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Contents / Índice

BOOK REVIEWS / RECENSÕES

Telling our stories: inside and outside of court

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Abstract. *Linguists who serve as expert witness at trials are expected not only to present their technical analyses effectively but also to capture and hold the interest of the jury. This paper suggests that one way to increase jurors' understanding of expert witness testimony and to increase their confidence in the expert is to contextualize their linguistic testimony by framing it as storytelling. However effective and accurate the testimony may be, it is better when it does not appear to be a disconnected fragment of the trial's ongoing narratives (Barry, 1991). Instead, effective expert witnesses must try to be a part of the overall trial story by couching their technical analysis as much as possible in the form of a story with an Abstract, Orientation, Evaluation, and Coda (Labov and Waletsky, 1967). This paper suggests that forensic linguists practice their story telling skills outside the courtroom in order to hone their skills of story-telling at trial. Six of the author's "war stories" are provided as examples.*

Keywords: *Expert witness, storytelling, worst-case scenario, discourse, power.*

Resumo. *Espera-se que os linguistas que desempenham a sua atividade como peritos em julgamentos, não só apresentem eficazmente as suas análises técnicas, mas também captem e retenham a atenção do júri. Este artigo propõe que uma forma de melhorar a compreensão do testemunho dos peritos pelos jurados e de aumentar a sua confiança no perito consiste em contextualizar o seu testemunho linguístico, formulando-o como uma narrativa. Mesmo que o testemunho seja eficaz e preciso, é melhor quando não é apresentado como um fragmento desconectado das narrativas contínuas do julgamento (Barry, 1991). Pelo contrário, as testemunhas periciais eficazes devem tentar fazer parte da história global do julgamento, fazendo um acompanhamento da sua análise técnica, tanto quanto possível, na forma de uma história com um Resumo, Orientação, Avaliação e Coda (Labov and Waletsky, 1967). Este artigo sugere que os linguistas forenses praticam as suas capacidades narrativas fora da sala de audiências, de modo a aprimorar as suas capacidades narrativas no julgamento. O trabalho fornece como exemplo seis "histórias de guerra" do autor.*

Palavras-chave: *Testemunha pericial, narração, pior hipótese, discurso, poder.*

Power in the courtroom

The courtroom trial is a speech event (Hymes, 1972; Gumperz, 1982; Shuy, 2013; Van Dijk, 1985) that is in many ways a battle over power. Judges have the power to control the entire procedure, to make sure that the law is properly interpreted and handled, to keep the participants civil and relevant, and to decide who can talk and when. Prosecutors and defense attorneys share the role of advocates with the power to present their versions of the case. Their power includes deciding which questions they ask defendants and witnesses and which answers are acceptable. By contrast, defendants have virtually no power unless their attorneys let them tell some of their own stories during the direct examination. Prosecutors often call on law enforcement officers to report the evidence and how it was gathered, during which their testimony shares some of the power given to expert witnesses.

Both prosecution and defense can use expert witnesses who call upon expertise in their fields of knowledge to inform juries about aspects of the evidence they might not otherwise know. As they testify, expert witnesses have a certain amount of prestige and power, provided that they do not wander off into the forbidden area of advocacy.

Addressing the audience

Much has been said about the most effective way for linguists to present their analyses as expert witnesses. It is well understood that our courtroom interactions must be scientific, accurate, unbiased, polite, and related only to the language evidence (Shuy, 2016). We also know that we should be patient and calm when attacked by opposing lawyers and that our appearance must be neat and appropriate in that formal setting. But during the highly stressed speech event of giving testimony, it is easy to forget that our role is not only to aid the jury to better understand the language evidence we have analyzed but also to do so in a convincing manner. In many ways this is a lot like classroom teaching, albeit the courtroom is usually more hostile than our students dare to be.

The first task of successful linguistic expert witnesses is to identify and analyze the appropriate language evidence that identifies linguists as experts, much in the way that juries often regard the police as experts in their field. Such analysis and testimony often satisfy this first task. But to be effective on the witness stand, linguists must not only help juries understand something new about the language evidence, but also cause them to consider that testimony as believable and as interesting as possible. This contrasts with giving papers at academic meetings, where even dry presentations and analyses can hold the attention of linguists who are already interested in the topic. In the academic context, linguists are judged primarily by the brilliance of their papers but considerably less so by the manner of presentation. Testimony in the courtroom requires more than that. Jurors must not only be impressed with the power of the analysis, but they also must be able to see how it fits the context of the case in a believable way.

Storytelling in the courtroom

This article proposes that adapting expert witness testimony to the more commonly understood genre of narrative will not only make the presentation more comfortable for the jurors but also can enhance its power and believability and their trust in both the linguists and what they have to say. However, if the expert's testimony is seen only as a fragmented piece of a trial's larger story, the jurors may struggle to see how it fits

in. In my opinion, our courtroom testimony can benefit greatly from presenting our technical analyses as an effective story. Ever since the ancient stories of Gilgamesh and the Iliad, stories have been an effective way to engage an audience to make them enjoy learning important new information focused on a single theme. Humans are driven to find connections between point A and point B. Some find those connections from empirical evidence, some from pure logical explanations, and others from well-crafted but accurate narratives that help listeners recreate the scenes in their own eyes.

A study conducted by Barry (1991) revealed that witnesses using a coherent and explicit narrative style presented around a central theme were judged more credible than witnesses who used a brief, choppy and fragmented style that evidenced little or no connection to a central theme. Barry found that speakers who use the narrative style successfully are not only valued in the courtroom, but are also more believable. Her research compared the fragmented style of defendants and non-expert witnesses with the explicitness of the narrative style practiced and used by law enforcement officers whose role functioned in a way similar to that of expert witnesses. Police officers were given free rein to tell their accounts sequentially, revealing each step in the sequence of events. They also avoided confusion about the story by using specific names and by being unambiguous in their use of specific pronouns and deictic referencing. Defense lawyers seldom had occasion to interrupt them as they narrated the events and most of the time the jury had good reason to judge their story narration as believable.

During the past forty or so years, I've observed the way lawyers tell their stories both inside and outside the courtroom. Many are very good storytellers whose narratives create positive effects on jurors and their stories can get even better when they repeat them outside the courtroom. When lawyers socialize, they are likely to tell each other what they call "war stories," which gives them practice in honing their ability to tell good stories inside the courtroom.

When linguists are on the witness stand, they need engage their audience well enough to capture their perspectives as they teach them a new way of seeing the language evidence they have placed in front of them. One way to do this can be to translate the technical terms we commonly use into words with which the jury is more familiar. For example, whether the memory is good or bad they may recall a bit of traditional grammar from their own schooling. Linguistic expert witnesses can find it useful to adopt this terminology as a way of explaining our more technical vocabulary by couching it in the language of jurors' own school experience.

My point here, however, is that when we we they are in the courtroom we too need to develop those same story-telling skills that lawyers use so effectively. Although linguists should correctly focus their testimony on the linguistic points they make, couching it in a narrative story context can make their points spring to life more effectively. The linear structure of narratives produces different functions within each section (Labov and Waletsky, 1967; Schiffrin, 1994). Stories begin with an Abstract that contextualizes the situation in which the narrative will expand. The Orientation describes the background information such as place, time, and characters. Next comes the Evaluation, which in courtroom narratives includes the linguistic analysis and complicating action that leads the story from point A to point B. The narrative ends with a Coda that shifts from the past time from to the current situation.

Setting the scene is important for helping a jury to see where our analysis fits into their growing understanding of the case's story. Presenting linguistic analyses in the chronological fashion of a story can help set up that grand finale effect of our linguistic conclusions, the hallmark of good storytelling. Knowing how to avoid giving too much information also can be important; those of us who are teachers sometimes have trouble limiting ourselves to the central points we are trying to make. The sequence of our story should highlight the most relevant parts of our analysis. Finally, an expert who appears to be a relaxed, enthusiastic, and friendly storyteller can encourage the jurors to listen and understand what they are hearing.

Practicing storytelling

Now for practicing our story telling. Lawyers get the first opportunity to frame their clients' stories for jurors and they also get practice telling those stories to colleagues and friends outside of the courtroom as well. After working on a number of cases, veteran forensic linguists – much like veteran lawyers – accumulate a number of their own war stories that not only make for interesting social conversation but also for effective classroom teaching. One important caveat, however, is the matter of confidentiality. If a specific lawyer-client privilege governs retelling the information about a case, experts are bound by these restrictions. With a few exceptions, most criminal cases in the United States are in the public record, where journalists and others are able to discuss them in as much detail as they wish. Confidentiality restrictions are more likely to be present in civil cases in which case lawyers and experts are prohibited from discussing the contents.

When we're introduced as forensic linguists at social occasions, we need to have a good story or two available that can explain our work in ways that laypersons can understand. The inevitable first question is "uh, what does linguistics have to do with law cases?" If we respond well to that question, most listeners will develop curiosity about a type of work they had never heard of before. Capturing the attention and understanding of casual listeners also has an immediate benefit to the teller, because expert witnesses need to practice explaining complex language issues to judges, lawyers, and jurors who often pose this same initial question. An effective way to describe our work is to tell it as a story.

Often one of the next problems we experience arises when our listeners ask us, "did you win the case?" This question opens the door for us to explain that expert witnesses don't win or lose cases. Our job is only to help the jury understand the language evidence. We are never advocates for one side or the other. We should be clear that this part of the story, winning or losing, is the lawyers' responsibility, not ours.

Another problem we have when we talk with friends and acquaintances at informal gatherings is "which case story shall I talk about?" I've found that more interest is generated when linguists relate their war stories about famous persons such as politicians, business tycoons, or athletes. If the result of a case is in the public domain and is therefore available to be discussed, listeners eyes may light up because they know about those people. But stories about less well-known, average people also can interest them. Even though criminal cases usually make for more interesting stories than civil disputes, virtually any legal case can provide forensic linguists with more interesting conversational topics than, for example, the historical development of Old Irish pronouns or the latest techniques for teaching English as second language. I've found that telling stories

effectively about criminal law cases in which a person's individual liberty is at stake can be more captivating, however, than accounts of one large company suing another. Experienced forensic linguists have a wealth of stories to tell. My own books and articles are based on the public records of many cases. They consist largely of stories that illustrate or clarify my linguistic analysis. This makes my work easy to write about and perhaps a bit more interesting than chapters in linguistic textbooks about phonetics, syntax, semantics, pragmatics, or even language variability.

It is important, however, that forensic linguists are ethically required to tell their stories accurately and honestly. We shouldn't spice them up with fake facts that make our involvement seem more important than it really was. For example, the fairly accurate linguistic profile I produced for the FBI in the Unabomber case makes an interesting story, but it would have been dishonest of me to claim that it had anything to do with Ted Kaczynski's capture or conviction. I have to say, as I have when I've written about this case, that it was Kaczynski's brother and his wife who were responsible for Ted's capture. But, although my linguistic profile played no immediately useful role to the FBI, it's still an interesting story.

It's common that when forensic linguists talk among themselves, a somewhat different question can stimulate an active exchange. Since listeners tend to be interested in extremes, they might ask, "what's the best case you ever worked on?" This is difficult to answer, since it can be unclear what constitutes "best." Perhaps an easier question to answer is: "what's the worst case you ever worked on?" Here we have a range of choices about what we mean by a "worst case." It could be the worst evidence we had to work with. We could describe the worst judicial process we ever had to deal with. We could talk about the worst defense theory our retaining lawyers tried to use. Our story could illustrate the worst police interview we've heard, the worst examination by a prosecutor, or the government's most unsupported indictment.

I will refer to these here as worst case scenarios and provide some examples from stories I tell to my students, friends, and colleagues. I make no claim that my war stories are anywhere near perfect or complete, but they provide a range of illustrative story telling possibilities. Note that like any story, the following narratives provide background orientation, conflict, and setting of the problem, move linearly from point A to point B, and end with the solution, or denouement. These are worst case scenario example stories based on my own experiences as an expert witness.

Worst defense theory

When linguists are first asked to work on a case, we don't have any idea about what the evidence will look like. The retaining lawyer may have a hypothesis about the evidence that turns out to be at odds with the linguistic analysis once it is conducted, or the analysis simply does not fit that hypothesis. When we finally discover that our linguistic analysis can do nothing useful for the retaining lawyer's case, the only honest and sensible thing we can do is to explain this to the lawyer, for we surely don't want to testify in ways that hurt the cases of the lawyers retaining us. Obviously, they don't want this either. Not surprisingly, this usually ends our relationship with such cases, but our analyses still have some value because they can alert those lawyers to what the other side is likely to say. Sometimes our retaining lawyers are disappointed, but still grateful to learn this; at other times not so much.

In the early 1980s I worked on one such case in what the FBI called its Abscam investigation, which was a large-scale investigation of politicians who were suspected of taking bribes. The lawyer for Florida Congressman Richard Kelly retained me to help him in his defense of a client who had been indicted for accepting a bribe from an undercover FBI agent. The FBI covertly videotaped an exchange in which Kelly denied nine times that he would take a bribe, but then the video showed him clearly stuffing his pockets full of $25,000 in cash. If the evidence had been only an audiotape of that conversation, a defense might have been possible, because Kelly kept saying he didn't want to take a bribe. However, the videotape totally destroyed that theory (see Shuy 1993 and Shuy 2013 for further details).

But Kelly's defense attorney wouldn't give up. He argued that Kelly had smelled a rat and was actually investigating the bribe giver. His defense theory, for which there was no support, was that Kelly took the money to use as evidence that would prove that the phony undercover agent was actually crooked. Linguistic analysis was totally irrelevant for this theory. I could testify only about what the language evidence showed, but I couldn't delve into the congressman's mind to discover his intentions, so we parted company at that point. The lawyer used his highly doubtful theory at trial because it was the only one he had. Not surprisingly, Kelly was convicted (see Shuy 1993 and Shuy 2013 for further details).

Worst police interview

In theory, the major reason the police have for interviewing suspects is to find out what actually happened. This is called the information interview. After the facts are learned, the police should then turn their findings over to a prosecutor whose job is to determine whether those findings are sufficient for the case to go to trial. This is called the information analysis. Many police interviewers, however, go far beyond their defined role of discovering the facts by trying to solve the case themselves. They often make accusations in an effort to elicit a confession, apparently believing that this will save the prosecutor and court a lot of time and effort. When police interrogations are electronically recorded, the defense has the opportunity to find flaws with the interview process, including any uses of leading questions, misstatements about what the suspect has said, and other coercive tactics that the law considers improper and unfair. Some suspects, including minors and the mentally handicapped, are extremely vulnerable to such police strategies.

In 1979 a number of unsolved murders of prostitutes led Dade County, Florida detectives to interview a homeless vagrant named Jerry Townsend. The ensuing partially recorded interviews took place over five consecutive days in September, sometimes at the police station, but mostly as the two detectives drove Townsend around visiting the sites of the murders, a tour during which they frequently turned their tape-recorder off and on. 14 of the 24 times the tape recorder was stopped, the detectives did not follow the accepted protocol of noting the timing or even mention that the recorder was turned off and then back on again. Whether or not any electronic signatures of these on/off occasions were discoverable, clear indications of the stops and starts were easily noticed by the conversational breaks in syntax, sudden topic changes, and also by the sudden variations in background noises.

For example, a rumbling noise from a nearby train was audible when Townsend started his sentence "No, I—" followed by a clicking noise. But what he said in the rest of that sentence had no relationship to the question he was answering and was inconsistent with what he said when the second train's noise was audible. Another time Townsend said that one of the prostitutes was a black girl driving a white car. After an audible on/off click, he then said it was a white girl driving a black car. Sometimes when the detectives accused Townsend of the murders, an off/on click could be heard, and no response was recorded. A bit later Townsend told them that he "committed suicide" on a woman, but we then hear an off/on click after which the detectives said nothing at all about whatever Townsend may have meant by this admission. Many such unidentified breaks led to the obvious conclusion that the detectives were tailoring Townsend's responses to fit their theory that he was guilty as they manipulated the on/off switch on their tape-recorder to create exchanges that were not in the sequence in which they appear to have occurred.

By using this manipulation, it was surprisingly easy for the detectives to get Townsend to admit to the first killing, which encouraged them to ask him about several other unsolved murders. As they drove Townsend around to the places where the bodies were found, Townsend was consistently wrong about the details, but each time he erred, breaks in the tape could be noted after which he then corrected his wrong information to make it fit their needs. For example, on the first day of interviewing he named one of the women correctly, but on the second day he said he didn't know her name. On the third day he gave her a completely different wrong name. On the first day he said he had choked all five women at a ballpark but in the following days he described different methods of murdering them, none of which matched the known evidence. As for his personal background, Townsend gave conflicting answers about his age when he got married (first 25 then 17), and his daughter's age (first 8 then 5).

It was apparent that either this was one of the guiltiest suspects these detectives had ever questioned or Townsend was so mentally troubled that he was a very poor suspect. The latter was clearly the case. Before trial, Miami's court-appointed psychologist gave Townsend a battery of tests and concluded that he had "a low level of mental functioning and/or brain damage." He diagnosed Townsend's drawing of a human figure as at the level of a 3 or 4 year-old and his reading ability as at second grade level, adding "within a range of mental retardation." His math skills were at the first-grade level and the intelligence test defined him as mentally retarded, functioning at the level of a seven or eight year-old. The same psychologist also concluded that Townsend was not malingering or faking. A second court-appointed psychologist came to essentially the same conclusions.

Undaunted by these psychologists' evaluations, the prosecutor then hired his own psychologist who came to similar conclusions about Townsend's IQ (estimating it at about 51); however, this psychologist claimed that the suspect operated at the level of a 19 year-old. Even though this third psychologist was not licensed and therefore could not be used as an "expert" at trial, the judge allowed him to testify about his assessment but prohibited the defense from cross-examining him.

In this case, it was up to the mental health experts to provide conclusions about the suspect's mental ability. However, linguistic analysis made important complementary contributions. Based on knowledge about how language works, it demonstrated that Townsend's language was inconsistent and erratic throughout his four days of ques-

tioning. It also exposed how the detectives took advantage of Townsend's weakness by using coercive questioning strategies, by misstating some of the things Townsend told them and leaving these misstatements on the official record, and manipulating the tape-recorder to create question/answer sequences that most likely did not exist. Such analysis can support the psychologists' findings about degrees of mental competence. During Townsend's four-day police interview, this mentally impaired suspect was completely cooperative, uncharacteristically agreeing with everything the detectives suggested whether or not it held any truth. The multiple linguistic contradictions and recording flaws in this case produced a story of one of the worst police interviews I ever experienced (see Shuy 1993 and Shuy 2014 for further details).

Worst judicial process

Recently when a student asked me if I had ever been involved in a treason case I told her this story. My only treason case was not in America or about American defendants. It took place in the Republic of Georgia, where the treason laws are very different from those in the US.

Treason has differing definitions. Japan identifies it as "crime of foreign mischief," whatever that means. In Thailand it means criticizing the king. In England treason means acting upon or imagining the death of the Monarch - or several other members of the royal family. Sweden has an amusingly archaic definition of treason that includes hitting the king with a strawberry tart. In the United States it might be considered foolish to say that the president should be "locked up" or even "executed," but it would be very difficult to convict the speaker of treason for saying such things.

The United States Constitution defines treason as levying war against the country and giving aid and comfort to those who do so. A prosecution for treason requires two witnesses to this overt act. But even though someone thinks or talks about this act, the case is very difficult to prosecute. Although John Wilkes Booth shot and killed President Lincoln, he was acquitted of the charge of treason. Many people use the word, treason, rather loosely to refer to something that seems disloyal. The framers of the Constitution were very careful to define it in the loosest terms possible, for after all they themselves recently had committed treason against England.

Like the loose definitions of Japan, Thailand, Sweden, England, and the United States, the Republic of Georgia had its own way of defining, discovering, and prosecuting treason. The following is a brief summary of a very complicated case that took place in that country. Since at least 2006, Georgian lawyers have complained that Georgia has a serious problem concerning the independence of its judiciary, in which over 99% of judicial decisions have agreed with the wishes of the former powerful executive, President Mikhail Saakashvili. This president was so fearful of plots to overthrow his government that he considered treasonous some of the meetings held by the country's many small anti-government political parties. One such opposition group, the Justice Party, was headed by Maia Toparia. Since she was the niece of the man accused of killing President Eduard Shevardnadze in 1995, her Justice Party was under particularly close scrutiny.

It was clear that President Saakashvili did not like Toparia, her party, or any other party that opposed him, suspecting that they were plotting to overthrow him. In September 2006 when he learned that Toparia and members of her party had held a meeting to

plan their future activities, Saakaskhvili became convinced that a coup was in the works. Several days after that meeting Toparia and twelve other Justice Party members were arrested and charged with plotting a treasonous coup. Subsequently the prosecutor located eleven people who claimed either to have been present at that meeting or who had talked with people who were there (in Georgia hearsay is apparently admissible). The alleged witnesses wrote official reports about what took place at the Justice Party meeting. A court-appointed English translation of these written reports constituted the major evidence at Toparia's ensuing trial.

Defense attorneys from the US and Georgia enlisted me to analyze the written reports of what the witnesses claimed to have seen and heard. I was shocked to find a remarkable similarity in their reports, some of which included very long paragraphs that were identically worded. Even though the interviews of these witnesses were said to have been conducted by several different investigators at different periods of time, all eleven reports presented their sequence of discourse topics identically. Two reports contained 16 consecutive sentences containing 770 words that were identical in vocabulary, syntax, and punctuation. Two other reports, written two months apart, also contained a nearly identical set of words, expressions, clauses, sentences, and topic sequences. In short, there was very good reason to believe that all eleven reports were the product of coaching and scripting by the interviewers. Even more damaging for the prosecution, the defense produced a videotape of one of the eleven witnesses that demonstrated he was in a far away town at the very time he claimed to have been present at the meeting. In short, the prosecution's evidence was not credible and appeared to be fabricated.

This highly tainted evidence was exacerbated by the even worse judicial procedure that took place during the trial. Even though at that time the Republic of Georgia was said to have made considerable progress in judicial reforms, this case offered evidence that a great deal more improvement was needed. The following provides some examples.

The judge ruled that the prosecution's witnesses did not have to appear at trial because their testimony was in their reports. Of course, this edict prevented the defense counsel from cross-examining those witnesses, the standard method of assessing and testing credibility in an adversarial trial system.

The judge would not allow the defense to call either fact witnesses or expert witnesses of its own, virtually prohibiting any defense testimony. This ruling prevented me from presenting my linguistic findings and stymied the efforts of the defense lawyers to even refer to them.

The judge accepted the reports of witnesses who admitted that they did not even attend the meeting, but had merely been told things by those who claimed to have been present.

The trial was closed to the public, including reporters, based on the notion of protecting state secrets, even though nothing in the evidence came close to discussing or revealing such secrets.

As a result, even though the prosecution's own evidence easily demonstrated that it was fabricated, the defense attorneys were not permitted to prove this at trial. Judicial process in this case provides a story of one of the worst cases of judicial maneuvering I have ever experienced.

Worst charges in a prosecutor's indictment

Although many prosecution indictments are well supported, others set forth claims about crimes that are not backed up by the prosecution's own evidence. The prosecutors' first major task is to review the evidence collected by the police and determine whether or not it is sufficient for an indictment. If they think it is, they will go to trial with the evidence provided by the police, even if it has aspects that appear to be questionable. Who knows? Maybe the jury will convict anyway. And that is the story about what happened in the criminal case brought against millionaire automobile designer and manufacturer John Z. DeLorean in 1982 (see Shuy 1993 and Shuy 2017 for further details).

The British government had awarded DeLorean four hundred million dollars to build a new automobile manufacturing plant in a part of Ireland where historically there had been very low employment and where there was a dire need to improve the area's economy. The grant also specified that after the automobiles began to be produced, an additional fifty million dollars would be advanced to DeLorean's company in order to establish dealerships and to support other necessary expenses once the cars started to roll off the assembly lines.

DeLorean had estimated the costs of this immense undertaking quite accurately. The plant had been built, hundreds of previously unemployed workers had been hired, and the first dribble of automobiles began to roll off the assembly line. All of this took place during the economic recession of 1981 to 1982 and Britain's new conservative Prime Minister decided not to comply with her predecessor's promise of the second level of promised funding. DeLorean quickly discovered that bank loans became difficult to get and investors were wary about investing during the financial crunch. Just when things were progressing very well otherwise, he desperately needed at least twenty million dollars to prevent his company going bankrupt.

Delorean soon discovered that his efforts to secure a loan from banks were going nowhere. He tried to attract new investors, but this too failed. It remains a mystery why FBI agents at this point in time decided to try to ensnare DeLorean in a drug deal, because several years previously DeLorean had made it publicly clear that he hated drugs. He even sold his interest in a professional football team that found itself involved in a drug scandal. But for some reason the FBI chose to target him.

This investigation began in 1982 when an undercover agent posing as a banker befriended DeLorean and promised to help him either to get a loan or to assist him in his efforts to find new investors. The banker/agent subsequently tape-recorded 63 conversations with DeLorean over a period of five months, after which they both finally had to admit that no matter how hard they tried, they were unable to find a loan or new investors. In one of their final conversations, however, the banker/agent said that he knew some people in the drug business who might be able to help by investing. The videotape of this meeting shows DeLorean's visual surprise at this suggestion. He didn't agree to the agent's suggestion, but he also didn't say "no" because the offer to find investors remained on the table and this banker was his last hope to find one. Nevertheless, the prosecution claimed that DeLorean's failure to offer an explicit "no" was evidence that he was interested in pursuing the drug scheme even though nothing like an agreement can be found in the recorded evidence. Any such agreement was merely the prosecutor's inference or assumption.

The purported banker then suggested that DeLorean meet with a person who might know about possible investors for the DeLorean Motor Company. The banker didn't tell DeLorean this, but this meeting was to be with a man named James Hoffman, who the FBI recently had captured flying illegal drugs into the country. Hoffman had been DeLorean's near neighbor many years earlier at a period when they both lived in San Diego. Although they had since lost contact, their teen-age sons had kept in touch. This enticement (an old neighbor who might know of investors) helped DeLorean agree to meet with Hoffman, producing the last of the 64 conversations taped by the FBI.

The meeting took place in a guest room at the posh L'Enfant Plaza Hotel in Washington DC, where the FBI covertly videotaped them talking. Since videotape technology was still a bit primitive at that time, the video was in black and white with camera angles showing Hoffman very clearly while only DeLorean's back could be seen. This grainy videotape made the elegant hotel look like a dingy dive, aiding the prosecution's inference that something nefarious was going on.

As a cooperating witness for the government, Hoffman's task was to get the now-desperate DeLorean to purchase drugs from a source that Hoffman allegedly knew about, in order for him to receive more favorable treatment at his forthcoming sentencing hearing.

After the greeting phase of the conversation, Hoffman said nothing about finding investors but went straight to work, vaguely and confusingly laying out the plans of a mythical drug operation and inviting DeLorean to participate. If DeLorean were to use whatever money his company had left, say five million dollars, he could buy the cocaine and then let Hoffman's group sell it on the street, which would return more than twice as much to DeLorean as he paid for the narcotics. If this didn't yield enough money, they could then repeat the process and finally reach the amount DeLorean needed to save his company.

DeLorean's language responses gave every appearance of being confused. The speech event of a business deal, much less a drug transaction speech event, was not what he was told would take place at this meeting. His schema about what was supposed to happen was very different. Things got even worse when the prosecutor misinterpreted DeLorean's speech acts. After Hoffman presented the opportunity to engage in the drug transaction, DeLorean told him "I'm getting my money from an Irish group," which could only be understood as disagreeing to participate in Hoffman's offer to commit an illegal act. Although DeLorean was telling a lie about that Irish group (there was none), it was an indirect speech act that indicated "I don't need your money," in other words a rejection of Hoffman's offer. It remains unclear why the prosecution didn't understand this, because even Hoffman appeared to understand it as a rejection, for his very next words were an ultimatum, "either we go ahead or end."

