explain a legal concept in their own words may create a fear of embarrassment, which will add to cognitive load and so impede understanding.

It is also worth considering the difficulty of explaining some of the relevant concepts in lay language. Asking a person to explain something in their own words, when judges have been clinging to a particular formulation because they know that formulation is right, but are less sure about any other formulation. Asking jurors to express a legal proposition in their own words basically invites jurors to depart from that formulation. A judge is then faced with the choice of reiterating the correct version of the formulation, thereby eliminating the point of asking for the juror's own words, or endorsing the reformulation and running the risk of the reformulation being found on appeal to be missing a critical component. Therefore, such an approach would be a radical departure and for good reason might meet resistance from judges (note also the quote from Heffer previously).

A less ambitious encouragement for judges to interact and negotiate meaning with jurors might be more feasible, and might lead to enhanced communication.

Possible Means of Improving Jury Direction

Cognitive Issues

The cognitive load and cognitive capacity issue suggests that jury instructions need to be rewritten following 'cognitive economy' principles, and particularly that **length is important**. Everything being equal, short instructions will be more easily understood than long ones.

Suggestions from the Plain Language Movement

The Plain Language movement is a world wide movement in favour of clarifying the language used in areas such as the Law and Administration. The recommendations include the linguistic features we have discussed above, but also extend much more, to document design, text structure, and conceptual organisation. In Australia for example see: https://www.opc.gov.au/about/docs/Plain_English.pdf. A highly developed outline for plain language is: http://www.plainlanguagenetwork.org/. (Cutts, 1993, 2000) cogently addresses the issue of plain legal language, as does previous work by Robert Eagleson in Victoria (Law Reform Commission of Victoria, 1987).

Linguistic Issues

The linguistic issues already mentioned are addressed by the Plain Language Movement. Their recommendations include the following:

Words – foreign or unusual words be replaced by words that are more comprehensible;

Phrases – because the concepts 'grammatical metaphor' and 'noun phrase structure' are not part of normal language understanding, the advice is usually expressed in terms of avoiding nominalisations and long lists of nouns;

Syntax – advice is usually framed in terms of sentence length, rather than sentence complexity. (We have seen much more sophisticated ways of viewing this.)

Discourse

More attention has been paid in recent years to text organisation. (It may be worth pointing out that, no matter how well organised and presented, a letter written in the

Luo language would be largely unintelligible to 99% of the world's population.) A good example is the following recommendations from the French body COSLA (translated and modified slightly from http://www.plainlanguagenetwork.org/).

- Construct the text carefully – use headings, a body, figures and annexes for minor information;
- Take a respectful and helpful relationship to the reader;
- Present clearly the writer's objectives – particularly obligations upon and warnings to the reader;
- Organise the argument logically and effectively.

A Summary

Decades of plain language research have shown that comprehension is improved if Jury Instructions are:

- brief
- clear, and
- orderly.

Brief, because there is a very human tendency to 'switch off' if formal instructions are long – think of airline safety instructions before a flight. Clear, because complexity makes language more difficult. Complexity may have different sources, including the linguistic elements mentioned earlier, and:

- technicality
- formality, and
- the differences between speech and writing.

(In Systemic Linguistics, this is the issue of High Register).

Orderly, because many texts are poorly organised, for instance:

- cramming concepts together, rather than addressing them one by one, and/or
- putting them out of logical sequence, and/or
- not making explicit how they connect (coherence).

This operates at the level of the whole text, rather than sentences. There is a wealth of additional material at: http://www.plainlanguagenetwork.org/.

Recasting

This information suggests something much more than language simplification is involved – it is looking more like recasting. What is meant by recasting? It involves entirely rethinking and reconstructing, by:

- extracting the meaning/concepts, then
- finding the best way to logically organise the concepts, then
- expressing the concepts in the most comprehensible way.

The revised version may have little resemblance to the original. Rather than traditional low-level modification, this process is very similar to high level translation from one language to another – extracting meaning from the source language, moving through abstract semantic space, and finding words to express the concepts and meanings in the target language. Like translation, the revised text can never be exactly the same in

semantic content – rather, as in Skopos translation theory (Reiss and Vermeer, 2014) – these intra-lingual translations should be fit for the purpose.

This moves beyond most of the current thinking about plain legal language. It is only at the last stage, 'expressing the concepts in the most comprehensible way', that the cognitive and plain language issues come into play – the new version would need to follow plain language principles; be as short as possible; remove redundant information; avoid cognitive overload; and be well organised. In other words, be brief, clear and orderly.

Procedure

Documents such as the Charge Book could include suggestions for judges about ways to interact and negotiate meaning with jurors.

A Worked Example

The Problem

Let us then look at the Jury Instructions in the State of Victoria. As noted above the current Jury Instructions are accessible at http://www.judicialcollege.vic.edu.au/eManuals/CCB/index.htm#30229.htm. What are the problems with the current instructions, and what might be done? The example used earlier is fairly typical of the existing Jury Instructions. It is clear that previous efforts have been made to clarify them. (The formatting from the original has been maintained.)

> ***Section 1.52 - Judicial College of Victoria (2013) Victoria Criminal Charge Book.***
>
> **1.5 - Decide Solely on the Evidence**
> **Introduction: What is Evidence?** …
> The **first** type of evidence is what the witnesses say. It is the answers that you hear from the witnesses that are the evidence, and not the questions they are asked. This is important to understand, as sometimes counsel will confidently include an allegation of fact in a question they ask a witness. No matter how positively or confidently that allegation is presented, it will not form part of the evidence unless the witness agrees with it.

Syntactic Complexity in the sentences

By syntactic complexity, I refer particularly to the number of clauses, but also to subordination and coordination. Rather than provoke a debate among grammarians, I have presented this graphically.

It is the answers
that you hear from the witnesses
(modifies 'answers')
that are the evidence,
(modifies all preceding)
and *(it is)* not the questions
(that) they are asked.
(22 word sentence)

Other linguistic complexities

- the italicised deleted elements in all 3 sentences, which reduce transparency
- "They are asked" – passive

Syntactic Complexity in the sentences

This is important to understand

as sometimes counsel will confidently include an allegation of fact in a question

(that) they ask a witness

(22 word sentence)

Other linguistic complexities

- the number of elements/phrases in: "as / sometimes / counsel / will include / confidently / an allegation / of fact / in a question" – complexity at the clause level.
- "as" meaning 'since' or 'because' is rarely used in casual speech – it is high register.
- "allegation of fact" is highly grammatically metaphorical – unpacked it is something like 'they say that x is a fact'.
- deletion of "that" in "a question [that] they ask a witness" – obscures the relationship.

Syntactic Complexity in the sentences

No matter (short for *'It does not matter'*)

how positively or confidently that allegation is presented

it will not form part of the evidence

unless the witness agrees with **it**.

(25 word sentence)

Other linguistic complexities

- "unless" is a concealed negative (it means 'if not', producing a triple negative with 'no matter' and 'not form').

- "is presented" – passive.
- "how positively or confidently that allegation is presented" – adverbs precede and are distanced from the verb.
- the final "it" is sufficiently far from "allegation" that its reference becomes unclear.

Conceptual Issues

The core information here is 'evidence is what the witnesses say' BUT the last sentence makes it clear that what the lawyers say also counts, if the witness agrees to it. In other words, it is misleading. So, we need to concentrate on the core facts, to avoid cognitive overload. Most of the rest is for emphasis, not clarity. Some of it is completely redundant information such as 'they ask a witness'.

> The **second** type of evidence is any document or other item that is received as an "exhibit". The exhibits will be pointed out to you when they are introduced into evidence. When you go to the jury room to decide this case, some of the exhibits will go with you for you to examine. Consider them along with the rest of the evidence and in exactly the same way.

Lexical Issue

It was noted earlier that the word 'exhibit' has a legal meaning that differs from the everyday meaning. It therefore needs to be replaced or defined.

Syntactic Complexity in the sentences *(the combination of clauses)*

There is one particular sentence that is highly problematic:

> When you go to
> the jury room
> to decide this case
> some of the exhibits
> will go with you
> for you to
> examine
>
> (23 word sentence)

I will look at this Jury Instruction in a slightly different way, because although there are syntactic complexities, I feel that the number of phrases or groups is the worst problem.

Syntactic Complexity in the sentences *(the combinations of phrases/groups)*

The **second** type
of evidence is
any document
or other item
that is received
as an "exhibit".
The exhibits will be pointed out
to you
when they are introduced
into evidence.
When you go
to the jury room
to decide
this case,
some of the exhibits
will go
with you
for you
to examine.
Consider them
along with the rest
of the evidence
and in exactly the same way.

- There are many subordinate clauses.
- Passives: 'is received', 'will be pointed out', 'are introduced'.
- unnecessary *high* language – why 'other item' rather than 'other thing'.
- legal jargon 'introduced into evidence'.

Conceptual Issues

The last two sentences anticipate the end of the trial, which may be a long time later. So, better to do it during final instructions. Redundant information: 'to you', 'when they are introduced into evidence', 'exactly'.

Suggested Revision

Ideally, as I suggested in a previous paper on plain language (Gibbons, 2001), various versions should be trialled with potential jurors, and tested out to see which communicates best. This approach has been used to test out revised Jury Instructions in several jurisdictions, including Oregon. However, this was not permitted in this case. What follows are some suggested revisions that I submitted. They were made with the lawyerly help of Matthew Weatherson of the Judicial College of Victoria. (The participation of a lawyer, particularly when elements are being removed, is essential in such work.) These revisions would not be acceptable in this particular form, but I use them to illustrate possible ways of improving communication with jurors. I believe they pass the Auntie Doris test.

What is evidence?

There are two kinds of evidence.

First - what the witnesses say or agree to. It is not what the lawyers suggest.

Second - exhibits.

These are things that we will show you. I will tell you when there is an exhibit, and we will give it a reference letter or number.

Overall
The number of syntactic elements and the complexity of the relations between them are considerably reduced. However, my revision still includes some syntactic complexity. I struggled with this but decided that there were some concepts that needed to be linked.

The paragraph that begins "First"
The misleading disjuncture between the first sentence and the last has been removed.

"This is important to understand, as sometimes counsel will confidently include an allegation of fact in a question they ask a witness. No matter how positively or confidently that allegation is presented . . . ". This element has been deleted because it includes no vital information. It seems to be there for emphasis, but in fact may be less powerful than the simple clear statement that replaces it. This also means that technicalities such as "counsel" and "allegation of fact" are removed. In the final sentence triple negation is reduced to single negation.

The paragraph that begins "Second"
This version unclutters the conceptual content of the first two sentences of the original. It removes "some of the exhibits will go with you for you to examine." because this information is only needed at the end of the trial. The final sentence is removed, because it adds no information. The revised version improves the identification of what 'exhibit' means in the language of the courtroom.

We should notice however that radical recasting can be seen as a necessary but not sufficient step to improve jurors' understanding of Instructions. Other changes in the medium and means of communication might be desirable, through addressing courtroom procedure. Some recommendations follow.

Addressing Procedure

Comprehension checking
Since an 'in your own words' approach would be a radical departure and for good reason might meet resistance from judges, a more conservative guideline might be the following:

Recommendation for inclusion in the Charge Book:
Question jurors about the meaning of the Instructions, to ensure they have understood. If they have not, try again.

Negotiation of meaning, and responding thoughtfully to jurors' questions
Less radically, constructive dialogue with judges might persuade them of the value of interacting and negotiating meaning with jurors, which in turn might lead to improvements in interactive practices, particularly responding thoughtfully to jurors' questions.

Recommendation for inclusion in the Charge Book:
Listen carefully and respectfully to jurors' questions, and answer them thoughtfully.

Narrative

Heffer's (2005) work also demonstrates the effectiveness of the use of oral **narrative** in improving understanding. The original already includes a narrative element, but it might still be valuable to include a recommendation to this effect.

Recommendation for inclusion in the Charge Book:

Use narrative and everyday experiences to explain Instructions.

Multimodal Instructions

Finally, Marder (2015) makes the obvious point that it is desirable to provide jurors with a written version of the jury instructions, so that they can revisit them if the need arises. As we saw, in Victoria written forms of all Jury Instructions are not always provided. With modern technology, and the use of multimodal techniques, for example by providing links to the jury instructions online, it should be possible to overcome this difficulty.

Recommendation for inclusion in the Charge Book:

Provide access to written forms of the Instructions, so that jurors can consult them.

Conclusion

We have seen that the current situation, where many Jury Instructions do not adequately instruct jurors, has arisen because the need to address a secondary audience, the Appeal Court, has overridden the needs of the primary audience, the jurors. As noted earlier, this is a travesty. We have seen that a process of radical recasting, rather than working at a superficial linguistic level, can improve the likelihood that more of the Instructions will be understood.

We have also noted that interactive and multimodal approaches could produce further improvements. My suggestions are only a starting point for negotiation with judges. In the end, perfect communication is in practice impossible. However, **improving** communication is certainly possible, and it is hard to find a logical reason not to do so, when so much as at stake.

Twist in the Tail

My time with the Charge Book Committee ended without the Committee adopting these suggestions. They decided to focus on other issues.

Notes

[1]I should like to thank Matthew Weatherson of the Judicial College of Victoria, and Judge Pamela Jenkins for their invaluable comments on this paper. Remaining errors are mine alone.

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Book Review

An Introduction to Forensic Linguistics: Language in Evidence (2nd edition)

Reviewed by Frances Rock

Cardiff University

An Introduction to Forensic Linguistics: Language in Evidence (2nd edition)
Malcolm Coulthard, Alison Johnson & David Wright (2017)
London: Routledge

When Malcolm Coulthard and Alison Johnson published their *Introduction to Forensic Linguistics: Language in Evidence* in 2007, enthusiastic reviewers described the volume as having "everything that a good introductory textbook should have" (Ikeo, 2008: 377) and as being "eminently useful for a wide variety of linguistics classes" (Berk-Seligson, 2008: 279):. My experience in using that edition with getting on for 800 forensic linguistics students in the intervening years has amply demonstrated this to be true. The book is an accessible, thought-provoking tour through a range of cases and linguistic approaches which offers insights to those new to the field and more seasoned readers. It was, then, with some trepidation that I greeted the news that a new edition was forthcoming, and with an additional co-author. These fears were unfounded, however. The addition of David Wright to the writing team and changes to the organisation and content of chapters has resulted in broader coverage without any compromise at the level of the volume's organisation. Likewise the revisions to the text have not reduced the impact of the crisp writing style, the thoughtful explanations and the effective worked examples. The volume remains an extremely valuable component of the teaching and understanding of contemporary forensic linguistics.

The 2017 edition maintains its commitment to "the text" (p. 4) and this claimed pledge is operationalised in every chapter where the focus is on data and textual evidence. The book has also maintained its clear division into two parts, the first concerned with the language of the legal process and the second with the examination of language

as evidence. The book has undergone some considerable changes. Much of the original introduction has been removed including, somewhat surprisingly, the widely-cited historical overview of the trajectory of forensic linguistics (Coulthard and Johnson, 2007: 5–7). Following the introduction, the first main chapter was originally entitled "Approaching a forensic text" (2007: 13) and whilst I found it a useful and engaging way in to the authors' approach and work in the field, one could have claimed its coverage was a little too grounded in one framework. This has been replaced in the new edition by a chapter named "Critical, theoretical and methodological approaches to language in legal settings" which much more deliberately and explicitly situates the study of legal language in the wider space of (applied) linguistics, making connections to sociolinguistics, pragmatics, critical and other discourse approaches, conversation analysis and corpus linguistics. This chapter is a timely response to the development of forensic linguistics which has occurred through increasing scholarship in more areas of law and evidence. The move to contextualise the discipline theoretically and methodologically is also appropriate given the way that the wider discipline of (applied) linguistics has metamorphosised in the ten years between the two editions.

