

## Book Review

### **Forensic Communication in Theory and Practice: A study of discourse analysis and transcription**

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#### *Forensic Communication in Theory and Practice: A study of discourse analysis and transcription*

Franca Orletti & Laura Mariottini (eds) (2017)

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#### **Introduction**

This edited volume is a useful addition to the body of academic literature bringing information to the English-speaking world about the practice of forensic linguistics in non-English-speaking countries – a body which, despite valuable contributions in the current journal and elsewhere, remains too small.

A particularly welcome aspect of the book is its inclusion of several chapters on an area too lightly covered in academic literature in any language, namely transcription of covert recordings (conversations captured secretly, by telephone intercept or by ambient or undercover recording, and used as forensic evidence in criminal trials). In this, as in other topics covered, another commendable aspect of the book is the intertwining of theoretical and practical topics captured by its title.

The contents are based upon papers presented at the conference *Theories, practices and instruments of forensic linguistics* organised by the book's editors in Rome, 1-3 Dec 2014<sup>1</sup>. After an introduction by the editors, the book is divided into four parts, which I overview briefly, before adding some evaluative comments.

#### **Overview**

The book's introduction outlines its overall topic: forensic communication as currently practised and researched in Italy and Spain. Like many forensic linguists before, the editors argue, cogently, the need for greater recognition by the law of the findings of

linguistics: 'Law and jurisprudence are made of words' (p.2). After an overview of existing work in forensic linguistics, they offer a deliberately broad definition of their chosen field of 'forensic communication' (a general term they use to include a range of topics that are evidently defined separately in Italian): 'the study of the language used in the judiciary system, from the texts of laws and norms written in the codes to the texts pronounced by judges and juries, including all the linguistic uses of the different phases of the trial' (p.3).

Part 1, *Theories, Practices and Training* starts with 'Transcribing Intercepted Telephone Calls and Uncovered Recordings: An Exercise of Applied Conversation Analysis' by Franca Orletti. The author draws on her extensive background in Conversation Analysis (CA) to highlight many complexities in creating and using transcripts of covert recordings that are given far too little attention by lawyers, who continue to see transcription as a simple matter of writing down what is there to be heard.

The second chapter is 'Obtaining Speech Samples for Research and Expertise in Forensic Phonetics' by Juana Gil Fernández, Marianela Fernández Trinidad, Patricia Infante Ríos and José María Lahoz-Bengoechea. These authors discuss the need for good practice in collecting known samples of suspects' voices, to be used as a reference in identifying speakers heard in covert recordings. They contrast the rigorous approach used in academic research with the often lax practices of the police. Noting the constraints that operate in practical contexts, they nevertheless call for greater control over the quality and quantity of reference samples.

Part 1 ends with 'A Training Program for Expert Forensic Transcribers', by Luciano Romito. This chapter reviews relevant findings of research on human speech perception, emphasising the fact, well known in linguistic science but not in the law, that lack of invariance in speech segments makes word recognition a far more complex process than is understood by the legal community. This means a transcript is never a direct representation of pre-existing lexical entities, but a construction by the transcriber. The author provides a number of examples of how this especially affects interpretation of covert recordings, concluding with a call for more training of those who provide forensic transcripts.

Part 2 is *Models and Tools for Speaker Identification: The Linguistic Approach*. As the title suggests, this looks at issues to do with identification of speakers whose voices are heard in covert recordings. It begins with Chapter 4, 'The Role of Idiolectal Evidence in Speaker Identification' by Jordi Cicres Bosch. This provides useful tutorial-style background on the science of speaker identification, emphasising that, despite the use of the term in the title, the concept that each speaker has a unique 'idiolect' is far from accepted in forensic linguistics. Indeed, the chapter emphasises the concept of unique idiolect as one of several types of misinformation that is widespread in law and law enforcement. As an example, a useful English-language account is given of the famous case of Óscar Sánchez, wrongfully convicted on the basis of voice identification evidence provided by a supposed 'expert' who evidently failed to distinguish widely divergent regional dialects used in the known and disputed samples.

Chapter 5, 'Linguistic Evidence in Legal Proceedings: An Approach to Forensic Speaker Identification (FSI)' by María García Antuña offers another useful tutorial on

the complexity of speaker identification, emphasising that, due to intra-speaker variability, voices are not unique in anything like the manner of fingerprints or DNA.