Undaunted by this rejection, Hoffman recycled the offer anyway, this time asking DeLorean to release just a few cars to the drug group instead of whatever money his company had remaining. Before DeLorean could answer, Hoffman used the conversational strategy of quickly changing the subject, saying that there may be some banking people who could lend DeLorean the needed money. To this, DeLorean's interest increased because Hoffman finally got to the topic that that was supposed to be the subject of their meeting—helping him find investors. To this, DeLorean said, "I want to do it." For gram-

matically incomprehensible reasons, even though DeLorean's reference was clearly to going with the Irish group, the prosecutor misinterpreted this as DeLorean agreeing to the drug deal.

I cite this investigation as having the worst-case indictment for the following reasons. First, the FBI admittedly had no indication that DeLorean was predisposed to commit a crime. It was more likely a fishing expedition to catch the biggest fish they could find, perhaps for public relations purposes. Second, five months of undercover conversations made by the phony banker had yielded nothing to suggest that DeLorean wanted anything but a loan or new investors for his company. We must ask the serious question about how much investigatory effort is needed before law enforcement is satisfied that their suspect is not venal. The FBI's own guidelines say that undercover operatives should offer "the opportunity" to commit crimes but no such opportunity took place for five months and when it finally occurred, DeLorean rejected it. Third, the tape-recording of the final meeting in which this "opportunity" was finally offered resulted in DeLorean's rejection of the offer to purchase and then resell narcotics. The prosecution erred when it misinterpreted DeLorean's "no" as a "yes." This was the fault of the prosecutor, who failed to analyze his own taped evidence properly and went ahead with an indictment as though DeLorean had said something he didn't say. Fourth, shortly before the trial, the prosecution leaked to the media the part of that videotape in which the agent showed DeLorean a suitcase full of drugs, to which DeLorean said, "it'll be dangerous." As far as the government was concerned, this remark allegedly indicated DeLorean's willingness to be involved. But DeLorean's physical demeanor of discomfort indicated that he was not only surprised to see the drugs, but also shocked by the fact that the drugs were even shown to him. His comment, "it'll be dangerous," was far from any agreement to participate. It was particularly revealing that despite the government's leak of this tape to the media, the prosecution never even mentioned this exchange at trial, apparently knowing full well that it did not help their case. Leaking questionable information out of context to the media is an inexcusable prosecution ploy that is not worthy of our government officials.

There was no justification for DeLorean's indictment. It should never have been brought, as the jury fully recognized when it delivered its verdict of not guilty.

Worst prosecutor's examination of a defendant

This category could provide many possible worst-case examples, primarily because prosecutors are known to embellish their indictments with allegations for which they have inadequate evidence. This strategy is sometimes called "throw everything you can think of on the wall and maybe some of it will stick." One of the tasks of the forensic linguist in such cases is to help the retaining lawyer distinguish between the language evidence that might stick and that which the prosecution has misstated, overstated, inferred, or even imagined.

One of the worst-case courtroom examinations by a prosecutor took place in Honolulu in 1983. The defendant was Steven Suyat, a second-generation Filipino who was born and raised in the backwater cane fields of Molokai where he spoke Hawaiian pidgin. He worked hard, trained as a carpenter and eventually became a business representative of the local carpenters union in Honolulu.

Suyat's troubles began when two of his fellow union representatives were accused of violating the National Labor Relations Board (NLRB) rule that allowed carpenters' union members to provide information to non-union workers at their work sites, but prohibited them from trying to recruit them to join their local union. These two union representatives, Ralph Torres and William Nishibayashi, were convicted. Although Suyat was not charged, the prosecutor subpoenaed him to testify as a fact witness, which he did. Even though there was no evidence against him, the prosecutor probably suspected that Suyat was guilty of the same charges. Important in this case is the fact that although defendants are represented by lawyers, the prosecution's friendly lay witnesses like Suyat, are not. Suyat tried to answer the prosecutor's questions during the trial of his fellow workers as well as he was able. His answers, however, led the prosecutor to indict Suyat on separate charges of perjury. Suyat's answers during the trial of his two union colleagues formed the entire evidence against him during his own relatively brief trial for perjury. Three of the prosecutor's questions and Suyat's answers framed his indictment for perjury.

1. Prosecutor: And one of the jobs of the business agent is to organize non-union contractors, right?

Suyat: No.

Perhaps in the effort to clarify, the prosecutor then repeated this question three more times yielding Suyat's same negative responses. Curiously, this led to four counts of perjury in the indictment. Since Suyat reasoned that it is very clear that unions organize workers but not contractors, he stuck by his answer of "no." A charitable interpretation of the prosecutor's action is that he never managed to figure out this difference. A less charitable interpretation is that he understood the difference, but stayed with it, hoping the jury would believe that Suyat was continuing to commit perjury.

2. Next, the prosecutor produced the logbook of one of Nishibayashi, Suyat's fellow business agents, and asked Suyat if what was written in it consisted of a true or false statement. This logbook said: "Gave Ralph and Steve [two other union officers] more time for organizing non-union contractors." Suyat's answer was that Nishibayasi's statement was false, reasoning that what his colleague said was in error because unions organize workers but not contractors. Again the prosecutor somehow must have hoped the jury would view Suyat's answer as perjury, even though it was consistent with his answer to the first question, namely that unions do not organize contractors.

3. Finally, the prosecutor asked Suyat to tell him what the word, "scab," means. Suyat answered, "I have no recollection." The prosecutor then produced Suyat's own logbook in which he had used that word, and concluded his examination in this way:

Prosecutor: So you don't remember what you meant by it when you put it down here?

Suyat: Well, yeah—

Prosecutor: Thank you. I have no further questions.

Here the prosecutor cut off Suyat's "well, yeah" in which the rising intonation contour gave every promise of being incomplete and pretty clearly indicated that he indeed could remember what "scab" means, and was ready to say more about it before he was stopped before he could finish. To that point Suyat felt unable to define "scab" in a way that would satisfy the well-educated and powerful prosecutor, but he knew what it meant and appeared to be willing to take a crack at it. Linguists know that two kinds

of context play a crucial role in defining words. The linguistic context is simply the prosecutor's words and sentences that occurred before Suyat's responses. The social context includes non-language factors surrounding those responses: the place where the exchange occurs, the social status and education of the participants, the conversational routine taking place, and other factors. The prosecutor was willing to accept only the linguistic context, ignoring the fact that Suyat was in a courtroom far from his daily social context while nervously and self-consciously trying to answer the questions posed by a man with far more education and status in a legal setting he had never before experienced.

Instead of taking the social context features into consideration and asking Suyat to explain further, however, the prosecutor used the common prosecutorial strategy of ending the examination on what he considered a high note. It remains unclear why Suyat's response was considered perjury.

At trial the judge used one of the common reasons for not allowing an expert witness to testify, explaining that we all speak English here and that there was no need for the jury to be aided by a linguist. I did the best I could to help the defense attorney explain the prosecutor's very strained inferences, but to no avail. The story of Suyat's conviction provides one of the worst prosecutorial examinations I have ever witnessed (see Shuy 1993 and Shuy 2011 for further details).

Worst treatment by a judge

In 1992 I was called as an expert witness at a murder trial in Richmond, Virginia. The defendant, Beverly Monroe, was charged with killing her boyfriend, Roger de la Burde, a wealthy older man who claimed to be a Polish aristocrat. Beverly and Roger met when they were both employed as research scientists at the nearby Philip Morris Tobacco Company. A romance developed and Roger asked Beverly to marry him. But after she discovered that he had very recently impregnated another woman, Beverly became disappointed and angry.

One evening she went for dinner at his home on his 220-acre horse farm to try to work things out. After their dinner and much conversation, the story gets murky. Beverly said she then drove home, stopping for some food supplies on her way. She called Roger the following morning, but got no answer. This worried her enough to return to his house to check on him. Since the door was locked and nobody answered, she got the stable keeper to let her in. There they found Roger dead in his lounge chair with a gun at his side.

The police detective interviewed Beverly and apparently did not believe her account. He was very sympathetic, but suspicious enough to ask her to take a polygraph test. He then told she had failed it and he'd need to talk with her some more (note than in the US police are allowed to lie in the pursuit of evidence). He tape-recorded his following telephone conversations with her and these tapes became the evidence that led to her indictment on charges of murder.

The government's tapes were so badly recorded that Beverly's contributions to the conversations were mostly inaudible. The parts that were audible were totally benign in terms of any admission of guilt. Taking on the role of a friendly therapist, the detective posed as her good friend who wanted to believe her and was trying to help her recall the events of that fatal evening. Beverly was so shaken by those events that she said could

not remember many of the things that the detective wanted to hear her say. After listening to the tapes, I was able to decipher a very large number of her statements that had been marked as inaudible on the transcript produced by the police. These passages clarified that contrary to the detective's report, she never admitted to killing her boyfriend. With my own transcript in hand I was prepared to testify about what was actually said on the tapes. Beverly's attorney and I discussed how my direct examination should go, and I was ready for the trial.

As I entered the courthouse a court official ushered me into a nearby small, windowless room to wait. This room seemed luxurious compared with the usual process of waiting on a bench outside the courtroom, but I was surprised that the man who placed me into that room locked the door and remained there with me as my personal jailer. He even accompanied me closely when I asked to use the bathroom. Fortunately, I was set free when the bailiff called for me to enter the courtroom.

As my direct exam started, I began to compare my transcript with that of the police. Suddenly the judge began yelling at me for mentioning the word, "transcript." I should know better than to mention anything about any transcript made by anyone. What kind of an expert witness was I? Why did I flout the ruling of this court? The reason was obvious to everyone but me. While I was locked up in the room, nobody could inform me about the judge's recent ruling that no transcripts would be used. Perhaps my retaining attorney could have asked for a brief recess to inform me about this edict, but he may have had his own good reasons not to irritate that judge. Alternatively, he could have told me about it as he started his direct examination. But he didn't, leaving me to suffer the humiliation alone.

Needless to say, I was dumbfounded, embarrassed, and left wondering what I had done that could have caused that judge's angry outburst. I was an experienced expert witness and had testified in many previous trials but I had never suffered anything like this violent attack. The worst part of it for me was that then I had to restructure my entire testimony by clumsily taking time to locate the passages on the tapes, a task that would have been much easier if I could have compared and referred to the government's and my own transcripts. I did this the best I could, but I cannot give myself a good grade as to how effective I was. I was not aware until after the trial that the detective had already testified to the jury about what (he thought) Beverly had said in those inaudible passages. Therefore, it was his word against mine, and the jury favored his. For example, on the tape the officer said, "You've known all along that there was something that made you feel guilty." The government's transcript indicated that her answer was "inaudible." But her words, "That's not true" were actually what she said. The government's transcript contained many other omissions in which Beverly denied killing her boyfriend. The detective claimed that these were actually her admissions of guilt.

The detective's creative but inaccurate representations led the jury to convict Beverly Monroe of murdering her boyfriend that night.

This sad story about my treatment at trial eventually had a happy ending. While Beverly was serving her sentence, her daughter, Katie, went to law school and worked hard to eventually produce a habeas corpus petition to release her mother. Her good efforts eventually managed to convince the U.S. District court to vacate Beverly's conviction. The court found that the trial contained several instances of prosecutorial misconduct,

including the withholding of crucial exculpatory evidence. Beverly Monroe was released from prison after serving nine years of her 22-year sentence. The story of my treatment by the judge in this case, including my initial imprisonment at the courthouse before testimony and the surprise restrictions placed on my testimony, made this the worst case in which I was ever treated by a judge (see Shuy 1998 and Shuy 2014 for further details).

The value of telling our stories

The time-honored approach to telling effective stories is more limited when we tell them in the courtroom compared with when we teach our students in the classroom and when we talk to our colleagues and friends. In the courtroom we have to find the right time and place to incorporate our stories into the trial's existing story context without sounding redundant or unduly repetitious, and the retaining attorney determines how it will fit. But we can tell our stories for illustrative purposes that accommodate our linguistic analysis into the appropriate parts of the overall trial narrative. This can add human interest and believability to our professional status as an expert witness whose primary job is to convey technical information. Unless a confidentiality agreement obtains, we can use our stories to teach and even to entertain. Doing so outside the courtroom can provide a training ground for improving our story telling in the courtroom. Effective storytellers know that context is vital for a good story. Our testimony in the courtroom can be enriched when we remind or reorient the jury about the context in which our linguistic analysis is set. This is much like the way we describe the research problems that we address in academic papers. A background orientation story frames and sets the stage for the analysis that follows. On the witness stand, however, it is easy to rush directly into our analysis and omit the orientation of our story, perhaps because we are aware that some or most of that story has already been presented by the prosecution and defense in their opening statements. My point here is that it can only help to remind the jury about those parts of the background that contextualize our testimony, at least as long as the judge will allow it. Without this frame, our testimony can look like a fragmented and somewhat dull context-free linguistic lecture. The key is to repeat just enough background to let the listeners know where our analysis of the evidence fits into the case, but not so much that it will seem so that it interferes with or gets in the way of the main part of our testimony, the linguistic analysis that follows.

One way to do this is to begin our testimony with a sentence beginning with a causal "because." Taking the Beverly Monroe case as an example, after being asked about the taped interviews, the linguist could say:

> **Because** it is the jury's task to know what is actually on those tapes and not to accept anyone else's opinions or inferences about the language that is on them, I spent many hours using my linguistic training and experience listening to the tapes in order to retrieve many portions of the conversations that other persons were apparently unable to hear.

The above use of "because" briefly helped contextualize the purpose of my linguistic analysis into the government's existing story. The court had agreed the tapes were badly made and hard to hear and the jury's task was to try to understand what was on them as best they could. The court also pointed out that it would be improper for the jury to accept mere inferences or guesses by anyone (in this case, the detective) about what the speakers on those tapes actually said. In short, my use of "because" briefly recapitulated

part of the government's story up to that point, reminded the jurors of their current task, and set the stage for what I was ready to tell the jury about what the speakers on the tapes had actually said.

Whenever possible during our testimony, we can also tell stories to illustrate our points. During the Suyat perjury case I was prepared to identify with him by citing examples of my own experience as a union member back when I was working my way through graduate school and employed by the Firestone Tire and Rubber Company. It would have been ludicrous to think that my fellow union members believed that we could recruit our employers to our union or that we didn't know what the word, "scab," means. Of course Suyat would also know these things and he did his best to say so.

In an airplane crash product liability case brought by an insurance company against the manufacturer of an airplane engine in the 1990s, I had to explain that the pilot's syntax was not distorted by the presence of a gaseous substance leaking from the plane's engine. Linguistic analyses of syntax can be so complex and different from that which layperson jurors are likely to know about sentence structure that I decided to tell the story about the time when I was a junior high English teacher:

> "Many years ago I was a junior high school English teacher in Akron, Ohio. You may recall from your own junior high school days that your English teacher taught you that sentences have subjects, verbs, and objects. You'd expect that a pilot who was under the influence of gaseous emissions from his engine would muddle the structure of this sentences in a way that is characterizes those who are talking while under the effects of an excessive influence of alcohol. The pilot's language shows absolutely none of those grammatical characteristics."

I showed the jury a chart I had made of the pilot's sentences during the three segments of his flight. Pilot to tower communication has a special syntax formula made up of an acknowledgement (Roger, okay, got it, etc.) followed by a self-identification (Mitsubishi 727). At this point the pilot can close the exchange (out) or form a sentence with a subject (we, we'll, etc.), a predicate (are refueled, are ready to go, going to 5000 feet, etc.), and a formulaic closing (out, Mitsubishi 727 out). I demonstrated that there were no aberrations in the pilot's syntax throughout his flight from Milwaukee to New Orleans.

I then went on to show how the pilot had not slurred his pronunciations of words when he said "Mitsubishi seven two seven," "Houston," "Moisant," "that's," and many other words. Following the story structure, I led the jury through the pilot's air to ground communication chronology from when he took off in Milwaukee to the time he crashed in New Orleans, concluding that there was no evidence in the pilot's syntax or pronunciation that the crash was caused by his being overcome with the gaseous fumes coming from the plane's engine. My story was effective and the insurance company lost the case (see Shuy 2008 for further details).

We forensic linguists are blessed to have a wealth of interesting stories that grow out of the cases we work on. I continue to believe the best way to teach something is by practicing telling our stories to our friends and students. Our stories cannot only describe the serious topics of our work but also be relevant and enjoyable to both the teller and the listener. Very likely many interesting stories emanate from our experience, even if they only poke fun at ourselves.

As stressed above, repeating our stories outside of the courtroom setting also has the practical benefit of honing our ability to communicate effectively inside the courtroom

to the special audience of lawyers, judges, and juries. The more we tell our stories, the more proficient we can become. No matter how good our stories are, however, they are constrained and shaped by the retaining lawyer and our stories are only as effective as they allow them to be. Of course we also have to highlight our more technical analyses, but it is critical to couch these in stories to which our listeners can relate.

Knowing our audience and taking their perspective involves our being relevant to their past and present experiences. In terms of the discourse inverted pyramid that I discuss in my books and articles (Shuy, 2013: 7-9; Shuy, 2015: 824-837; Shuy, 2017: 21-33) story-tellers and their listeners should be in the same speech event and share the same schemas. We need to contextualize the problem, conflict, and setting in the same way we do in the courtroom, then build to the story's climax with a punch line linguistic conclusion and a brief coda that brings the listener to the current time frame.

In this article I chose to illustrate my points by telling stories about some worst case scenarios. Of course those are not the only types of stories we can tell, but these can convey the kind of story drama that can hold the interest of our listeners. The engaged listeners, whether legal actors or not, can gain a new appreciation for linguistic analysis and its value in the real world through our skills of storytelling.

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References

Barry, A. (1991). Narrative Style and Witness Testimony. *Journal of Narrative and Life History*, 1(4), 281–291.

Gumperz, J. (1982). *Language and Social Identity*. New York: Cambridge University Press.

Hymes, D. (1972). Models of Interaction of Language and the Social Life. In J. Gumperz, V. John and D. Hymes, Eds., *Directions in Sociolinguistics*. New York: Holt, Rinehart and Winston, 35–71.

Labov, W. and Waletsky, J. (1967). Narrative Analysis. In J. Helm, Ed., *Essays on the Verbal and Visual Arts*. Seattle: University of Washington Press, 12–44.

Schiffrin, D. (1994). *Approaches to Discourse*. Cambridge MA: Cambridge University Press.

Shuy, R. W. (1993). *Language Crimes: The Use and Abuse of Language Evidence in the Courtroom*. Oxford: Blackwell.

Shuy, R. W. (1998). *The Language of Confession, Interrogation, and Deception*. Thousand Oaks, CA: Sage.

Shuy, R. W. (2008). *Fighting Over Words*. New York: Oxford University Press.

Shuy, R. W. (2013). *The Language of Bribery Cases*. New York: Oxford University Press.

Shuy, R. W. (2014). *The Language of Murder Cases*. New York: Oxford University Press.

Shuy, R. W. (2015). Discourse Analysis in the Legal Context. In D. Tannen, H. Hamilton and D. Schiffrin, Eds., *The Handbook of Discourse Analysis*. Maldon MA: Wiley Blackwell, 822–840.

Shuy, R. W. (2016). *The Language of Fraud Cases*. New York: Oxford University Press.

Shuy, R. W. (2017). *Deceptive Ambiguity by Police and Prosecutors*. New York: Oxford University Press.

Van Dijk, T. (1985). *Handbook of Discourse. Vol.1, Disciplines of Discourse*. London: Academic Press.

Assessing the abilities of phonetically untrained listeners to determine pitch and speaker accent in unfamiliar voices

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Abstract. *It is sometimes the case that a victim of a crime will never see the perpetrator's face, but will be exposed to his or her voice. This could occur in situations such as masked robberies, telephone fraud, or the receipt of bomb threats via phone or voicemail. In such cases, attempts can be made by the police or intelligence services to get the witness or victim to describe the voice of the offender. However, there is a high likelihood that a given earwitness will lack the linguistic expertise and technical vocabulary of the kind used by trained phoneticians when they describe voices. One question that arises from this problem is whether phonetically untrained listeners have the ability, using verbal means, to accurately capture different aspects of speakers' voices. This paper presents an experiment in which a group of listeners were tasked with assessing how 'high-pitched' the voices of 12 speakers were, along with providing a description of each speaker's accent. These assessments were then compared to measured Fundamental Frequency (F0) values and prior knowledge of the speakers' accents in order to assess listener performance. The results suggest that while some listeners have the ability to make reliable judgements of relative vocal pitch, the overall correlations between measured F0 and perceived pitch were weak. With regard to accent, the results suggest that the more unfamiliar a speaker's accent is to the listener, perhaps owing to the geographical distance of the area where the accent is spoken from the listener's place of origin, the harder it will be for the listener to accurately describe that accent. We argue that testing the abilities of earwitnesses to assess aspects of speakers' voices before their descriptions are used further would be a useful safeguard against the use of potentially inaccurate or erroneous earwitness evidence in police investigations.*

Keywords: *Keywords: Voice identification, vocal pitch, speaker accent, earwitness evidence.*

Resumo. *Acontece com frequência a vítima de um crime não ver o rosto do perpetrador, mas ser exposta à sua voz. Pode acontecer em casos como roubos por assaltantes encapuzados, fraudes por telefone ou ameaças de bomba por telefone ou voicemail. Nesses casos, as forças policiais ou a polícia judiciária podem tentar que a testemunha ou a vítima descrevam a voz do(a) criminoso(a). Contudo, existe uma probabilidade elevada de uma testemunha auditiva não possuir os*

conhecimentos linguísticos e o vocabulário técnico utilizado por foneticistas especializados ao descrever as vozes. Uma questão, decorrente deste problema, é se ouvintes sem formação fonética possuem a capacidade de, usando meios verbais, captar com precisão diferentes aspetos das vozes dos falantes. Este artigo reporta uma experiência na qual se pediu a um grupo de ouvintes para determinar quão agudas eram as vozes dos 12 informantes, para além de fornecer uma descrição da pronúncia de cada falante. Estas avaliações foram, depois, comparadas com os valores de Frequência Fundamental (F0) medidos e com o conhecimento prévio da pronúncia dos falantes para avaliar o desempenho dos ouvintes. Os resultados sugerem que, embora alguns ouvintes tenham a capacidade de fazer julgamentos fiáveis do tom vocal relativo, as correlações gerais entre os valores F0 medidos e o tom percebido eram fracos. Relativamente à pronúncia, os resultados sugerem que, quanto menos familiar for a pronúncia de um falante para o ouvinte, talvez devido à distância geográfica da área onde se fala a pronúncia do local de origem do falante, mais difícil é para o ouvinte descrever com precisão a pronúncia. Defendemos que, testar as capacidades das testemunhas para avaliar aspetos das vozes dos falantes antes de utilizar descrições mais detalhadas, seria uma boa salvaguarda contra o uso de provas testemunhais potencialmente imprecisas ou errónas em investigações policiais.

Palavras-chave: *Identificação de voz, tom vocal, pronúncia do falante, prova testemunhal.*

Introduction

In January 2018, media reports broke of a series of violent burglaries taking place in southeast England, during which a masked intruder physically assaulted and robbed victims of high-value possessions such as jewellery (BBC News, 2018). When asked to provide a description of the perpetrator, one victim described him as follows: "I would say he spoke well, he had no accent, he didn't have bad grammar, he's an intelligent man, he knows how to assess the situation and carry this out." Examples of this kind illustrate some of the difficulties that witnesses may have when asked to provide linguistically precise descriptions of the speech of a criminal who provided few or no other useful clues to identity, e.g. from his face, while the offence was in progress. Under such circumstances, the witness's description of the offender's voice may become the most useful evidence available. The potential importance of such earwitness testimony is highlighted by Nolan and Grabe (1996: 74), who point out that victims of certain crimes – verbal threats delivered via the telephone, masked robberies, sexual assaults, or instances where criminal activity has been overheard but not seen, and so on – may have been exposed only to the voice of the culprit, and not his or her face.

However, the great majority of earwitnesses to crimes will have had little or no formal linguistic training (Griffiths, 2012), and, according to Shuy (1993), will almost always lack both the ability and the vocabulary needed to give adequately detailed descriptions of other speakers' language behaviour. Furthermore, Sherrin (2015) documents two examples of cases in Canada in which unreliable earwitness voice identification led to wrongful convictions, and also cites 17 US cases of wrongful imprisonment that were based, at least in part, on faulty earwitness testimony. These issues present an ongoing problem to police officers and security personnel, who from time to time will wish to elicit meaningful descriptions of the voices of criminals from earwitnesses.

Although speaker identification by earwitnesses and earwitnesses' descriptions of offenders' voices are not equivalent, dependent as they are upon different sorts of memory recall, they are closely related. Broeders and van Amelsvoort (2001) state that the foil (non-suspect) samples in a voice identity parade should match as closely as possible with the verbal description given by the witness, although they also point out that such descriptions do not necessarily form a solid foundation upon which foil selection should take place. Furthermore, the UK guidelines on constructing voice lineups (Nolan, 2003: 288) explicitly state that "the identification officer in charge should obtain a detailed statement from the witness" which "should contain as much detail and description of the [offender's] voice as is possible". This emphasises the need for voice descriptions to be promoted as best practice in the UK as a part of eliciting earwitness evidence.

It has also been argued that the process by which phonetically untrained listeners identify voices operates below the level of consciousness (Broeders and van Amelsvoort, 2001; Watt, 2010), making it difficult for an earwitness to introspect about and then verbally externalise what can essentially be viewed as an automatic process. The problem is further compounded by the often highly technical nature of the terminology used by expert phoneticians to capture aspects of a speaker's voice, much of which – in spite of the relative transparency of labels like 'creaky', 'whispery' or 'breathy' for certain voice quality attributes – is unlikely to form a part of the non-linguist's lexicon. Watt and Burns (2012) highlight that it is unlikely that the majority of earwitnesses will have voice description skills comparable to those who have received specialised training in phonetics or linguistics. This issue was earlier commented on by Yarmey (2001), who obtained voice descriptions of unfamiliar speakers using an open-ended question format in which listeners were free to provide as many or as few descriptors as they considered appropriate. Yarmey (2001) observed that listeners provided, on average, between 4 and 5 descriptors, but that these were often non-technical and somewhat limited in their usefulness.

However, despite warnings from researchers that phonetically untrained listeners perform poorly when tasked with describing the voices of speakers, some research has shown that listeners appear to be able to identify certain aspects of speakers' voices with relative accuracy. In an investigation of listener accent attribution, Griffiths (2012) found that lay listeners were able to label speakers' accents reasonably accurately, although descriptions of the voices of speakers with localisable accents, such as that of Cardiff, Wales, were more accurate than those for speakers with less region-specific accents like Standard Southern British English (SSBE). Additionally, Watt and Burns (2012) found that listeners were able to provide phonetically interpretable descriptions of voice quality with a tolerable degree of accuracy and consistency, and in a way that was compatible with expert terminology. Both Griffiths (2012) and Watt and Burns (2012) stress the importance of further research on how non-linguists describe voices in forensically relevant contexts. Griffiths (2012: 76) specifically warns that this research is needed because "non-linguist members of the general public [by which here he means police officers] are appointed to elicit the best possible linguistic evidence, from other non-linguist members of the general public [witnesses], which other non-linguists [legal counsels such as barristers] then represent in law courts."