Elsewhere in Part 1, the original third chapter "Legal genres" (2007: 54) no longer appears in its own right although some of the ideas from that chapter are incorporated or at least covered elsewhere in the new edition. The removal of this chapter makes the line through the first section, on language in the legal process sharper. Chapters on calls to the police and interviewing (still covered together in a single chapter), as well as courtroom language, remain. The revised sub-section headings are punchier and more informative than those in the earlier edition. The literature included and some examples have also been updated.

Part 2 has seen the more extensive revision and it is here that Wright's expertise will have been most relevant. The chapter on forensic phonetics now makes no mention of document analysts with whom even the original volume claimed to be "hardly concerned at all" (2007: 156). This wise change reflects the tightening of forensic phonetics since 2007 and allows that area of scholarship to be presented in its own right. Chapter 8, entitled "Idiolect and uniqueness of encoding" in 2007 (161) now has the more expansive title "Authorship attribution" (151) and a broader coverage which reflects and responds very successfully to developments in that area in particular. These developments, in methods, methodology, theory and casework are nicely charted in the new chapter which achieves this without losing its attention to historical antecedents. Throughout part 2, once more, sources and some examples have been updated. The final main chapter, on the concept of linguistic expertise has seen some particularly helpful changes. These involve a slight but effective re-sequencing of sections and, crucially, the addition of a section on the expression of expert opinion using statistics which has been extremely useful already in class sessions with undergraduates.

At the book's close, the reason for the removal of the historical overview from the beginning of the book becomes apparent as Svartvik, cast as the first forensic linguist, or at least the first to use the term "forensic linguist", now appears as part of a completely new "Conclusion" chapter (2007: 215–221) which historicises in a more polemical and forward looking way than was possible in the introductory chapter of the earlier edition. This closing chapter of the new edition situates forensic linguistics in the landscape of application, professionalization (to the extent that this is flagged through such measures

as codes of conduct) and in the context of the sub-discipline's own and continuing development. This concerted attention to the field's responsibilities is a valuable addition which signs off on the right note for a book on an area of scholarship which can have the kinds of implication described and evaluated therein.

When the first edition of this volume was published, there were relatively few texts available which offered an accessible, undergraduate-level way in to the still forming sub-discipline of forensic linguistics (although Gibbons, 2003, for example, is a notable exception). The current volume enters a more densely and indeed richly populated textual world where textbooks (e.g. Eades, 2010; Mooney, 2014 and edited collections (e.g. Coulthard and Johnson, 2010; Tiersma and Solan, 2012 provide their own distinct takes on the question of what constitutes forensic linguistics and how it is best explained. The revisions to this book have given it a renewed clarity of voice within this impressive body of work particularly through the attention to theoretical and methodological context at the outset and the forward-looking conclusion at the end.

The 2017 edition of *An Introduction to Forensic Linguistics* closes with some puns and word-play which reflect the good humour evidenced in the writing throughout. Specifically the closing paragraph raises the question of whether the authors' "advocacy" has been so "persuasive" that "the majority [of readers] will find in favour" presumably of the usefulness of the volume. The jury we must turn to for a verdict are students who have used the new edition. The volume has certainly met with the approval of my students, not only for its mention of chocolate biscuits (or should that be cakes?) on the very first pages (2017: 1-2), one of the books new examples. My mention of this example is less flippant than it might seem as the example illustrates one of the major strengths of the book for me, as a teacher. As Malcolm Coulthard once told me, students do not have to be enjoying themselves to be learning however a positive learning experience certainly does no harm. I have therefore been struck, since introducing this new edition in class, by the frequency of students' positive comments on the book. Most notably, class members would often recount things that they had read in its pages, unsolicited, and bring up their own responses to the activities and examples. The authors' own experience as educators is evidenced on every page and it would seem that they will not be sent down by the jury they have addressed.

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Book Review

Introducción a la Lingüística Forense – un libro de curso

Reviewed by John Gibbons

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Introducción a la Lingüística Forense – un libro de curso
Gerald R. McMenamin (2017)
Fresno, CA: The press at California State University

This book, written in Spanish, uses the term 'Forensic Linguistics' in the broader sense of the study of language in the justice system, but it is mainly concerned with the narrower field that I have called (Gibbons, 2011) "communication evidence". It deals mostly with language evidence in the legal system of the USA, particularly where the Spanish language is involved, often in California. The early chapters examine the background to forensic linguistics, and the book then moves on to case studies in which the author was involved, four on written language, and seven on speech. With regard to the role of the expert witness in Common Law trials McMenamin makes the fundamental point that the expert witness provides information and analysis to the court to assist it in its deliberations, but cannot and should not attempt to dictate the verdict.

Part I. Introduction

Chapter 1. The Socio-Historical Context of California

Rightly, McMenamin believes that this study needs to be contextualised in the geography and social history of California, in particular the ongoing role of Spanish and Spanish speakers. It forms the background of later case studies. He points out that California was established as a Spanish-English bilingual state, and bilingualism was supported by continuing migration from South of the border. He documents the very large numbers of Hispanic migrants in modern California, and points that Spanish speakers have suffered ongoing xenophobic persecution, and vilification, not least by the current US president. The politicisation of judges through an electoral system can exacerbate this.

McMenamin believes that the Forensic Linguist can play a critical role in this troubled context.

Part II. Forensic Linguistics

Chapter 2. Forensic Linguistics

This chapter is a survey of many aspects of Forensic Linguistics in its broad sense of the relationship between language and the law. It consists of 3 main Sections: 'Forensic Linguistics', which attempts provide a basic definition and outline of the field; 'Introduction to some Subdisciplines', which provides brief outlines of various areas of Forensic Linguistic study, and 'What Forensic Linguistics is Not'. The second main section, 'Introduction to some Subdisciplines', begins with spoken language. He discusses recent developments in machine acoustic voice identification (sic), suggesting modern developments of the controversial spectrogram may be more reliable. He then goes on to discuss the communication of rights such as the right to silence, to the presence of a layer, and right to an interpreter – these are sometimes referred to as 'cautions' outside the USA. In the US these are provided by the Miranda warnings, which he notes have been frequently criticised for the comprehension problems that result from their linguistic complexity. He then discusses FL spoken discourse analysis, but puzzlingly only in terms of evidence on intention. However the following material covers other discourse analysis themes, including the detection of deception, and the language of cross examination, followed by the linguistic detection of the origins of asylum seekers, noting that the latter is problematic. Turning now to the written language, he discusses authorship (an approximate written equivalent to voice attribution). He mentions various important studies, most of which have emerged from the Forensic Linguistic centre at Pompeu Fabra University, in Barcelona. This is also true of the next sub-section on plagiarism. Next he briefly mentions plain language and its relative, unclear warnings. He summarises evidence on trademarks. He then mentions various studies of the Spanish of the law and readability formulas. He moves on to linguistic profiling, mentioning a number of interesting studies on Spanish (and contrastive profiling with English and Catalan). This is followed by legal drafting (perhaps misleadingly called 'distintos sistemas jurídicos" – different legal systems). Legal interpreting and translation is briefly overviewed, and then the reader is wisely directed to websites and other sources for more information on this large field.

Corpus linguistics is defined and its importance for forensic linguistics is outlined (it can be used both for the analysis of legal language and the provision of linguistic evidence), and once more the reader is referred to the large literature on the subject. The language of vulnerable witnesses talks of the methods used to obtain reliable testimony from children, and of the appalling ideologies that underpin the questioning of sexual assault victims. Linguistic rights is the topic of the next sub-section, focusing on the right to use minority languages, and the frequent failure to implement such rights, followed by a mention of hate speech/discourse. The final main section, 'What Forensic Linguistics is Not', argues that Forensic Linguistics is not Psychology, Engineering, and Information Technology (which is only a "tool").

Minor Issues

It is very difficult in a short survey in single chapter to cover the full richness of the field of Forensic Linguistics (something that I have failed to do on many occasions). Rightly,

in a book in Spanish, McMenamin prioritises material on and in Spanish. Nevertheless, I am puzzled by some of his exclusions. For example in the discussion of acoustic voice identification, he does not mention the FBI's claim that it has highly reliable automatic voice attribution, and in the 'communication of rights' sub-section he does not mention the key study by Rock (2007) which reveals many variables that hinder communication of rights, not limited to linguistic structure. Similarly when discussing trademarks, he mentions Shuy (on English) but not Oyanedel and Samaniego (2001) (on Spanish). Given his many and significant contributions to the field it is certain that the author is very well cognitively organised, but this organisation is not always made explicit in the text. He does not place topics into categories such as 'description of the nature of legal language', 'linguistic human rights', and 'communication evidence' (Gibbons, 2011). Although these fields overlap, categorisations are useful in a textbook. At a lower level, 'linguistic profiling' is not associated with its cousin 'writer attribution', nor is a connection drawn between 'plain language' and 'legal drafting'. Almost any scholar in the field will have some aspect that they believe omitted or under-played: for example, there is no mention of a particular preoccupation of mine, the teaching of legal language in countries where the language of the law is not the mother tongue of the lawyers – such as the legal English used in some territories formerly ruled by Britain, the USA and New Zealand. This issues raised here may in part be due to the lack of reference to major texts on Forensic Linguistics, for instance the work of Tiersma, Levi and more recently Heffer.

Chapter 3. Linguistic expert witnessing

McMenamin notes that forensic linguistic witnessing is becoming more relevant as many Hispanic legal systems adopt oral examination and citizen judge/jury procedures. In the section on FL reports he talks about the inadequacy of testimony based on opinion without supporting data, the rules of evidence that courts apply, and the procedure to be used to satisfy these rules. He then goes on to argue that evidence should be totally explicit about source texts, data, methods, findings and conclusions. He provides a likelihood scale for the presentation of authorship opinions. He then goes on to discuss the typical Common Law court witness appearance genre, and recounts Shuy's view that the essential prerequisite for expert witnessing is an in-depth linguistic training. Shuy also suggests that some preparation for the court process is useful, along with information on how to prepare a report for the court.

'Practical Considerations' (section 3.7) begins with Finegan's description of the process leading to expert witnessing in court, and notes the difficulty of presenting in a way that meets the expectations of courts. He also states very clearly that it is not the expert witness's role to judge the case, but purely to present communication evidence, even if they believe their client to be in the wrong, or even if the actions they are helping to defend are morally repugnant – neutrality is essential. This includes rejecting any attempt by their lawyer to convince the expert witness of the rightness of their case. Maintaining objectivity and impartiality is fundamental to expert witness ethics. He then goes on to make a spirited case for linguists to work in groups to do forensic analysis, in order to bring in multiple perspectives.

Section 3.8 is a translation of a text on expert witnessing by Susan Morton of the San Francisco police force, which covers many of the very practical issues of appearing in court, including clothing, nervous habits, etc.

Minor Issues

The use of likelihood scales has come under strong challenge in IJSLL; although they are still in wide use, it might be good to mention this issue. Some of the material in this chapter is relevant only to the American form of Common Law, for example asking to conference with the judge.

Part III Forensic Stylistics

Chapter 4. Style

This chapter is a summary of the nature of 'style' – a term that is used in many different ways – and argues that it is a valid form of analysis that can be used for evidence in US courts, which have unusually strict limitations on the nature of evidence. He begins by discussing style in general, particularly within the plastic arts, and noting that there can be stylistic schools, as well as individual styles. He then goes on to work through the history of writing on style beginning with the Ancient Greeks, revealing that much of modern stylistic theory has early roots. Later in the chapter he discusses the important topic of style as options and choices, and the degree of conscious awareness of this. Every linguistic act involves a choice among options. These options may involve propositional meaning, but it is options among social meaning that are more associated with style. 'Style' is the author's selection from various linguistic options. He then goes on to suggest that another definition of style is 'deviations from a norm', from the anomalous to the 'incorrect', and it becomes clear that such 'incorrectness' is often dialectal, sociolectal, temperolectal or register variation. He ends the chapter with a sweeping critique of the rejection of forensic linguistic evidence in *U.S. v. Van Wyk*.

Minor Issues

This is a long and learned disquisition on Style which, for practical purposes, could be summarised more concisely. It is probably sufficient to say that there are no absolute stylistic characteristics; rather style is the sum of probabilistic choices within phonology/graphology, lexis, grammar and discourse. These features tend to form groupings, as Biber reveals in his valuable statistical studies: constellations of features that probabilistically co-occur. (I would also argue that 'standard' language descriptions conceal considerable variation in all aspects of language.) There is little need to journey through Aristotle and Saint Augustine to reach this conclusion. In his summary of linguistic approaches to style, he hardly mentions the notion 'register', and while mentioning Biber, does not reference the substantial work done on this in Systemic Linguistics.

Chapter 5. Forensic Stylistics

The chapter begins by revisiting the concepts in Chapter 4, and by defining such linguistic concepts as 'Variation' and 'Linguistic Variable', and gives examples of variation of various types found in the literature. Then discusses literary stylistic analysis. He

describes qualitative stylistic analysis before moving on to quantitative analysis. He illustrates from a menu from a US taco restaurant which has various unusual characteristics, and shows how to calculate the probability of occurrence of some of the competing variables by comparing with Spanish corpora, including some specialised ones. He use the CREA Spanish corpus for his calculations. He defines forensic stylistics as concerned only with written language. He then discusses the nature of norms, and idiolects, problematising both, but he maintains the importance of the concept of norms, suggesting that these may emerge from corpus linguistics rather than prescriptive norms. 5.5 provides an excellent description of the means of author attribution. Poorly translated by me, it says:

> The unique style of an individual is the combination of individual traits and collective (class) traits in the language of a single author. That is, the overall style of the writer does not lie in the presence of a single idiosyncratic characteristic …but …in the features selected from all the possibilities.

He also mentions the interesting possibility of detecting authorship of computer coding (analysis of informatic style). Although he supports the notion that forensic linguistic analysis should be replicable, he strongly doubts whether a single analytic program can automatically detect authorship (a top down approach), maintaining that a bottom up analysis of identificatory traits is a necessary pre-requisite (a point I have also made in Gibbons, 2011. He does not mention that this view is challenged by the Spanish academic Turell (2010) (although she was writing in English). He then discusses the knotty issue of whether writers/speakers have conscious metalinguistic awareness of their stylistic choices – which is important in the analysis and presentation of linguistic evidence, and he mentions Labov's preference for variables that are not consciously monitored, because they are more consistent. However, he points out that it is difficult to know of which variables an individual is actually aware – there are certainly more such variables in written language, because writing is in part learned through conscious processes. The issue becomes in part which elements of the writing process have become automatised. Finally he discusses the issue of meeting American evidence rules in court.

Minor issues

This is truly a minor quibble, but I notice that he gives non-standard examples from the Spanish writing of Christopher Columbus (Cristoforo Colombo) which traces these to interference from Portuguese. As Columbus was Italian, this may not always be correct.

Part IV. Case Studies: Written Language

McMenamin does not provide official case names and numbers in the text (they are available in an annex at the end), so they are not used in this review.