Chapter 5, by Antonio Briz Gómez and Elena López-Navarro Vidal, offers a 'Proposal of Grammatical and Discursive Markers for Forensic Speaker Comparison', suggesting that inclusion of grammatical and stylistic characteristics can be valuable in some speaker comparison analyses. In support, they provide examples from a very small corpus of informal family talk, acknowledging need for far more data. These authors, too, emphasise the dangers of over-estimating the concept that speakers can be identified through a definitive idiolect.

Part 3, *Models and Tools for Speaker Identification: The Engineering Approach* starts with 'Audio Authenticity: From Analog to Digital Era', by Giovanni Tessitore, Stefano Delfino, Luigi Bovio, Claudio Fusco, Giuseppe Feliciani and Gianpaolo Zambonini. This is another tutorial-style chapter, emphasising how much more difficult it is to detect tampering in current digital recordings than it was in the days when most recordings were on analog tape.

Chapter 8, 'Tools for Forensic Speaker Recognition', by Francesco Sigona and Mirko Grimaldi, outlines why many forensic phoneticians recommend using a Likelihood Ratio (LR) in drawing conclusions about speaker identification evidence, both in manual and automatic analyses. While acknowledging that LR is rarely used by court-appointed experts in Italy, the authors seem to suggest that Italian police are equipped with computer methods incorporating LR statistics that rapidly output conclusions of 'identified' vs 'unidentified'. If I have understood correctly, this seems surprising and potentially problematic.

The last section, Part IV, is *Courtroom Discourses and Texts*. This starts with Chapter 9, 'Forensic Interactions: Power and (Il)literacy in Spanish Courtroom Trials, by Laura Mariottini (one of the editors). This describes a new corpus of Spanish courtroom discourse, and uses a Conversation Analysis (CA) approach to provide a thorough and compelling analysis of how inequalities of power and knowledge emerge in court, especially for non-native-speaker participants.

Chapter 10 is 'Managing Epistemic Asymmetries in Interpreter-Mediated Court Examinations through Repair Sequences', by Marta Biagini. This too takes a CA approach, this time to analyse interpreter-mediated interactions in court. Using French/Italian data collected over a two-year period, it shows the importance of the interpreter's role in the justice system, and argues for greater recognition by the courts regarding what resources and facilities interpreters need in order to perform their role well.

The last chapter, 11, is 'Some Observations on the Use of Latin in a Corpus of Sentences of the Italian Supreme Court of Cassation', by Rossella Iovino. This uses an extensive corpus of Supreme Court sentencing hearings to examine the role played by Latin language in legal discourse in Italy.

## **Evaluation**

### **General**

All chapters are characterised by a strong concern to improve the fairness of the criminal justice system by contributing to the slow process of reforming long-entrenched legal practices that have been developed with too little consultation of the linguistic sciences.

This is a concern felt by forensic linguists in many other countries, who will find value and solidarity in the present book.

### **Presentation**

Before discussing the content of the book, it may be worth getting the one negative comment out of the road. That has to do with the physical presentation of the book. While it initially presents an attractive appearance, with a good cover and clear typesetting, the copy-editing is extremely poor, with a very large number of typographical and proofing errors, and the binding is insufficient: in my copy, pages were already coming loose the first time I opened the book. Of course, these matters lay with the publishers, not the editors or authors, and fortunately do not detract from enjoyment and appreciation of the content. Nevertheless, they seem worth mentioning in a review.

### **Content**

A key motivation for this book is to remedy the widespread lack of attention given to the transcript of a forensic recording. Too often a transcript is accepted by the legal system as an objective representation of the contents of a recording, with little or no recognition of the complex processes involved in creating a transcript, or the effect of these processes on the ultimate reliability of the transcript.

The book in general, and particularly the chapters by Orletti and Romito, argue strongly against this complacent attitude, and urge recognition of the foundational role that the transcript plays in all further analysis. While I greatly appreciate this contribution, I would like to see it taken even further in some places. The following sections select for discussion a few topics related to my own interests (cf. Fraser, 2014). In all cases my remarks merely amplify comments already well made by the authors, in the hope that this additional emphasis will help reinforce their views.

### **Speaker attribution vs speaker comparison and speaker identification**

Several of the chapters take on the crucial question of how linguistics can assist the courts in identifying speakers in forensic recordings. The majority of this discussion focuses on the importance of obtaining a valid 'known sample', and performing a valid comparison between voices in the known sample and the 'disputed sample' in the forensic recording. While these topics are essential, and covered well in the book, there is room for more attention to another, equally essential, topic. That is the question of how to ensure reliable attribution of individual utterances in the disputed sample to specific speakers.