At present, voice descriptions elicited from witnesses by law enforcement officers in the UK are still unlikely to be systematically collected, not least because no standardised

protocol to structure the task has yet been developed in this country (Watt and Burns, 2012; Watt, 2010). By contrast, the Netherlands Forensic Institute (NFI) have for over a decade been making use of a questionnaire for the elicitation of earwitness voice descriptions (Watt and Burns, 2012). There do exist, however, UK government documents such as the National Counter Terrorism Security Office bomb threat checklist (National Counter Terrorism Security Office, 2016), which incorporates questions about speakers' voices in the context of lay-listener evaluations of telephoned bomb threats. The relevant section of this document is reproduced in Figure 1. It invites the user to comment on a range of vocal features using predominantly non-technical terms such as 'slurred', 'lisp', and 'deep', alongside a range of labels for presumed emotional states such as 'angry' and 'calm'. Whereas the NCTSO document uses simple 'present/absent' tick-boxes to elicit earwitness descriptions, the NFI questionnaire uses scales ranging from one extreme to another as a means of getting witnesses to describe the voices of speakers they have heard. The latter technique mirrors the method used by Handkins and Cross (1985), which elicits scalar judgements of rate of speech, rate variation, pitch variation, 'expressive style', 'enunciation', 'inflection', tremor, pauses, and nasality. While some of these terms, such as nasality, have clear phonetic or linguistic correlates, the precise meaning of others, such as enunciation (the scale for which ranges from 'very poor' to 'very good') or inflection (from 'none, flat' to 'very much'), is harder to pin down.

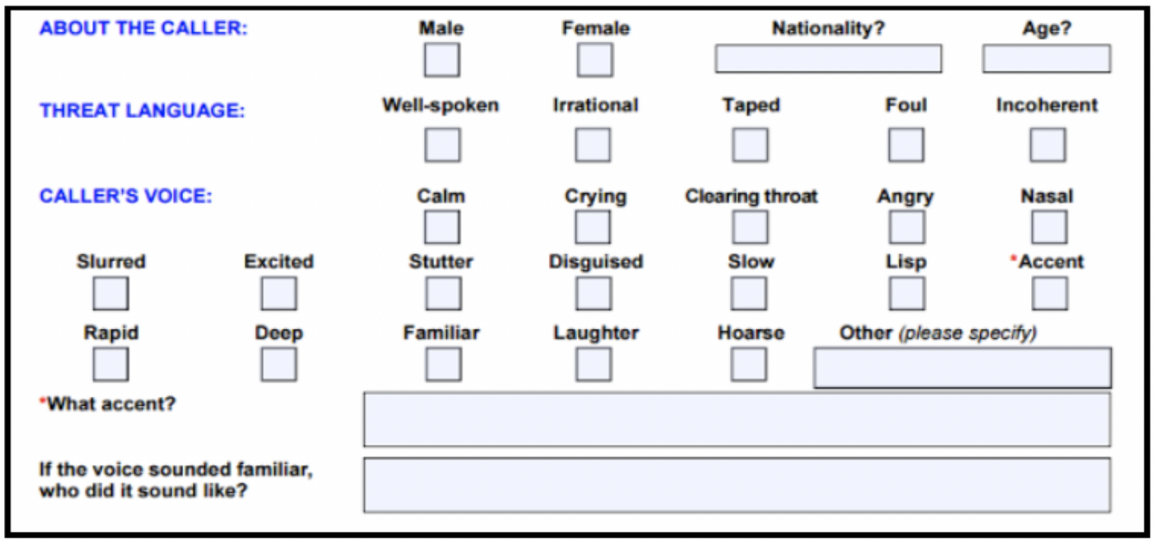

Figure 1. Extract from UK National Counter Terrorism Security Office bomb threat checklist (full form available at http://bit.ly/2o8UDBq).

Research aims

Following the work of Griffiths (2012) and Watt and Burns (2012), the goal of this paper is to assess how accurate listeners are at making judgements of specific aspects of speakers' voices under particular conditions. The research presented focuses on two particular aspects of voice: *pitch* and *regional accent*. This research addresses whether listeners' judgements of the high-pitchedness of a speaker's voice align with acoustic measurements of average Fundamental Frequency (F0), the key acoustic correlate of vocal pitch (Laver, 1994). It also builds on Griffiths' (2012) work by eliciting and examining listeners' descriptions of the accents of speakers of three different varieties of English.

These two aspects of voice were chosen owing to the fact that neither parameter relies on lay-listeners' ability to interpret specialised linguistic or phonetic terminology, and on account of both types of voice characteristics being used in documents such as the NCTSO bomb threat evaluation checklist (Figure 1).

Method

Stimuli

Twelve speakers (6 male) provided informed consent to take part in a recording session during which they were asked to produce the utterances "There's a bomb at York Station. It will go off this afternoon" and "I'm warning you about a bomb at York Station, which will go off this afternoon". Given that the NCTSO document is used to evaluate bomb threats, we sought to mirror this context when designing the stimuli for the experiments. Each speaker was instructed to produce each utterance twice, once with extra emphasis on the word 'will' and once with emphasis on the word 'this'. This yielded 48 recordings to be used as experimental stimuli. All speakers were students at the University of York or Newcastle University, UK. Recordings were made in a quiet recording environment using a Zoom H4N handheld recorder with the microphone positioned on a table approximately 30cm from each speaker. Among the group of speakers, four were speakers of Standard Southern British English (SSBE), four were speakers of Northern Irish English, and four were L2 speakers of English having 'Middle Eastern' languages as an L1 (three Arabic speakers, one Persian speaker) [1]. Each accent group contained an equal number of male and female speakers. The SSBE and Northern Irish accent samples were checked by the researchers to ensure they were appropriately representative of the target accents.

The median F0 measurements for each voice were extracted using the ProsodyPro script (Xu, 2013) in Praat (Boersma and Weenink, 2016), with pitch trace errors being manually corrected before the script was used. Additionally, measures were taken for the *F0 range, formant dispersion* (measured as the "average distance between adjacent formants up to F3" (Xu, 2013)), *jitter* (an index of variability in glottal cycle duration), *shimmer* (glottal cycle amplitude variation), and *harmonic-to-noise ratio* of each speaker's voice in each utterance. These additional measurements were also extracted using the ProsodyPro Praat script (Xu, 2013). These variables were used to capture a range of information about each speaker's vocal tract resonances and phonation qualities.

Finally, in order to make the experimental stimuli sound more like real-world telephone calls, all recordings were band-pass filtered between 300 and 3400Hz to simulate a landline telephone channel (Künzel, 2001; Nolan *et al.*, 2013). A 0.5-second period of silence was also added to the end of each utterance, and this was followed by a 1-second long 175Hz tone which was designed to resemble the 'hangup tone' ending of a telephone call.

Participants

85 student participants (9 male, mean age = 20, age range = 18-55) received payment or course credit to take part in an experiment in which they were tasked with evaluating a subset of the recordings created for the experiment. No participant in the study had received advanced-level formal phonetic training. Each participant heard a different subset of the total number of voices, presented in a computer-generated randomised

order. The mean number of voices evaluated per listener was 11, and the mean number of times each utterance was evaluated was 20. All participants were tested in either the Department of Psychology or the Department of Language and Linguistic Science at the University of York, and all participants were native English speakers who self-identified as having a British English accent. Furthermore, no participants were from Northern Ireland, and no listeners reported that they themselves had an accent with any Arabic, Persian or Middle Eastern influence.

Procedure

Participants wore closed-cup headphones in a quiet environment, and were instructed to listen to each voice and then to answer a series of questions about the speaker they had heard. Listeners were not limited as to the number of times they could hear a given recording, but were not able to amend previous answers when progressing through the experiment. As part of the questionnaire, listeners were instructed to say how high-pitched they thought the voice of each of the speakers they heard was. These evaluations were provided on a scale ranging from 0-100, where 0 represented 'very low-pitched' and 100 represented 'very high-pitched'. The scale was the same for male and female voices, and listeners were not given any instructions to provide ratings in accordance with gender norms. Listeners were also instructed to say what accent they thought each speaker had. This was done using an open-answer format, in response to the question "' *What accent do you think this speaker has? Leave the box blank if you are unsure*". We also collected information about how similar listeners thought their own accents were to a range of different UK accents. This list included *Oxford/Cambridge* (designed to reflect SSBE), *Newcastle, Yorkshire, Manchester, Liverpool, Belfast* and *Glasgow*. This information was collected in order to assess perceived similarity between listeners' accents and two of the target varieties in the experiment (SSBE and Northern Irish English). The other accents were included as distractors so as not to focus listeners' attention entirely on the target varieties.

Given that the research was not concerned with listeners' abilities to remember speakers' voices, the evaluation of each voice sample took place immediately after exposure to that sample. It is also acknowledged that the experimental design of this study created a more favourable environment for voice evaluations to take place than would be expected in real-world forensic scenarios. For example, evaluations took place in a stress-free environment, listeners were aware that they would be evaluating each voice using a repeated evaluation format, listeners had the option to listen to each recording as many times as they wished to, and the evaluative questions were asked immediately after exposure to a given vocal stimulus.

Results and discussion

Pitch perception

To assess how accurate listeners' pitch judgements were, their perceived pitch scores were compared to the corresponding measured median F0 values for the voices of the speakers in the experiment. Figure 2 plots listeners' pitch judgements against the measured median F0 values, separated in accordance with speaker sex, given that F0 is a sexually dimorphic aspect of voice (e.g. Puts *et al.*, 2006).

Figure 2 shows a weak positive correlation between listeners' pitch judgements and the measured median F0 values for both male (Pearson's $r = 0.33$, $df = 492$, $p < 0.001$)

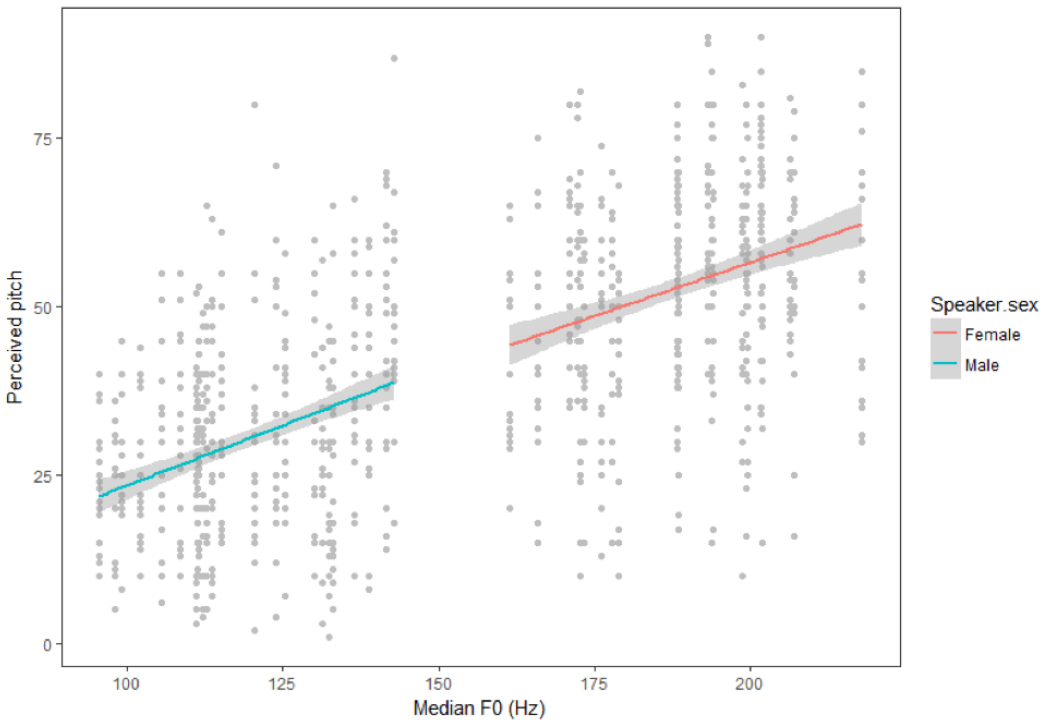

Figure 2. Relationship between listeners' perceived pitch scores and median F0. The axis units are Hz (x axis) and listeners' subjective pitch ratings on a scale between 0 ('very low-pitched') and 100 ('very high-pitched') (y axis). Each dot represents a single listener judgement, and each column of dots represents an individual recording (four produced by each speaker; male and female speakers are treated separately).

and female (Pearson's $r = 0.28$, $df = 479$, $p < 0.001$) speakers. We use Cohen's (1992) approach to the estimation of the magnitude of these effects, where r=0.10 equates to a small effect size, r=0.30 is the threshold for a medium effect size (classified by Cohen (1992: 156) as an effect which would "represent an effect likely to be visible to the naked eye of a careful observer"), and r=0.50 is said to represent a large effect size. We can therefore posit small to medium effect sizes for the relationship between median F0 and perceived pitch for female and male speakers in the present experiment. Additionally, although the relationship is reported by our models to be statistically significant for both male and female speakers, the graph in Figure 2 shows that a high level of variation exists between listeners' perceptual pitch scores and the corresponding measured F0 values. The relatively high level of variation in the sample is also evident in the r^2 values for the relationship between measured mean F0 and perceived pitch. For the male speakers, 10% of the variation ($r^2 = 0.10$) in the sample was accounted for by the relationship between measured mean F0 and perceived pitch. For the female speakers, 7% ($r^2 = 0.07$) of the total variation was accounted for by this relationship. Figure 2 also illustrates that while male voices were, overall, perceived to be lower-pitched than the female voices, there was a relatively high degree of overlap between the perceived pitch judgements for the male and female voices in the experiment. This was, however, not mirrored in the measured median F0 values, which showed complete separation between male and female speakers.

Three potential explanations can be proposed to explain the results seen in Figure 2. The first is that individual listeners interpreted the perceived pitch scale differently, and that a given value on the scale did not, therefore, map onto the perceived pitch scale equivalently for each listener. Secondly, it could be the case that other aspects of speakers' voices, such as voice quality or the relative distribution of formants, could also influence pitch perception. This would mean that making direct comparisons between average F0 and perceived pitch is a rather crude one-dimensional measure of the accuracy of listeners' pitch judgements. Thirdly, it could be the case that listeners are both inconsistent and inaccurate when tasked with gauging how high-pitched the voice of a given speaker is.

In an attempt to reduce the influence of individual differences in how listeners interpreted the scale used to elicit perceived pitch judgements, standardised scores were calculated for each listener's judgements of the high-pitchedness of speakers' voices using the scale() function in R (Baayen, 2008: 61). Figure 3 plots the standardised perceived pitch scores against the corresponding measured median F0 values. The figure reveals that there was some reduction in variation when standardised scores were used, in comparison to the raw data displayed in Figure 2. Analysis of the correlation coefficients showed a slightly tighter positive correlation and increased effect size between perceived pitch and median F0 for both male (Pearson's $r = 0.40$, $df = 492$, $p < 0.001$) and female (Pearson's $r = 0.32$, $df = 479$, $p < 0.001$) speakers when standardised scores were used. However, the r^2 values for both male ($r^2 = 0.16$) and female ($r^2 = 0.10$) speakers showed that only a limited amount of variation was accounted for by the relationship between standardised perceived pitch scores and measured mean F0.

The second reason that was proposed above for the weakness of the relationship between perceived pitch and measured mean F0 was that other variables, such as voice quality or the dispersion of formants across the frequency spectrum, could influence listener pitch perception alongside average F0. In order to assess the relationship between multiple acoustic phonetic variables and listeners' pitch judgements, multiple linear regression models were constructed using the lm() function in R. These contained listeners' perceived pitch scores as the dependent variable, and measurements of *median F0, F0 range, formant dispersion, jitter, shimmer* and *harmonic-to-noise ratio* as independent variables. Separate models were constructed for male and female speakers. Analysis of the r^2 values from the models for both male ($r^2 = 0.15$) and female ($r^2 = 0.13$) speakers showed that a greater proportion of variance was accounted for when the additional acoustic measures were considered, although the respective models still only accounted for 15% and 13% of the variation in the data. The proportion of variance accounted for in the relationship between perceived pitch and acoustic aspects of voice was further enlarged by using the standardised pitch judgement scores instead of the raw judgement scores, with 20% of the variation being accounted for by the model for male speakers ($r^2 = 0.20$), and 19% by the model for female speakers ($r^2 = 0.19$). However, in order to capture this level of variation, multiple judgements made by the same listener were required in order to calculate the standardised pitch judgement scores. To some degree this could be considered unrealistic for users of documents such as the NCTSO bomb threat checklist, which is designed to obtain earwitness evaluations from a single listener about a single speaker on a single occasion.

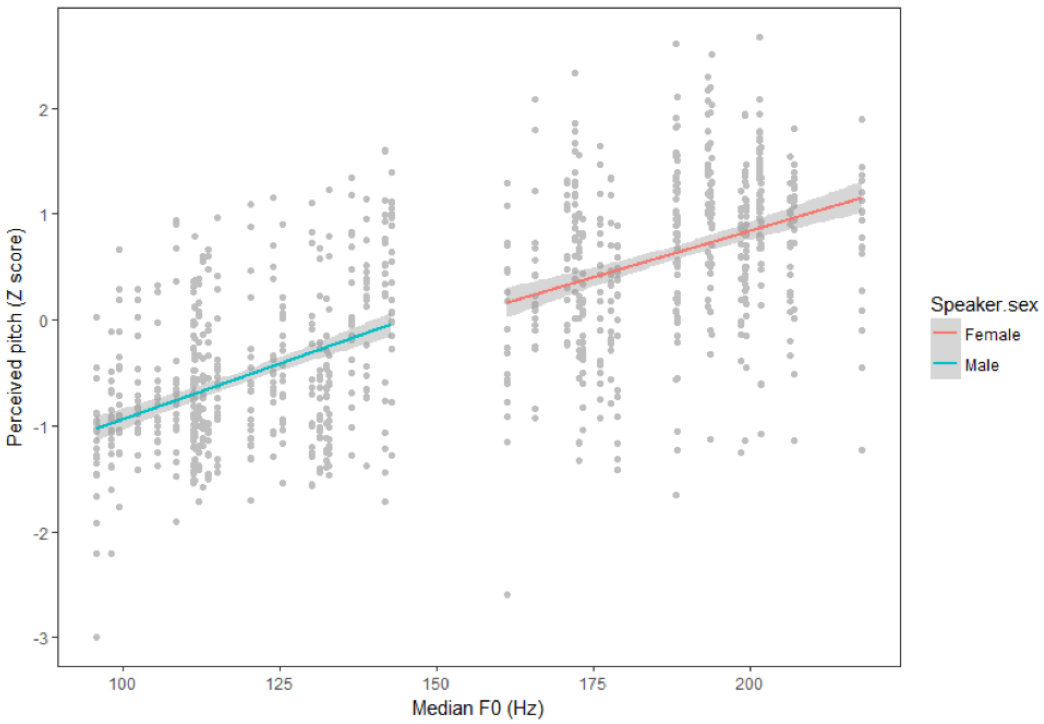

Figure 3. Relationship between listeners' standardised perceived pitch scores and median F0. The axis units are Hz (x axis) and listeners' standardised subjective pitch ratings on a scale between 0 ('very low-pitched') and 100 ('very high-pitched') (y axis). Each dot represents a single listener judgement, and each column of dots represents an individual recording (four produced by each speaker; male and female speakers are treated separately).

Further questions arise from this analysis relating to the role of the individual listener in the pitch judgement task. Specifically, is it simply the case that some listeners are good at the task, and some are not? If this were indeed the case, then there might be some merit in testing the ability of an earwitness to distinguish aspects of voice, for instance pitch, before his/her earwitness evidence is further used. In order to address this question using the data from the current experiment, a subset was created containing the responses of all those participants who provided a pitch judgement for three of the male speakers in the experiment, hereafter labelled Speaker 1, Speaker 2 and Speaker 3. These speakers were chosen because their average median F0 values (a) spanned the range found in the data for male speakers, (b) reflected the population statistics for English speakers' average F0 reported by Hudson *et al.* (2007), and (c) were almost equally spaced from each other along the pitch continuum (Speaker 1 - 99Hz, Speaker 2 - 120Hz and Speaker 3 - 140Hz). Given that the question randomisation process meant that not all listeners evaluated the voices of all speakers, some listeners were excluded from this analysis.

In total, 26 listeners provided at least one perceived pitch judgement for utterances produced by the three speakers described above. Table 1 shows the perceived pitch scores for each listener. The interest in this analysis is not in the absolute values, but rather in the relative pitch judgements provided by listeners. Given the 20Hz gaps between the three speakers' average median F0s, it was expected that listeners would provide a lower perceived pitch score for Speaker 1 (99Hz) than for Speaker 2 (120Hz), and

that the score applied to Speaker 2 would, in turn, be lower than the score for Speaker 3 (140Hz). If a listener met these criteria, they were classified as an accurate listener, shown in bold type in Table 1. This analysis showed there were 14 accurate listeners within the subset. This would support the view that some listeners are simply unable to judge pitch accurately according to the present criterion, while other listeners are capable of performing the task adequately or well.

Listener	**Perceived pitch scores**		
	Speaker 1 (99Hz)	**Speaker 2 (120Hz)**	**Speaker 3 (140Hz)**
P10	**30**	**31**	**58**
P11	19	18	41
P12	16	9	60
P13	19	51	49
P16	**20**	**30**	**70**
P17	**10**	**20**	**50**
P20	**10**	**35**	**45**
P25	**15**	**20**	**33**
P26	**21**	**28**	**40**
P28	20	20	20
P29	30	25	10
P3	**20**	**58**	**68**
P36	**10**	**23**	**30**
P40	**44**	**45**	**49**
P46	29	20	66
P47	26	18	18
P50	**11**	**26**	**49**
P52	**20**	**30**	**55**
P53	37	24	10
P6	**20**	**41**	**46**
P61	35	38	25
P63	22	12	33
P64	**29**	**35**	**51**
P69	28	13	60
P8	**25**	**34**	**55**
P87	39	37	46

Table 1. Listeners' perceived pitch scores for Speaker 1, Speaker 2 and Speaker 3. Bold type denotes listeners who assigned the 'correct' ranking of the three speakers from low to high pitch, irrespective of the spacing on the perceptual scale between Speakers 1 and 2 and Speakers 2 and 3, or the placement of the scores on the 0-100 scale.

Accent perception

The data in this study also permitted an assessment of how accurately listeners could describe a speaker's accent via the responses to the question "What accent do you think this speaker has? Leave the box blank if you are unsure". The experiment made use of three different accents: Standard Southern British English (SSBE), Northern Irish English, and Middle Eastern-accented English. Listeners were also asked to state how similar they felt their own accent was to a series of other UK accents using a 0-100 scale (very different - very similar). The list of accents included *Oxford/Cambridge* and *Belfast* so as to

facilitate an assessment of how closely aligned listeners thought their own accents were to the British target varieties in the experiment.

Responses to the question which obtainened listeners' assessments of how similar they thought their own accent was to the accents of both *Oxford/Cambridge* (SSBE) and *Belfast* (Northern Irish English) showed that listeners in the experiment aligned their own accents much more closely to SSBE than to Northern Irish English. The mean similarity score across the sample for SSBE was 40.4 (range 0-100), whereas the mean similarity score for Northern Irish English was 4.6 (range 0-47). Additionally, 51 listeners provided a similarity score of 0 for *Belfast*, in contrast to 17 listeners who gave a similarity score of 0 for *Oxford/Cambridge*.

A summary of the accent attributions for the SSBE speakers is shown in Figure 4. The results shown in Figure 4 reveal that listeners appeared to describe the accent of the SSBE speakers relatively accurately when they opted to describe it, although the most commonly chosen option was to leave the box blank to indicate uncertainty. When labelling SSBE, the most common way of answering besides selecting Unsure (Blank) was to choose one of the set of accent labels relating to SSBE or RP. These answers included "Southern", "Southern accent", "Southern England", "Southern English", "SSBE", "Standard Southern British", "RP", "Roughly RP" and "RP but grew up in London/'Estuary English' area" (Estuary English being the relatively newly-emerged 'hybrid' of RP and working-class London English; see Altendorf, 2011). An association between the SSBE speakers and the prestigious university towns of Oxford and Cambridge was also found in the data, as was a link between the SSBE accent and the capital city of London. More specific places in southeast England, including Kent, Chelsea and Surrey, were occasionally listed by listeners. More general terms such as "British" and "English" were also used, possibly owing to the generalisable nature of the accent, or to the presence of other accents in the experiment which were non-English.

Given the lack of a fixed geographical location for SSBE, and the position of Received Pronunciation (RP) as a social rather than a geographical accent of the UK (Hughes *et al.*, 2012), it can be argued that an association with any location within the south or south east of England could validly be considered an accurate attribute of an SSBE accent. It can also be argued that if a listener was unsure about a speaker's accent, then providing no answer rather than risking an inaccurate description was an appropriate strategy. Furthermore, it could be contended that the explicit instruction to provide no answer when the listener was unsure about a speaker's accent was a useful means of allowing listeners to express their uncertainty with confidence, instead of providing instructions which could implicitly encourage listeners to provide an accent label solely because the question asks for one. It is also possible that a listener's decision not to provide an answer was based on the perception that speaking with an SSBE accent means the talker has 'no' accent, a belief which is commonly held among laypeople in the UK (Mugglestone, 2003), or that because SSBE is not confined to a specific locality in Southern England, it was not possible for listeners to define the speaker's accent to a specific town, city or region. Indeed, one participant in the experiment (P65) described her own accent as "no accent – plain southern but not posh", which further illustrates these possible explanations.

Figure 4 also shows that a small number of more inaccurate labels, including "Yorkshire", "Manchester", "York" and "Lancashire" were provided by listeners. While it is certainly true that some people from these places speak with RP/SSBE accents, or accents

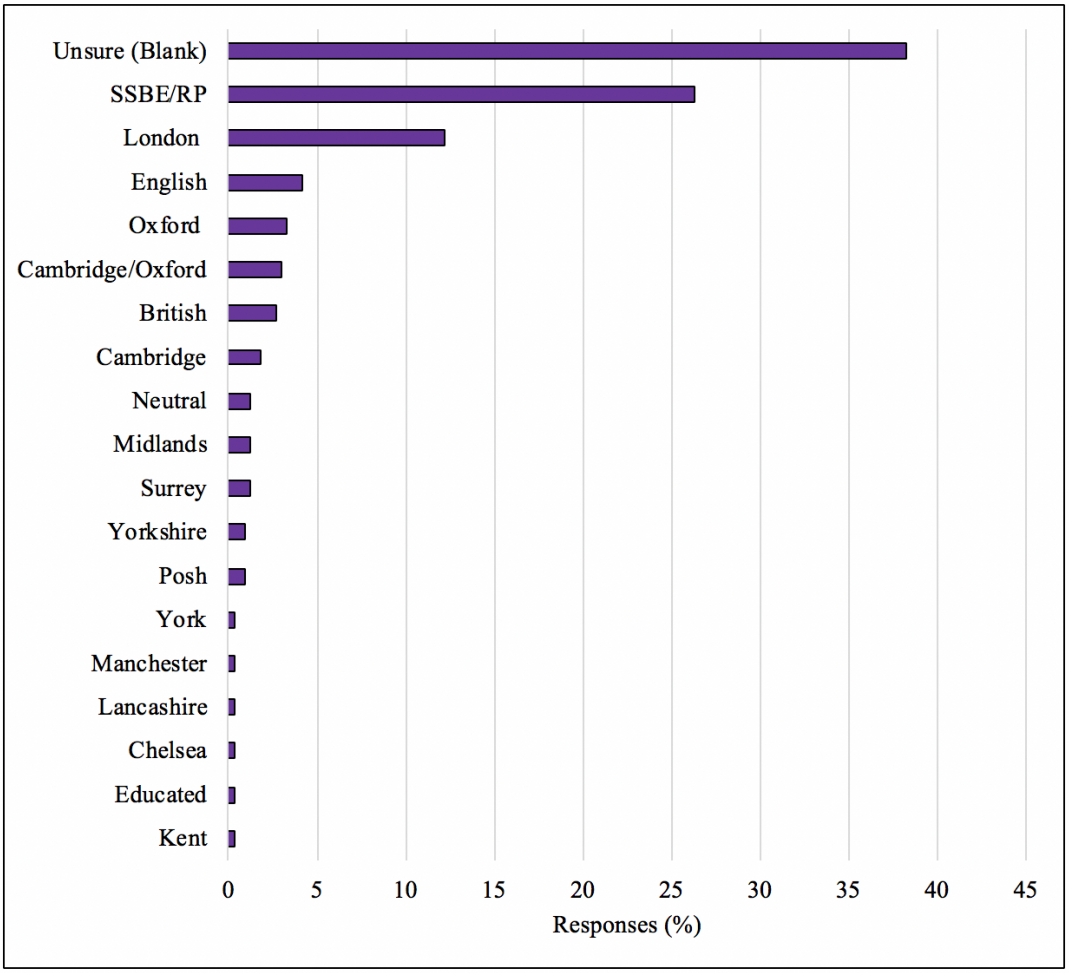

Figure 4. Percentage distribution of responses to the question "*What accent do you think this speaker has? Leave the box blank if you are unsure*" for the Standard Southern British English speakers.

phonetically very close to the standard model, they are not areas where the majority of speakers would have such an accent. The descriptors "York" and "Yorkshire" could also be attributable to the fact that participants in the experiment were students at the University of York, an institution attracting significant numbers of students – many of whom have SSBE accents – from southern England and/or from affluent middle-class backgrounds. For a northern English city, York and its surrounding area is home to an unusually high proportion of university graduates and people in professional occupations, and otherwise has a demographic profile that is markedly different from those of other urban areas of Yorkshire (Dorling, 2010). These factors mean that students have numerous opportunities to be exposed to SSBE accents within their university city.