Chapter 6

An authorship case – *California v. Armas*

This case dealt with the death of a girl who had suffered physical injuries. The prosecution stated these were the result of abuse, while the defence argued they were the result of falling down stairs. The linguistic evidence was to do with the authorship of

a hand-written confession after an unrecorded police interview. There were linguistic experts for both sides, who disagreed on the authorship of this document.

McMenamin used the standard technique of comparing known writing by the author with the confession for linguistic differences and similarities. These were non-standard punctuation, spelling and morphological division – some of these features are common in the Spanish writing of poorly educated Mexicans. McMenamin found 5 similarities and 21 differences in the use of non-standard features, which he states is sufficient to prove beyond reasonable doubt that the confession was not written by the accused.

Chapter 7

An authorship case – *'Company' v. 'Employee'*

A woman sued her company over harassment by her boss. One strategy that she used to fight the harassment was to send anonymous letters to the boss and his wife in a mixture of English and Spanish. The company wished to know whether the woman had in fact written the letters. He compared her writing with the anonymous letters, proved authorship, and the woman confessed to sending the letters.

Chapter 8

An authorship case – *María Aguinda et al v. Chevron Corp*

The case involved a group of indigenous people in Ecuador suing Texaco/Chevron for environmental damage to the ecosystem, and consequently their health, society and agriculture. An Ecuadorian court awarded damages of millions of dollars. The authorship of expert evidence on the environmental damage was challenged by Chevron, who stated that it had been edited by an American company rather than being the sole work of the expert who presented it as his own in the first person. Chevron also challenged the authorship of the judgment in the case. McMenamin showed that the expert evidence showed various markers of the influence of English grammar – suggesting the role of the American company. Turell provided supporting analysis. He showed that the editing was for both language and content, and was able to reveal the likely process of development of the testimony. Concerning the judgment, on the basis of formatting, including numbers and punctuation, he found a conclusive dissimilarity between the judgment and other writing by the judge. These challenges were justified – in both cases, the real author later confessed to authorship. He finishes by appealing for reform to the Ecuadorian justice system to ensure that such cases, involving the devastated lives of the indigenous, receive due process.

Chapter 9

Comprehension of Written Text – *California v. Defendant*

This case involves a legal requirement that sex offenders update their personal information each year within five working days of their birthday. The Public Defenders Office was worried that a man who had not done so may not have understood the written document; therefore this case is not one of authorship, but what I call 'meaning transfer' – it involves a matching of the linguistic proficiency of the reader with the linguistic demands of the text. The defendant was a Tongan with limited English proficiency. The

form he was expected to complete required verification that the defendant had understood the document, but no means of actually checking. The form that the man had signed was clearly defective in this regard, and had been changed in the subsequent year to move the onus to the offender. Furthermore, despite a requirement that such forms be written in 'plain English', this form did not meet this requirement. In addition to intelligibility issues, the legibility of the Arial 6.5 typeface was low (the defendant was 67 years old). To test the readability of the text the expert used the Flesh Readability measure, which showed the complexity of the text. His analysis of the defendant's police interview showed his limited English proficiency. Overall then, there was a mismatch between the demands of the text and the defendant's capabilities, so it was doubtful that he understood the text. Although cultural factors were not mentioned in the report, there may have been cultural issues concerning sexual abuse, the concept of time and the nature of communication (compare Eades's and Walsh's work with Australian Aboriginals).

Minor Issue

The Flesh Readability measures used by McMenamin have been frequently challenged – there are better measures of linguistic complexity.

Part V. Case Studies: Spoken Language

This section consists of 7 chapters discussing cases where evidence was given on spoken language.

Chapter 10

Miranda Rights – *California v. Defendant*

This case involved comprehension of Miranda Rights by a Spanish monolingual. The case begins with McMenamin's opinion (an interesting departure from the structure of previous chapters) that the defendant could not have understand it because of his low level of education, which poorly matched the demanding linguistic complexity of the Spanish version of the Miranda Warnings, and the presentation – the police officer read the Miranda Warnings in Spanish rapidly and unclearly.

Chapter 11

Miranda Rights – *California v. Defendant*

In this case, the questioner's poor Spanish and the defendant's responses to the reading of the Miranda Rights meant that it was not certain that he had received these rights.

Chapter 12

Miranda Rights – *California v. Ceja*

In this case, the Miranda Rights were administered in English to a Spanish speaker with limited proficiency in English without the assistance of an interpreter. Her first response, that she would understand better in Spanish, was ignored. Subsequent attempts to confirm she has understood were equally questionable because they expressed her limited

understanding, or were 'mmhmms' (i.e. backchanneling). On this basis McMenamin stated in court that it was uncertain if the defendant understood her rights, and there was evidence of coercion, and asked for the record of interview to be dismissed as evidence. McMenamin (following a distinction made by Cummins) based his testimony partly on her mastery of BICS expand in English, but not CALP expand. This was specifically dismissed by the court. McMenamin details many more such rejections of his expert testimony. The court's responses in my view indicate a poor understanding of language and language proficiency, and a refusal to accept expert testimony on these, a not uncommon response from lawyers and judges. This is worsened by various ad hominem attacks on him in the judgment. His evidence was rejected by the court, the record of interview was accepted, and the defendant was punished by permanent imprisonment without parole. This chapter is disquieting.

Minor Issue

McMenamin used Cummins's terms BICS and CALP to explain the defendant's lack of mastery of English. Cummins himself abandoned those terms in the 1990s, and refers to Biber's work on register instead (see for example Biber and Conrad, 2009). There is also valuable complementary description of register in Systemic Linguistics. A more adequate register model (lacking in much American Forensic Linguistics) might be helpful.

Chapter 13

Bilingual Interpreting – *Texas V. Cortez*

This is an interesting historical case from 1903 that shows the consequences of poor quality interpreting, and the legal system's endemic prejudice against Hispanics. McMenamin includes this case on the basis that it is representative of an ongoing problem up to the present day, and that there is consistent misrepresentation of the conditions of detention of border crossers. McMenamin did not present evidence on this issue.

Chapter 14

Bilingual Interpreting – *United States v. Defendant*

In this case, English written translations of Spanish voice recordings were used as evidence that the accused played a significant role in drug dealing. Some of the most inculpatory recordings were retranslated into English by two independent interpreters working together. They revealed significant errors in the earlier translations, some caused by inadequate mastery of local Spanish, and others seemingly caused by the government interpreter's bias. McMenamin reveals the problem of inadequate legal translation/interpreting – which is found in many parts of the world. He does not mention the impact on the case of the new translation, which was used by the defence to challenge the official version.

Chapter 15

Pragmatic Meaning – *'Employee' v. 'Company'*

This case dealt with the meaning of the nickname 'negrito'. The online Spanish dictionary says bluntly:

> The word "negro" means black and "negrito" means "little black." Lots of folks in Latin America will call certain friends "negrito" as a nickname when he has dark skin. It's not an insult.

However, this article from the Independent newspaper makes it clear that the term can be regarded as racist in certain contexts: http://www.independent.co.uk/sport/football/news-and-comment/simeon-tegel-is-the-term-negrito-racist-sadly-for-the-fa-yes-and-no-6277646.html. This is the treacherous water into which McMenamin ventured. The company employed a team of Spanish speaking workers with one African American member. The Spanish speakers addressed him as 'negrito', and also used the term to refer to him. The company asked McMenamin to investigate two questions – the meaning of the term, and whether there was any negative or discriminatory intent when the term was used in this context. McMenamin decided that, in this context, the use was not discriminatory, but a marker of solidarity. He points out that courts tend to value dictionary meanings rather than taking into account the pragmatics of use. In his analysis he points out that the *-ito* diminutive ending is often used as a solidarity marker, particularly in nicknames. I would add however that it can also be patronising. By careful research into Spanish nickname practices, he supports the view that the Hispanic employees intended the term to be one of inclusion and affection, but he says that the African American did not experience it in that way.

Minor Issue

The Hispanic employees' intention may not have been discriminatory (the illocution), but given the history of the term 'negro' in America, the African-American employee may well have experienced the term as negative (the perlocution). McMenamin could give more weight to the perlocutionary force.

Chapter 16

English pronunciation – *Jazmin and the Spelling Bee*

This the case of young Punjabi speaker in the USA whose pronunciation of the written letter 't' led to her losing the Spelling Bee, because the jury heard it as a 'd', which was assessed as a spelling error. McMenamin performs an exhaustive analysis of the pronunciation of this dental sound in English and Punjabi, and shows that Jazmin was in fact pronouncing the written letter 't' – but her lack of aspiration was consistently different from the US English norm. McMenamin states that the policy of the Spelling Bee organisation needs to change on such issues, especially as the organisation encourages the participation of new migrants with English as a Second Language.

Conclusions

This book is very important, because, while there is extensive publication on Forensic Linguistics in English and on English, there is relatively little in other languages, with the possible exception of German. I do not have access to all material published in Spanish, but this may be pioneering work. It is well written, clear, and mostly well organised. It is

a brave book, because, like his previous work, the author is willing to place his cases and the methods used on record, where they are open to criticism, and where he believes he may have been in error, he says so. This book is a 'must read' for all Spanish speakers interested in Forensic Linguistics, and I congratulate McMenamin.

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Linguagem e Direito: Os eixos temáticos

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Linguagem e Direito: Os eixos temáticos
Malcolm Coulthard, Virgínia Colares & Rui Sousa-Silva (Org) (2015)
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Este volume abrange dois âmbitos do conhecimento estreitamente relacionados: linguagem e direito. Como frisam os coordenadores na apresentação da obra, patrocinada pela Associação de Linguagem & Direito (ALIDI), através de vinte e um trabalhos de quarenta investigadores (séniores e iniciantes) pretende-se "estreitar o diálogo e estabelecer eixos temáticos nessa interface" (p.15). Com uma bela metáfora, os organizadores falam de como estes eixos temáticos tecem *a terceira margem do rio*. Aliás, uma "espécie de *entrelugar* no qual poderemos estudar/compreender a linguagem em uso nessa instância social de estabelecimento do direito" (p. 17). Esse *entrelugar* é evocado pela ideia da "transdisciplinariedade". Destarte, não se procura "o domínio sobre as várias outras disciplinas, mas a abertura de todas elas àquilo que as atravessa e as ultrapassa".

O escopo do livro é, portanto, complexo e ambicioso, mas o seu objeto constitui um território fronteiriço potencialmente fértil para dita reflexão transdisciplinar. O resultado desta aposta é, sem dúvida, heterogéneo e inevitavelmente desigual. Todavia, as diferenças de qualidade e profundidade dos diferentes textos não retiram interesse e importância ao conjunto que não é apenas uma reunião de textos, mas uma reflexão coerente.

Contudo, diante de uma obra tão *proteica* (429 páginas, 40 trabalhos diferentes) talvez a única maneira adequada para a sua análise seja arriscar uma leitura pessoal da mesma. Sendo assim, a análise que segue focar-se-á apenas em alguns dos textos que fazem parte do volume. Ora bem, esta seleção não indica necessariamente uma avaliação da maior qualidade dos trabalhos ressalvados. Aliás, esta recensão vem a ser como um roteiro pela terceira margem desse rio largo e caudaloso da relação entre direito e linguagem.

Um roteiro que é, com certeza, pessoal e propõe um olhar crítico sobre algumas das interfaces propostas, sobre alguns destes *entrelugares* pelos quais certos trabalhos deste livro transitam ou se detêm.

O volume está organizado em cinco partes, que vêm ordenar os diferentes eixos temáticos:

A primeira parte da obra, *linguística forense*, trata da "linguagem como evidência" (p.16). Nas questões analisadas, os linguistas atuam como peritos do sistema de justiça. Neste bloco destaco dois interessantes trabalhos acerca do plágio. O primeiro deles (Sousa-Silva, 2015: 38) centra-se no plágio jornalístico, enquanto o segundo (Abreu *et al.*, 2015: 64) é a apresentação de resultados de uma interessante investigação acerca do plágio académico em instituições de ensino do Brasil e do Chile. Os dois trabalhos mostram o caráter complexo do plágio, que, além de ser uma questão técnica relacionada com a linguagem e o seu uso, constitui um comportamento que acaba por ser tratado "não só como uma questão moral e ética, mas também como uma questão legal" (Sousa-Silva, 2015: 43). É nesse *interlugar*, a meu ver, que reside o principal interesse destes dois textos. O primeiro trabalho vem salientar a importância e o potencial probatório da linguística forense em casos de plágio e de violação de direitos de autor, enquanto o segundo texto referenciado (Abreu *et al.*, 2015) parte de uma investigação específica para refletir acerca de outra forma de plágio, o académico, à qual se associam outros tipos de significados, sendo, assim, um exemplo, frequente no livro, de investigação empírica relacionada com os temas objeto do mesmo. Desta forma, desde abordagens próximas à Sociologia jurídica, Criminologia e outras disciplinas de natureza interdisciplinar, se mostra a riqueza destes contributos até atingir essa *transdisciplinariedade* que é um dos objetivos essenciais do volume.

Já o segundo bloco, centra-se em questões relacionadas com o discurso jurídico. Esta linha visa analisar questões relacionadas com as relações entre poder e linguagem jurídica, assim como com a interpretação dos textos legais em diferentes contextos. Neste segundo bloco podemos ressaltar os textos relacionados com a *Lei Maria da Penha*, texto legal brasileiro sobre violência de género. O contributo de Lúcia Freixa visa "explorar, por uma análise crítica aplicada a textos próprios do sistema penal, de que maneira um problema social como a violência nas relações de gênero é tratado no sistema judiciário" (2015: 157). Esse objetivo é conseguido a partir de um corpus formado por 25 processos penais de ameaça e lesão corporal, registados entre os anos de 2007 e 2008, no Cartório do Crime da cidade de Jaraguá, interior de Goiás e enquadrados na *Lei Maria da Penha*, nos quais vítimas e agressores tinham relações de parentesco, sendo a maioria casais. Por seu turno, o trabalho de Sobral *et al.* (2015: 112), partindo de uma técnica também enquadrada na *Análise Crítica do Discurso Jurídico (ACDJ)*, centra-se apenas numa resolução judicial concreta sobre a revisão de um acórdão que resolve um recurso absolvendo um homem que teria agredido a sua mulher alegando legítima defesa e a reconciliação do casal. Os dois trabalhos, partindo de textos que recolhem decisões judiciais concretas e contextualizadas – se bem que a partir de um desenho empírico mais amplo no primeiro caso e mais concentrado no segundo – demostram a persistência de certa cultura patriarcal no *habitus jurídico*, utilizando os conceitos de Bourdieu (2006). Isto leva, nalguns casos, a justificar certas formas de violência contra as mulheres na aplicação das normas apesar daquilo que as leis parecem dizer. Definitivamente, estes dois contributos, desde perspectivas teóricas muito semelhantes, procuram, baseados numa forma de pesquisa

social crítica, "estudar a linguagem como prática social, observando o papel do contexto e as relações entre linguagem, poder, dominação, discriminação e controle" (Freixa: 2015: 161).