In my experience, speaker attribution is typically done as part of the transcription. It is treated as a straightforward process, well within the capability of a transcriber. However, though speaker attribution can sometimes be straightforward, very often it is not. In recordings featuring multiple speakers in informal conversation, it can be difficult to attribute utterances to speakers reliably even when the audio is clear, and far more so when the audio is indistinct. Further, transcripts, even if not created by investigators, may use speaker names suggested by investigators. These and other factors can create problems with the disputed sample that may not always be picked up by a speaker comparison expert. Given the book's focus on transcription I would have liked to have seen a little more discussion of the vital aspect of speaker attribution. Admittedly, there is not much existing research to draw on, but the topic could have been addressed a little more than it is, even if only to recognise the need for it to be given more attention.

### **Interpreting/translation of witness evidence vs forensic evidence**

A strong theme of the book, especially the chapters by Mariottini and by Biagini, is the essential but complex role played by court interpreters, who enable evidence to be heard from speakers of languages other than that of the court. While the contribution of these chapters is greatly appreciated, it also highlights the rather lesser attention given to issues of interpreting/translation of foreign language material heard in covert recordings. Again, this undoubtedly reflects the far lesser coverage of this topic in the recent forensic linguistics literature (cf. Gilbert, 2017). However, a book of this kind is arguably an ideal opportunity to urge recognition of the topic, and consider its similarities and differences from court interpreting.

### **Court transcripts vs evidence transcripts**

As discussed above, the book intentionally takes a broad view of transcription, aiming to include discussion of transcripts both of overt courtroom communication, and of communication captured in covert recordings and used as evidence in court. While this broad coverage is appreciated for the cross-fertilisation it allows, I think it is also worth maintaining a clear distinction between transcripts of overt and covert recordings. The two types of transcripts have very different purposes. For example, while courtroom transcripts have the purpose of creating a record of overt discourse that multiple observers have clearly heard and understood, transcripts of covert recordings have the purpose of assisting the court to understand the (sometimes contentious) nature of the recorded conversation, and evaluate competing interpretations of the forensic evidence it provides (cf. Fishman, 2006).

One area where this distinction between overt and covert recordings is relevant is in the role given to the theory of Conversation Analysis (CA). Another strong theme of the book is the value of CA as a tool for analysing spoken discourse in legal contexts – and surely there can be no dispute about this value as a general concept. However, in my opinion the role for CA is rather different in the two contexts: analysis of overt courtroom discourse, and evaluation of transcripts of covert recordings.

One of the strongest findings of CA, discussed in admirable detail in Orletti's chapter, is that no transcript can ever be fully neutral or complete. Any transcriber, even a skilled professional linguist, is necessarily, though unconsciously, influenced by the context and purpose for which the transcript is being created (Wald, 1995, is recommended to all linguists as a particularly powerful demonstration of this proposition).

In an academic context, the transcript is prepared by the linguist for his or her personal use. The linguist has typically been present during the recording, or has direct access to those who were. It is possible, and expected, that they will obtain verification for their transcript from an independent associate. All these factors contribute to reliability of the transcript.

In a forensic context, none of these factors are in place. The transcript is prepared by the linguist to assist a third party, the trier of fact. The transcriber, by definition, cannot know the full context of the recording – since this is what is being determined by the court. Opportunities for verifying the transcript against the 'ground truth' of what was said are limited – indeed the transcript is being created precisely to assist the court in determining what was said and who said it. All these considerations raise questions that cannot (yet) be directly answered by a CA approach. Admittedly, again,

there are no agreed answers to be drawn on from the existing literature. While these matters are touched upon by the book, I would have liked to have seen them given a little more explicit recognition, if only to provide arguments to persuade lawyers of their importance, and to encourage more research to determine the most reliable ways to evaluate transcripts of audio used as forensic evidence.

## Conclusion

*Forensic Communication in Theory and Practice* is a valuable contribution to an under-represented branch of Forensic Linguistics and can be highly recommended as a resource for all researchers, including graduate students, who have an interest in transcription and interpretation of forensic recordings of any kind.

## Notes

<sup>1</sup>I was honoured to present an invited paper at the conference, but did not offer it for the book as it reviewed work already published elsewhere (e.g. Fraser, 2014).

## References

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