Figure 5 shows the responses provided by listeners when they were asked to describe the accent of the Northern Irish speakers in the experiment.

In contrast to the SSBE accent description, the "Unsure (Blank)" classification was not the most popular label provided by listeners for the Northern Irish-accented speakers. There was a much greater proportion of "Irish" labels compared with the number of "Northern Irish" and "Southern Irish" labels. This suggests that many speakers either could not,

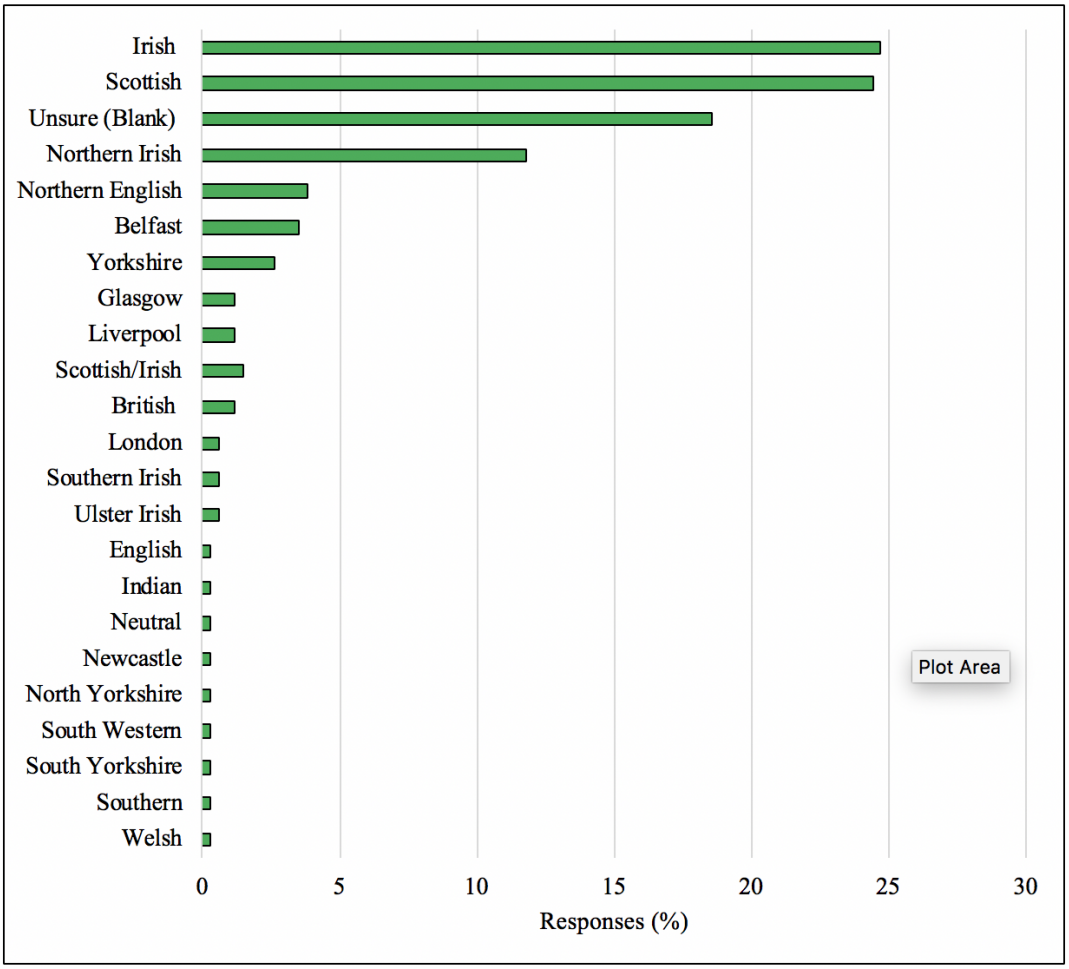

Figure 5. Percentage distribution of responses to the question "'*What accent do you think this speaker has? Leave the box blank if you are unsure*" for the Northern Irish speakers.

or were unwilling to, determine the speaker's accent more precisely than to say he/she had an Irish accent. They may alternatively have thought the "Northern" qualifier to be superfluous, just as listeners from outside England might not think it necessary to specify whether an evidently English speaker is from the north or south of England. The results in Figure 5 also show that there appears to be confusion between listeners' perceptions of Northern Irish and Scottish accents. The Northern Irish speakers in the sample were frequently reported to have a Scottish accent, which was either indicated using a generic "Scottish" label or a more specific label such as "Glasgow". Given that the trend in the data was for listeners to say that their own accent was dissimilar to both Northern Irish English (mean similarity score to *Belfast* = 4.6/100) and Scottish English (mean similarity score to *Glasgow* = 5.2/100), the confusion is perhaps explainable by the relative lack of perceived similarity to and/or familiarity with, the target varieties.

Subsequent analysis was conducted to assess whether the confusion between the Northern Irish and Scottish accents was either speaker-specific, or listener-specific, or both. Figure 6 shows the number of 'Scottish' and 'Irish' labels assigned to each of the four Northern Irish speakers in the sample. For the purposes of this analysis, labels

were grouped so that the "Northern Irish", "Southern Irish", "Ulster Irish", "Irish" and "Belfast" descriptors were all grouped into the 'Irish' category, while the "Scottish" and "Glasgow" labels were grouped into the 'Scottish' category. Figure 6 shows that while the proportions of 'Scottish' and 'Irish' classifications were not the same for each speaker, no single speaker was consistently misidentified as sounding particularly Scottish by the listener group. This suggests that the confusion between the two accents seen in Figure 5 was not the consequence of one or two speakers in the study being frequently mistaken for Scottish speakers, but rather that the misidentification applied across all the speakers in the study.

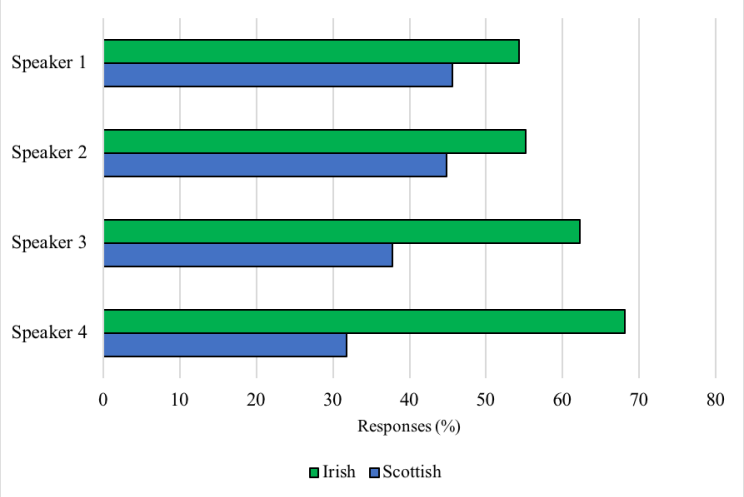

Figure 6. Percentage of Scottish and Irish accent labels assigned to each of the four Northern Irish speakers in the sample.

Given that the confusion of the Northern Irish and Scottish accents was not closely associated with any particular speaker, analysis was also conducted to assess how good individual listeners were at attributing the relevant accent labels correctly. The responses of each individual listener were assessed, with a count taken for the number of 'Irish' labels assigned to the Northern Irish voices. These results are shown in Table 2. Due to the automatic question randomisation process, results are displayed as percentages, as different listeners heard different numbers of the Northern Irish recordings (range = 1-8; mean = 3.87). Listeners were grouped according to the extent to which they assigned an 'Irish' label to the voices of the Northern Irish speakers (in percent).

Percentage of 'Irish' attributions	Number of listeners
0-20	33
21-40	12
41-60	9
61-80	9
81-100	20

Table 2. Percentages for the number of listeners who provided 'Irish' labels for the Northern Irish speakers' accents.

The data in Table 2 show that 20 listeners classified the Northern Irish accent using 'Irish' labels between 81 and 100% of the time. Conversely, 33 listeners classified the Northern Irish accent using 'Irish' labels between 0 and 20% of the time. This shows that the majority of listeners within the sample performed either very accurately or very inaccurately when assigning accent labels to the Northern Irish voices, and it suggests that labelling inaccuracies within the data shown in Figure 5 were the result of some listeners being consistently unable to provide a correct label.

The third accent included in this experiment was Middle Eastern-accented English. Figure 7 shows the accent labels provided for the Middle Eastern speaker samples. Given the large number of accent labels used to describe the Middle Eastern speakers' voices, Figure 7 excludes labels which were used on just one occasion. These excluded labels were *African, American, British Arabic, Central European, Central Asian, Korean, Automated, Greek, Hispanic, South American, Leeds, Northern British, Malaysian, Non-regional, Welsh, Swedish, Scandinavian, Scottish, South Africa, South East, Turkish*, and *Thai*.

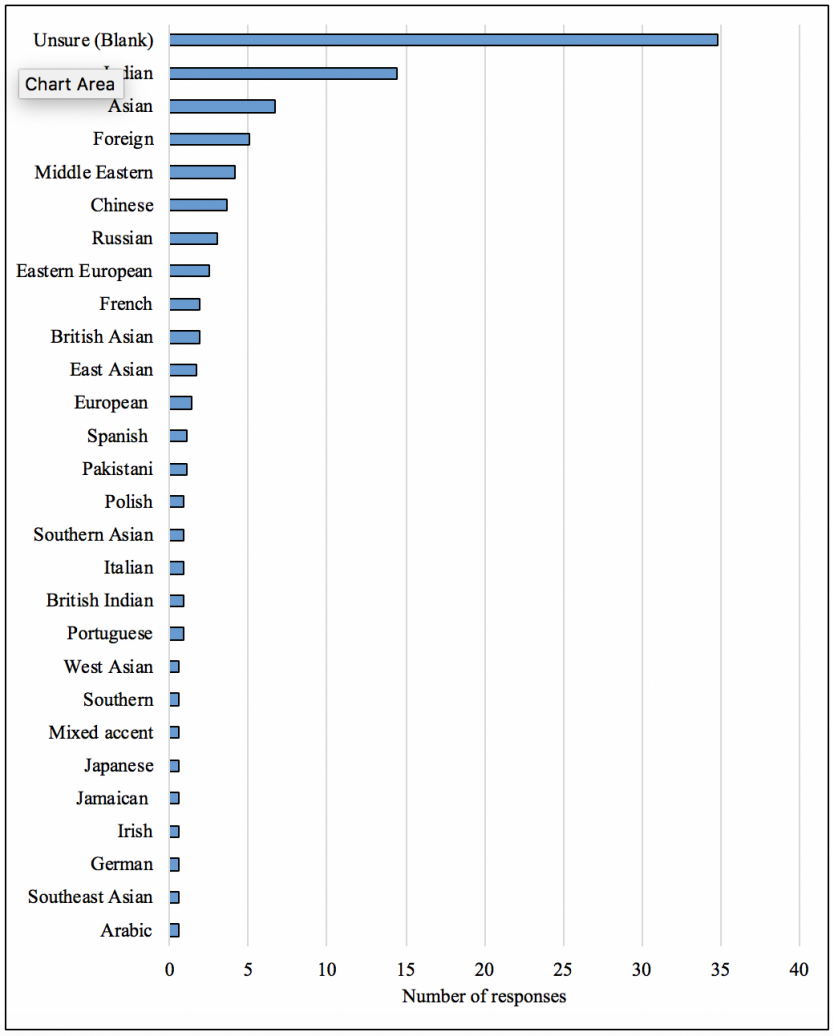

Figure 7. Percentage distribution of responses to the question "'*What accent do you think this speaker has? Leave the box blank if you are unsure*" for the Middle Eastern speakers.

Figure 7 shows that, like the SSBE accent, the most popular accent label assigned to the Middle Eastern speakers was "'*Unsure (Blank)*". There was also a greater number of different labels assigned to the Middle Eastern speakers (n=40) than to the SSBE speakers (n=19) or the Northern Irish speakers (n=23), suggesting a greater level of inconsistency among listeners when assigning accent labels to the foreign accent compared to the British accents in the experiment. The overwhelming majority of responses named a non-British location for the accent of the Middle Eastern speakers in this experiment, but there was a high level of inconsistency within the labels assigned, which made reference to 35 different countries spanning five continents. Additionally, relatively few responses (n=17) pinpointed the Middle Eastern speakers' accents as having any Arabic, Persian or Middle Eastern origin, with *Indian, Asian* and *foreign* the most commonly assigned labels. While the *foreign* descriptor is non-specific, it can be considered an accurate description in so far as listeners were able to say that the speakers in the Middle Eastern recordings were not native British English speakers. It may also not be unreasonable to suggest that Asian is a relatively accurate accent label for the Middle Eastern speakers, given the proximity of parts of the Middle East to the Asian subcontinent[2]. Again, however, the descriptor is relatively broad and arguably would be of rather limited use within a forensic investigation.

Conclusion

The goal of the research presented in this paper was to assess how accurately a group of listeners could perceive different aspects of a speaker's voice within an experimental setting, with a view to evaluating the usefulness of such a practice in certain forensic contexts. With respect to assessments of vocal pitch in line with measured average F0, the analysis showed small to medium-sized correlations in the data between median F0 and listeners' judgements of how high-pitched speakers' voices were. The coefficients improved when standardised pitch scores were used, and when other acoustic measurements relating to pitch and voice quality were included alongside average F0 measurements. However, the best-performing model – that for male speakers – still only accounted for 20% of the total variation present. The analysis also illustrated how some listeners within the sample seemed unable to correctly appraise the relative differences between three speakers' voices with average median F0 values of 99Hz (Speaker 1), 120Hz (Speaker 2) and 140Hz (Speaker 3). Of the 26 listeners who evaluated these speakers' voices, only 14 assigned relative pitch judgements in accordance with the increase in average F0 across the three speakers' voices. This suggests that some listeners lack the ability to reliably judge how high-pitched a speaker's voice is, while some listeners are able to accurately estimate vocal pitch in line with measured acoustic correlates.

As for the description of accents, the analysis suggests that listeners' abilities to describe accents decreases as the degree of unfamiliarity or geographical distance increases. There were relatively few inaccurate labels used to describe the accents of the SSBE speakers, with a higher number of confusions shown when listeners were asked to describe the Northern Irish speakers' accents, and further confusion when listeners were asked to describe the accents of the Middle Eastern speakers. Given the trend in the data for speakers to identify the SSBE accents as being more similar to their own in comparison to the Northern Irish English, these data would support the idea that the more geographically distant or unfamiliar an accent is, the greater the scope for confusion or otherwise inaccurate accent labelling (the L1 accents of English spoken in Australia and

New Zealand are obvious likely counterexamples to this generalisation, but they do not invalidate the general 'proximity effect' patterns observed in numerous perceptual dialectology studies. See e.g. Montgomery, 2015; Shen and Watt, 2015; Preston, 2018. Had this study tested listeners from Glasgow, Edinburgh or Belfast, then the misclassification of the Northern Irish-accented speakers as Scottish speakers would not have been expected as the listeners would have presumably been more familiar with the tested varieties.

Additionally, given the wide variety of answers provided by listeners in this study when they were asked to describe the accents of the Middle Eastern speakers, the data lend support to the view that there is limited value in asking phonetically untrained non-native listeners to assess the geographical provenance/nationalities of speakers based on vocal information alone. As listeners rarely assigned a "British" label to the Middle Eastern accents, it could be argued that while listeners were adequately equipped to assess whether a speaker was a native or non-native speaker of English, any information beyond this was unreliable. This generalisation is especially important in view of the fact that the NCTSO bomb threat checklist encourages users to give an opinion concerning a speaker's possible nationality. With respect to asking untrained listeners to determine the accent of a given speaker, the data in this study suggest that there may be some usefulness in asking this question. The results nevertheless also urge caution, owing to the poor performance of some listeners in the Northern Irish accent classification task, and suggest that factors such as the background of the listener and their general accent classification ability should also be considered.

It can also be contended that the use of information about a speaker's accent obtained through asking non-linguist earwitnesses to describe the voice of a given speaker should also be used in conjunction with the knowledge that not all accents have a well-defined corresponding geographical location. For example, the spread of geographical locations that listeners associated with the SSBE speakers in this study spanned much of the south of England, and yet it cannot be considered 'inaccurate' to suggest that SSBE speakers could come from any of those places. We argue, therefore, that the use of speech-based evidence in the form of phonetically untrained listeners' descriptions of voices and accents should be treated with due scepticism by default, and that such information should be used in conjunction with empirically verified data about UK and international varieties of English that have been collected by professional linguists.

One possible improvement to the practice of eliciting information from earwitnesses would be the development of a set of materials designed to test a listener's abilities to identify various aspects of speakers' voices. Given that the evidence recorded in documents such as the NCTSO bomb threat checklist would, in many cases, be based only on the perceptions of a single listener, it would potentially be useful to assess the capability of that earwitness to make reliable observations of different aspects of speaker's voices. This would allow the police and other investigative agencies to verify whether the checklist user can consistently and accurately identify different aspects of voice before any use is made – either in court or for the purposes of further investigative work – of subsequent checklist evidence he or she might produce (cf. the recommendations laid out in Nolan (2003) concerning testing of earwitness reliability using the voice parade paradigm). However, such a recommendation would require more research to be

implemented in practise, specifically regarding the finer details of how such a test could be standardised and implemented by those working in the criminal justice sphere.

There is plentiful scope for expansion of the design of this study in future work, which could focus on other aspects of voice such as speech rate, variation in the F0 contour as a cue to how 'monotonous' or 'lively' a speaker's utterances are perceived to be, nasality, disfluency features (e.g. hesitations, filled pauses, etc.), and the use of paralinguistic markers such as clicks. As we referred to earlier, it is also acknowledged that the experimental conditions in this study created a more favourable earwitness environment than would be expected in certain real-world scenarios, such as the handling of bomb threats in emergency service control rooms, hospitals or schools. However, the aim of the work in this study has been to generate empirical data as a basis upon which to make recommendations about how earwitness evidence can be better collected and later deployed by those tasked with gathering such information. It is hoped that this approach could be helpful in guarding against the use of erroneous, redundant, vague or otherwise low-value earwitness testimony in the sphere of criminal investigation. At the very least, we hope that the availability of systematically-collected data of the sort described above will serve to encourage more discriminating, better-informed evaluations of the utility of earwitnesses' voice descriptions on the part of members of the law enforcement and intelligence communities.

Notes

[1]Arabic and Persian are of course languages with highly distinct phonologies, but we take the view that in the present context the differences in the way these participants speak English are not large enough to create significant disparities in terms of the listeners' evaluations of the speakers' accents

[2]The term Asian in the UK tends to be used to denote people with origins in the countries of the Asian subcontinent – chiefly India, Pakistan, and Bangladesh – rather than people of East Asian ancestry (China, Korea, Japan, Vietnam, etc.). We recognise also that the Middle Eastern countries, including those of the Arabian Peninsula, are conventionally said to be part of the continent of Asia.

References

Altendorf, U. (2011). *Estuary English: Levelling at the Interface of RP and South-Eastern British English.* Tübingen: Gunter Narr Verlag.

Baayen, R. H. (2008). *Analyzing linguistic data: A practical introduction to statistics using R.* Cambridge: Cambridge University Press.

BBC News, (2018). 'Ex-soldier' raiding Home Counties houses at gunpoint.

Boersma, P. and Weenink, D. (2016). Praat: Doing Phonetics by Computer.

Broeders, A. and van Amelsvoort, A. (2001). A practical approach to forensic earwitness identification: constructing a voice line-up. *Problems of Forensic Sciences*, 47, 237–245.

Cohen, J. (1992). A power primer. *Psychological Bulletin*, 112(1), 155.

Dorling, D. (2010). Persistent North-South divides. In N. M. Coe and A. Jones, Eds., *The Economic Geography of the UK*. London: Sage, 12–28.

Griffiths, M. (2012). "'Did he have an accent?': Forensic speaker descriptions of unknown voices". In S. Tomblin, N. MacLeod, R. Sousa-Silva and M. Coulthard, Eds., *Proceedings of the International Association of Forensic Linguists' Tenth Biennial Conference*, 245–261, Birmingham, UK: Aston University Centre for Forensic Linguistics (Online).

Handkins, R. E. and Cross, J. F. (1985). Can a voice lineup be too fair? In *Paper presented at Symposium on Forensic and Scientific Issues in Voice Recognition at the Meeting of the Midwestern Psychological Association*, Chicago, IL.

Hudson, T., De Jong, G., McDougall, K., Harrison, P. and Nolan, F. (2007). F0 statistics for 100 young male speakers of Standard Southern British English. In *Proceedings of the 16th international congress of phonetic sciences (Vol. 6, No. 10)*, Saarbrücken, Germany.

Hughes, A., Trudgill, P. and Watt, D. (2012). *English Accents and Dialects: An Introduction to Social and Regional Varieties of English in the British Isles.* London: Hodder Education, 5th ed.

Künzel, H. J. (2001). 'Beware of the "telephone effect": the influence of telephone transmission on the measurement of formant frequencies'. *International Journal of Speech, Language and the Law*, 8(1), 80–99.

Laver, J. (1994). *Principles of Phonetics.* Cambridge: Cambridge University Press.

Montgomery, C. (2015). Borders and boundaries in the north of England. In R. Hickey, Ed., *Researching Northern English.* Amsterdam: John Benjamins, 345–368.

Mugglestone, L. (2003). *'Talking Proper': The Rise of Accent as a Social Symbol.* Oxford: Oxford University Press, 2 ed.

National Counter Terrorism Security Office, (2016). Bomb threat checklist.

Nolan, F. (2003). A recent voice parade. *International Journal of Speech Language and the Law*, 10(2), 277–291.

Nolan, F. and Grabe, E. (1996). Preparing a voice lineup. *International Journal of Speech Language and the Law*, 3(1), 74–94.

Nolan, F., McDougall, K. and Hudson, T. (2013). Effects of the telephone on perceived voice similarity: implications for voice line-ups. *International Journal of Speech, Language & the Law*, 20(2), 229–246.

Preston, D. C. (2018). Perceptual dialectology. In C. Boberg, J. Nerbonne and D. Watt, Eds., *The Handbook of Dialectology.* Oxford: Wiley-Blackwell, 173–207.

Puts, D. A., Gaulin, S. J. C. and Verdolini, K. (2006). Dominance and the evolution of sexual dimorphism in human voice pitch. *Evolution and Human Behavior*, 27, 283–296.

Shen, C. and Watt, D. (2015). Accent categorisation by lay listeners: Which type of "native ear" works better? *York Papers in Linguistics Series*, 2(14), 106–131.

Sherrin, C. (2015). Earwitness evidence: the reliability of voice identifications.

Shuy, R. W. (1993). *Language Crimes: The Use and Abuse of Language Evidence in the Courtroom.* Oxford: Blackwell.

Watt, D. (2010). The identification of the individual through speech. In C. Llamas and D. Watt, Eds., *Language and Identities.* Edinburgh: Edinburgh University Press, 76–85.

Watt, D. and Burns, J. (2012). Verbal descriptions of voice quality differences among untrained listeners. *York Papers in Linguistics*, Series 2, 1–28.

Xu, Y. (2013). ProsodyPro - A Tool for Large-scale Systematic Prosody Analysis. In *Proceedings of Tools and Resources for the Analysis of Speech Prosody (TRASP 2013)*, 7–10, Aix-en-Provence, France.

Yarmey, A. D. (2001). Earwitness descriptions and speaker identification. *International Journal of Speech Language and the Law*, 8(1), 113–122.

The last ten years of legal interpreting research (2008-2017). A review of research in the field of legal interpreting

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Abstract. *Despite the controversial discussion around the definition and extent of the role of interpreters in legal settings (Hale, 2008), academics, practisearchers and increasingly interpreter users seem to agree on the crucial role of legal interpreting for both institutional and non-institutional users. When a linguistic barrier exists, interaction in prisons, courtrooms, asylum hearings, or between police officers and victims, suspects or witnesses, relies on interpreters and is modified by the very bilingual and multicultural nature of the interpreter-mediated encounter. Legal interpreting is dependent upon legislative, political and socioeconomic changes, such as the adoption of interpreting regulations or changes in migration policies; and researchers are making admirable efforts for the professionalization of legal interpreting. This review article describes the evolution of research on legal interpreting during the past ten years (2008-2017), and analyses the trends emerging and the focal points of research activity in the field. For the purposes of this review, publications on legal interpreting were compiled (including court, police, prison, asylum, immigration and military interpreting), and a database was created. Overall, 464 publications were collected and coded per setting and main theme, and reviewed for identification of salient themes and trends.*

Keywords: *Legal interpreting, research, themes, evolution.*

Resumo. *Apesar da controversa discussão em torno da definição e da dimensão do papel dos intérpretes em contextos legais (Hale, 2008), académicos, investigadores/profissionais e, cada vez mais, aqueles que recorrem aos serviços dos intérpretes parecem estar de acordo relativamente ao papel crucial da interpretação jurídica, quer para utilizadores institucionais, quer para utilizadores não institucionais. Sempre que existe uma barreira linguística, a interação nas prisões, na sala de audiências, nos pedidos de asilo ou entre agentes policiais e vítimas, suspeitos ou testemunhas, depende dos intérpretes e é modificada pela própria natureza bilingue e multicultural do evento mediado por intérpretes. A interpretação jurídica depende de alterações legislativas, políticas e sócio-económicas, tais como a adoção de regulamentos de interpretação ou mudanças nas políticas de*

migração; e os investigadores têm feito esforços consideráveis com vista à profissionalização da interpretação jurídica. Este artigo de revisão descreve a evolução da investigação sobre interpretação jurídica ao longo dos últimos dez anos (2008-2017) e analisa as tendências emergentes e os principais pontos da atividade de investigação no campo. Para efeitos desta revisão, o artigo baseia-se na compilação de publicações sobre interpretação jurídica (incluindo interpretação em tribunal, polícia, prisão, pedidos de asilo, imigração e militar) e criação de uma base de dados. No global, foram recolhidas 464 publicações; estas foram subsequentemente codificadas por contexto e tema principal e revistas para identificação dos temas e tendências mais salientes.