Por seu turno, a terceira secção estabelece um diálogo entre as teorias do processo e da análise crítica do discurso jurídico ao mesmo tempo que se concentra "na interpretação dos textos legais em uso nos eventos comunicativos" (p. 17). Neste bloco cabem trabalhos que poderíamos considerar próximos da Filosofia do Direito ou da Ciência Política. Seria bom começar o nosso percurso pessoal nesta seção pela leitura com o texto de Lemos Hinrichsen *et al.* (2015: 257) que, além de uma análise das leis de educação brasileira, fornece uma panorâmica interessante e uma revisão crítica, através de diferentes contributos filosóficos de relevo, dos mecanismos que permitem "as ciências dogmáticas jurídicas adquirem seu estatuto da ordem, isto é, da ideia de sistema harmonioso, o que significa direito" (p. 273). O seu contributo vem colocar algumas questões provocadoras e acaba por ser um bom enquadramento geral deste bloco nessa ligação entre direito e linguagem que é o tema do livro. Nesta esteira, conclui o autor: "O Estado é uma simulação porque o direito é uma simulação! O ordenamento jurídico é apenas um aparato discursivo – ele é, sempre, linguagem". Também neste bloco, o texto da autoria de Cartaxo Alves *et al.* (2015: 203), desde a consideração das sociedades hodiernas, entre elas a Brasileira, como pluralistas, vem analisar a mudança do papel do judiciário brasileiro e especificamente do Supremo Tribunal Federal em sede de controle da constitucionalidade. Partindo da teoria comunicativa de Habermas (2002) e da importância que adquire nela o diálogo (e, portanto, a linguagem) a autora vem concluir que dita crise "somente poderá ser revertida quando forem adotados mecanismos que favoreçam uma maior participação de todas as esferas do povo na tomada de decisões, rechaçando-se esse modelo que busca cercear a divergência advinda do pluralismo, em prol de um conceito superado de consensualidade em torno de certos valores" (Cartaxo Alves, 2015: 218). É de ressaltar também neste bloco o texto de Braga Ferreira e Ramos Sales Mendes de Barros (2015: 241) que se serve de uma análise de discurso sobre uma súmula vinculante do Supremo Tribunal Federal de 2008, relativa aos critérios para os polícias usarem a força. Partindo dos termos literais e, portanto, do uso da linguagem, o autor desvenda através deste exemplo concreto o uso que o aparelho ideológico do Estado faz desta decisão. Acaba por mostrar, na senda do enquadramento teórico de Althusser (2003), a presença de um enviusamento conservador e protetor das elites até o ponto de se perguntar "que sociedade, qual projeto de sociabilidade saiu vencedor com essa decisão?".

Por sua vez, questões relacionadas com a interação em contextos legais ocupam a quarta parte da obra. Nesta parte iremos destacar dois trabalhos que analisam, cada um deles, aspetos concretos destas interações e que parecem complementar-se. O primeiro deles, da autoria de Nunes Scardueli (2015: 297), centra-se numa análise discursiva de textos policiais, em especial relatórios de inquéritos em contexto de violência conjugal e de género. O trabalho vem mostrar como, apesar do espírito das leis como a *Lei Maria da Penha*, "os discursos empregados na fase policial geram sentidos ainda muito impregnados por relações ideológicas e de poder, referente às questões de gênero" (p. 313). No segundo trabalho, da autoria de Negraes Pinheiro Andrade (2015: 317), coloca-se a questão dos encontros legais na fala em interação através da técnica da Análise de Conversa Aplicada (ACA). Esta segunda investigação, a partir de uma análise pormenorizada da fala e a forma como ela se produz, própria do instrumento utilizado, vem trazer a lume

a importância do modo como a interação dos cidadãos com a justiça importa para a própria qualidade democrática do sistema. Conecta-se, portanto, com tópicos importantes como a vitimização secundária no caso das vítimas-testemunhas e, em geral, com desenvolvimentos teóricos como a justiça procedimental (*procedural justice*) ou a justiça interpessoal (Tyler, 1984, 1988; Bernuz Beneitez, 2014). Ambos os textos provam como estas ferramentas de análise em tópicos que interessam grandemente também a disciplinas como a Sociologia jurídica ou a Vitimologia, por exemplo, podem ser analisadas deste ponto de vista mais específico da linguagem, mostrando assim a aplicação prática da *transdisciplinariedade* como um olhar de grande utilidade.

Finalmente, o quinto e último bloco, sob o rótulo de criminologia crítica, debruça-se sobre alguns tópicos próprios desta abordagem criminológica à luz do interacionismo simbólico, "segundo o qual é a partir das interações sociais, por meio da linguagem, que se constroem as relações e as identidades" (p. 17). Neste percurso pessoal pela obra, importa agora destacar dois trabalhos, cuja mais-valia talvez se encontre no facto de incluírem um enquadramento teórico mais geral que vem a explicitar e exemplificar a abordagem desta seção de encerramento. O texto de Albuquerque Filho *et al.* (2015: 362) vem analisar a importância da Criminologia crítica para o Direito penal. Os autores concluem que "O Direito Penal necessita ser observado além do Direito, através de outras lentes, num processo humano dialético perceptível, em completa harmonia com a Criminologia Crítica, com a realidade social e toda a ordem jurídica" (p. 366). Deste contacto "atinge-se uma maior efetividade da justiça, da aplicação do direito, a conseqüente melhoria na prestação jurisdicional e o desenvolvimento de uma política criminal séria." (p. 371). O texto de Pereira Vinhas e Babini Lapa do Amaral Machado (2015: 374), numa linha complementar, centra-se no âmbito da Vitimologia, uma ciência que, embora tenha certa autonomia, faz parte desse arquipélago interdisciplinar que a Criminologia é (Agra, 2012). Embora o trabalho se foque num aspeto muito concreto como é a análise da neutralização da vítima no caso de estupro de vulnerável na ordem jurídica brasileira, aborda também uma interessante reflexão acerca do papel da vítima e da Vitimologia a partir da análise de conceitos centrais muito desenvolvidos nessa área de conhecimento.

Este percurso pessoal pelo livro deixa para trás, por questão de tempo e espaço, outros trabalhos também de grande interesse que têm como objeto variados tópicos, mas sempre analisados da perspectiva da relação entre direito e linguagem e inseridos nos eixos temáticos apresentados. Assim, temos trabalhos relacionados com as advertências ao consume de tabaco (Araújo Pupo Hagemeyer, 2015: 23), o estatuto e posição atual do tradutor forense no Brasil (Fröhlich e Piovesan Gonçalves, 2015: 85) numa perspectiva da linguística forense. No eixo relativo ao discurso jurídico, encontramos trabalhos que utilizam a técnica da análise crítica do discurso aplicada a decisões judiciais concretas (Negreiros Calado, 2015: 142) ou que lidam com o tópico do papel da memória e da opacidade da língua na hermenêutica jurídica (Aguiar Gonçalves e Fonseca-Silva, 2015: 178). Inserido na terceira seção temos também um interessante trabalho sobre a concessão de patentes aos medicamentos e que vem propor uma análise crítica da perpetuação do monopólio da exploração de fármacos pelas indústrias farmacêuticas (Stamford da Silva e Rodrigues Tabosa, 2015: 223). No bloco dedicado à interação em contextos legais, além dos já revistos, encontramos trabalhos a partir de investigação empírica referidos à coerência dos textos produzidos pelas polícias (Silveira de Souza Jorge, 2015: 281), ou textos de cunho mais puramente teórico que visam desconstruir o atual modelo puni-

tivo a partir da teoria da linguagem (Fernando José de Souza Filho, 2015: 342). Na última parte da obra encontramos, juntamente com os trabalhos já referenciados, um conjunto de análises de políticas criminais e tratamentos legais que podem ser incluídos dentro da Criminologia crítica e focados em diferentes tópicos: as decisões denegatórias e concessivas de *habeas corpus* de tráfico de drogas (Fonseca Gonçalves, Montenegro Pessoa de Mello e Colares, 2015: 354), o cadastro de perfis genéticos dos criminosos (Diego José Sousa Lemos, 2015: 401) e uma análise crítica da *Lei Maria da Penha* a partir da sua aplicação em Recife (Salazar L. Q. de Medeiros *et al.*, 2015: 417).

Definitivamente, trata-se de uma obra complexa e muito rica que vem analisar um conjunto de temas variados e heterogéneos (embora com algumas linhas recorrentes marcadas como, por exemplo, o género e a violência doméstica e a tensão entre liberdade e segurança) partindo de uma perspectiva relevante. Essa heterogeneidade pode levar a pensar-se, num primeiro momento, que a obra não possui suficiente unidade e sentido – pensamento que pode sair reforçado porque, nalguns casos, poderiam ter-se juntado trabalhos com o mesmo tema, colocando-se primeiro textos mais gerais ou de cunho mais teórico, seguindo-se aqueles com tópicos mais específicos. Contudo, a impressão final é de um conjunto de trabalhos que demostra a interligação entre direito e linguagem e a forma em que esta pode ser perspetivada a partir da transdisciplinariedade num conjunto de eixos temáticos de grande relevância para a sociedade brasileira e global.

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Book Review

Language and Law: A resource book for students

Reviewed by Emily Chiang

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Language and Law: A resource book for students
A. Durant & H. C. Leung (Eds.) (2016)
London and New York: Routledge

This book is the latest contribution to a growing body of works inviting the budding scholar to explore the relationships between linguistics and law. Durant and Leung dissect a wide range of complex issues (social, legal, linguistic, political) that occur at the intersections between language and law in an accessible way that demands no prior knowledge of either field. The wide range of topics covered include legal language, its historical development and sociolinguistic implications, legal genres, the language of different participants in various legal contexts, legislative interpretation using the Gricean Cooperative Principle, speech acts and power relations, disputed language and advertising, forensic evidence and multilingualism in law.

As is a feature common to volumes in Routledge's 'resource books for students' series, the book is usefully structured as 'flexi texts', meaning it is divided into four main sections: Introduction, Development, Exploration and Extension. Within each section are ten content 'threads', each covering a specific dimension of language and law. The reader can choose therefore to read the book 'vertically', starting with a broad range of key concepts and following these through to current literature and analytical activities, or 'horizontally', by focusing on a single topic thread from its Introduction right through to the Extension. I combined these two approaches, and as a recent MA graduate in forensic linguistics, it is clear to me that this flexibility will be useful for students aiming to gain a general overview of the field, as well as tutors encouraging their students to engage with particular topic areas in preparation for seminars or related coursework.

The Introduction section for each thread includes basic information regarding legal proceedings (e.g. the order of jury trial proceedings and roles of courtroom participants) in digestible chunks, without patronising the reader. It also introduces core linguistic concepts and their relationships with various aspects of law, along with relevant illustrative example texts, such as the use of a clause from a will to explore the relationship between a register and a genre (p. 13). The Development section builds on the topics introduced by highlighting and evaluating seminal works in each area, for example the contributions of Mellinkoff (1963), Crystal and Davy (1969) and Tiersma (1999) to legal language and Heffer's (2005) work on language in jury trials. The Exploration section provides considerately selected real world examples of language in legal contexts, such as a statutes (p. 120), and excerpts from a prosecutor's opening speech (p. 131), along with discussion questions, to clearly illustrate learning points and encourage extended thinking and independent analysis relating to each topic. The authors usefully advise the reader where full versions of the data provided within the book can be found online. The Extension section offers thought-provoking discussions and arguments surrounding each topic thread, for example, arguments for and against the reform of legal language to make it more accessible to the lay public, and the various challenges associated with regulating discourse in online environments. A final 'Further reading and resources' section not only directs the reader to further useful and important works, but also indicates the general and current thinking in each area. This section also includes a list of online (and free) resources where students can access a range of legally relevant linguistic data – no doubt extremely valuable to any student tasked with designing their own research projects or looking to put into practice the analytical skills and thinking developed in reading this book.

Organisation, clarity, focus and breadth of topics are some of the most obvious strengths of this book. Linguistic theory is introduced and built upon gradually through each thread in an accessible manner, and in each case this is complemented with authentic and engaging material. Particular attention is paid to pragmatics, and such theories as speech acts, Grice's Cooperative Principle and conversation analysis are explained extremely well, as is their application to various problems in everyday legal proceedings. In assuming the target audience has no prior training in either law or linguistics, the authors do a good job of looking after the reader, and this is partly by clear signposting; each new section begins with a reminder of previous content associated with that particular thread, as well as what can be expected from the current section. The authors show a real understanding of the needs of newcomers to the field, and this is often reflected in the discussion questions which might, for example, advise about how best to digest a particularly complex passage (p. 175) or help the reader to clarify their previous answers ("To make your discussion of Q5 more concrete…") (p. 202).

Thread 9 – Forensic Evidence – has a particularly strong Exploration section, with practical activities covering a wide range of forensic linguistic issues, including authorship analysis, perjury, threats, trademark disputes, meaning disputes, and groups with limited linguistic access in legal proceedings (e.g. children and second-language speakers). Importantly, this thread includes material from a police interview; an area of great interest in forensic linguistics which is not picked up in other discussions (e.g. on the linguistic power of legal institutions) as fully as it might have been. However, it seemed a little strange that this thread, in so clearly illustrating the practical applications of lin-

guistics in such a broad range of legal settings, should come so late on in the book (being thread 9/10). The activities involved in its Exploration section do understandably rely on knowledge of the linguistic theory introduced prior to the thread, so admittedly it would not usefully serve as the introductory topic; however, it certainly feels like it would be better introduced earlier on, not least to expose students to the types of law-focused work engaged in by linguists.

In comparison to other introductory books in forensic linguistics, (e.g. Coulthard *et al.*, 2017; Olsson and Luchjenbroers, 2014), *Language and Law* seems to have a slightly heavier interest in the language of the courtroom and legal documents, spending less time on other forensically relevant areas like police interviews, vulnerable witnesses, emergency service encounters, or the vast domain of online crimes (discussion on this topic is largely limited to the regulation of online language). This perhaps explains the presentation of 'language and law' as separate from 'forensic linguistics'. The latter is described as the "applied channel" through which "linguistic knowledge can in some circumstances contribute to the functioning of law…" (Durant and Leung, 2016: 40). However, the book's centralisation of 'legal language' and legal meaning makes it richer in detail concerning some legal practices than other works in the area, and as such would greatly complement works such as Coulthard, Johnson and Wright's (2017) *An Introduction to Forensic Linguistics*, particularly for those with a special interest in legal procedure over language crimes (see Shuy, 1993).

As a student resource book, *Language and Law* is tasked with covering a large amount of information and learning materials in a limited space. This is done extremely well, helped by the authors' explicit acknowledgement of the limitations of provided materials, and their readiness to point to relevant literature, useful resources and materials elsewhere. This outward looking approach means that the book is able to treat each topic it covers with impressive consideration and depth, while retaining respect for the reader's limited knowledge and experience. This book is both useful and engaging; its varied content, activities and resource information will certainly be valuable to students, course leaders, and anyone else interested in exploring the fascinating interplays where language meets law.

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Book Review

Speaking of Language and Law: Conversations on the Work of Peter Tiersma

Reviewed by I. M. Nick

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Speaking of Language and Law: Conversations on the Work of Peter Tiersma
Lawrence M. Solan, Janet Ainsworth & Roger Shuy (eds.) (2015)
Oxford: Oxford University Press

According to its editors, this book has two main objectives. The first is to provide readers with scholarly discussions of issues key to the study of Language and Law. To accomplish this goal, an international team of experts was assembled to share their thoughts on 15 seminal publications written by one of the field's undisputed pioneers, the late Peter Tiersma, senior law professor at Loyola Law School in Los Angeles, California. The resulting dialogic exchange was designed to accomplish the second major objective of this publication: paying "tribute to a great scholar" (p. xiii).

Peter Meijes Tiersma graduated from the Boalt Hall School of Law at the University of California, Berkeley as a Doctor of Jurisprudence. This was not, however, his first graduate degree. Before studying law, he had already earned a PhD in Linguistics from the University of California at San Diego. Armed with these dual degrees, Tiersma published successfully within both disciplines. From traditional linguistic articles on the complexities of Frisian phonology to lengthy legal treatises about the intricacies of contractual law, his research earned him cross-disciplinary respect and recognition. However, the ultimate power of Tiersma's scholarly legacy lies in his exceptional ability to analyze the natural intersection between jurisprudence and linguistics; and apply the insights won from one field to the betterment of the other.

An excellent synopsis of Tiersma's interdisciplinary journey appears in the preface: "Right from the beginning of his legal academic career, Peter launched into writing a series of articles on the tacit linguistic assumptions embedded in many legal doctrines.

[...] these articles unpacked legal doctrine, demonstrating which elements correspond to the ways people actually communicate, and which ways they do not." (p. xii). Of course, Tiersma was by no means the first or the last scholar to explore the critical interplay between language and law. But he was most certainly one of the very best. The impressive breadth and depth of his research are effectively reflected in the scope and richness of the essays assembled in this volume.

Had this ambitious project been led by novices, the number and diversity of these contributions could easily have made for a chaotic collection of essays haphazardly thrown together. However, in the skillful and creative hands of the erudite editorial trio of Professors Lawrence M. Solan (Brooklyn School of Law), Janet Ainsworth (Seattle University School of Law), and Roger W. Shuy (Georgetown University, Emeritus) – all internationally recognized language and law scholars in their own right – this publication adeptly takes readers on a fascinating intellectual voyage. Indeed, the editors are to be congratulated for successfully devising and managing an organizational structure intelligent and robust enough to support the enormous expanse of Tiersma's publications.

Described briefly, the book is organized into five parts: I.) Legal Language and Its History; II.) The Language of Contracts and Wills; III.) Speech and Action; IV.) Interpreting Laws; and V.) Language and Criminal Justice. In line with the sub-title of the volume, each part or "conversations" begins with original essays written by Tiersma over the course of his career. These discursive initiations are then responded to by no less than 32 different international experts from not only linguistics and law, but also literature, medicine, philosophy, anthropology, history, and psychology.

Part I, Legal Language and its History, for example, provides a fascinating historical and philosophical discussion. The deliberation begins with Tiersma's concise yet engaging description of how Legal English – itself the product of cultural conquest and linguistic assimilation – has progressively infiltrated domains of jurisprudence around the world, despite continual attempts to hinder, control, or at least shape its influence. According to Tiersma, it is precisely this dynamic history that partially explains why today's Legal English is such "an odd mixture of very archaic features, on the one hand, and quite innovative usage, on the other" (p. 15). Were Part I to continue along this tried-and-true trajectory, its contribution would have been solid yet unspectacular. Luckily, Part I takes a different course.

In an exciting move of rhetorical savvy, the editors present a series of thought-provoking essays that challenge the notion that "legal language" is essentially different from "everyday language". Interestingly, the very first to offer a rebuttal is Tiersma himself. In Chapter 4, he systematically deconstructs "legal language" as a myth all onto itself and concludes that "just about all the features attributed to legal language are also characteristic of formal written prose" (p. 28). He further argues that the suggested use of "plain language" to lend legal language translucence is also futile. With varying degrees of sophistication, the five remaining chapters of Part I offer argumentation to buttress these two points. One of the strongest contributions appears in Chapter 8. Here, Edward Finegan reasons that even if legalese could be stripped of all its "wordiness, redundancy, pomposity, and dullness" (p. 47), the legal implicature endemic of courtroom utterances would necessarily re-introduce much if not all of the original complexity, ambiguity, and general persnicketiness. According to Dieter Stein's compact philosophical

essay, the ultimate source of this resilient complexity is not to be found inside the words of legal texts, but within the socialized meanings ascribed those words.

Where Part I explores the historico-philosophical bases of legal language, Part II examines two concrete examples: contracts and wills. To be sure, for all but the most ardent law lover, initially, these topics might seem prohibitively dry, if not mind-numbingly boring. However, readers will be pleasantly surprised by how sincerely interesting this subject-matter can become in the hands of skillful writers. Evidence of this assertion is given again by Tiersma who first details in Chapter 10 how technological advances in information transcription and storage have profoundly affected the legal possibilities for communicating one's last will. Then, in Chapter 11, the discussion shifts from legally permissible forms of wills to legally valid formulations of unilateral contracts. On their surface, these two text-types may seem to have comparatively little in common. However, underlying both are fundamental questions of intent, volition, wish, and commitment – all constructs that directly relate to Speech Act Theory. As Sidney DeLong asserts in Chapter 13, one of the enduring attractions of Tiersma's scholarship amongst linguists has been the degree to which it "demonstrates the theoretical and practical value of speech act theory to an understanding of the relationship between natural language and the law." (p. 79).

While most of the essays in Part II echo this praise, Jeffrey Lipshaw's contribution does much more. After acknowledging the utility of Speech Act Theory for the analysis of contract formation, he expresses skepticism that "intent can ever be divined or that the never-never land of offer and acceptance doctrine has anything to do with the real mutual intention of the parties, whether or not manifested in performative utterances." (p. 89). Regardless of whether one agrees with Lipshaw's reasoning, his criticism is remarkably refreshing; and in many ways profoundly honors Tiersma's academic legacy. Although the scholar's life has come to an end, his intellect continues to provoke and stimulate scholarly debate vital to the fields he devoted his life to investigating.

One of the most adroit academic discussions in this collection appears in Part III, Speech and Action. The conversation begins with "The Meaning of Silence in Law". Then in four academic turns taken by Peter Tiersma, Elisabeth Mertz, Malcolm Coulthard, and Meizhen Liao, the difficulty in negotiating the legal/linguistic meaning(s) of silence is explored across a variety of situations (e.g. police interactions with Mirandized, silent arrestees; product warnings that remain silent on consumer health risks; burning crosses left outside African Americans' homes). From this comparatively broad set of juridical settings, the conversational focus in the second segment of Part III is narrowed to one, single, provocative topic: rape.

Tiersma's work opens the expert discussion with the classic essay "The Language of Consent in Rape Law". As Tiersma describes, within many legal systems, a prerequisite for establishing a case of rape is evidence that the alleged victim clearly communicated that sexual contact was undesired. Historically, this expectation (be it formally codified or not) has led to the inference that individuals who remained silent before, during, and/or after the sexual act had essentially provided their consent, thereby undermining the legal basis for subsequent claims of rape. As a result of this widespread inference, many a victim has been left re-traumatized, and many a sex-offender has been set free. To help legally right this moral wrong, Tiersma suggests that rape laws allow for a lexico-semantic differentiation commonly made in other, non-sexual, criminal cases; namely,

the legal distinction between "voluntary" and "involuntary consent". Using Tiersma's logic, in cases where a person silently submits to sexual intercourse not out of his/her own free will, but "because it seems like the best choice under the circumstances" (p. 138), the court may then infer that the sexual act was consensual but nevertheless involuntary. The question that would then face the court would be whether the defendant knew, or reasonably should have known, that the consent given was involuntary. The advantage of this redefinition of rape, according to Tiersma, is that court deliberations would be shifted away from interpreting the speech acts or mental state of the victim and towards those of the offender.

The scholarly responses to this suggestion are as varied as they are fascinating. Drawing on data taken from the Canadian rape trial, *R. v. Ewanchuk*, 1995, Susan Ehrlich, for example, provides a real-life example of how, just as Tiersma asserted, rape trial adjudicators can and do infer consent on the basis of a complainant's linguistic and non-linguistic behaviour. By comparison, Tim Grant and Kerrie Spaul contrast Tiersma's argument with Cowart's 2004 counter-argument. Although Grant and Spaul agree with their colleagues' shared assertion that "consent is reactive to another's plan or proposition", they conclude that an additional aspect must also be taken into account: consent is not only "an expression of a real choice between permission and refusal of someone else's plan" but also "requires an external expression of which option has been selected" (p. 147). In cases where an individual has remained silent, they reason "that unexpressed or uncommunicated consent is not consent at all" (p. 147). In Gregory Matoesian's subsequent turn, the argument is made that, regardless of whether one agrees or disagrees with Tiersma's proposed rape redefinition, the patriarchal logic inherent to all legal language inescapably taints and perpetually reproduces the hegemonic structures of the phallophilic society-at-large.

Finishing this discursive set is Gail Stygall, who rather unexpectedly applies Tiersma's re-conceptualization of consent to an entirely different legal context: the enforcement of contracts of adhesion. According to Stygall, in blatant contrast to rape cases, the law "has rarely addressed the question of consumer consent to contract terms. Instead, the consumer's consent to the terms is assumed or taken for granted" (p. 155). Once the reader adjusts to the initially jarring juxtaposition of consumer rights and sexual violations, Stygall's contrast becomes both intellectually intriguing and socially unsettling. Although numerous scholars and laypersons alike have taken issue with rape laws that automatically infer agreement when no verbal protest was made, much less public attention given to the potential dangers of the court automatically inferring consumer consent when producers have remained silent on potential liabilities and risks.

Part IV, as the title implies, shifts focus to Interpreting Laws. Here again, two excerpts from Tiersma's long list legal publications serve as a discursive opener. The first, "Dynamic Statutes", describes how modern technology has revolutionized the manner in which legal texts may be written. The second offers several precedent-making examples of such "textualization". The remaining chapters of Part IV provide an eye-opening and at times deeply disturbing description of the real-life consequences of judicial textualization. For example, in Chapter 32, "Talk about Text as Text", Solan expands upon Tiersma's work and concludes that, despite their collective repudiation, "judges act as much as lawgivers as the law interpreters they profess to be" [emphasis added] (p. 201). Jeffrey Kaplan's contribution "Textualization, Textualism, and Purpose-stating pream-

bles" goes further and presents cases where the court's holding about statutory meaning dramatically exceeded the expected interpretative boundaries. One of Kaplan's most interesting examples involves the interpretative dispute between Justices Rehnquist and Scalia in *U.S. v. X-Citement Video*. Readers interested in such interpretative disputes are pointed to Frank Ravitch's contribution, "Philosophical Hermeneutics in the Age of Pixels". In this tantalizingly short excurse into Gadamerian philosophy and the law, Ravitch examines how the meaning of a legal text is shaped by all those preconceptions and predispositions that each interpreter brings into the interpretative act. Had Ravitch's chapter been included here as opposed to Part I, it would have offered a highly effective philosophical counterbalance to the other case-driven chapters in Part IV.

Part V Language and Criminal Justice is one of the longest segments of the volume and is divided into two thematic sub-sections. The first contains chapters devoted to the "Crimes of Language". Not unexpectedly, this sub-section deals with two prototypical "word crimes": perjury and threat. However, if there is one lesson that Tiersma's scholarship teaches, it is that much of what appears to be straightforward is anything but. Precisely this point is exemplified in Chapter 35 where Tiersma presents a series of puzzling cases that will leave readers scratching their heads. For instance, in *Bronston v. United States*, a defendant is found guilty of committing perjury because his court testimony, though literally true, was found to constitute a falsehood by implication. A similarly intriguing but far more disturbing example appears in Chapter 36 where Solan and Tiersma recount private emails between two men who disclose their mutual desire to abduct and sexually torture a young girl. For most readers, the men's correspondence clearly transgresses the line between shared fantasy and concrete plan. The court, however, concluded that the communication did not legally constitute threat. The juxtaposition of such counterintuitive cases with Ainsworth's brilliant assessment of "how we play games with words in the law" (p. 230) offers readers a profound appreciation of the disjoint between the deceptively simplistic models of human communication and the messy reality of authentic courtroom discourse. Consequently, as Susan Berk-Seligson powerfully demonstrates in her study of Central American organized crime, the potential investigative scope required for interpreting potentially criminal discourse may far exceed the physical realms of the courtroom.

While the first sub-set of chapters in Part V focusses on the interpretation of language produced by lawyers, plaintiffs, and defendants before the court; the second subset centers on the language of the court itself. Like any other participant in the criminal justice system, the court has, as Tiersma outlines in Chapter 40, its own perspective and agenda. However, unlike the other participants, the court alone has the authority to control not only what is said, but also how what is said is to be interpreted. Given that the analysis of language is essential to that process of legal interpretation, one might assume that linguists' expertise would be eagerly and frequently accepted into the court's deliberations. Based on the experience of law professor and former federal prosecutor, Laurie Levenson, however, just the opposite seems to be the case. According to Levenson, judges generally "consider themselves to be masters of words" who neither require nor welcome outside expertise in discerning linguistic meaning(s) (p. 260).

The deliberative rigidity is not only evident in texts of traditional legislative preambles, but also in the conservative wording of jury instructions – the subject of the sixth and final part of the volume. In many legal systems around the world, judges are not

the only courtroom decision-makers; jurors may also play a role in deciphering and applying legal language. To help compensate for their lay colleagues' lack of legalese expertise, judges may sometimes offer 'jury instructions'. This practice is not without juristic pitfall, however. As Tiersma summarized with his trademark alacrity in Chapter 46 "Capital Instructions": "Poorly instructed jurors will render poor decisions." (p. 281). The last three chapters of Part V are devoted to examining some of the causes and effects of impoverished jury instructions.

According to Bethany Dumas, one reason why judges often fail to effectively communicate with jurors is that "legalese is really a domain-specific social dialect" that is largely foreign to laypeople (p. 287). While difficult, this dialectal impasse could be bridged. Doing so, however, would, as Chris Heffer reminds us in Chapter 48, require addressing the power differential that reinforces and demarcates the linguistic disconnect between judges and jurors. As Tiersma rightly predicted and Nancy Marder confirms, for better or worse, the resulting informational void is increasingly being filled via technology, as frustrated jurors turn to "the Internet and social media to find answers to questions they have about the[ir] instructions." (p. 296).

Although the bipartisan misunderstanding amongst judges and jurors is undeniably critical to how and whether justice is dispensed, the ultimate impact of Part V would have been significantly increased had the overall thematic focus been extended to other courtroom language-users (e.g. defendants and plaintiffs, translators and interpreters, lawyers and transcribers, expert and lay witnesses). This observation is, in many respects, more an accolade to the expansive relevance of Tiersma's work than it is a criticism of the current volume.

That does not mean to say, however, that this reference is without weakness. As with any edited volume, there are a few contributions that would not have been missed had they been omitted. Readers may also at times find themselves wishing that authors had been warned against beginning their contributions with summaries of the very Tiersma publications provided at the start of every part. And, in all fairness, linguists or lawyers with little expertise or interest in issues beyond their immediate specialization may find that the fine-grained arguments make for unusually turgid reading. However, for anyone interested in or passionate about language and the law, this volume will be an indispensable resource that will doubtlessly become an international standard against which others are measured; an intellectually challenging and deeply-inspiring example of true academic excellence… in short, a brilliant and moving reflection of the man who inspired this work: Professor Peter Tiersma.