Palavras-chave: *Interpretação jurídica, investigação, temas, evolução.*

Introduction

This review traces the state of the art and the development of legal interpreting research over the past ten years (2008-2017). Publications focusing on legal interpreting were collected and stored in a database (available for download on the journal website). The review will start with a descriptive bibliometric analysis of the number of outputs per setting, type of output, and year, which are presented against the social and legislative backdrop for the period analysed. Following the descriptive analysis, the trends, changes, and prevailing themes across settings and by setting are discussed, and differences between settings are highlighted. "Legal interpreting" is understood in this review as an umbrella term encompassing studies of interpreting in one or several fields, including law-enforcement settings, encounters related to asylum and immigration proceedings, interpreting in courtroom, police and prison settings, as well as studies looking into community settings with an element of legal interpreting.

Largely inspired by the criteria applied in (Monteoliva-García, 2016), but with a different aim in mind, this review includes publications that focus in particular on interpreting in legal settings. Some publications encompass aspects that pertain to both interpreting (oral) and translation (written), and it is undeniable that intersections between both translatory activities exist. However, both the nature of the activities and the evolution of research in them differ. The spoken nature of interpreting; its immediacy and limited access to, for instance, terminological resources to solve communication problems; the presence, whether face-to-face or remotely, of the interpreter in interpreted events; and the impact of those elements upon the translatory activity and upon other participants' moves, shape the scope of research. For this reason, this review focuses on research on legal interpreting, i.e. on scholarly research on interpreting across the settings that are considered to fall under the umbrella of *legal interpreting* (Hertog, 2015a), namely the courtroom, police settings, prison, asylum, immigration, and military settings. As highlighted by Hertog (2015a) in his review of the legal interpreting field in the EU, over the past forty years, the scope of interpreting in the judiciary has moved from focusing primarily on court interpreting to embracing other settings, some of which are slowly but progressively receiving more scholarly attention.

Interpreting Studies as an academic discipline has gained agency within the broader field of Translation and Interpreting, as manifested in an increase in research activity focusing on interpreting, specialist academic conferences and interpreting journals over the past three decades. The recent publication of the *Encyclopedia of Interpreting Stud-*

ies (Pöchhacker, 2015) is also indicative of this trend. Pöchhacker (2015: 201) describes Interpreting Studies as a discipline that is interdisciplinary and multi-faceted in nature, in the sense that interdisciplinarity has been a feature of research on interpreting from its inception. This is manifest in studies looking into interpreting from related disciplines such as Linguistics, Pragmatics and Cognitive Psychology, interested in exploring, for instance, the interpreting process as a cognitive process (Gerver, 1975). This feature is also found in courtroom interpreting, as illustrated by the fact that one of the seminal studies on court interpreting was carried out by the sociolinguist Berk-Seligson (1990); or the most recent studies carried out by Angermeyer (2008) through the lens of Applied Linguistics. As will be discussed later, legal interpreting research is one of the fields with increasing collaboration between interpreting scholars and, practitioners, practisearchers (Gile, 2015b), and scholars or practitioners from the fields in which interpreting takes place. The latter is certainly the case with legal interpreting – and other fields that are often included under the label "community interpreting" or "interpreting in public service settings", such as interpreting in healthcare, educational, mental health or social work contexts.

As the analysis presented below shows, research on legal interpreting has been propelled not only by the evolution of the field of interpreting, but also by legislative changes and by changes in the professional arena. Especially in the EU context, the adoption of a number of Directives safeguarding the right to translation and interpreting in legal proceedings of suspects and victims of crimes seems to have had a major impact upon the scope and research trends in the field. The focus on professionalisation and quality found in numerous studies illustrates the momentum brought about by legislative changes. In addition, the work of interpreters has attracted the attention of legal professionals and scholars from fields in which interpreting takes place. It seems timely to review the state of the art of a field that is changing rapidly, and which is directly affected by policies in the current climate of political instability and ideologies that are far from favouring the difference (whether cultural, linguistic or other) across the globe.

Background to the study

This review stems from Monteoliva-García (2016), a project sponsored by SSTI, the Society for the Study of Translation and Interpretation of NAJIT, the National Association of Judiciary Interpreters and Translators in the US. The aim of that project was to compile research outputs on legal and judiciary interpreting, conduct a bibliometric analysis and create an annotated bibliography for professional interpreters and scholars alike, in particular for legal interpreting practitioners and newcomers in the field as a research discipline. The research outputs were compiled from *Google Scholar* and *WebofScience* with the reference management system *EndNote*. The database was exported to *MS Access* and *MS Excel* for manual edition, including the fields generated by *EndNote* (author, year, title, publication type, publication title – for journal papers and book sections, abstract note, page, issue, volume, manual tags, and annotation) and two other fields. The two new fields, *Identifier* 1 and *Identifier* 2 were added manually to facilitate the task of selecting works. *Identifier* 1 served the purposes of classifying the publications per setting or subdomain from the legal and judiciary domain, if there was one. Otherwise, the tag "legal" was used. *Identifier* 2 was used to tag each publication according to the main thematic focus, such as *role, users' perceptions, remote interpreting, discourse* and *pragmatic*s. The list of themes and settings was made in collaboration with SSTI Board

of Directors because the task of dividing a field into subdomains and research foci was far from being a straightforward task. The subject index in the *Routledge Encyclopedia of Interpreting Studies* (2015) was used to select terms that are being used in the field.

The identifiers mentioned above made it possible to select publications for annotation that were representative of the variety of settings and themes, not proportional to the number of research outputs per setting. Had the latter been the case, most of the annotations would have been about publications on court interpreting. As discussed below, court interpreting still prevails as the most-widely researched setting among the ones included in this review, but other settings are witnessing a rise in number and scope. During the setting identification process, the tag *legal* was used in works that address the field as a whole or two or more domains. The tags for the subdomains were used when the publication focused on a particular one, such as *prison*.

In addition, the works for annotation were selected based on the following criteria: inclusion of seminal and authoritative works; inclusion of works from the different settings; thematic representation; and illustration of a variety of research methods. An attempt was made to show the diversity of research in the field, including both old and emerging themes. The annotated bibliography can be read in chronological order or in alphabetical order (by author). In Monteoliva-García (2016), both myself and SSTI Board of Directors considered that offering the reader the opportunity to reach the bibliography in chronological order would be helpful in illustrating the evolution of research in the field.

Although the database (Monteoliva-García, 2016) has been used as a starting point, the aim of this review differs in purpose and scope. This review reflects upon the state of the art and the evolution of research in the field. Drawing on a 10-year period (2008-2017), it provides an overview of research activity and reflects upon the trends both across subdomains and in specific ones within legal interpreting.

Method

Research outputs for the period 2008-2016 were selected from the database of research outputs in legal and judiciary interpreting published until March 2016 (Monteoliva-García, 2016). Publications from 2008 to March 2016 were extracted and a new database created. On a second stage, publications for the period analysed were re-searched in order to both update the database, in case some had been missed in Monteoliva-García (2016), and publications for the period between March 2016 and December 2017 were added.*Google Scholar* was the starting point for the search process. Search queries were based on the combination of the key terms *interpreter* with *asylum, court, immigration, legal, police* or *prison*, and their translation into French, German, Italian and Spanish (the languages known by me). Publications in Portuguese that came up during the search process have also been included. The terms *interpreting* and *interpretation* were also combined with each of those terms, but not in isolation, as many hits were related to the interpretation of the law rather than to interpreting as a translatory activity. The key words "interpreter", "translation", "language" and "translator" were used to narrow down the search results.

Together with *Google Scholar*, publications were searched in *BITRA*, the Universidad de Alicante Bibliography on Translation and Interpreting; the UK service for doctoral thesis repositories *EThos*; manual search queries of publications known to me that

were not listed; as well as the tables of contents of edited volumes and journals, because not every paper or section found was listed in Google Scholar. The latter were entered manually in the reference management system *New RefWorks*, exported to .cvs format and saved in *MS Excel* and *MS Access* files for manual editing and analysis. As in (Monteoliva-García, 2016), the fields *publication type, publication year, author, title, publication title, volume, issue, pages* and *manual tags* were transferred directly from the reference management system into the database. The fields language, setting and category (main theme) were entered manually by me.

In addition, the field "abstract" was also completed manually for those publications in which no abstract had been automatically retrieved by the reference management system, as well as for publications other than journal articles for which a description was available but had not been retrieved by the reference management system.

Regarding the themes addressed by legal interpreting scholars, this review draws on the themes identified in Monteoliva-García (2016), to which two more have been added. The first one is the category *rights* for works that focus on the rights to translation and interpreting services in legal settings; the second one is *legal implications*, which has been used to tag works exploring the legal implications or effects of interpreting in specific communicative events or proceedings. Finally, the discussion presented below will address both themes identified across settings and themes that seem specific to, or more widely researched in, certain settings.

Even though the search process aimed at comprehensiveness, it is unavoidable that publications have been missed – either because they are not included in the databases used or because they are unknown to me. The lack of knowledge of languages other than the ones included in the search queries also limits the extent to which the compilation of works analysed is representative of the field.

For the analysis, the starting point was a descriptive statistical analysis of the number of publications per year, setting, theme, type of publication, and the main journals. This initial bibliometric analysis was carried out in *MS Access* to obtain basic statistical information, and it is selective and descriptive in nature. It is selective because categories such as the number of citations or authors' affiliations have not been included, as they are not relevant for the purposes of this review. As Gile (2015a) explains, bibliometric analysis has been used selectively in recent years in the field of Interpreting Studies, and it can be a useful method to explore new or emerging fields of specialization, such as the analysis by Martínez-Gómez (2015) on non-professional interpreting. As Gile (2015a) argues, statistical analysis of research outputs per author, affiliation and citations are indicators of productivity or impact. However, the productivity or impact of specific authors or academic institutions are not relevant factors for the purposes of this review, hence the number of citations and affiliation have not been included in the database. The basic statistical analysis presented in the first place aims at providing the reader with an overview of the amount of research across field and per field throughout the ten years selected for review and the types of outputs. This basic statistical analysis serves as a backdrop for the thematic analysis. The second part of the analysis presents a discussion of the focal points and thematic trends of the field based on the publications reviewed.

Descriptive analysis of legal interpreting publications (2008-2017)

Overall, 464 publications related to the field of legal interpreting were collected and added to the database for the period analysed. The publication types include books, book sections, conference proceedings, edited volumes, specialist handbooks, journal articles, monographic works and doctoral theses. The label *Handbook* was applied to manuals on legal interpreting addressed to educators, students, practitioners and/or interpreting users. The label *Book Section* has been used for book chapters or chapters in monographic works, and the label *Thesis* has been used for PhD theses. Table 1 below shows the number of publications per publication type:

Publication Type	**Number**
Journal article	303
Book section	94
Book	16
Conference proceedings	14
Edited volume	12
Thesis	12
Monograph	6
Handbook	7
Total	464

Table 1. Number of publications per type

As shown in Table 1 above, journal articles and chapters in edited books are the two main types of publication between January 2008 and December 2017, 303 and 94 respectively. Sixteen books, twelve edited volumes and twelve theses were published. The majority of papers was published in specialist journals of Translation and Interpreting. Specialist journals on Translation and Interpreting with six or more publications on legal interpreting include *Interpreting: International Journal of Research and Practice in Interpreting (N22)*, which was the first international peer-reviewed journal focusing solely on Interpreting as a scientific discipline (Riccardi, 2015); *MonTI. Monografías de Traducción e Interpretación (N11)*, a Translation and Interpreting journal jointly published by three Spanish universities and which devoted issue 7 (2015) to legal interpreting; *TRANS: Revista de Traductología (N11)*, also covering both Translation and Interpreting and published by the University of Málaga, in Spain, and with a monographic on legal interpreting (19.1) in 2015; *Translation and Interpreting (N9)*, a refereed journal in the field of Translation and Interpreting Studies hosted by Western Sydney University in Australia; and six in *The Journal of the American Translation and Interpreting Studies Association (N6)*. Broadening the scope of journals to those from disciplines other than Translation and Interpreting, it is worth highlighting that thirteen papers were published in *Language and Law / Linguagem e Direito*, eleven in the *International Journal of Speech Language and the Law*, and six in the *Journal of Pragmatics* in the period analysed.

Publications per year

The analysis of publications per year shows a basically steady 'amount' of research activity in the period analysed with a peak of activity in 2015:

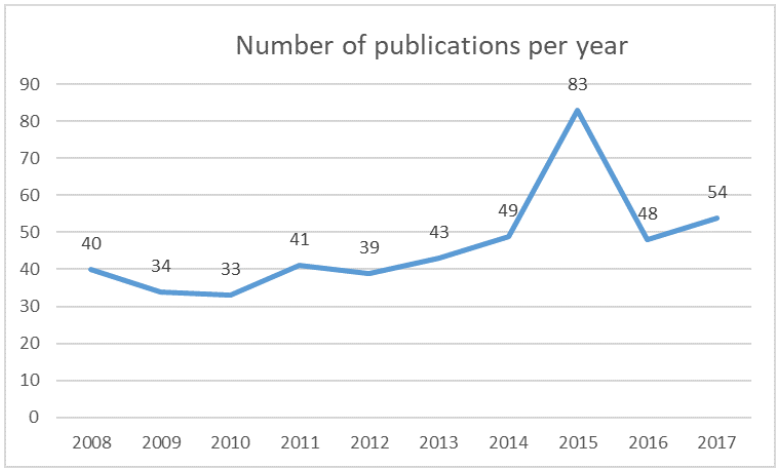

Figure 1. Number of publications per year (2008-2017).

The graph in Figure 1 above shows the total number of items published per year between 2008 and 2017. An average of 46.4 outputs were published per year for the period analysed. This average represents a marked increase compared to the 14.3 average number of publications identified in Monteoliva-García (2016) for the previous 10-year period (1998-2007).

In relation to this increase, it is worth noting the significance of the birth of *EULITA*, the "European Legal Interpreters and Translators Association", created in 2009. According to their mission statement, *EULITA* do not only aim at representing the associations of legal translators and interpreters and their interests, but also at promoting best practice and cooperation among universities and other institutions in the field of Legal Interpreting and Translation. As contained in their mission statement, the promotion of research is included among the actions that serve those aims:

> EULITA aims to strengthen and to represent the interests and concerns of the associations and their members vis-à-vis national, European and international organisations and institutions, to promote the establishment of associations of legal interpreters and translators in member states where as yet they do not exist, to promote close cooperation with academic institutions in the field of training and research and to encourage the establishment of national and EU-wide registers of qualified legal interpreters and translators, while at all times respecting the diversity of judicial systems and cultures.
> EULITA is further committed to promoting quality in legal interpreting and translation through the recognition of the professional status of legal interpreters and translators, the exchange of information and best practices in training and continuous professional development and the organisation of events on issues such as training, research, professionalism, etc. thus promoting judicial cooperation and mutual trust by the member states in each other's systems of legal interpreting and translation.

As shown in Figure 1 above, the number of research outputs in the year 2015 was exceptionally high, with 80 items. As mentioned by Hertog (2015a), 14 different EU projects among institutions and universities from different EU countries on legal interpreting and translation were conducted between 2007 *(Building Mutual Trust I*) and 2016 (the last one was *Justisigns*), which can be accessed at EULITA's website[1]. The projects carried out

between 2011 and 2015 (*AVIDICUS 3, LIT Search, TraiLLD, Understanding Justice, Co-Minor-IN/QUEST, SOS-VICS, Qualitas, AVIDICUS 2, Building Mutual Trust II, ImPLI*, and *TRAFUT*) were two to three years long. As can be observed in the database, a large number of publications emerged from these research projects.

The adoption of three EU directives including legal safeguards and for those who require linguistic assistance in criminal proceedings, was a milestone for the rights of suspects and victims of crimes in the EU context, and it certainly seems to be related to the increase in research activity mentioned above – research projects and publications. *Directive 2010/64/EU of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings*[2] established the rights to translation and interpreting for suspects; the adoption of *Directive 2010/64/E*U was followed – and strengthened – by the adoption of two other instruments: *Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*[3], and *Directive 2013/48/EU of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest*[4].

Despite the challenges and problematic transposition of *Directive 2010/64/EU* into the legislation of the EU Member States, the adoption of this and the two other directives mentioned above was of paramount importance for the rights of those involved in legal proceedings and propelled research activity in the field of legal interpreting in the EU (Blasco-Mayor and Del Pozo Triviño, 2015; Hertog, 2015a). In the US, court interpreting as a profession has been regulated and evolving for decades, in particular in criminal cases, and certification and training schemes have been in place since the Court Interpreters Act was enacted in 1978. This Act establishes the right to have a certified or otherwise qualified interpreter for any individual who is involved in a court proceeding and requires one, whether due to a hearing impairment or to insufficient competence in English. Notwithstanding this right, certification, provision, training and quality standards are not homogeneous across states or languages, as highlighted by O'Laughlin (2016) and Abel (2012). In the EU, legal translators and interpreters are still in the process of regulating and establishing the profession, with a focus on setting up training programs and certification schemes, and differences between jurisdictions and legal traditions in different justice and law enforcement agencies make harmonization a challenging task. However, the fact that legal provisions guaranteeing the rights of those involved in criminal proceedings are in place, has channelled research efforts, many of which align with the purpose of the abovementioned legislation. In addition, the themes that are the foci of research revolve around the various and complex aspects that are key for professionalisation, such as the multi-faceted notion of quality, certification, training, access rights, the interpreter's role, and remote interpreting. These studies also seem to have had a positive impact and promoted the support of governmental and justice institutions in national projects, as in the case of the comprehensive *TIPp* project[5] (Translation and interpreting in criminal proceedings) led by academics from the Universidad Autónoma de Barcelona and funded by the Spanish Ministry of Economy and Competitiveness.

The factors identified above are interrelated and reveal the extent to which the advances in research and in the quality of service and practice depend on political will

Giambruno (2016), while legislative changes are in turn in large part promoted, thanks to the efforts of academics and associations in the field.

Publications per setting

The total number of publications per setting and their distribution (%) are presented in Figures 2 and 3 below:

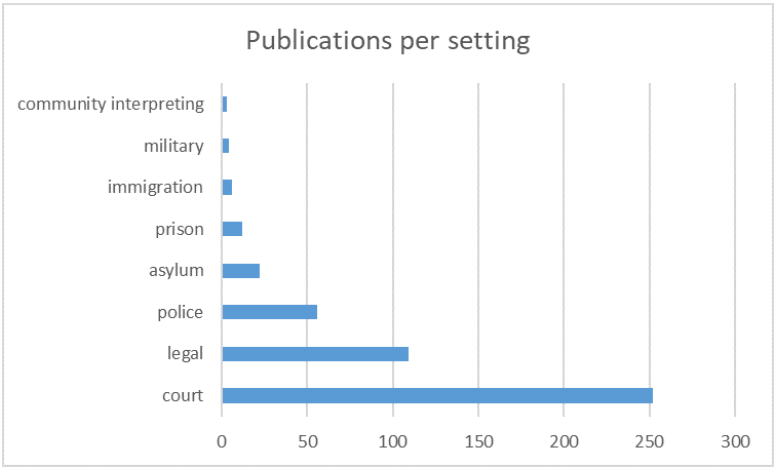

Figure 2. Publications per setting (N).

As shown in Figures 2 and 3, court interpreting is still the most widely researched field (54% of publications for the period analysed). The prominence of courtroom interaction in legal proceedings and aspects related to easier access to data are two potential factors that may account for this difference. Other settings still remain largely unexplored, as in the case of prison settings, with 12 publications. Despite the underrepresentation of interpreting in immigration proceedings, it is worth noting that they are often included in publications that have been labelled as legal in the database, i.e. addressing aspects that pertain to one or more domains or that are generic. Compared to the analysis in Monteoliva-García (2016) for the 1976-2016 period, the proportion of court interpreting studies has decreased (from 64% to 54%), and that of studies of police interpreting have increased (from 9% to 12%). Police interpreting seems to be emerging as an area of research interest, but it is still ill-explored.

As mentioned above, aspects that are specific to a given domain are sometimes subsumed in publications that have been labelled as *legal*. Many of the publications offering an overview of the field in a particular country or region include aspects of different domains and themes but have been labelled as *legal* in the database. As a result, even though the publications focusing exclusively on a particular setting are represented above, those settings have also been included in generic studies of legal interpreting, in particular police settings.

Evolution of research activity per setting

This section describes the evolution of publications per setting during the 2008-2017 period. The field of court interpreting is still the most widely researched, and it is also the domain that attracts most attention in publications labelled as generic (*legal*). As shown

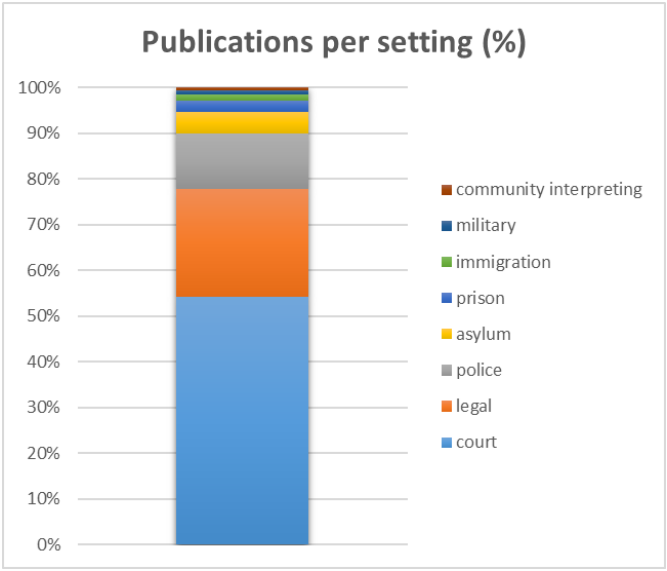

Figure 3. Publications per setting (%)

in Figure 4 below, the peak reached in 2015 for the total number of publications reviewed was also a peak for publications in court, police, immigration and prison interpreting:

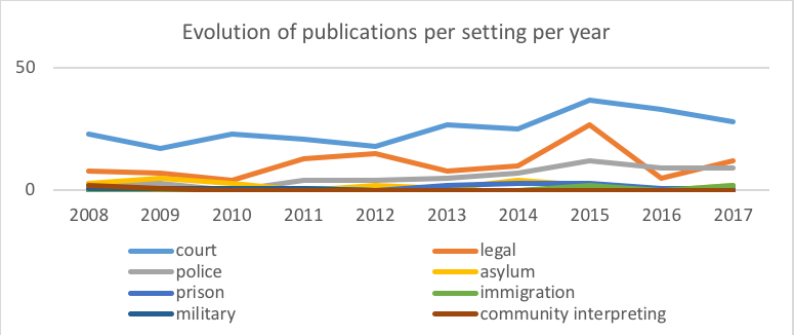

Figure 4. Publications per setting and year.

The different settings followed a rather similar evolution, except for publications classed as legal, which decreased between 2012 and 2013, while court interpreting and police interpreting ones increased. As mentioned in the previous section, the effects of legislative changes are observable not only in the number of outputs but also in the attention the different settings are receiving. Even though court interpreting is still the main research focus, scholars exploring interpreting in other legal fields should take advantage of the slight momentum gained over the past three years. Political and sociodemographic changes may hinder that momentum, though. One of the publications reviewed (Carlisle, 2017) is a book chapter from a book devoted to the future of languages after Brexit. The chapter explores the impact of Brexit upon translation and interpreting services in the criminal justice system and in police settings in the UK. Together with the ideologies promoting hate against migrants, for instance in the United States, assessing the impact of Brexit upon attitudes towards linguistic diversity, multilingualism and the rights to translation and interpreting in legal settings is certainly timely, in particular in the legal

context, where interpreting users are primarily migrants or members of communities that have the status of minorities. Furthermore, issues regarding the role and status of languages at universities and the future of interpreter training are at stake, as well as the future of research projects like the ones mentioned above, in which UK universities have participated.

Focal points in legal interpreting research (2008-2017)

Following a review of the publications collected, the last ten years of legal interpreting research are characterized thematically by studies describing the state of affairs of legal interpreting in a country or region; studies furthering the discussion on themes that remain controversial, such as the legal interpreter's role; and the refinement and combination of research studies focusing on specific aspects. On reading the studies compiled, discourse-analytical analyses of interpreter-mediated interaction exploring participants moves at a micro-level certainly stand out. These cannot be classed as "new", but the diversity of aspects looked at through very detailed analyses is expanding, such as the handling of discourse markers in police interviews (Blakem§ore and Gallai, 2014; Gallai, 2013, 2015, 2017); the role of silence in interpreter-mediated police interviews and how it intersects with the strategic use of silence by interviewers (Nakane, 2011); the impact of micro-moves in interpreting upon the image projected by defendants in court interpreting (Gallez and Maryns, 2014); the role of gaze in turn-management and positioning with regard to other participants in asylum interviews (Mason, 2012); or the difficulties of coping with inexplicit language in court interaction (Lee, 2009), further and strengthen existing research that was of paramount importance in the first decades of research in the field (Berk-Seligson, 1990, 2002, 2017; Hale, 2004).

The period reviewed has also witnessed the publication of studies focusing on particular groups of interpreting users in specific subdomains, such as minors in asylum interviews; the needs of a particular group across legal settings (victims of domestic abuse); or the challenges of the use of new technologies upon particular aspects of interpreting dynamics (turn-taking in police interviews). The sections below review the diversity of themes addressed in the publications reviewed, and the foci and lenses through which authors have explored them.

The interpreter's role in legal settings

The role of interpreters is one of the focal points of studies in public service settings, and certainly a controversial one in the literature on legal interpreting (Hale, 2008). The discussion surrounding the interpreter's role in community settings, including legal settings, encompasses debates about the very definition of role. Many legal practitioners using interpreting call for a machine-like interpreter who translates verbatim (Morris, 1995) without making an "interpretation", a view that reveals lack of awareness of the intricacies of discourse practices and sense-making processes, the influence of contextual factors upon human interaction, and misunderstanding the process of interpreting between languages with the interpretation of the law. At the other end of the spectrum, voices such as Barsky (1996) have advocated for interpreters having extensive latitude in terms of role performance and agency as active intermediaries in asylum interviews. This active role would be performed through breaching epistemic and cultural gaps between claimants and officers.

The metaphor of the interpreter as a machine or conduit (Reddy, 1979) has been largely challenged in community interpreting settings, including legal settings, but the study of the interpreter's role remains a central focal point. Laster and Taylor (1994) argue against narrow conceptualisations of the interpreter's role, such as the conduit model, and propose reconceptualising it and referring to interpreters as "communication facilitators". This conceptualisation offers a more realistic description of what interpreters do, and of the decision-making process involved in the interpreting process. In the literature reviewed, some studies find views among interpreters who favour that role. Martin and Ortega-Herráez (2009) conducted a survey-based study among court interpreters in Spain and found that some court interpreters perceive their role precisely as that of "facilitators of communication", a role they enact by adapting the register for both speakers, explaining legal procedure, or summarizing; actions which clash with the existing view of interpreters as conduits who translate literally.

It follows from the above, that the tension between the norms set out in codes of ethics, role performance and perceptions of role is evident, and researchers in the works reviewed acknowledge the difficulties of trying to find a universal definition and convergence:

> In the middle of the spectrum between what is deemed by most as unacceptable advocacy for individual clients and what most consider acceptable advocacy for the interpreting process is a range of options for interpreter intervention that has yet to be fully defined (Mikkelson, 2008: 87).