Book Review

Introduction to Court Interpreting

Reviewed by Elena Zagar Galvão

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Introduction to Court Interpreting (2nd Edition)
Holly Mikkelson (2017)
London and New York: Routledge

Featured in the 'Translation Practices Explained' series published by Routledge, this introductory volume to the court interpreting profession is aimed primarily, but not exclusively, at interpreting students for self-study or as part of coursework, as well as at interpreter and translator educators. However, in today's world of mass migration, forced displacement and the global labour market, this book should also be recommended reading for law professionals, law enforcement officers, and all other public officials who are likely to come into contact or to work in close collaboration with legal interpreters. Indeed, the usefulness of this book becomes even more obvious if we consider that (a) there are still many countries which make no formal provisions for the way court interpreters should be recruited or for what amounts to competence and quality performance in court interpreting, (b) that specialisation courses or fully-fledged degree courses in legal interpreting are still fairly rare in the overall landscape of interpreter education, and (c) that, as the author points out, court interpreting is a young profession "still struggling for recognition by colleagues in the legal field, government institutions, the public at large and even many practitioners" (p. 138).

The book is now in its second edition (the first was published in 2000) and, although its general structure and the organisation of each chapter have remained unchanged, the newly released edition has been revised and expanded to bring it up to date with the most recent theoretical, practical and pedagogical developments in the field. Three chapters (5, 8 and 10) have been added to the original seven, reflecting the growing importance of specific social settings where court interpreters are required, the more widespread use of remote interpreting, as well as the pressing need for addressing professional concerns and continuing education. Thus, Chapter 5 covers interpreting in law

enforcement settings, such as police stations, immigration agencies, and detention facilities. It examines the specific challenges posed by communicative situations such as police interviews, police questioning and immigration procedures and provides useful guidelines for interpreters. These guidelines include a set of best practices for the transcription and translation of communications recorded during criminal investigations, which are known as forensic transcription and translation (FTT) and are regarded as a very challenging and fast growing area of legal interpreting. Chapter 8 is entirely devoted to Remote Interpreting (RI), discussing its various configurations and applications in legal settings and summarising the main findings of recent studies conducted in Europe (AVIDICUS, 2016), the U.S. (Angelelli, 2015) and Australia (Napier, 2012) on how this mode of interpreting affects the perceived quality of interaction and working conditions in police interviews and court proceedings. The chapter also gives useful technical recommendations for the equipment to be used in telephone and videoconferencing and stresses the need for specific training of both interpreters and law enforcement officers to ensure best results. Finally, Chapter 10 addresses professional issues such as job opportunities for court interpreters, accreditation systems in various countries, professional associations, pre-service training and continuing education. Of particular interest is the issue of outsourcing, a cut-price practice adopted in the past few years by courts in the United Kingdom, Spain and Ireland with such poor results that it even attracted the attention of the media, notoriously oblivious to interpreting and translation issues. This negative outcome and similar problems in U.S. courts prompt Mikkelson to warn that

> Until influential stakeholders such as the legal profession and the legislature recognize the importance of accurate interpreting in the administration of justice, administrators concerned only with budgetary matters will continue to hold sway in decision-making on the provision of language services in the courts. (p. 140)

In line with this observation, the book clearly sets out to raise public awareness about the importance of educating and involving all stakeholders in the fight for equal access to justice across language barriers.

Other significant additions include: a section on the history of court interpreting in the past two decades (pp. 7-10); a section entitled "Revisiting the role of the interpreter" (pp.82-83), an overt reference to Angelelli's seminal work on interpreters' *visibility* (Angelelli, 2004) based on a large-scale investigation of their perceptions of role and behaviour; and a short section on 'simultaneous consecutive', a hybrid interpreting technique in which interpreters use state-of-the-art devices like digital pens to record the source text and then provide a simultaneous interpretation on the basis of this recording (p.106). All of these additions, compounded with new suggestions for further reading and role-play scenarios, make for a fresher, more complete and balanced account of the court interpreting profession.

The volume opens by examining the role of court interpreters and clarifying that, despite their name, they are called upon to mediate in various communicative events and settings related to the judiciary and law enforcement. Indeed, depending on the different languages or even varieties of the same language, they may also be called 'legal', 'judiciary', 'judicial' or 'forensic' interpreters. Their role is often not as clear cut to the many interacting parties as interpreters would like it to be, and although the need for their services is consecrated in international law as well as most national legislations, at least

when it comes to criminal proceedings, they are often regarded by legal practitioners as a necessary but cumbersome extra element in the communication process. Moreover, even among legal interpreters, opinions vary as to the extent to which they should strive to act as mere conduits and therefore refrain from any type of explanation or elaboration of the original message, or as language and cultural mediators who actively seek to ensure efficient communication. All of this is further complicated by the different legal traditions and expectations in different countries with regard to exactly what as well as how interpreters should (or should not) interpret in the court. Major differences exist, for instance, between what is considered standard interpreter conduct in the adversarial tradition of Common Law and the inquisitorial approach of Civil Law, a matter which is addressed at some length in Chapter 3 ("Legal traditions of the world"). It is undoubtedly a sign of the author's realistic and non-prescriptive attitude towards legal interpreting that this central dilemma should be voiced at the very beginning of the book and later revisited in the chapter on criminal and civil procedure (Chapter 4) and in the chapter on the code of ethics (Chapter 6). The latter includes the new section on the role of the interpreter mentioned above and introduces evidence from recent investigations showing that interpreters are far from being the completely impartial relayers of information they are so often made out to be, a fact practising interpreters have known for a long time but may have been reluctant to admit. Throughout the book, Mikkelson herself adopts a middle-of-the-road approach between "strict adherence to the linguistic elements of the message and omission of nonverbal elements" (p. 4) on the one hand, and intervention to help bridge cultural gaps on the other. While recognising that it often takes a great deal of effort for an interpreter to remain neutral and impartial, especially considering that limited language proficient parties (LLP) tend to view interpreters as being 'on their side' by default, the author repeatedly advises that the goal of court interpreting is to put all parties on an equal footing and not to simplify the technical legal discourse of court proceedings for the benefit of LLP litigants, as this would mean giving them an unfair advantage over those who speak the language of the court.

The remaining chapters skilfully accomplish the aim of the book by addressing a host of relevant issues. Apart from those covered in the new chapters outlined above, the volume examines the right to an interpreter in various countries and describes the type of exams administered in some of the existing accreditation systems (Chapter 2). It gives an overview of the major legal traditions of the world and of criminal and civil procedures (Chapters 3 and 4). It introduces some essential concepts in both criminal and civil cases and lists a range of resources for preparing for assignments, including tips for effective internet searches (Chapter 9).

Written in a clear and pleasant style, *Introduction to Court Interpreting* is an excellent starting point and indeed a must-read for interpreting and law students, novice interpreters, conference interpreters looking to branch out into the court interpreting profession, law professionals and immigration officials, as well as for anyone who is interested in learning more about the intricacies of interpreter-mediated justice and law enforcement. It is, above all, a book that makes complex concepts and matters accessible to a wide readership.

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Derecho Civil Comparado Aplicado a la Traducción Jurídico-Judicial

Recensão de Elisa Correa Santos Townsend & Christiane Heemann

UNISC & UNIVALI

Derecho Civil Comparado Aplicado a la Traducción Jurídico-Judicial
E. Vázquez y del Árbol (2014)
Madrid: Dykinson

Lendo o livro de Vázquez y del Árbol percebemos, de imediato, que é a leitura buscada por profissionais e estudantes do direito e da linguística jurídica (ou forense). A prática jurídica internacional desenvolveu-se a tal ponto que escritórios de advocacia e empresas internacionais da esfera anglo-hispânica necessitam seus documentos traduzidos do inglês ao espanhol e vice-versa. Para tanto, o trabalho dos tradutores-intérpretes é indispensável e, no intuito de bem desenvolver suas traduções e interpretações, alguns livros são ferramentas indispensáveis aos profissionais deste âmbito. Este é o caso do livro em epígrafe. Na verdade, há muito tempo o inglês já é a *língua franca* dos negócios internacionais. Todavia, ao tradutor-intérprete faltavam instrumentos de trabalho como este. Como professora universitária, pesquisadora e tradutora-intérprete, a autora percebeu a necessidade de pesquisar e, subsequentemente, escrever um tratado especializado sobre tradução jurídica comparada no âmbito do Direito Civil, analisando os documentos, contratos e formulários mais utilizados neste campo de estudo. Sendo um dos ramos mais presentes na vida cotidiana das pessoas e empresas, advogados e tradutores-intérpretes, professores e alunos de tradução e de inglês jurídico, o livro é inovador por se tratar de um dos primeiros do tipo, aplicado à tradução-interpretação jurídica na perspectiva do direito comparado, que oferece uma vasta gama de textos existentes na vida real.

Permite-se ao leitor adentrar horizontes de maior complexidade e dimensões mais profundas quando encontra um estudo sobre tradução e interpretação de documentos legais que coteje diferentes sistemas jurídicos – o britânico e o espanhol, respectivamente,

da *common law* e da *civil law* – apresentados de forma comparativa em perspectiva interdisciplinar. Partindo de um corpus de quinhentos documentos – extraídos da prática, da vida real – de várias áreas do Direito Civil o estudo de Vázquez y del Árbol segue a tendência de vanguarda no desenvolvimento da linguística jurídica, desvelando em cada capítulo desdobramentos comparativos complementares e interligados, abarcando os enfoques teórico e prático da tradução jurídica.

Após introdução do processualista Juan Damián Moreno, segue o Capítulo Um, listando as peculiaridades e dificuldades enfrentadas para transpor o discurso jurídico de um para outro sistema legal, incluindo debates lexicais, sintáticos, estilísticos e semânticos. Aborda-se verbos, substantivos, preposições, conjunções, adjetivos, advérbios, sintaxe pronominal, estilística, aspectos ortográficos e tipográficos dos textos legais com informações de suma importância, e.g., a explicação de que a palavra *ley*, em espanhol, raramente é traduzida como *law*, em inglês (p. 23), mas sim como *act*. Para leitores de Portugal ou do Brasil o exemplo se aplica ao termo lei, do português: quando se refira à legislação ou regra, raramente se traduzirá como *law* em inglês, mas sim como *act*. Outros exemplos similares são analisados, permitindo estender o aspecto comparativo a outros países, como no exemplo acima, já que a *civil law* é o sistema jurídico vigente – dentre outros países – em Portugal e no Brasil.

No Capítulo Dois (p. 33), um corpus de binômios, trinômios e polinômios é estudado, propondo a tradução ideal para cada um. Em seguida, são apresentados detalhes pragmáticos para concatenar o direito comparado com a tradução legal: primeiro descreve-se o contexto jurídico das duas culturas, britânica e espanhola; segundo, estuda-se o contraste entre os documentos de cada sistema; por fim, replica-se o método para cada conceito do direito civil até que todos sejam comparados, processo, este, instrumentado por tabelas explicativas que fornecem várias possibilidades de tradução do inglês para o espanhol e vice-versa.

Os procedimentos judiciais para cada parte do Reino Unido (Inglaterra, País de Gales, Escócia, Irlanda do Norte, e o país da Irlanda) e da Espanha são detalhados no Capítulo Três (p. 45), permitindo um estudo comparativo profundo, incluindo legislação de cada nação referente à nascimento, adoção e acolhimento familiar. O Capítulo Quatro (p. 117) segue a estrutura de seu precedente para divórcio, separação, casamento e sua anulação, incluindo legislação, história, procedimentos legais e religiosos do Reino Unido e da Espanha.

O Capítulo Cinco (p. 223) contempla morte e sucessão, comparando as diferenças entre Reino Unido e Espanha: quem pode herdar e fazer testamento, procedimentos envolvidos em cada um destes atos jurídicos, tipos de testamentos, sua revogação e anulação, parte legítima e disponível da herança para cada um dos países envolvidos. Os Capítulos Três, Quatro e Cinco são acompanhados por três textos, cada um, propondo suas respectivas traduções, comentários a cada solução de tradução, glossários bidirecionais e referências, elevando o livro a um patamar de obra de ampla utilidade.

Há uma importante ferramenta para tradutores no Capítulo Seis (p. 329), no qual são explicadas as técnicas de tradução, sugerindo aquelas eleitas como as mais adequadas para traduzir o discurso jurídico. É aqui que a autora aborda o problema mais desafiador da tradução legal: as diferenças de origem cultural e de sistemas legais que levam o tradutor a enfrentar conceitos jurídicos na cultura do idioma de origem que não possuem

equivalente exato na cultura da língua alvo, exemplificando com as expressões solicitor, *trust* e *notary public*, em sua acepção jurídica, cuja tradução "palavra por palavra" para o espanhol não representa a ideia exata pretendida pelo texto original. Para tais casos, a autora enumera soluções disponíveis ao tradutor. A ferramenta perfeita, consoante repetido no livro, é a comparação dos textos do sistema legal da *common law* com os textos da *civil law* e suas traduções. Finalizando o livro, no Capítulo Sete (p. 343), são compartilhados os pontos de vista de outros especialistas do Direito Civil e da tradução jurídica por meio de entrevistas.

A obra oferece importantes subsídios à seara educacional por contribuir para o aperfeiçoamento de estudantes de cursos de tradução, interpretação, direito, letras, administração de empresas, inglês (incluindo Jurídico e de Negócios), direito comparado, ademais de outros cursos interdisciplinares. Também é valiosa para tradutores-intérpretes profissionais e advogados que necessitam trabalhar com ambos os sistemas legais, isto é, da *common law* e da *civil law*. Os recursos proporcionados ao final dos Capítulos Três, Quatro e Cinco são de grande valia para o direito comparado. Na área do direito privado, o único tópico do qual sentimos falta dentro da proposta da autora poderia ser a abordagem de temas do direito processual civil conexos ao direito civil abordado. Entretanto, respondendo à nossa sugestão, a editora justificou que este é o tema de nova publicação da mesma autora, já no prelo.

Book Review

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

Reviewed by Tammy Gales

Hofstra University

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

G. Oxburgh, T. Myklebust, T. Grant & R. Milne (Eds.) (2016)

Malden, Oxford and Chichester: Wiley Blackwell

Communication in Investigative and Legal Contexts: Integrated Approaches from Forensic Psychology, Linguistics and Law Enforcement is the newest addition to the Wiley series in the Psychology of Crime, Policing and Law, which is committed to publishing volumes that research and promote best practices in international investigative interviewing techniques. The intended audiences for this series are psychologists and "all those concerned with crime detection and prevention, policing and the judicial process" (p. ii).

Aptly, the editors of this compilation – Dr. Gavin Oxburgh, Forensic Psychologist; Dr. Trond Myklebust, Assistant Chief of Police; Dr. Tim Grant, Forensic Linguist; and Dr. Rebecca Milne, Forensic Psychologist – state that their purpose is:

> to provide readers with an in-depth coverage of the complex area of communication in forensic contexts. This includes the investigative interviewing of victims and witnesses, the investigative interviewing/interrogation of suspected offenders and high-interest groups, during discourse in courtrooms and via legal intermediaries and interpreters (p. 6–7).

In order to accomplish these aims, the editors bring together scholars in an insightful new way. Rather than compiling chapters on a central theme written by individual scholars from different disciplines, in this volume, the editors created interdisciplinary teams

of two-to-four writers for each chapter, which were comprised of researchers from a variety of academic fields (e.g., psychology, criminology, applied cognition, linguistics, and law), public service (e.g., state and federal police, military intelligence), and private practice (e.g., government consultancy, interpreters, lawyers). Authors were also from a variety of international locations (e.g., Australia, Canada, Finland, the Netherlands, New Zealand, Norway, the United Kingdom, and the United States), giving the compilation more applicability for a wider audience.