In one of the studies reviewed, Kinnunen and Koskinen (2010) note the lack of definition of the legal interpreter role and the consequences it has for practice and for the profession. Those exploring this complex and multi-faceted concept are resorting to a variety of theories or approaching it from different angles, and in relation to changes in the field, such as the use of new technologies, and show that the interpreter's role is far from machine-like or unaffected by contextual conditions. An example is found in Fowler (2013), who identified views and attitudes among judges regarding interpreters that seemed to be based on previous experiences of poor interpreting. Another example is the study by Devaux (2017), whose PhD thesis focused on interpreters' perception of their own role in court interpreting settings when videoconference interpreting is used. In his thesis, Devaux applies the Actor-Network-Theory and the concept of role-space to compare how interpreters perceive themselves depending on where they are located (prison or court). Angermeyer (2016) analysed authentic arbitration hearings in New York and explored the court interpreters' role in relation to the specific process of arbitrators obtaining consent from litigants, and the study revealed that interpreters intervene actively in that process. Baixauli-Olmos (2013, 2017) focused on interpreting in prison settings, one of the settings that remains largely unexplored, with the exception of the studies by himself (Baixauli-Olmos, 2013, 2017) and Martínez-Gómez (2014, 2015, 2016). Baixauli-Olmos calls for attention to the particular environment in which interpreting takes place in defining the role of interpreters, i.e. the prison, and Martínez-Gómez explores the role of non-professional interpreters and the interpreting quality with non-professional interpreting in prison settings.

In the field of police interpreting, Berk-Seligson's comprehensive volume *Coerced Confessions* (2009) documents and critically discusses the controversial use of police officers as interpreters and observes how coercion can be exerted through police officers'

shifts between their two roles in police interrogations in the United States. Kredens (2016) offers an account of the perceptions of both police officers and interpreters about the role of interpreters. Based on the respondents' reactions to different scenarios in which ethical issues were at stake, the study revealed a number of commonalities between the views of interpreters and police officers, which the author associates with both groups having a shared aim in the police interview.

Quality

The complex notion of quality has attracted the attention of the academic community in the wider discipline of Interpreting Studies across interpreting modes and settings, and in relation to criteria such as quality parameters, assessment, standards, assurance, and controversies surrounding perceptions of quality. Three international scientific conferences focusing on Interpreting Quality have been held since 2001, and quality certainly stands out as a recurrent theme in the publications reviewed, whether as a focal point or in relation, primarily, to the assurance of quality in legal interpreting through testing and certification (Giambruno, 2016). This focus appears to be directly related to the efforts to develop legal interpreting standards following the adoption of Directive 2010/64/EU mentioned above.

Quality is the focus of one European project *Qualitas: Assessing LI Quality through Testing and Certification*[6], conducted between 2011 and 2014. This project, and the publications emerging from the research activity, provide insightful discussions and materials for testing and assessment of interpreting competence as certification mechanisms, and ultimately as the tools to assure the quality of interpreting services. Together with the comprehensive publication (Giambruno, 2016) resulting from the project, which discusses the set of skills required for interpreting, the particular modes and requirements of the legal field, the use of videoconference interpreting, languages of lesser diffusion, and the design of testing and assessment materials. Other publications can be found on the project website, such as a report of the state of affairs of legal interpreting in the 27 EU countries; and specific aspects included in the main volume have been disseminated also through other publications (Ortega-Herráez, 2011).

The study of quality in video-mediated criminal proceedings has been the focus of the *AVIDICUS 1* project[7], led by Professor Sabine Braun, and of the studies by Fowler (2013) on the use of video linking between courts and prisons in England; Licoppe and Verdier (2013, 2015) and Licoppe and Veyrier (2017), who focus on the use of videoconference in France and aspects related to participation; and Napier and Leneham (2011) on the feasibility of using remote interpreting in courts for sign language interpreting. In the framework of the most extensive project on remote interpreting in legal settings to date, the *AVIDICUS* project, the use of remote interpreting in legal settings across EU member states was analysed, and video-mediated interpreting was studied through surveys, experiments, comparative studies of face-to-face and video-mediated interpreting, for both spoken and sign languages. The research outputs related to this project revealed, for instance, the impact of remote interpreting or video interpreting upon the quality of interpreting in police interviews due to a higher degree of information loss and interpreting error, as well as an increase in interpreter fatigue. The potential of video technologies in legal interpreting settings was analysed and recommendations were made regarding the use of video-mediated interpreting and the different formats.

Two other projects followed *AVIDICUS 1*, (*AVIDICUS 2* and *AVIDICUS 3*), which expanded the research findings and scope initiated in *AVIDICUS 1*.

Other studies highlight the impact of factors that are specific to the environment in which interpreting takes place and which shape the notion of quality. One of them is the experimental study by Böser (2013) on police interviews with witnesses and the free-recall segment. In the study, Böser (2013) observes, among other aspects, that the segmentation of speech resulting from the use of consecutive interpreting impacts upon the purpose and format dynamics of the free-recall segment. Böser (2013) argues that the definition of quality in interpreting needs to be adopted bearing in mind the features of specific contexts, both the specific protocols and discourses and the nature of interpreted speech. In addition, working conditions have also been explored as a factor that can have an impact upon interpreting quality and quality assurance, as in Hale and Hale and Stern (2011), a study based on a nation-wide survey conducted in Australia.

It follows from the above that research on quality in legal interpreting is being conducted through different lenses and is taking into consideration an increasing number of factors. This trend will hopefully lead to changes in practice, assessment and training, and quality will probably remain as one of the focal points of research in the field, the advent of changes brought about by new technologies, advances and refinement of certification, and an enhanced understanding of the concept of quality itself.

Publications focusing on guidelines for interpreting users

It is evident from the review process that legal interpreting studies not only focus on the interpreter, but most often on the communicative encounter and on the other ("primary") participants or interpreting users. More importantly, guidelines and recommendations are being published for interpreting users on how to work with interpreters in different domain. Maddux (2010) addresses a largely unexplored area, namely the participation of interpreters in forensic evaluations in the United States, and proposes a number of protocols. The author analysed the various factors that come into play in interpreter-mediated interviews with forensic psychologists. In particular, Maddux (2010) identified factors in the literature that are related to the interviewee, such as cultural preferences or assumptions; factors emerging from the particular discourse context (the interview); as well as factors related to the interpreter, such as their level of competence. Following the analysis of the complex set of factors that affect interaction in the interpreter-mediated forensic interview, the author makes a number of recommendations for forensic psychologists, and notes the need to inform the court system and attorneys about the potential threats of interpreter-mediated forensic interviews to their validity and reliability. The fact that the author is himself a forensic psychologist is also relevant, as it shows a progressive increase of awareness and interest regarding interpreting and interpreters.

Drawing on the findings of the *ImPLI* project, Amato and Mack (2015) applied Conversation Analysis to design a handbook containing materials based on video-recorded police interviews, as well as activities for both interpreting trainees and police officers. The materials are designed to promote reflection on the interpreter's role in police interviews. Albl-Mikasa *et al.* (2011) explored the impact of regulations that are in place in the court system to inform the judges and other judicial officers on how to work with interpreters. The authors distributed a survey among court interpreters to assess the impact of an information sheet available for judges upon their court interpreting practice.

The study revealed that the availability of the guidelines does not necessarily translate into best practices. For instance, interpreters seldom received information or terminology prior to the interpreted encounter, a practice that is included in the list of recommendations. This leads on to a point that is also recurrent in the literature, the need for cooperation between the different stakeholders, from policy-makers to interpreting users, academics and interpreting professionals (Heydon and Lai, 2013; Kinnunen, 2013; Salaets and Balogh, 2015).

Training, certification and professionalization

Training needs and professionalization are two recurrent themes in the literature, with the three EU Directives mentioned above articulating many of the studies, such as the monographic issue by Blasco-Mayor and Del Pozo Triviño (2015), including an article by Hertog (2015b) on the directives; the edited volume by Bajčić, M. and Basaneže (2016); Dobrić (2014) on the changes required in the field of court interpreting in Croatia to comply with quality and service standards set out in the Directive; studies of the state of affairs in Italy, in particular regarding police interpreting (Amato and Mack, 2017) and training (Preziosi and Garwood, 2017); the state of affairs of the profession in Montenegro (Andjelic, 2015) and in Slovenia (Kutin and Ivelja, 2016); Ortega-Herráez (2015) on legal interpreting training in Spain and its relationship with professionalisation under the Directive; and Osiejewicz (2015) on training and quality under the Directive, to name but a few.

Beyond the EU context, Kasonde (2017) analyses the state of affairs of court interpreting and professional practice in Zambia, which is far from being up to the standards required; Al-Tenaiyi's thesis (2015) looks into the court interpreting profession in the United Arab Emirates; two scholars from the field of Criminal Law explore, among other aspects, the perceptions of other participants of the interpreters' role and factors that impact upon interpreting practice and interpreters (Aliverti and Seoighe, 2017), including the outsourcing of interpreting services to companies, poor working rates and conditions and their impact upon the quality of services; and discuss relevant themes in the field such as interpreters' power, the influence of other external factors upon interpreters' performance, and trust. Bowles (2008) discusses the lack of standards and regulations in the court system in Alabama; and Chen and Liao (2016) describe the professionalisation process of court interpreting in Taiwan and the current stage of development.

Despite the differences, many of the challenges in this arena are shared across countries and regions: the lack of recognition of the interpreter's status in the legal sector; mismatch between the required standards and the mechanisms to maintain them, as well as between qualifications and working conditions; differences in provision, training and quality control between languages; lack of regulation regarding interpreter selection and qualifications; and lack of monitoring of interpreting quality.

"Atypical" interpreting formats

In the publications reviewed, the author noticed that some studies explored interpreting formats that differ from the typical formats used across legal settings (consecutive, short consecutive or simultaneous interpreting, and/or whispered interpreting, depending on the setting). The presence and/or participation of individuals other than the interpreter who have knowledge of both languages emerges as a factor that has an impact on the way interpreting takes place. One of the publications is the comprehensive PhD thesis

by Ng (2013) of the *atypical bilingual courtroom* in Hong Kong. The language used in courtroom interaction is English instead of Cantonese, and those citizens selected to act as jurors are assumed to understand English. The presence of participants with bilingual skills changes the workings of interpreting, for example through participants' interventions and ability to monitor the interpreter's performance. The presence of bilingual participants can also lead to the imposition of interpreting at certain stages and non-interpreted interaction at others, as problematized by Nakane (2010) in Japanese courts and Du (2015) in a Chinese criminal court. In both studies, the bilingual skills of defendants, who were speakers of minority languages, were taken for granted as sufficient and, rather than a stand-by mode of interpreting throughout the interaction, interpreting was used selectively only at certain stages. Both authors problematize the imposition of non-interpreting, leaving the interpreter present by but silenced (Du, 2015) despite the visible cues of miscommunication.

Another atypical format is the *stand-by mode* of interpreting, a term coined by Angermeyer (2008) in his study of code-switching in small claims courts in New York City. In the stand-by mode, the primary participants communicate in their shared language and the interpreter takes part in the interaction intermittently, when miscommunication problems arise. Though it remains largely unexplored and it poses certain challenges both for the interpreter and for the interaction, Angermeyer found that the imposition of interpreting as an alleged form of guaranteeing communication reveals a monologising view of bilingual interaction and also comes with risks. The stand-by mode of interpreting has also been explored in police settings (Monteoliva-Garcia, 2017a,b), in particular in authentic video-recorded police interviews with suspects, in which a professional interpreter took part. The suspects, whose main language was Spanish, also had competencies in English and the stand-by mode of interpreting was used throughout the interviews. The interpreter interpreted either when the other participants requested her participation or when she identified cues of miscommunication. The stand-by format of interpreting was featured by participants' use or non-use of interpreting differently depending on the interview phase, a redefinition of the interpreter's role (with monitoring communicative success becoming a crucial part of her role), as well as by a high degree of collaboration among the three parties in managing the sense-making process.

Adversarial interpreting (Kredens, 2017) can also be included among emerging forms of interpreting discussed in the studies reviewed. The label refers to interpreted encounters in which two interpreters are present, such as a police interview in Kredens' study, one of them being normally the interpreter appointed by the institution, and the other one an interpreter brought by the other party, hence the term *adversarial*. The presence and participation of the second interpreter and how this affects the other interpreter's decisions lies at the heart of the study, for instance, when the interpreter who is monitoring the other interpreter intervenes and offers an allegedly better version than that provided by the interpreter, corrects it, or otherwise confirms it or supports it. Furthermore, the study discusses the still undefined protocols for expert assessment of interpreters' performance and the potential of monitoring.

The atypical formats of interpreting identified in the publications reviewed are all based on authentic cases, feature bilingualism, either among interpreting users or through the presence of two interpreters, and manifest practices that are occurring in

legal interpreting scenarios. They differ from more standard interpreting formats and, together with the situations in which those practices originate and the underlying factors, they highlight emerging needs and practices that will likely receive more scholarly attention from academics.

Focus on specific participants in interpreter-mediated encounters

In the studies compiled it is noticeable the progressive specialization in the field through studies that focus on features of interpreting and the needs and/or rights of specific groups of interpreting users. The case of domestic violence victims and the professionals who work with them, including interpreters, is a telling example. Reporting domestic violence is less likely among victims who do not speak the language of the institution (Tipton, 2017). The *SOS-VICS*[8] project, funded by the EU and conducted in Spain, is the largest-scale project involving academics from several universities who focused on the state of the art of interpreting for victims of domestic violence across community settings, and developed materials, workshops and publications including reports, guidelines and recommendations for the different stakeholders (Abril Martí, 2015; Del Pozo Triviño and Toledano Buendía, 2016; del Pozo-Triviño, 2017). These publications offer an invaluable tool for those involved in the delicate encounters in which domestic violence victims do not speak the language of the institution, by for instance flagging up the risks for communication and the provision of legal, social work or health care services that may result from interpreters' lack of specialist knowledge of domestic violence protocols. Hale and Ozolins (2014) reflect on the valuable contribution of a short interpreting course for female workers involved in domestic violence cases in legal settings. Interpreter training is not always available or easily accessible for certain communities, and the availability of courses providing guidance is crucial.

Other studies have looked at interpreter-mediated encounters in domestic violence cases through a discourse-analytical lens. Elsrud (2014) analyses the negative impact upon interpreting users and their identity as "the other" as a result of poor interpreter performance, including omissions, changes and additions of information in domestic violence hearings. Tipton (2017) analyses the concept of risk management in interpreting through document analysis and questionnaires and interviews with interpreters who had experience in domestic violence interviews. The study focused on risk management as a crucial component of police interviews with victims of domestic abuse. A lack of specific and more focused procedures for interviews involving interpreters, and a number of areas in which there is scope for improvement were identified. One example is the need for interpreters to be equipped with the relevant knowledge on risk management procedures, and for police officers to be more knowledgeable about interpreters' needs and interpreting protocols.

Whereas defendants and witnesses prevail as non-institutional interpreting users in court interpreting studies, the needs and participation of jurors is also gaining scholarly attention. A group of researchers focusing on sign language interpreting analysed the rights of deaf individuals to act as jurors in Australia (Hale *et al.*, 2017; Napier and McEwin, 2015), a country in which deaf individuals do not have the right to act as jurors. The studies analysed the alleged risks for deaf jurors of being at a disadvantage with regard to hearing jurors as a result of accessing deliberations and instructions through a sign language interpreter. The results of both the pilot and the follow up study show that deaf jurors are not at a disadvantage, and these promising findings could translate into

legislative changes. It is also worth highlighting the work carried out by the members of the *Justisigns*[9] project, a EU-funded project aimed at developing training materials for deaf people, legal professionals and sign language interpreters to work in encounters that fall under the umbrella of the legal field and target the specific needs of the participants involved.

The atypical interpreting format discussed above in relation to Hong Kong's bilingual courts has also been addressed from the point of view of jurors as interpreting users (Ng, 2016). In her study, Ng identifies comprehension problems among jurors, for whom interpreting is not explicitly available –they only get to hear the interpreter when consecutive interpreting is used for the defendants. When jury members are selected, knowledge of English is one of the criteria for selection, but the study reveals flaws in the way competence is assessed – or rather simply taken for granted. Jurors reported comprehension problems, hence compromising the quality of trials. The study identifies a group of participants in proceedings who are deprived of the right to an interpreter despite the evidence showing that they would benefit from having one, and raises concerns about the quality of the proceedings.

This section concludes with another group of participants in legal encounters who are highly vulnerable: minors, and who fortunately have started to receive attention from researchers. In asylum settings, Keselman's thesis (2009) and publications (Keselman *et al.*, 2008, 2010a,b) provide a very detailed analysis of the complexity of asylum interviews with minors; the participation of interpreters and their impact upon the narratives told by minors; the challenges faced by participants in interaction in handling identity; and power issues in this particular type of encounter. Studies of such interpreter-mediated legal encounters have also looked into the specific participation framework in police interviews, in particular in the *Co-Minor-IN/QUEST I*[10] project and the still on-going *Co-Minor-IN/QUEST II*. The EU-funded project, in which experts from the fields of psychology, interpreting and justice took part, identified the features of pretrial questioning of minors and the needs of this vulnerable target group, and proposed recommendations based on the specific features observed, such as the complex participation framework resulting from the participation of children, psychologists, interviewers, and interpreters, and the resulting need for a high degree of awareness of each other's role and cooperation; or the challenges posed by language use by children (Salaets and Balogh, 2015).

Conclusion

This review described research activity in the field of legal interpreting and presented the themes that are being addressed by a community of researchers that is progressively specialising in specific types of encounters, groups and factors affecting interpreter-mediated communication. Through their research efforts, researchers from interpreting studies and other disciplines are contributing to advancing knowledge of important matters such as the needs of victims of domestic abuse in police interviews, the impact of having interpreting services available and training for particular subdomains of the legal sector, and the impact of the presence and participation of bilingual participants in interpreter-mediated legal encounters. As stressed at various points in this review, themes such as the interpreter's role, professionalisation and quality are ubiquitous in the literature, and will hopefully translate into enhanced practices and, in certain cases,

reforms in policies and regulations. The field features stark differences between settings, and the courtroom remains the most-widely researched field. Emerging fields, in which valuable research has been conducted, deserve further attention. Interpreting in prisons and asylum, immigration and police settings should receive further scholarly attention, but these are settings that are still less easily accessible. Hopefully, the increasing activity and cooperation between legal practitioners, interpreters and academics will also have an impact in facilitating access to those more confidential and less accessible domains. The threats of the current political climate and ideologies of hate against those who are quickly labelled as "other", in part due to the fact that they speak a different language, are obvious for a practice that provides a service to both justice and law-enforcement institutions and migrants or members of minorities. Ultimately, the quality and professionalisation of legal interpreting in the various domains and specific encounters depends on the concerted efforts of policy-makers, academics, interpreters and legal practitioners, as well as on an increase in the awareness of the significance and the complexities of legal interpreting.

Notes

[1]See *EULITA* website for a comprehensive list and a description of each project http://eulita.eu/european-projects/

[2]See *Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings at* EUR-Lex http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:jl0047

[3]See *Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime* at EUR-LEX http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX\%3A32012L0029

[4]See *Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings* at EUR-Lex http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex\%3A32013L0048

[5]See *TIPp* project website: http://pagines.uab.cat/tipp/en

[6]See *Qualitas* project website: http://www.qualitas-project.eu/

[7]See the website hosting the three *AVIDICUS* projects: http://www.videoconference-interpreting.net/?page_id=16

[8]See *SOS-VICS* project's website: http://sosvicsweb.webs.uvigo.es/

[9]See *Justisigns* project website: http://justisigns.com/JUSTISIGNS_Project/About.html

[10]See *Co-MINOR-IN/QUEST* I and II dedicated website: https://www.arts.kuleuven.be/english/rg_interpreting_studies/research-projects/co_minor_in_quest

References

Abel, L. K. (2012). Improvements in Language Access in the Courts, 2009 to 2012. *Clearinghouse Review: Journal of Poverty Law and Policy*, 46, 334.

Abril Martí, M. I. (2015). La interpretación en contextos de violencia de género con referencia al caso español. *TRANS. Revista de Traductología*, 1(19), 77–94.

Al-Tenaijy, M. (2015). *Court interpreting in the united arab emirates: Recruitment policies, training opportunities and quality standards.* Phd thesis, Kent State University.

Albl-Mikasa, M., Glass, A. and Hofer, G. (2011). *Professionalisierung des Gerichtsdolmetschens im Kanton ZÃ¼rich: empirische Studie zur Umsetzung der Dolmetscherverordnung.* ZHAW ZÃ¼rcher Hochschule fÃ¼r Angewandte Wissenschaften.

Aliverti, A. and Seoighe, R. (2017). Lost in translation? Examining the role of court interpreters in cases involving foreign national defendants in England and Wales. *New Criminal Law Review: In International and Interdisciplinary Journal*, 20(1), 130–156.

Amato, A. and Mack, G. (2015). *Comunicare tramite interprete nelle indagini di polizia: un contributo dell'analisi conversazionale alla didattica dell'interpretazione*. Bologna: Bononia University Press.

Amato, A. and Mack, G. (2017). Interpreters Working with Children in Italy. *inTRAlinea*, 19, 1–13.

Andjelic, J. T. (2015). Legal interpreting in Montenegro in view of its EU accession: diagnosis and proposals of necessary modifications. *MonTi: Monografias de Traduccion e Interpretacion*, 7, 141–162.

Angermeyer, P. S. (2008). Creating monolingualism in the multilingual courtroom. *Sociolinguistic Studies*, 2(3), 385–403.

Angermeyer, P. S. (2016). Promoting litigant consent to arbitration in multilingual small claims court. In S. Ehrlich, D. Eades and J. Ainsworth, Eds., *Discursive constructions of consent in the legal process*, Discursive Constructions of Consent in the Legal Process. Oxford: Oxford University Press, 163.

Baixauli-Olmos, L. (2013). A description of interpreting in prisons: Mapping the setting through an ethical lens. *C.Schaeffner, K.Kredens and Y.Fowler, Eds., Interpreting in a Changing Landscape: Selected papers from Critical Link*, 6, 45–60.

Baixauli-Olmos, L. (2017). The Development of Prison Interpreting Roles: A Professional Ecological Model. *Revista Canaria de Estudios Ingleses*, 75, 65–87.

Bajčić, M. and Basaneže, K. D. (2016). *Towards the professionalization of legal translators and court interpreters in the EU*. Cambridge: Cambridge Scholars Publishing.

Barsky, R. F. (1996). The interpreter as intercultural agent in convention refugee hearings. *The Translator*, 2(1), 45–63.

Berk-Seligson, S. (1990). *The bilingual courtroom: Court interpreters in the judicial process*. Chicago: University of Chicago Press.

Berk-Seligson, S. (2002). *The bilingual courtroom: Court interpreters in the judicial process*. Chicago: University of Chicago Press.

Berk-Seligson, S. (2009). *Coerced Confessions - The Discourse of Bilingual Police Interrogations*. Berlin: Mouton de Gruyter.

Berk-Seligson, S. (2017). *The bilingual courtroom: Court interpreters in the judicial process*. Chicago: University of Chicago Press.

Blakem§ore, D. and Gallai, F. (2014). Discourse markers in free indirect style and interpreting. *Journal of Pragmatics*, 60, 106–120.

Blasco-Mayor, M. J. and Del Pozo Triviño, M. (2015). Legal interpreting in Spain at a turning point. *MonTI. Monografías de Traducción e Interpretación*, 7.

Böser, U. (2013). 'So tell me what happened!': Interpreting the free recall segment of the investigative interview. *Translation and Interpreting Studies: The Journal of the American Translation and Interpreting Studies Association*, 8(1), 112–136.

Bowles, J. R. (2008). Court Interpreters in Alabama State Courts: Present Perils, Practices, and Possibilities. *American Journal of Trial Advocacy*, 31, 619.

Carlisle, A. (2017). Languages in the Eye of the Law. In M. Kelly, Ed., *Languages after Brexit*, Languages after Brexit. New York: Palgrave Macmillan, 85–94.

Chen, Y. and Liao, P. (2016). A Revised Model for the Professionalization of Court Interpreting in Taiwan. *Compilation & Translation Review*, 9(2).

Del Pozo Triviño, M. and Toledano Buendía, C. (2016). Training interpreters to work with foreign gender violence victims in police and court settings. *Language and Law / Linguagem e Direito*, 3(2), 192–203.

del Pozo-Triviño, M. (2017). The right of gender violence victims and survivors to quality translation and interpreting according to legislation. The SOS-VICS contribution. In A. Liimatainen, A. Nurmi, M. Kivilehto, L. Salmi, A. Viljanmaa and M. Wallace, Eds., *Legal translation and court interpreting: Ethical values, quality, competence training*, Legal Translation and Court Interpreting: Ethical Values, Quality, Competence Training. Berlin: Frank & Timme, 23–46.

Devaux, J. (2017). *Technologies in interpreter-mediated criminal court hearings an actor-network theory account of the interpreter's perception of her role-space.* , University of Salford.

Dobrić, K. (2014). The future of court interpreting in Croatia. *Studies in Logic, Grammar and Rhetoric*, 38(59).

Du, B. (2015). The Silenced Interpreter: A Case Study of Language and Ideology in the Chinese Criminal Court. *International Journal for the Semiotics of Law*, 507.

Elsrud, T. (2014). Othering the 'other' in court: Threats to self-presentation during interpreter assisted hearings. *International Journal of Law, Language & Discourse*, 4(1), 27–68.

Fowler, Y. (2013). *Non-English-speaking defendants in the Magistrates Court: A comparative study of face-to-face and prison video link interpreter-mediated hearings in England.* Phd thesis, Aston University.

Gallai, F. (2013). *Understanding discourse markers in interpreter-mediated police interviews.* Phd thesis, University of Salford.

Gallai, F. (2015). Disentangling the Complex Web of Language, Culture, and Cognition: A Case for Interdisciplinarity in Legal Interpreting Research. *Cultus 8: The Journal of Intercultural Mediation and Communication*, 8, 143–171.

Gallai, F. (2017). Pragmatic competence and interpreter-mediated police investigative interviews. *The Translator*, 23(2), 177–196.

Gallez, E. and Maryns, K. (2014). Orality and authenticity in an interpreter-mediated defendant's examination: A case study from the Belgian Assize Court. *Interpreting: International Journal of Research & Practice in Interpreting*, 16, 49.

Gerver, D. (1975). A psychological approach to simultaneous interpretation. *Meta: journal des traducteurs/Meta: Translators' Journal*, 20(2), 119–128.

Giambruno, C. (2016). Quality assessment and political will: a necessary symbiosis. *Language and Law= Linguagem e Direito*, 3(2), 116–134.

Gile, D. (2015a). Bibliometric Research. In F. Pöchhacker, Ed., *Routledge encyclopedia of interpreting studies*. London/New York: Routledge.

Gile, D. (2015b). Interdisciplinarity. In F. Pöchhacker, Ed., *Routledge encyclopedia of interpreting studies*. London/New York: Routledge.

Hale, S. B. (2004). *The discourse of court interpreting: Discourse practices of the law, the witness, and the interpreter.* Amsterdam/Philadelphia: John Benjamins Publishing.

Hale, S. B. (2008). Controversies over the role of the court interpreter. *Benjamins Translation Library*, 76, 99–122.

Hale, S. B. and Ozolins, U. (2014). Monolingual short courses for language-specific accreditation: can they work? A Sydney experience. *The Interpreter and Translator Trainer*, 8, 217–239.

Hale, S. B., Roque, M. S., Spencer, D. and Napier, J. (2017). Deaf citizens as jurors in Australian courts: Participating via professional interpreters. *International Journal of Speech, Language and the Law*, 24(2), 151–176.

Hale, S. B. and Stern, L. (2011). Interpreter quality and working conditions: comparing Australian and international courts of justice. *Judicial Officers Bulletin*, 23(9), 1–4.