Tracing the long history of research on investigative interviewing from Stern's (1904) original study, the editors highlight the volume's emphasis on multidisciplinary diversity in their introduction through their two primary goals: "to improve the quality of the interview and bridge the gap between the fields of psychology, law enforcement and (forensic) linguistics" (p. 2). They outline where the area of investigative interviewing currently stands in terms of best practices and they acknowledge global organizations such as INTERPOL, CEPOL, IPES, and iIIRG that continue to aid in the professionalization of such practices. The result of these efforts is a highly original volume that reviews a broad array of literature, presents a wide range of interdisciplinary perspectives, and suggests relevant and timely directions for best practices in research and application of investigative interview techniques.

The book is organized thematically into six sections: I. Communication, Language and Memory (chapters 2–3); II. Communicating with Victims and Witnesses (chapters 4–6); III. Communicating with Suspects (chapters 7–8); IV. Communicating in the Courtroom (chapters 9–10); V. Specific Communicative Tasks (chapters 11–14); and VI. Conclusions and Future (chapters 15–16). While the ordering of and connection between the individual chapters within each theme is not always clear, the chapters themselves provide in-depth examinations of their stated topics. Thus, in order to highlight the strengths and contributions of each chapter *and of the compilation as a whole*, the following review provides an overview of the chapters according to a few currently unstated, but important themes for readers that may help align the research contained within the volume in a new way.

1. An Overview of Common Methods of Interview and Interrogation

There are two chapters that provide excellent historical accounts and summaries of the main methods of police interviewing: chapter 7, "Interviewing Suspected Offenders" (Oxburgh, Fahsing, Haworth, and Blair), and chapter 5, "Interviewing Adult Witnesses and Victims" (Dando, Geiselman, MacLeod, and Griffiths).

While located mid-way through the book, chapter 7 provides an excellent introductory frame to the rest of the chapters in the volume. The authors begin by describing the worldwide miscarriages of justice that have resulted from poor interview strategies (Kassin and Gudjonsson, 2004). They review the long-standing acceptable tradition of using torture up until as recently as 1984 when the United Nations Convention Against Torture was ratified. However, even despite such international progress, they cite statistics from Amnesty International that still report widespread abuse within criminal justice systems, with the U.S., Russia, China, and Turkey, among others, leading allegations of torture (Conrad *et al.*, 2014).

Given the clear need to address this persisting issue, the authors summarize the two main forms of interview techniques that currently exist: the Reid Technique, which began in 1947 and is commonly used across the U.S. and in parts of Canada; and the PEACE Model, which was adopted in the early 1990s and is used across England, Wales, New Zealand, Australia, Norway, and the Netherlands.

The authors describe the primary stages of the two methods with the Reid Technique focusing on interrogation – "a guilt-presumptive process and a closed social interaction led by an authority figure who already believes in the perpetrator's probable guilt" (p. 146) – and the PEACE Model focusing on investigative interviews – a process wherein victims, witnesses, or suspects are interviewed in a search for the truth. Since the authors argue that all interviews should be investigative interviews regardless of interviewee status (e.g., suspect, eye witness), this chapter perfectly starts the discussion for the remainder of chapters that follow.

Also providing an overview of investigative interviewing methods is chapter 5, which describes two successful approaches to the interviewing process within the PEACE Model. The first is performing a cognitive interview in order to obtain an interviewee's account with minimal interference from the interviewer. The second is using conversation management in order to allow the interviewer to both control and manage the interview. The former approach is used with cooperative witnesses while the latter is used with reluctant or uncooperative ones—the aims of both are to gather information in a non-confrontational manner.

Each method is built upon current well-tested scientific principles and contributes to an investigator's "toolbox of techniques designed to elicit specific kinds of information" (p. 82). That said, the authors also address how problems can arise when memory retrieval processes are improperly used or when an interviewer reverts to improper question formats. Challenges also arise when such techniques are applied with vulnerable witnesses.

2. Information Gathering Techniques

Covering various methods of gathering information in different interview contexts are chapter 2, "Exploring Types and Functions of Questions in Police Interviews" (Grant, Taylor, Oxburgh, and Myklebust), chapter 6, "The Role of Initial Witness Accounts within the Investigation Process" (Gabbert, Hope, Carter, Boon, and Fisher), chapter 8, "A (Nearly) 360' Perspective of the Interrogation Process: Communicating with High-Value Targets" (Narchet, Russano, Kleinman, and Meissner), and chapter 11, "Hostage and Crisis Negotiation, Perspectives on an Interactive Process" (Braten, St–Yves, Royce, and Laforest).

The authors of chapter 2 examine the inadequacies of traditional typologies of question types within police interviews that are based on "words" as opposed to "function" (p.18). Word-based taxonomies, for example, are those found in *The Practical Guide to Investigative Interviewing* (Centrex, 2004) a commonly used police training manual in the UK. Questions are categorized as: open (beginning with the "wh" question words), closed (requiring a yes/no response or a closed-set answer), and leading (suggesting an answer). The stated functions of such questions are to elicit information and establish its credibility.

However, questions can serve a multitude of additional functions such as "making assertions"; "performing requests, corrections, and challenges"; and "demonstrating power and control" (p. 18). Therefore, the authors perform an original analysis of the account phase of five suspect interviews. Using Conversation Analysis, they reveal two main functional question types: topic initiation questions and topic facilitation questions. These findings supplement Heydon's (2011) work on the use of topic initiation questions to control the suspect and further support the need to recategorize questions by topic management instead of question type.

Chapter 6 describes the stages a witness may go through during an event, the kinds of interactions he or she may experience, and how methods of information gathering during initial encounters with a witness may affect later ones. For example, during the first stage, the witness may engage with a police emergency call handler, the success of which has been linked to the call handler's use of a script to gather information (Leeney and Müller-Johnson, 2011). During the second stage, witnesses will engage with front line responders, many of whom are hampered by a lack of extended interview training, time due to the situation, or personnel to appropriately cover the number of witnesses. In this case, Self-administered Interviews were found to have positive results for engaging with multiple witness in major crime events (Gabbert *et al.*, 2009).

The final two chapters on information gathering focus on high-stress, sensitive context techniques. Chapter 8 focuses on intelligence interviews in the context of the global war on terror, drawing on prior interviews with interrogators, interpreters, and analysts (Russano *et al.*, 2014a,b). The authors preform a qualitative analysis of the issues identified by survey participants when interviewing high-value targets and recommend training for such professionals using a systems-based framework (Senge, 2006) that "serves as a vehicle for better understanding the overarching interrogation process and how that process might be enhanced through organizational learning" (p. 175).

Chapter 11 highlights successful crisis negotiation models used by law enforcement organizations such as the NYPD's "Talk to me" and the FBI's "*Pax per conloquium*" ('resolution through dialog') that focus on communication (St-Yves and Collins, 2012). They demonstrate how negotiators can successfully change potentially volatile behavior through models that promote active listening, express empathy, build rapport, and finally influence the subject (Vecchi *et al.*, 2005). The authors of chapters 8 and 11 highlight the importance of building rapport, using open-ended question strategies, and creating a positive, relaxed communication style to aid in achieving a successful outcome in high-stress contexts.

3. Reliability and Credibility of Witness Testimony

Four chapters contribute to the theme of witness reliability and credibility through discussions of how a witness's memories and narratives are constructed in and affected by various criminal and legal contexts: chapter 3, "Recall, Verbatim Memory and Remembered Narratives" (Ost, Scoboria, Grant, and Pankhurst), chapter 4, "Interviewing Child Witnesses" (La Rooy, Heydon, Korkman, and Myklebust), chapter 9, "Courtroom Questioning and Discourse" (Henderson, Heffer, and Kebbell), and chapter 12, "Verbal Lie Detection" (Vrij, Taylor, and Picornell).

Chapter 3 is the foundational chapter for this theme. While this chapter is highly psychological in orientation, it provides a very accessible review of current understanding of the general stages of memory (i.e., encoding, storage, and retrieval) and of the different kinds of memory (i.e., semantic, procedural, episodic, and future). The authors focus on episodic memory – the what, where, and when of past events (Tulving, 2002), which is most relevant to the context of witness testimony.

Given the range of literature that has problematized the reliance on memories of recalled events in witness testimony (e.g., Bernstein and Loftus, 2009, the authors examine three stages in memory retrieval: remembering, validation, and communication (Blank, 2009), and discuss strategies for overcoming limitations of each within interview settings. For example, avoiding the repetition of questions on a particular topic has proven to increase witness certainty of recalled memories (e.g., Ackil and Zaragoza, 2011. Similarly, since this is a potentially new setting for the interviewee, telling them that a response of "I don't know" is encouraged, if that is the case, provides more accurate information during an interview (e.g., Waterman *et al.*, 2004.

With this psychological foundation to understanding the role of memory in criminal and legal contexts, chapters 4 and 9 highlight specific instances where problems with recall or remembered narratives affect various parts of the legal process. Chapter 4 examines issues of suggestibility, recall, and communication strategies with a specific vulnerable population: child witnesses. Specifically, if investigators are not aware of best practices for interviewing children at their various stages of development, which differ dynamically from those of adults, problems will arise that affect memory and can result in false or forgotten memories.

For example, interviewers need to be aware of regional and developmental differences in phonology that may affect interviewer comprehension, in comprehension of vocabulary related to time, in the ability to comprehend complex sentence structure or pronouns, and in pragmatic understanding of the purpose of the interview. As in other chapters, being well-prepared, using rapport building strategies (appropriate for children), asking open-ended questions, and providing frequent summaries of the witness's narrative have been found to provide the most accurate recall. Accessing freely available, scientifically-tested training protocols such as the NICHD specific for child witnesses (e.g., Lamb *et al.*, 2008 are recommended.

Chapter 9 problematizes reliance on memories in witness testimony, particularly in the context of cross-examinations in court. It has been well-attested that cross-examination strategies such as using suggestive questioning techniques that can lead to reduced witness accuracy in recalling and retelling past memories (e.g., Loftus, 1996; Gudjonsson, 2003, ultimately affecting a witness's credibility in the eyes of the jury. The authors problematize this issue by highlighting the fact that cross-examiners are not only trained to use such strategies but that they do so purposefully in order to manipulate witnesses (Heffer, 2005). The authors call for change within the overall courtroom process (e.g., providing a more relaxed atmosphere, using plain language) in an effort to move lawyers from current cross-examination strategies that affect witness recall to a more evidence-based cross-examination model.

Finally, chapter 12 focuses on how reliable particular deception detection models are in actually detecting deception in witness statements. While current models such

as Criteria-based Content Analysis, Reality Monitoring, and Scientific Content Analysis have been found to have mixed results in discerning liars from truth-tellers, the authors present a new approach that has been found to have promising results: the Verifiability Approach. This approach is based on the premise that truth-tellers provide more verifiable details than liars, especially when interviewees are told of this method in advance of providing a witness statement (e.g., Nahari and Vrij, 2014. The authors follow up by presenting strategies for encouraging witnesses to provide more information under a heavier cognitive load in order to support the use of such a model for detecting deception in witness statements, thereby providing stronger witness reliability.

4. Working with Experts and Interpreters

Within this theme, there are three chapters that address aspects of working with professionals outside traditional law enforcement and legal roles: expert witnesses in chapter 10, "Expert Witness Communication" (Fadden and Solan); intermediaries in chapter 13, "Vulnerable Individuals, Intermediaries and Justice" (O'Mahony, Marchant, and Fadden); and interpreters in chapter 14, "The Interpreter-Mediated Police Interview" (Fowler, Vaughan, and Wheatcroft).

The authors of chapter 10 examine the interaction between lawyers and experts in adversarial systems and highlight their complementary, but conflicting goals. Specifically, lawyers would like the analyses of their expert witnesses 1) to be credible, 2) to be comprehensible to a lay jury, 3) to provide strong support for the lawyer's case, and 4) to withstand potentially difficult cross-examination methods. These goals are mirrored in leading handbooks on trial advocacy that teach law students how to communicate and work with expert witnesses (e.g., Mauet, 2013. However, while experts align with the first goal, goals two and four may be more difficult to accomplish due to the precise nature of academic language and methods of presenting scientific findings, and goal three contradicts the lawyer's underlying purpose of employing an expert, whose goal is to provide scientifically-grounded, objective analysis of the evidence.

The authors additionally provide a concise review of the legal standards by which experts are accepted in court in the U.S. and Canada – in comparison to those in the U.K. – and suggestions for reform are called for to lessen the conflicting goals in this legal context.

Chapters 13 and 14 discuss the use of intermediaries and interpreters in police interviews and in court. Chapter 13 particularly outlines research from England, Wales, Australia, and Canada supporting the need to increase support for registered intermediaries – trained professionals from psychology, speech pathology, social work, nursing, and teaching, among other disciplines, who aid a witness and legal professional in situations where communication and comprehension need facilitating. Drawing on Eades' (e.g., Eades, 1992, 2008 extensive work on cross-cultural miscommunications in court, the authors detail two case studies that present examples of and rationales for using various communication strategies in which intermediaries are trained during trial with vulnerable witnesses such as children, non-native speakers of the language, and adults with intellectual disabilities.

Similarly, chapter 14 outlines problems with and successes of integrating interpreters into the interview process from two perspectives: police and interpreters. The

authors point out that while police in the UK are used to working closely with interpreters throughout the investigatory process, they have little formal advice on how to do so. As such, problems can arise when interpreters are used during cognitive interviews, for example, given the nature of the open-ended narrative process required of such interviews. The authors offer two possible solutions: interpreting a witness's message simultaneously in a low voice (Colin and Morris, 1996) and taking extended notes of the witness's narrative before interpreting (Hale, 2007). Similar problems can arise during the translation of a written statement in court if an interpreter does not have knowledge of the appropriate register of a witness statement (Hale, 2007), which may affect the way a jury views the witness.

5. Conclusions and Future Directions

The final two chapters (15 and 16) summarize directions for future research identified by the authors within the volume, especially as they relate to best practices for improving cognitive interviewing techniques. Specifically, chapter 15, "Improving Communicative Practice: Beyond the Cognitive Interview for Adult Witnesses" (Westera and Powell), reviews research on the Cognitive Interview process and presents more nuanced aspects of the process that still need further research. Such areas include examining best strategies for different interview contexts, various levels of interviewer expertise, requirements of different crime types, availability of recording devices, and type of interviewee. In chapter 16, "Communication in Forensic Contexts: Future Directions and Conclusions", the volume's editors conclude by addressing areas of research they believe to be important for continued progress within the field. Areas include ways to streamline and standardize investigative interviewing procedures, work more successfully with vulnerable witnesses, and integrate intermediaries such as experts and interpreters more seamlessly into the legal process. They conclude by highlighting the absolute necessity of interdisciplinary collaboration between researchers and practitioners in both legal and law enforcement contexts.

Assessment of the Volume

Overall, this volume provides a unique, insightful compilation of chapters that encourage the continued development of more effective techniques of investigative interviewing. This is demonstrated by the multidisciplinary perspectives throughout as well as by the rich avenues for future research presented at the end of each chapter and in the final two chapters of the book. That said, there are three areas that could be strengthened—all of which are related to organizational cohesion.

First, as noted previously, there are different thematic ways that the individual chapters could have been organized that may have highlighted the strengths of each more effectively. Given the diverse range of audiences for whom this book is intended, the editors could have provided suggestions for different thematic groupings in the introduction that may have aided those from different perspectives in academia and practice—psychology, linguistics, law, and law enforcement – in their approach to accessing the materials most beneficial to their differing needs. Since the individual chapters are extremely thorough and well-written, providing options for additional thematic orga-

nizations would help highlight each chapter's contribution to the differing needs of the book's different audiences.

Second, while compiling an edited volume of *singly-authored* chapters by multidisciplinary authors is a daunting task, compiling one of *multiply-authored* chapters by multidisciplinary authors is an even greater one. Because of this challenge, there is a considerable amount of overlap between the literature reviews and historical coverages in many of the chapters. For example, as noted by the authors of chapter 2, "[m]ost investigative interviewing chapters in the current volume begin with [a] wealth of psychological literature" (p. 17); this is indeed true to the extent that much of it is repeated in chapters with similar themes. Similarly, chapters 2, 5, and 7 all provide thorough (and excellent) overviews of the PEACE Model. Instead of repeating such background and scholarly information, one introductory chapter could have been dedicated to reviewing the history and current state of investigative interviewing techniques and another could have provided a general literature review of the key themes in the volume, allowing the remaining chapters to focus more explicitly on their specific topics, studies, and suggestions for best practices moving forward.

Third, if permissible by the series editors, a single unified bibliography for the volume would have also helped decrease the overlap between chapters since many reference much of the same literature. This may also have helped draw attention to the citations that are missing from certain chapters (e.g., three of the in-text citations on interviewing vulnerable witnesses, among others, from chapter 5 are missing in the bibliography) – an issue that should be checked for all chapters and corrected in the next edition.

Despite the organizational limitations, the individual chapters in this volume provide an excellent overview of the current state of investigative interviewing that is carried out in a number of Western countries and, most importantly, it offers many useful suggestions for future cross-disciplinary research. Thus, through the collaborative cross-disciplinary efforts that are highlighted throughout, the contributors successfully achieve the editors' two primary goals: "to improve the quality of the interview and bridge the gap between the fields of psychology, law enforcement and (forensic) linguistics" p.(2).

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PhD Abstract

Authorship profiling in a forensic context

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Keywords: Authorship analysis, authorship profiling, sociolinguistics, gender, age, education, social class, style, threat, register analysis.

Introduction

A task commonly assigned to forensic linguists is the analysis of a piece of dangerous communication for the purpose of profiling the general characteristics of the anonymous author. The most famous case of this kind is probably Shuy's "devil's strip" letter, in which a kidnapper has been profiled as an educated person from Akron, Ohio from the use of the phrase 'devil's strip' (Leonard, 2005). Although linguists are often successful in using the sociolinguistic origin of lexical items for the purposes of profiling, such as in the mentioned case, the research on the variation in writing style and its correlation to social factors, such as gender or age, is still under-developed. Some advances have been carried out within computer science on non-forensic texts, such as blogs or novels (e.g. Argamon *et al.*, 2009; Newman *et al.*, 2008). Because of the pervasiveness of register variation, whether these findings do apply to malicious texts commonly analysed within forensic linguistics is still an open question.

Research questions

The thesis examines whether already established findings regarding the correlations between general patterns of language variation and the social factors of gender, age, level of education, and social class also apply to **malicious texts**. Such texts are defined in the present work as those *texts that are a piece of evidence in a forensic case that involves*

threat, abuse, spread of malicious information or a combination of the above. The goals of the thesis are thus to: (1) elaborate a comprehensive account of the most pervasive patterns of variation of language use correlated with gender, age, level of education, and social class; (2) verify whether these same patterns are found in malicious texts and whether they can help in the profiling of the demographics of the author of a malicious forensic text.

Methodology

To answer the research questions above, a first step consists in gathering a battery of style markers by performing a literature review across all the disciplines that have shown an interest in studying language variation across social factors. After a review of the major studies in different fields, a list of 132 grammatical and lexical linguistic features was compiled.

In order to test whether these same markers could be used to profile authors of malicious texts a corpus of malicious text including the texts' authors demographic details should be compiled. However, due to lack of malicious texts with known author demographics, a set of fabricated texts resembling malicious texts was gathered instead. This corpus, the Fabricated Malicious Texts (FMT) corpus, was compiled in an experimental setting using writings produced by 96 participants from several social backgrounds. These participants were asked to write three texts of about 300 words in length: a letter of complaint to a holiday agency, a letter of complaint to the Prime Minister of the UK, and a letter to their abusive employer threatening damage to their car.

Given the limitation of fabricated data, to control for the possibility that the fabricated data is different from natural occurring data, a corpus of authentic malicious texts was also gathered. This corpus, the Authentic Malicious Texts (AMT) corpus, consisted of 104 texts with an average length of 354 words. This corpus was used to test whether any significant difference in terms of the 132 linguistic features examined existed with the FMT data set and whether, generally speaking, the register adopted in the AMTs was consistent with the register adopted by the participants in the FMTs. Statistical tests of difference indicate, firstly, that no significant register differences are present between the two data sets. Secondly, tests of difference also indicate that no significant differences due to the experimental conditions are found for the 132 linguistic features between the AMT and FMT data sets with the exception of two features. The two findings altogether suggest that findings relative to the FMT data set can also be expanded to real malicious texts.

The analysis of the FMT data set consisted firstly in the use of tests of statistical difference for the 132 linguistic features. Secondly, using the best performing features, logistic regression models were fitted in order to test whether the features presenting statistical differences were also able to predict the gender, age, level of education, or social class of an author.

Results

A first result of the thesis is the literature review that describes the stylistic markers and the most pervasive patterns of variations in language use for the social factors gender, age, level of education, and social class. The review demonstrates that there exists patterns of language variation that are consistently found across several studies using different data sets:

- The genders are typically distinguished by the *report vs rapport* discourse orientations, with men typically adopting a report style realised by more nominal structures while women typically adopting a rapport style realised by more verbal and clausal structures.
- Different age groups are distinguished by the same opposition between nominal and clausal structures, with the incidence of nominal style tending to increase with age. Additionally, grammatical complexity was found to decrease with age.
- For level of education and social class, the literature presents a picture that consists in a general decrease of lexical and grammatical complexity as level of education and socioeconomic metrics decrease.

The analysis of the FMT data set shows that all of the major patterns of variation found in other data sets are also valid for malicious forensic texts. Since register variation was experimentally controlled in this study, stronger effects are found compared to previous studies for all of the social factors. Social class was the social factor for which the strongest effects were observed. Level of education, on the other hand, was dropped from further analysis as the effects observed for this social factor largely overlapped with social class.

The use of logistic regression to train models that can profile the authors of FMT texts was largely successful, although performance varied depending on the register of the text. A logistic regression model trained to distinguish upper from lower social class achieved a classification rate of, on average, 78%. Social class was the easiest social factor to profile, which confirms that social class is the social factor with the most pervasive effect on language production. The logistic regression model for age was the second most successful model, with an average prediction rate of 70% between subjects above and below the age of 40. Finally, gender could be predicted with a rate of 60-70% depending on the register of the letter, with the abusive letter to the boss being the easiest to profile.

In conclusion, the present study demonstrates that the established patterns of variation in language use attested in various registers for the social factors gender, age, level of education, and social class are also present in malicious forensic texts. However, the profiling of the authors' social backgrounds are greatly affected by register variation. Although these linguistic patterns can be used to predict the demographics of an unknown author with a reliability that ranges between 60% to 80%, performance depends on the register of the text, the analysis of which is thus a precursory and necessary step for authorship profiling.

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PhD Abstract

Investigating plagiarism in the academic context

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Keywords: Plagiarism, education, academic writing, academic context, policies.

Throughout her experience as a student and tutor at UFSC (Universidade Federal de Santa Catarina), the author observed the absence of institutional norms and support when dealing with cases of plagiarism. Such a gap triggered further research on plagiarism in her PhD research, whilst finding out how to detect and prevent it in academic contexts.

The thesis, organised into seven chapters, presents different perspectives to define plagiarism, an investigation of its origin, and specifics in academia. Regarding a definition to this complex phenomenon, a number of scholars were introduced in order to present some explanations, such as Coulthard and Johnson (2007), who emphasise that linguists are able to deal with linguistic plagiarism. Pecorari (2010) mentions the need to distinguish between intentional and unintentional plagiarism: while the former occurs with an intention to deceive, the latest is done due to lack of knowledge about academic writing conventions to avoid plagiarism, or as consequence of poor linguistic or academic writing skills. However, finding out whether plagiarism is intentional or not demands some investigation from the educator or the forensic linguist. An important key, presented by Sousa-Silva (2013), has to do with the complexity in the extract traced. For instance, the use of synonyms, alterations in text structure, translation, among other strategies that help conceal copy, are strong indications that there might be some intention.

In the thesis, two different scenarios about how plagiarism has been treated are presented: 1) at UFSC, in which several problems had been identified; and 2) at the UoB (University of Birmingham), as a series of consistent efforts have been made in the UK since 2002 to deal with plagiarism. Interviews were done with professionals besides observation of policies, courses, and institutional documents. Questionnaires were also introduced so as to understand students' perceptions of plagiarism and the institutional approach. These investigations helped trace the panoramas in both institutions.

The objective of the thesis was to analyse the approach adopted at the UoB in order to support the development of suggestions to improve the situation at UFSC. Therefore, it was possible to produce a proposal to UFSC in order to work on detection and prevention through the creation and adoption of anti-plagiarism policies. These policies include the establishment of specific institutional rules and of an institutional structure to deal with cases of plagiarism, the offer of courses on academic writing, and the oriented employment of detection software. It was considered necessary to adopt some of the measures observed at the UoB to UFSC, as they are inserted in different contexts, which requires specific adjustments. The entire proposal can be accessed in the thesis.

The thesis also intended to emphasise other aspects related to plagiarism besides the usually focused ethical concerns, which are relevant, but they are out of the reach of teachers and linguists. Therefore, the study carried out by Krokoscz (2014) was also reported, as the author mentions the existence of a third participant in plagiarism cases in the educational context (besides the one that is plagiarised and the one who plagiarises a given text), which is the teacher (or the educational institution). Such facts demonstrate that in academic contexts plagiarism gets even more complex, as it does not have to do simply with authorship rights, but mainly with educational issues.

Results pointed to the need of shorter-term measures, such as the implementation of policies to better approach plagiarism in universities as well as the proper use of detection software. However, such changes alone would not be enough to efficiently resolve this phenomenon, as long-term changes in education are also necessary, such as the teaching of academic writing skills earlier in schools. In addition, fostering students to write using their own words as a means of exercising freedom in delivering opinions, and to appropriately acknowledge external sources in order to give more reliability to their work could be efficient ways to prevent future cases of plagiarism. Furthermore, telling them that this way they would be acting as honest and valued citizens; a good way of giving them positive motivation to want to learn and to behave accordingly to what is scientifically and morally useful to human development.

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PhD Abstract

A phonetic-acoustic study of inter- and intra-speaker variation in Catalan-Spanish bilingual speakers

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Keywords: Forensic linguistics, forensic phonetics, speech comparison, acoustic-phonetic parameters, inter-speaker variation, intra-speaker variation, inter-language variation, bilingualism, Catalan, Spanish.

The existing sociolinguistic context in Catalonia, and the fact that the two languages are predominant in this region, puts forward the need to consider the possibility of using speech samples in Catalan and Spanish in a forensic speech comparison context. According to the data from a survey on the linguistic uses of the population carried out in 2013 (DGPL & Institut d'estadística de Catalunya, 2013), more than 80% of the population has a suitable command of both Catalan and Spanish so as to be able to communicate naturally. Therefore, there exists the possibility that the forensic phonetician is involved in a case where the disputed and undisputed sample(s) have been produced in these two different languages.

The objective of the present research is to determine whether the analysis of the phonetic-acoustic parameters that are most commonly used in forensic speech comparison in one language can also be applied to the comparison of samples in different languages, in this case Catalan and Spanish. The corpus of study contains data on read-aloud speech by 22 adult male experienced professional speakers, of which 11 are balanced bilingual speakers and 11 are Catalan dominant bilingual speakers. The texts that were read were the Catalan and the Spanish versions of the same news article published

in the newspaper *El Periódico*. The participants were asked to read each article twice in the order they chose, with the aim of having two repetitions by each speaker and thus being able to analyse intra-speaker variation. Consequently, each speaker produced four readings (two in each language) and all of them chose to read the Spanish text first and then the Catalan text.

The variables that were analysed can be grouped into six main categories. Firstly, the parameters related to F0 were the mean, the median, the standard deviation, the skewness and the kurtosis of a total of 4646 tone units. Secondly, the first four formants of 1848 instances of the central low vowel [a] in stressed position and followed and preceded by a plosive or an approximant. Thirdly, the first four formants of 1320 instances of [l] in unstressed and intervocalic position. Fourthly, the duration of the VOT of 1144 instances of [k] in unstressed and intervocalic position. Fifthly, the centre of gravity, the standard deviation, the kurtosis, the skewness and the intensity of 792 instances of [s] in unstressed and intervocalic position. Finally, the articulation rate of the bilingual Catalan-Spanish speakers was also analysed. Therefore, the total number of phonetic-acoustic variables that was analysed in the present PhD thesis was 20. The selection of these variables was based on the grounds that they are most frequently analysed by forensic phoneticians, according to Gold and French (2011), and due to their frequency of appearance in comparable phonetic contexts in the corpus of analysis.

The statistical analysis of the data was carried out by means of the *Generalised linear mixed model* method, since it considers the possibility that there are correlated observations linked to the presence of fixed and random effects. This method has allowed the estimation of the impact of the independent variables, namely language, speaker and repetition, over the 20 dependent variables.

In light of the results obtained, it is possible to conclude that the majority of the phonetic-acoustic parameters usually analysed in forensic speech comparison for a single language are equally valid when comparing speech samples in Catalan and Spanish. However, the results obtained for five of the parameters in this investigation do not confirm the initial hypothesis completely, due to several reasons.

First, the values of the second formant of stressed [a] followed and preceded by a plosive or an approximant shows high inter-speaker variation and low intra-speaker variation, both in Catalan and Spanish. However, these values show an inter-language variation that is statistically significant in 41% of the speakers analysed. Therefore, it is concluded that the analysis of this parameter should not be carried out in the comparison of samples in two different languages.

Secondly, the values of the second formant of intervocalic unstressed [l] show low inter- as well as intra-speaker variation, both in Catalan and Spanish. Nevertheless, the F2 values of this segment indicate an inter-language variation that is statistically significant in 68% of the speakers analysed and, consequently, this parameter should not be taken into consideration in the comparison of samples in different languages.

Finally, the values of the third formant of stressed [a] preceded and followed by a plosive or an approximant, the intensity of unstressed intervocalic [s] and speech rate all show statistically significant intra-speaker and inter-language variation in a very low percentage of speakers. However, in the context of this research, these parameters show statistically significant inter-speaker variation in approximately half of the speak-

ers analysed. Therefore, they cannot be considered as reliable parameters in forensic speech comparison, not only in the comparison of samples in different languages, but also in the comparison of samples in the same language, either Catalan or Spanish.

References

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Gold, E. and French, P. (2011). International practices in forensicspeaker comparision. *The International Journal of Speech, Language and the Law*, 18(2), 293–307.

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://llld.linguisticaforense.pt) 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 subsections, 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.

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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.

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   Os autores devem consultar a página da revista na Internet (http://llld.linguisticaforense.pt) antes de enviarem os seus textos para obterem mais informações acerca do processo de submissão, instruções e modelos de formatação da revista.

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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;
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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.

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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.