Hertog, E. (2015a). Directive 2010/64/EU of the European Parliament and of the Council on the Right to Interpretation and Translation in Criminal Proceedings: Transposition Strategies with regard to Interpretation and Translation. *MonTI. Monografías de Traducción e Interpretación*, 7, 73–100.

Hertog, E. (2015b). Looking back while going forward: 15 years of legal interpreting in the EU. *TRANS. Revista de Traductología*, 1(19), 15–31.

Heydon, G. and Lai, M. (2013). Police interviews mediated by interpreters: An exercise in diminishment? *Investigative Interviewing: Research and Practice*, 5(2), 82–98.

Kasonde, A. (2017). The changing role of the court interpreter-translator in Africa: the case of Zambia. *Comparative Legilinguistics*, 27, 21–32.

Keselman, O. (2009). *Restricting participation: Unaccompanied children in interpreter-mediated asylum hearings in Sweden*. Phd thesis, Linköping University.

Keselman, O., Cederborg, A., Lamb, M. E. and Dahlström, Ö. (2010a). Asylum-seeking minors in interpreter-mediated interviews: What do they say and what happens to their responses? *Child and Family Social Work*, 15, 325.

Keselman, O., Cederborg, A. and Linell, P. (2010b). "That is not necessary for you to know!": Negotiation of participation status of unaccompanied children in interpreter-mediated asylum hearings. *Interpreting: International Journal of Research and Practice in Interpreting*, 12(1), 83–104.

Keselman, O., Cederborg, A.-C., Lamb, M. E. and Dahlstrom, O. (2008). Mediated communication with minors in asylum-seeking hearings. *Journal of Refugee Studies*, 21, 103.

Kinnunen, T. (2013). Translatorisches handeln und die interprofessionale kooperation im kontext des gerichtsdolmetschens in Finnland. *Zeitschrift für Translationswissenschaft und Fachkommunikation*, 6(1), 70–91.

Kinnunen, T. and Koskinen, K. (2010). Agency, activity and court interpreting. *Tampere Studies in Language, Translation and Culture*, B(4), 126–164.

Kredens, K. (2016). Conflict or convergence?: Interpreters' and police officers' perceptions of the role of the public service interpreter. *Language and Law / Linguagem e Direito*, 3(2), 65–77.

Kredens, K. (2017). Making sense of adversarial interpreting. *Language and Law= Linguagem e Direito*, 4(1), 17–33.

Kutin, Š. and Ivelja, I. (2016). Challenges faced by the court interpreter section of the association of translators and interpreters of Slovenia in light of the Directive. In M. Bajčić and K. Dobrić, Eds., *Towards the professionalization of legal translators and court interpreters*, Towards the Professionalization of Legal Translators and Court Interpreters in the EU. Cambridge: Cambridge Scholars Publishing, 23.

Laster, K. and Taylor, V. L. (1994). *Interpreters and the legal system*. Sydney: The Federation Press.

Lee, J. (2009). Conflicting views on court interpreting examined through surveys of legal professionals and court interpreters. *Interpreting*, 11, 35–56.

Licoppe, C. and Verdier, M. (2013). Interpreting, video communication and the sequential reshaping of institutional talk in the bilingual and distributed courtroom. *International Journal of Speech, Language & the Law*, 20, 247.

Licoppe, C. and Verdier, M. (2015). L'interprétariat par visioconférence au sein des chambres de l'instruction en France: une étude conversationnelle de l'activité d'interprétariat dans un dispositif interactionnel médiatisé. *Langage et société*, 109–131.

Licoppe, C. and Veyrier, C.-A. (2017). How to show the interpreter on screen? The normative organization of visual ecologies in multilingual courtrooms with video links. *Journal of Pragmatics*, 107, 147–164.

Maddux, J. (2010). Recommendations for Forensic Evaluators Conducting Interpreter-Mediated Interviews. *International Journal of Forensic Mental Health*, 9, 55.

Martin, A. and Ortega-Herráez, J. M. (2009). Court interpreters' self perception. In R. D. Pedro-Ricoy, I. Pérez and C. L.Wilson, Eds., *Interpreting and Translating in Public Service Settings*. London/New York: Routledge, 141.

Martínez-Gómez, A. (2014). Interpreting in prison settings. *Interpreting: International Journal of Research and Practice in Interpreting*, 16(2), 233–259.

Martínez-Gómez, A. (2015). Interpreting quality in prison settings: A proposal for an evaluation tool. In C. Zwischenberger and M. Behr, Eds., *Interpreting Quality: A Look Around and Ahead*. Berlin: Frank & Timme.

Martínez-Gómez, A. (2016). Facing face: Non-professional interpreting in prison mental health interviews. *European Journal of Applied Linguistics*, 4, 93–115.

Mason, I. (2012). Gaze, positioning and identity in interpreter-mediated dialogues. *Coordinating Participation in Dialogue Interpreting*, 102, 177.

Mikkelson, H. (2008). Evolving Views of the Court Interpreter's role: Between Scylla and Charybdis. In C. V. Garcés and A. Martin, Eds., *Crossing Borders in Community Interpreting: Definitions and dilemmas*. Amsterdam/Philadelphia: John Benjamins Publishing.

Monteoliva-García, E. (2016). Annotated Bibliography and Database on Legal and Judiciary Interpreting.

Monteoliva-Garcia, E. (2017a). La relevancia de las secuencias de interpretación en entrevistas policiales con interpretación en standby. *Revista de Llengua i Dret*, 68, 100–116.

Monteoliva-Garcia, E. (2017b). *The collaborative construction of the stand-by mode of interpreting in police interviews with suspects*. Phd thesis, Heriot-Watt University.

Morris, R. (1995). The moral dilemmas of court interpreting. *The Translator*, 1, 25–46.

Nakane, I. (2010). Partial Non-use of Interpreters in Japanese Criminal Court Proceedings. *Japanese Studies*, 30, 443.

Nakane, I. (2011). The role of silence in interpreted police interviews. *Journal of Pragmatics*, 43, 2317–2330.

Napier, J. and Leneham, M. (2011). It Was Difficult to Manage the Communication: Testing the Feasibility of Video Remote Signed Language Interpreting in Court. *Journal of Interpretation*, 52.

Napier, J. and McEwin, A. (2015). Do deaf people have the right to serve as jurors in Australia? *Alternative Law Journal*, 40(1), 23.

Ng, E. (2013). *The atypical bilingual courtroom: an exploratory study of the interactional dynamics in interpreter-mediated trials in Hong Kong*. Phd thesis, Aston University.

Ng, E. (2016). Do they understand?: English trials heard by chinese jurors in the Hong Kong Courtroom. *Language and Law / Linguagem e Direito*, 3(2), 172–191.

O'Laughlin, M. (2016). Addressing Linguistic and Cultural Issues in American Criminal Cases. *Language and Law= Linguagem e Direito*, 3(2), 3–44.

Ortega-Herráez, J.-M. (2011). Cómo acreditar intérpretes a través de la traducción: análisis crítico de la acreditación profesional de intérpretes jurídicos en España. *TRANS: revista de traductología*, 131–153.

Ortega-Herráez, J.-M. (2015). Reflexiones en torno al binomio formación-acreditación como elementos constitutivos de la profesionalización de la interpretación jurídica. *TRANS: Revista De Traductología*, 19(1), 131–152.

Osiejewicz, J. (2015). Legal Education of Court Interpreters and Sworn Translators upon the Directive 2010/64/EU. *International Journal on New Trends in Education & their Implications (IJONTE)*, 6, 151.

Pöchhacker, F. (2015). *Routledge encyclopedia of interpreting studies*. London/New York: Routledge.

Preziosi, I. and Garwood, C. (2017). Training legal interpreters in an imperfect world. In L. Cirillo and N. Niemants, Eds., *Teaching Dialogue Interpreting. Research-based proposals for higher education*, Towards the Professionalization of Legal Translators and Court Interpreters in the EU. Amsterdam/Philadelphia: John Benjamins Publishing.

Reddy, M. (1979). The conduit metaphor. *Metaphor and Thought*, 2, 285–324.

Riccardi, A. (2015). Speech rate. In *Routledge Encyclopedia of Interpreting Studies*. London, New York: Routledge, 397–399.

Salaets, H. and Balogh, K. (2015). *Children and justice : overcoming language barriers : cooperation in interpreter-mediated questioning of minors*. Cambridge: Intersentia, 2015.

Tipton, R. (2017). 'You are foreign, you are nothing in this country': Managing risk in interpreter-mediated police interviews with victims of domestic abuse. *Revista Canaria de Estudios Ingleses*, 75, 119–138.

Juggling investigation and interpretation: The problematic dual role of police officer-interpreter

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Abstract. *This article is a case study example of problems that arise when a bilingual police officer interrogates a suspect and acts as interpreter at the same time, thus creating a conflict of interest that is difficult to resolve. We shed light on the challenges that both officers and suspects face in multilingual communication when professional interpretation is not available. Our focus is on both language inaccuracies due to language incompetence and communication problems due to lack of impartiality because of the officer-interpreter's primary commitment to investigation rather than unbiased interpretation. We explain why assuming the two roles, interrogator and interpreter, creates numerous difficulties: linguistic, ethical and, potentially, legal. We also illustrate how the constant switching between the two roles exerts intense cognitive pressure on the officer, which professional interpreters are trained to deal with, but the officer-interpreter is not. The consequence is an enhanced negative impact on accuracy and efficiency in evidence elicitation.*

Keywords: *Access to justice, interpreting, Limited English Proficiency (LEP), police interrogation, Spanish.*

Resumo. *Este artigo apresenta um exemplo de um estudo de caso sobre os problemas que emergem quando um agente policial bilingue interroga um suspeito e, simultaneamente, desempenha a função de intérprete, criando assim um conflito de interesses que é difícil de resolver. Refletimos sobre os desafios enfrentados, quer por agentes, quer por suspeitos, em contextos de comunicação multilingue quando a interpretação profissional não se encontra disponível. Focamo-nos, quer nas imprecisões linguísticas devidas a incompetência linguística, quer nos problemas de comunicação devidos à falta de imparcialidade decorrentes do compromisso primordial do agente-intérprete para com a investigação, mais do que numa interpretação não enviesada. Explicamos por que é que assumir os dois papéis, o de interrogador e o de intérprete, cria várias dificuldades – linguísticas, éticas e, potencialmente, legais. Também mostramos como a alternância entre os dois papéis exerce uma pressão cognitiva intensa sobre o agente, para a qual os intérpretes profissionais são treinados, mas o agente-intérprete não. O resultado é um impacto negativo mais acentuado sobre a precisão e eficiência na recolha de provas.*

Palavras-chave: *Acesso à justiça, interpretação, Proficiência Limitada em Inglês (LEP), interrogatório policial, espanhol.*

Introduction

In this article, we examine the interrogation of a suspect carried out by two police officers, where one of the officers acted as an interpreter. We use the term "police interrogation" rather than "police interview" because the communicative exchange that we analyse took place in the United States, where the approach to questioning of suspects is better described as interrogation, due to its accusatorial nature. In addition to the United States, the accusatorial method is also favoured in Canada and in many Asian countries. This method is in contrast with the information-gathering interview method, mainly practiced in the European Union, the UK, New Zealand, Australia and Norway. Confession is the primary goal in US interrogations, while in an interview-based approach the focus is rather "on obtaining from suspects information that could be used to support/verify a confession should one occur in the interview" (Soukara *et al.*, 2009). These differences between the two methods of information exchange in police contexts are also reflected in the linguistic and stylistic features that enable us to distinguish between the two (e.g. see Berk-Seligson, 2002b on when an "interview" is actually "an interrogation").

Our key goal here is to illustrate the types of problem that may occur on occasions when a professional interpreter is not available and the difficulties that both officers and suspects face in such communicative exchanges. Some issues we raise here, such as accuracy, may be problematic even when a professional interpreter is involved, as previous research has shown (e.g. Berk-Seligson, 2002a; Filipović, 2007), but here we empirically document problematic instances of non-professional interpreting and the impossibility of adequately performing both investigative and interpreting duties simultaneously. We also discuss the negative consequences of such procedural arrangements for the information-gathering process itself and more broadly for the ultimate goal of achieving equality in access to justice.

The specific issues we focus on are the *lack of neutrality and accuracy* and the *resulting impact on efficiency*. We discuss the *lexical, grammatical and discourse features* that underlie the difficulties we identified. Efficiency is seen as an overarching target in communicative exchange, which in this case is impeded by distortion of information, due to background bias and inaccuracy (or worse) in translation due to lack of required skills. We contextualise our discussion of all linguistic features in relation to this view. Our authentic data come from a bilingual interview transcript of a police interrogation with three participants, a suspect and two police officers, one of whom interprets for both his fellow officer and the suspect. It is part of a large database of bilingual and monolingual police interview transcripts and previously used in Filipović (2007), which was collected in 2006 in a number of jurisdictions in the state of California (San Jose, San Francisco and Oakland).

The issue of neutrality that we raise is related to the general question of ethics and to the particular fact that in this case the interpreting is performed by somebody who is clearly not a neutral party. In addition, the use of bilingual officers as both investigators and interpreters in the same communicative situation puts them under substantial pressure due to the different cognitive and linguistic demands that characterise the two

roles. The interpreting role alone carries a significant amount of multifaceted cognitive load, as psycholinguists who have studied translation as a cognitive process explain (see De Groot, 2011 for an overview) and as Gile (1997) also drew attention to as part of his effort model for interpreting.

The immense cognitive pressure that performing two communicative roles at once exerts on the bilingual officer is likely to result in even more aggravated loss of accuracy in translation, as well as loss of time or information that results from the role switching, as we demonstrate in our analysis below. Furthermore, equality in access to justice will also be compromised if the information content of the suspect's statement or the overall perception of the suspect is unintentionally altered due to lack of professional interpreting.

We exemplify various problems that we detected in our data and we use this analysis to highlight the kind of issues that need more academic and professional attention. Finally, it is not just neutrality and accuracy that have to be carefully considered, but also the overall efficiency, which involves delivering the best possible product in the timeliest manner and with as little cost as possible, but without compromising quality. Efficiency is very likely to be lower if a professional interpreter is not employed. Moving between languages in a single communicative situation is bound to happen at a slower pace and with a higher number of instances of confusion in communication if untrained interpreters are involved, as we discuss and illustrate in our analysis.

Research context

In the early stages of a criminal investigation police officers take the pivotal role of obtaining accurate and relevant information from alleged suspects, victims and witnesses. When the interviewee does not speak the official language of the country in which the crime took place, and the interviewer does not speak the language of the interviewee, investigative communication effectively becomes more challenging. Before we address some of the challenges that we encountered in our case study materials, we provide some background to the provision of professional language services.

The US Government acknowledged in 2000 the need for professional interpreting in the legal system and made an Executive Order which was finally ratified by the Attorney General in 2011 and which was aimed at "improving access to services by persons with Limited English Proficiency" (Limited English Proficiency, 2014). The provision consists of having "language access planning" (Limited English Proficiency, 2014) available to users at the different governmental services. The reason for this change of policy is that it is well documented that when police officers become interpreters or transcribe interviews, defendants have sufficient grounds to appeal their conviction (Berk-Seligson, 2009: 31). The US Department of Justice had researched the employment of language services and provisions in legal cases and as a result they "elaborated a set of prohibitions on the use of non-professional interpreters by law enforcement agencies, in particular, the use of "bilingual officers or employees regardless of level of bilingual competency" (Berk-Seligson, 2009: 13). Berk-Seligson (2009) studied the provision of non-professional interpreters in great detail, including police officers, employees at the police station, relatives or friends of the suspected offender, and found that such interpretation was deemed non-independent, inaccurate and biased.

We do not know, however, how strictly any policy recommendations are adhered to. In fact, we are grateful to one of our anonymous reviewers who pointed out that US police officers acting as both interrogators and as interpreters during interrogations of LEP suspects is "an increasing and pervasive problem" and that moreover, this "malpractice lends itself to legal-linguistic violations and miscarriages of justice". Furthermore, non-professional interpreting is still happening worldwide, irrespective of whether certain policies against it are in place or not. In some cases, non-professional interpreting may be the necessary approach when obtaining information from witnesses is time-critical and waiting for an interpreter may lead to loss of vital information. However, having anything but professional interpretation in suspect interviews is exposes the interrogation to actual and potential problems that may have an undeservedly negative impact on the suspect's predicament. Additionally, non-professional interpreting can consume more time and result in higher cost and resource consumption (e.g. police time) than would have been the case if professional interpretation was made available.

We have to point out that in our current analysis we cannot refer to professional standards and codes of ethics when we discuss the performance of a police officer-interpreter who has never had any professional interpreter education. There is no reason to expect a bilingual police officer to be familiar with professional interpreting norms, which are normally acquired by language professionals through specialist training. If any code of practice should be invoked in this case it is the standards that a police officer-interpreter is primarily bound to by the police department as one of its officers. Bilingual police officers see themselves first and foremost as professionals in their original contractual capacity. Thus, it is no surprise to discover that when a police officer-interpreter has the chance to extract a confession, she or he would give this priority over the neutrality principle that is inherent in the interpreter role (see Berk-Seligson, 2009 for more details on these tensions). Our aim here is to highlight the problems that arise in communication for all parties involved when the officer-interpreter switches between the two roles and starts prioritising one over the other.

We will first contextualise the current study within previous related research. Next, we will analyse specific examples from the transcript and focus on a number of lexical and grammatical contrasts between the two languages that cause difficulties in translation. We then highlight certain discourse features that characterise this specific interrogation and we point out the effects that all the detected problematic aspects may have on how the suspect's statements and attitude are perceived and understood. We also draw attention to the ways in which inaccuracies attributable to lack of adequate language competence and those driven by the lack of impartiality on the part of the interpreting officer could contribute to blame attribution. In conclusion, we summarise the findings, address their broader applicability and suggest directions for further research.

Previous relevant literature

Police interrogations have been studied in the past, but the duality of the role of the police officer-interpreter has not been examined in great detail before (with the notable exception of Berk-Seligson, 2002b); see further below). For example, Ainsworth (2010) detected a number of problems associated with coercive police interviewing, with particular reference to Miranda rights in the United States. She found that invoking one's rights does not necessarily protect against an inadvertent waiver of rights, self-incrimination or false

confession. Benneworth (2010) contrasts different interview techniques in police interviews ('closed' vs. 'open') and suggests that adopting an open interview style can make a positive difference to the interview outcome. Another perspective in investigative police interviewing research is given in Haydon (2005), who analysed power relations in the context of police interviews with suspects. She argues that in discourse terms both the interviewing officers and the suspects have power related to the information they have and share in the conversation, and that the power relationship changes throughout the interaction "relative to participants' access to resources which provide control over the interaction" (Haydon, 2005: 13). She points out further that access to these resources may be limited further by more than just a speaker's role in the interaction and can include factors such as social class, education and cultural background. This notion of discourse power is different from the notion of power related to inequality in status among the interlocutors, which is inherently present in police interviews, because of the very different respective positions of the interviewer and the interviewee. Institutionally defined social control due to the nature of the police interview situation itself engenders power asymmetry, which is manifested in communication, for example, by the control over turn-taking or topic control and management (Haworth, 2006; Haydon, 2005).

Previous research has also highlighted some specific conversation strategies used by both suspects and police interviewers. For instance, a study by Newbury and Johnson (2006) exemplifies a number of these strategies that a suspect resorts to in order to resist constraining and coercive questioning by the police. Haworth (2010) pointed out that discursive interviewer strategies are actually used for the purpose of eliciting information that is geared towards the later informational needs of the prosecution.

Cross-linguistic studies in this area are much fewer, but more are appearing as our contexts of communication, including law enforcement, become increasingly multilingual. For instance, a recent study by Kredens (2017) highlights various situational contexts in which officers and interpreters can interact successfully by sharing a common interest in effective communication.

Another recent study of professional police interpreters exemplifies the range and types of challenges and strategies they face in the context of multilingual investigative interviewing (Mulayim *et al.*, 2015). Finally, and closely related to our case, Berk-Seligson (2002b) offers an invaluable insight into how police officers may use their ambiguous role of investigator-interpreter to their advantage towards the achievement of their goal of eliciting a confession from a suspect. Berk-Seligson (2002b) noticed that the officer-interpreter in an interrogation of a murder suspect with limited knowledge of English, which she analysed, was constantly sliding back into police detective mode, using his dual role to manipulate the detainee into a confession.

This article adds another dimension to the study of police interrogation, namely original empirical insights into the kinds of difficulties that can occur when professional interpretation is not made available. Our focus is not on coercion or manipulation in police contexts and on the communication means that can be used to put pressure towards a confession. Rather, we focus on the difficulties of eliciting information accurately and efficiently from a suspect, not necessarily because of coercion or manipulation and the resistance to it, but rather due to the inability of the police officer to maintain professional standards required in this context.

We do not seek to provide broad generalisations here with regard to frequency or the applicability of our findings across different cases. We are aware of the limitations of a single case study. However, we are confident that the goal we pursue here is worthwhile, because similar or related issues may be detected in other cases and because our work can raise awareness about the need for further research in this area, with more case studies and more data and examples of this kind being made available. Therefore, our key aim here is to identify the possible sources of problems that can then be probed for and attested on other occasions and on larger datasets. We believe that the phenomena we highlight would indeed characterise other communicative exchanges of this type and the support for this view comes from one of our anonymous reviewers, who states that our article is "illustrative of prototypical police interrogations in every state of the US". Against this background, we now turn to data analysis.

Data description

Our case study is based on a written interview transcript that was made by a registered legal interpreter who worked for the San Francisco police authority. We do not have information with regard to whether this specific interview was video- or audio-recorded. This certainly imposes limitations on our analysis because we are not able to make comparisons between the actual interaction itself and the transcript that was produced. Furthermore, a number of relevant conversational features that may be relevant may not have been transcribed (e.g. hesitations, raised voice, etc.), which is another limitation of this dataset type.

The transcript is a verbatim rendering of an authentic interrogation carried out by two US police officers and the charge was alleged sexual assault. The language in which the suspect communicates is mainly Spanish but it appears that he does understand some English. The police officers are both English speakers (referred to as PO1 and PO2). One of the two officers (PO2) is a speaker of Spanish as a heritage language and he is the one doing the interpreting. The original conversation was carried out in English and Spanish and there is also a control translation into English. The control translation, henceforth referred to as (CT) in the examples, was carried out post-interview by a professional registered legal translator in accordance with the standard practice in the US (Filipović, 2013b: 341). The original conversation and translation is always on the left-hand side in the transcript and the control translation is on the right-hand side running in parallel with the original. We have preserved the same pattern in our examples where we present extensive (longer) exchanges. In single-line examples we provide either the translation by the PO2 or the control translation from the transcript and we indicate which one we present each time. We cite all the aspects of the transcript as they appeared originally, including spelling and punctuation, and we did not correct any errors that were present in the transcript in order to preserve the authenticity of the material.

It is not apparent in the transcript whether the police officers are male or female. For the sake of reference in this article, we refer to the police officers as males. The suspect was male. The original transcript (not counting the English CT text) is 26 pages long, containing 3,168 words in Spanish and 4,626 words in English. The English part of the transcript is longer in this case because there are certain sections where different conversations are carried out in English only, between PO1 and PO2, and not translated in Spanish for the benefit of the suspect.

Data Analysis

In this section we introduce and exemplify certain lexical, grammatical and discourse features that are relevant for our argument about the compromised neutrality, accuracy and efficiency that characterise this suspect interrogation. The reason we decided to focus on neutrality and accuracy, and their overall effect on efficiency is because we had detected that those were the areas in which the juggling of the two roles (investigator-interpreter) results in a noticeable impact on communication outcomes. Namely, the only ethically right option, which is to speak through a neutral interpreter, was not afforded to the suspect. The bilingual police officer may be accurate when he is speaking just one language or the other, but his fluency and accuracy decreases when he has to shift between the two languages. Finally, the performance of the dual role investigator-interpreter actually makes the communicative exchange significantly longer and more cumbersome because the bilingual officer confuses the suspect with certain inaccurate renditions from English to Spanish and the suspect has to ask repeatedly what the officer means. Moreover, the officer sometimes switches to only interrogating the suspect in Spanish without interpreting for his fellow officer, which then results in the two officers having different information and this slows the communication process down further.

Neutrality

Neutrality is something that must be preserved in interpreting, yet it is hard to do so when one has, at the same time, a responsibility for eliciting evidence. In the examples below we can see clearly that PO2 is acting as an interpreter as well as an investigator. In example (1) PO1 asks 3 questions, while PO2 contributes 6 times: three times to translate PO1's questions (underlined) and three times to ask his own set of questions. This is an example of one role intruding on another, namely the interrogator role trumping the interpreter role:

1

PO1:		Okay. Okay um at any time did she tell you that she didn't want to have sex?
PO2:	*Ah eh en cualquier tiempo que ustedes estaba ahi ella le dijo a usted que ella no queria tener sexo con usted?*	Ah eh any time that you were there, did she tell you that she did not want to have sex with you?
Suspect:	*No*	No
PO2:		No
PO1:		She never said that?
Suspect:		No
PO1:		Okay. Did she try to stop you?
PO2:	*Ella trataba de pararla a usted pa que no haga sexo con ella?*	Did she try to stop you so that you wouldn´t have sex with her?
Suspect:	*(*) cuando ya nos ibamos.*	(*) when we were already leaving.
PO2:	*Como?*	What?

Suspect:	*Cuando ya nos ibamos, que ya nos fueramos entonces me dijo (*) nos fuimos.*	When we were already leaving, that we should go then she told me (*) we left.
PO2:	*No, no, o sea, la pregunta fue si ella, cuando ustedes estaban haciendo sexo...*	No, no, say, the question was if she, when you were having sex...
Suspect:	*Um hum.*	Um hum.
PO2:	*Si ella lo paro a usted de hacer sexo?*	If she stopped you from having sex?
Suspect:	*No.*	No.
PO2:		No.
PO1:		Are you sure?
Suspect:		Yeah.
PO2:	*Seguro?*	Sure?
Suspect:		Yeah.
PO1:		Cause she´s telling me a different version of what happened.
PO2:	*Porque ella le esta diciendo algo, otra cosa de lo que paso.*	Because she is telling him something, another thing about what happened.
Suspect:	*No.*	No.

We can see in example (1) that PO2 mixes up his interpreting role with that of an investigator by expanding the questions that PO1 asked and also by adding his own questions, expanding or reformulating the original questions posed by his fellow officer. For instance, when PO1 asks "Did she try to stop you?", PO2 expands that question in the Spanish translation as "Did she try to stop you *so that you wouldn't have sex with her*?". More worryingly, immediately afterwards PO2 reformulates the same original question posed by PO1 as "...if she stopped you from having sex?", to which the suspects answers "No". As a result, something important becomes obscured, namely the possibility, that PO1 was exploring, that the victim may have tried to stop the suspect but did not manage to. This reformulation of the question and the answer may lead us to believe that the victim may not have tried to stop the suspect at all, which in the current context may be a complete distortion of fact.

This interaction dynamics are confusing for the suspect since he is not sure who he needs to address with his answers, who is asking which questions and how to establish a clear communication channel with either officer during the interrogation. The officers, likewise, are not able to establish rapport, considered to be very important in the process of suspect interviewing and interrogation (Vallano *et al.*, 2015). This kind of interaction pattern persists throughout the interview and is evident in the transcript on 10 other occasions. Part of establishing rapport in conversation involves eye contact and directing answers to the person who is asking the question. This is very difficult to achieve under the circumstances in this case. Another example illustrating the same lack of neutrality is the following:

2

PO1:		[...] I don't know what the truth is. [...] That's why we're here talking to you, getting your side of the story.
PO2:	*Nosotros no sabemos lo que paso en verdad [...] por eso estamos aqui hablando con usted solamente para ver lo que usted nos tiene que decir.*	(CT) We don't know what really happened. [...] that is why we are here talking with you, only to see what you have to tell us.

The first person singular *I* uttered by PO1 is changed in translation to we by PO2. The significance of this alteration lies in the fact that it signals that both officers are responsible for questioning, and that the suspect is put in a position to rely on the officer-interpreter for fair and accurate representation of his statements in spite of PO2 being partnered with PO1 in this communicative situation. Knowing that statements of suspects can be misrecorded even in the same language, it is easy to understand why this suspect is additionally disadvantaged by having no assurance of neutrality in translation (see Coulthard and Johnson, 2007 for details on cases of misrecorded linguistic evidence in police investigations).

These sample extracts show that police officers acting as interpreters in an investigation may not maintain neutrality and impartiality when interpreting. It is not surprising however that the officer-interpreter adds his own commentary to the other officer's questions. While this may be considered a lapse in the interpreting protocol, from the perspective of interrogation this may seem perfectly acceptable. There are in fact two officers conducting the investigation, with one of them assuming an additional role as interpreter. The point we want to make here is that the roles are difficult to separate and in the case of the exchanges above, the officer-interpreter is probably not even trying to keep them apart since his allegiance lies primarily with his police duty to elicit evidence and confession. However, the dual role set-up may get in the way of the primary, investigator role since one of the key aspects of that role is rapport-building, already made more problematic by the lack of direct communication in all interpreter-assisted interviews regardless who the interpreter is. On this occasion rapport-building is rendered more difficult indeed for both officers. Even more importantly, this type of interrogation set-up results in an ethically objectionable situation, whereby equality in access to justice seems to be compromised due to the lack of neutral professional interpreting. Legal language, including police-speak, is difficult enough even for monolinguals (see Gibbons, 2003, 2017 and communication across languages in this context adds an additional challenge for all of the parties involved, but it is of an even more significant disadvantage for the non-English-speaking suspect.

Accuracy

Accuracy is undeniably crucial in interpreting, but it is particularly hard to achieve for a police officer who is not a professional interpreter. Hale (2014: 325) argues that "the role of the interpreter is to accurately render every utterance in order to place the parties in a position similar to a monolingual one" and the achievement of such an equivalent status may be lost in translation (see Berk-Seligson, 2002a; Filipović, 2007, 2013b). In

view of this, it is recommendable that some key language differences and their potential consequences be highlighted by an interpreter from the outset of an interaction. Previous psycholinguistic research has demonstrated that language differences can lead to entrenchments of different habits and conceptualisations of events as well as differences in memory for witnessed events (see Filipović, 2011, 2013a, 2018). For example, some languages oblige speakers to use different constructions based on whether an action was performed on purpose or not (e.g. Spanish; see Filipović, 2007, 2013a,b). These important meaning differences in the domain of causation can be left unspecified in other languages and the same ambiguous constructions can be used for both intentional and non-intentional actions (e.g. as in English "He dropped the victim on the stairs" – on purpose or not?). Highlighting this kind of language contrast would contribute to an awareness about the need to formulate questions in such a way that the intended meaning is available in both the original language and the translation.

Lexical and grammatical issues

One lexical area that is important in our analysis is that of *modality*. We know that a change in modal verbs can cause a change in the interpretation of the whole event description (e.g. how likely is it that something happened or not) and it can influence our perception of witnesses as more or less reliable (see Filipović, 2016 for details). In the current analysis we detected instances, such as the one in example (3) below, that show how an interpretation of the suspect's statement may change in translation if the modal verb in the original is rendered with one that has a different meaning. Here PO2 translates an expression of desire 'quería' = 'wanted' into a strong obligation 'had to' thereby changing the original modal meaning used by the suspect:

3

Suspect:	[...] ya de ahí pues ella **quería** ir a la escuela	[CT] from there well she **wanted** to go to the school.
PO2:		[...] **she had to** go back and I took her back to school

The difference between the modal meaning in Spanish and its translation into English illustrates a shift in meaning. PO2 conveys the message as an obligation (i.e. "had to go") whilst the suspect speaks of a desire (i.e. "quería ir" = "wanted to go"). The suspect is saying that the alleged victim wanted to do something and, as evidenced later in the script, he insists on stating that he always complied with her wishes. This is an important part of his account of events. The translated statement on the other hand indicates that the alleged victim had the obligation to go to school, but does not indicate that it was actually her wish that the suspect complied with.

Other lexical and constructional difficulties are seen in the script, with impact on accuracy and efficiency of the communicative exchange. When PO2 needs to move between the two languages, he sometimes exhibits *negative transfer* of linguistic properties from one language into the other (i.e. using constructions from one language which are actually ungrammatical in the other; see Odlin, 1989 on language transfer in general). It seems likely that PO2 is a heritage language speaker of Spanish, who shows signs of either incomplete acquisition or subsequent language attrition. This is particularly

evident when a construction from one language needs significant restructuring in order to be translated satisfactorily into the other, and at the same time different lexical choices also need to be made. Though the police officer-interpreter could have used various grammatically correct Spanish constructions, in situations where he needs to switch between the two languages he at times produces ungrammatical utterances that confuse the suspect. This delays the suspect's replies, causes hesitation in his speech and results in him asking for further clarification from the officer, which then lengthens the interrogation process further.

One instance of negative language transfer from English into Spanish is seen in example (4). English does not distinguish between two different meanings of the verb "to be", temporary and permanent, "she is a teacher (at the moment)" as opposed to "she is a woman" but they are conveyed by the use of two entirely different verbs in Spanish,*estar* and *ser*. For instance, in example (4) PO2 should have said *¿cómo* ***estaba*** *ella?* and not *¿Como* ***era*** *ella?* because he was inquiring about the state of the victim at a specific time rather than her essence (i.e. permanent personality characteristics). The use of *ser* instead of *estar*, was out of context and confused the suspect:

4

P02:	*Como* ***era*** *ella?*	(CT: how **was** she?).
Suspect:		[inaudible/unclear; does not understand the question]

Another example of negative lexical and grammatical transfer to consider is when PO1 in example (5) below, says "walked her back to school" and PO2 interprets this construction as "'*la caminaste para la escuela*":

5

P02:	*Usted sabe que iba para la high school de YB porque tu* ***la caminaste*** *a la escuela?*	(CT: You know that she was going to YB high school because you walked her to school?).

The construction used by PO2 in Spanish is ungrammatical in that language and it is a literal word-for-word translation of the original English structure. A paraphrase would be in order here in Spanish, something to the effect "walked to school with her" or "accompanied her to school (walking)". The suspect's reaction to this ungrammatical question was a muffled response of confusion and it took several exchanges back and forth among the participants to resolve where the confusion was coming from. The negative transfer, in motion constructions of this type, occurs several times in the transcript. Importantly, the control translation does not signal these instances of ungrammaticality that impede comprehension; rather it just offers a grammatically correct translation into English, as illustrated in example (5). Pointing out such inaccuracies in translation and encouraging translators to make translator notes to this end can greatly improve quality control standards for transcript production.

When we see how the officer-interpreter uses inadequate words and constructions, which make the suspect hesitate and falter each time, and which force the suspect to ask for clarification on multiple occasions (i.e. by saying ¿Cómo? = What? or similar),

we have to reflect on the potential consequences that may result. We know that pauses and hesitations have negative consequences for communication in general (Dingemanse and Enfield, 2014), especially in judicial contexts where they can create the impression of a given speaker being powerless and consequently, less convincing or trust-worthy (Berk-Seligson, 2002a), or even guilty according to an anonymous reviewer of this article.

The multitude of occasions when the suspect displays such behaviour during this interrogation may reflect negatively and create a perception of him as an evasive and/or uncooperative interlocutor. A close analysis of an interview transcript would disprove that, but how can we make sure that such analyses are indeed regularly performed? In fact, this suspect was clearly protesting his innocence and giving direct responses when he understood what was being asked of him. The importance of recording and transcribing interviews becomes even more apparent on occasions like this (see Kredens and Morris, 2010 for a critical discussion on transcript production; see also Filipović, 2007, 2013b).

Discourse features

In this section we present some specific discourse features, such as question types, forms of address and exchange flow, which illustrate both general problems with certain strategies used in police interrogation, and the problem of role-juggling that is specific to the type of situation under consideration and that has repercussions for how the discourse is structured.

We begin by looking at the types of question in the interrogation. Police officers can employ a mixture of open-ended and closed questions. Closed questions are ones that clearly require either yes or no answers, whilst open-ended questions – such as those starting with *wh* – give the interlocutor an opportunity to express a "free narrative and longer responses" (Oxburgh *et al.*, 2010: 48).

In fact, there is hardly any instance of free narrative in the transcript as most of the questions are closed. Initially, some of the open-ended questioning may be felt to be non-threatening and inviting the suspected offender to give a more detailed account of his relationship with the alleged victim. Questions such as "how old are you?" and "where do you work at right now, bro?" presented in Spanish at the beginning of the interview are constructed so that the suspected offender engages with the police officers. Specifically, the term bro – short for brother (i.e.*mano* as short for *hermano* in Spanish) – is used frequently at the end of questions and more extensively right at the start of the interrogation. This informal form of address appears to be employed to attempt to even out the "asymmetrical power relationship between the police officer and the [alleged] suspect" (Berk-Seligson, 2009: 122) and to ensure that, by establishing a good rapport in police interviews, the social distance between the parties is narrowed, even though this is somehow artificial since it is clear what the respective positions, i.e. law enforcement vs. suspect, are. However, adjustment of conversation, whereby cooperation is sought through an attempt at friendly interaction, is better maintained with the use of more open-ended than closed questions. In the following extract, we can see that the police officer-interpreter is making the most of his "high level of entitlement" (Drew and Walker, 2010: 100) through the use of restrictive, closed questions:

6

PO2:	*Ella se quito la ropa o usted se la quito?*	Did she take off her clothes or did you take them off of her?
Suspect:	*Sea pues los dos nos la quitamos...*	Well say that we both took it off[1]...
PO2:	*Como?*	*What?*
Suspect:	*(*) o sea con...*	(*) or say with...
PO2:	*Usted se la quito o ella se la quito?*	Did you take it off or did she take it off?
Suspect:	Pues cuando estaba asi...	Well when she was like this...

We were also able to detect blame implication (see Atkinson and Drew, 1979 for a general discussion), as well as leading questions, which are common during interrogation. Namely, attempts to confuse, or trip the suspect up, or to use his words against him are legitimate in the context of US police interrogations. The suggestion of culpability is seen when the police officer-interpreter seems not to accept that the action was mutually agreed between the alleged suspect and the victim, although a clear direct answer "we both took it off" was given by the suspect. Repeating the same question multiple times even though the answer had been given and reversing the order of the original question by the PO1 (from "did she or did you" to "did you or did she") may indicate that PO2 is either not accepting the given answer or that he genuinely may not have understood when the suspect states that both he and the victim participated in the action of pulling the victim's trousers down (line 13 in example 7 below):

7

(01)	PO2:		
(02)			When she was laying down she take off her shirt.
(03)	PO1:		She took off her own shirt.
(04)	Suspect:	*Yeah, la blusa. Y (*).*	Yeah, the blouse. And (*).
(05)	PO1:		And who took her pants off?
(06)	PO2:	*Y quien le quito el pantalones?*	And who took off her pants?
(07)			
(08)	Suspect:	*Ella ah se los (*)*	She ah did (*).
(09)	PO2:	*Se los desabrocho usted?*	Did you unbutton them?
(10)	Suspect:	*Yeah.*	Yeah.
(11)			
(12)	PO2:	*Y se los bajo usted?*	And did you pull them down?
(13)	Suspect:	*Los dos.*	Both of us.
(14)			
(15)			
(16)	PO2:	*Usted se, usted, usted se los desabrocho de ella y se los bajo?*	You, you, you unbuttoned them and pulled them down?
(17)	Suspect:	*Si.*	Yes.
(18)	PO2:	*O no? Si?*	Or nor? Yes?

(19)			
(20)	Suspect:	*Cuando yo se los desabroche.*	When I unbuttoned them.
(21)	PO2:	*Uh huh.*	Uh huh.
(22)	Suspect:	*Ella se los asi.*	She did like this.

It is important to note here that the repetition of already answered questions has been found to lead to more false confessions (Berk-Seligson, 2009: 129). We can see this kind of insistence through the repeating of already answered questions in example (7) above. In addition, in example (7), it seems like PO2 and the alleged suspect are negotiating the "version of events" (Benneworth, 2010: 141). In each exchange, the interlocutors determine the line of action, but there appears to be a misunderstanding between PO2 and the suspect in extract (7) from lines 14 to 18. Namely, PO2 is seeking to determine whether the suspected offender undertook both actions, i.e. unbuttoning and pulling down the trousers of the alleged victim. However, the suspect clarifies the order of events by stating that he unbuttoned the trousers but that the alleged victim "did like this" (line 22). Possibly, when the suspect stated "she did like this" (line 22), he acted out pulling down the trousers as already stated in line (08). In addition, the suspect states earlier that both he and the victim pulled the victim's trousers down but then he also responds "yes" (line 17) to the question-statement by PO2, "You unbuttoned them and pulled them down" (lines 14-16), thus implying that it was him who performed all the actions. This may be incriminating for the suspect and even though it is true that he indeed pulled down the trousers of the victim, the important detail is that this action happened with the victim's consent according to the suspect's statement here, because she also apparently participated in the pulling down of the trousers. It could appear that the suspect is both saying that he pulled the trousers down and that it was the victim who did it, which is potentially damaging to his credibility.

It is important to highlight here that at this point PO2 stops interpreting altogether and switches just to direct interrogation of the suspect in Spanish. Afterwards, he speaks with his fellow officer in English and tells him what the exchange in Spanish had been about. This way of structuring discourse, whereby PO2 fully abandons his interpreter role and assumes the investigator role in a language not understood by the fellow investigator, interrupts the discourse flow severely and makes it difficult to ensure that all the details are accurately conveyed to the other officer. This switch to one of the two roles happens in other places in this transcript and makes the whole exchange more cumbersome, while also carrying information loss.

Another frequent feature throughout the interview is the high number of negative questions, which take the form of either negative interrogatives (e.g. "Didn't you...?") or negative statements with an expectation of a response. Specifically, as can be seen in questions (a) to (d) in example (8), these question types are found on multiple occasions:

8

a) PO2: You didn't finish?
b) PO1: Didn´t she kick you?
c) PO1: She didn´t kick you when you guys are having sex?
d) PO2: It didn´t go inside?

In terms of information structure, negative questions are harder to process as they carry an additional implication. As Reese and Asher (2010: 144) point out, "negative questions convey a backgrounded attitude on the part of the speaker toward the proposition expressed by the positive answer." Namely, negative questions convey a conflict with a prior belief, while positive questions have a higher degree of neutrality. Negative questions and statements imply that something should have been the case but is not. It would be a better practice to use neutral questions in investigative interviewing (e.g. "did she kick you?") because using negative questions puts both interviewers and the interviewee in a more difficult position. The interviewers can be seen as implying a certain amount of information and the interviewee is finding the processing of the expressed vs. implied meaning harder to cope with, and consequently hesitates and delays his answers, thus possibly affecting the perception of his testimony. Additionally, negative statement-questions such as "She didn't kick you?" could be answered by either confirming or denying while the same meaning stays the same, as in "yes, she didn't kick me" vs. "no, she did not kick me". It is not immediately clear to speakers, even in everyday conversations, what the appropriate answer format should be, and in high-pressure situations such as the one we are discussing here, the confusion about how to answer is likely to even greater due to tension.

Conclusions and possibilities for further research and applications

This article has highlighted some of the linguistic difficulties that may arise when a police officer who investigates a crime also takes the role of an interpreter during an interrogation. We discussed how the lack of professional interpreting competence by the officer-interpreter affected the level of neutrality and accuracy, as well as the overall efficiency of evidence elicitation and how it created additional meanings or meaning shifts that were not expressed in the original statements by the suspect. It is apparent that in the case study under consideration, the police officer acting as interpreter (PO2) does not distinguish between his role of law enforcement officer and that of neutral interpreter, and we explained why he cannot be expected to do so. We emphasised that the cognitive load of each role individually is very high, and that the simultaneous performance of both roles has a negative impact on his performance of each of them, as well as on the interaction among all the interlocutors. The cognitive pressure impacts the officer's use of Spanish, which appears worse when he is going back and forth between the two languages. This highlights the incredible skill that legal interpreters, and indeed interpreters in general, display in keeping the cognitive pressures under control. Further difficulty stems from the fact that the officer-interpreter is a heritage language speaker of Spanish, so his proficiency is particularly inadequate for an interview with a suspect in a serious assault case. This lack of proficiency and his lack of professional interpreter training, are the key reasons why we encounter numerous inaccuracies in both translation directions, English to Spanish and Spanish to English. This problem, accompanied by a lack of impartiality, leads to a distortion of meaning in the translations of both PO1's questions and the suspect's responses. PO2 introduces changes with respect to both content and presentation format, which can potentially contribute to a more negative perception of the suspect.

We acknowledge that our focus on a single, albeit multi-faceted, case is just one informative example of where points of conflict may occur in multilingual police communication conducted in the absence of professional interpreters. We trust that this

case study can serve as an alert for both police officers and professional interpreters by signalling how specific, finely-grained contrasts of language structure and use need to be attended to very closely when interrogating and interpreting, especially in legal contexts where consequences can go far beyond mere misunderstanding. Further typological analysis, that includes the contrasting of multiple languages and language pairs, is much needed, as well as the documentation of their potential and real effects in legal contexts.

As we mentioned at the beginning of this article, many English-speaking countries have some kind of provision in place that is supposed to resolve problems like the ones we have outlined, although the extent and success of policy implementation awaits confirmation. More worryingly, there are many many jurisdictions around the world where no such provisions have been made and bilingual police officers are still regularly called upon to interpret. As we know that translation can influence judgment (see Filipović, 2007; see also Ibarretxe-Antuñano and Filipović, 2013, it should be imperative to provide translation and interpretation to the highest possible standard in terms of neutrality and accuracy. We also need to take efficiency into consideration, which means that we must balance interpreter time and other costs with quality assurance. We believe that the issues we have raised in this article reflect some significant obstacles on the road to equality of access to justice for some groups, such as non-native speakers. We hope that our article will encourage further research in this area as well as contributing to a wider spread of good practice and to initiatives for fair and equal treatment for all in the justice system.

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Notes

[1]Note that "clothes" ("la ropa") is singular in Spanish, thus the pronoun "it" in this example.

References

Ainsworth, J. (2010). Miranda Rights – Curtailing Coercion in Police Interrogation: The Failed Promise of Miranda v. Arizona. In M. Coulthard and A. Jonhson, Eds., *The Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, 111–125.

Atkinson, J. M. and Drew, P. (1979). *Order in Court*. London: The Macmillan Press Ltd.

Benneworth, K. (2010). Sexual Offences - Negotiating Paedophilia in the Investigative Interview: The Construction of Sexual Offences Against Children. In M. Coulthard and A. Jonhson, Eds., *The Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, 139–154.

Berk-Seligson, S. (2002a). *The Bilingual Courtroom - Court Interpreters in the Judicial Process*. Chicago: The University of Chicago Press.

Berk-Seligson, S. (2002b). The Miranda warnings and linguistic coercion: The role of footing in the interrogation of a limited-English speaking murder suspect. In J. Cotterill, Ed., *Language in the legal process*. New York: Palgrave Macmillan, 127–143.

Berk-Seligson, S. (2009). *Coerced Confessions - The Discourse of Bilingual Police Interrogations*. Berlin: Mouton de Gruyter.

Coulthard, M. and Johnson, A. (2007). *An Introduction to Forensic Linguistics: Language in Evidence*. Abingdon: Routledge.

De Groot, A. M. B. (2011). *Language and Cognition in Bilinguals and Multilinguals: An Introduction*. New York: Taylor and Francis.

Dingemanse, M. and Enfield, N. J. (2014). Let's Talk: Special Report. *Scientific American Mind*, September/, 64–69.

Drew, P. and Walker, T. (2010). Citizens' Emergency Calls. In M. Coulthard and A. Johnson, Eds., *The Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, 95–110.

Filipović, L. (2007). Language as a witness: Insights from Cognitive Linguistics. *The International Journal of Speech, Language and the Law*, 14(2), 245–267.

Filipović, L. (2011). Speaking and remembering in one or two languages: Bilingual vs. monolingual lexicalization and memory for motion events. *International Journal of Bilingualism*, 15(4), 466–485.

Filipović, L. (2013a). Constructing causation in language and memory: Implications for access to justice in multilingual interactions. *International Journal of Speech, Language and the Law*, 20(1), 1–19.

Filipović, L. (2013b). The role of language in legal context. In M. Freeman and F. Smith, Eds., *Law and Language – Current Legal Issues*. Oxford: Oxford Press, 328–341.

Filipović, L. (2016). May vs. Might in the judgement on certainty: The difference between L1 and L2 English speakers. *Applied Linguistic Review*, 7(2), 181–201.

Filipović, L. (2018). Speaking in L2 but thinking in L1: Language-specific effects on memory for causation events in English and Spanish. *International Journal of Bilingualism*, 22(2), 180–198.

Gibbons, J. (2003). *Forensic Linguistics: An Introduction to Language in the Justice System*. London: Blackwell.

Gibbons, J. (2017). Towards Clearer Jury Instructions. *Language and Law/Linguagem e Direito*, 4(1), 142–160.

Gile, D. (1997). Conference interpreting as a cognitive management problem. In J. H. Danks, G. M. Shreve, S. B. Fountain and M. McBeath, Eds., *Cognitive Processes in Translation and Interpreting*. London: Sage, 96–214.

Hale, S. (2014). Interpreting culture. Dealing with cross-cultural issues in court interpreting. *Perspectives: Studies in Translatology*, 22, 321.

Haworth, K. (2006). The dynamics of power and resistance in police interview discourse. *Discourse and Society*, 17, 739–759.

Haworth, K. (2010). Police interviews in the judicial process: Police interviews as evidence. In M. Coulthard and A. Johnson, Eds., *Routledge Handbook of Forensic Linguistics*. Abington: Routledge, 169–194.

Haydon, G. (2005). *The Language of Police Interviewing*. Basingstoke: Palgrave Macmillan.

Ibarretxe-Antuñano, I. and Filipović, L. (2013). Lexicalization patterns and translation. In A. Rojo and I. Ibarretxe-Antuñano, Eds., *Cognitive Linguistics and Translation*. Berlin: Mouton de Gruyter, 253–284.

Kredens, K. (2017). Making sense of adversarial interpreting. *Language and Law= Linguagem e Direito*, 4(1), 17–33.

Kredens, K. and Morris, R. (2010). A Shattered Mirror? Interpreting in legal contexts outside the courtrooom. In M. Coulthard and A. Johnson, Eds., *The Routledge Handbook of Forensic Linguistics*. London: Routledge.

Limited English Proficiency, (2014). Executive Order 13166.

Mulayim, S., Lai, M. and Norma, C. (2015). *Police Investigative Interviews and Interpreting: Context, Challenges, and Strategies*. Boca Raton, FL: CRC Press.

Newbury, P. and Johnson, A. (2006). Suspects' resistance to constraining and coercive questioning strategies in the police interview. *International Journal of Speech, Language and the Law*, 13(2), 213–240.

Odlin, T. (1989). *Language Transfer: Cross-linguistic Influence in Language Learning*. Cambridge: Cambridge University Press.

Oxburgh, G. E., Myklebust, T. and Grant, T. (2010). The Question of Question Types in Police Interviews: A Review of the Literature from a Psychological and Linguistic Perspective. *The International Journal of Speech, Language and the Law*, 17(1), 45–66.

Reese, B. and Asher, N. (2010). Biased Questions, Intonation and Discourse. In M. Zimmermann and C. Féry, Eds., *Information Structure: Theoretical, Typological and Experimental Perspective*. Oxford: Oxford University Press, 139–174.

Soukara, S., Bull, R., Vrij, A., Turner, M. and Cherryman, J. (2009). What really happens in police interviews of suspects? Tactics and confessions. *Psychology, Crime and Law*, 15(6), 493–506.

Vallano, J. P., Evans, J. R., Schreiber Compo, N. and Kieckhaefer, J. M. (2015). Rapport-building during witness and suspect interviews: A survey of Law enforcement. *Applied Cognitive Psychology*, 29(3), 369–380.

Resources and constraints in linguistic identity performance: a theory of authorship

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Abstract. *The majority of practicing forensic linguists working on questions of authorship subscribe in some form to a theory of linguistic identity that relies on a view of language as essentially a product of sociolinguistic experiences and membership of particular identity categories. On the other hand, discourse analysts tend to adopt a social interactionist view, seeing language as a resource to be drawn on for the performance of particular identities. In order to bridge this gap we set out our theory of identity which acknowledges the importance of pioneering works such as Johnstone (1996) and Bucholtz and Hall (2004) who theorise identity as being interactionally emergent, while simultaneously allowing space for certain aspects of identity to persist across different interactional moments. Within the context of deceptive identity performances by undercover police officers in online investigations against child sex abusers, we propose a model for understanding the relationship between language and identity that is neither essentialist nor radically interactionist. Such a model can support the work of the forensic linguist in their endeavours to train officers in identity assumption tasks, and explicates a particular phenomenon we have observed in their attempts, namely identity 'leakage'.*

Keywords: *Identity, authorship analysis, authorship synthesis, linguistic individual, assuming identities online.*

Resumo. *A maioria dos linguistas forenses em exercício que trabalham em questões de autoria adere, de algum modo, a uma teoria de identidade linguística baseada numa perspetiva da linguagem como sendo essencialmente um produto de experiências sociolinguísticas e da pertença a determinadas categorias de identidade. Por outro lado, os analistas do discurso têm tendência para adotar uma perspetiva interacionista social, que vê a linguagem como um recurso de base no desempenho de determinadas identidades. Com o objetivo de suprimir este fosso, propomos a nossa teoria de identidade, que reconhece a importância de trabalhos pioneiros como o de Johnstone (1996) e Bucholtz and Hall (2004), que teorizam a identidade como sendo interacionalmente emergente, ao mesmo tempo que deixam margem para a persistência de determinados aspetos da identidade em diferentes momentos interacionais. No contexto do desempenho de identidade dissimulada*

por agentes secretos no âmbito de investigações online sobre abuso sexual de crianças, propomos um modelo para compreender a relação entre linguagem e identidade que não é, nem essencialista, nem radicalmente interacionista. Este modelo poderá apoiar o trabalho dos linguistas forenses nos seus esforços de formação de agentes em tarefas de tomada de identidade e explicar um fenómeno em particular que observámos nas suas tentativas, nomeadamente o 'vazamento' de identidade.

Palavras-chave: *Identidade, análise de autoria, síntese de autoria, indivíduo linguístico, assumir identidades online.*

Introduction

Linguists working with all methods of forensic authorship analysis and profiling in written texts seem to rely on some version of a rather simplistic notion of linguistic identity, centring on the theoretical notions of (i) *sociolect* and (ii) *idiolect*. Fairly well established tenets of sociolinguistics, these terms refer to (i) the linguistic varieties associated with particular social groups based on gender, age, social class etc., and (ii) the idea that each individual has their own distinct version of their language(s). Both of these concepts in turn depend on a view of language use as the product of sociolinguistic experiences. This reliance is seemingly at odds with advances that have been made within other fields, such as discourse analysis and linguistic anthropology, where language has increasingly come to be viewed in social interactionist terms – as a resource that is drawn on to index or perform particular identities, as opposed to a mere *product* of those identities. In this paper we set out to address this apparent gap by setting out our own theory of language and identity, with reference to a specific ongoing project into the relationship between language and identity in online interactions. Our contribution to the field of forensic authorship studies is theoretical; we contend that language is indeed a crucial resource for the construction and performance of identities, but we also develop the argument that the resources we draw on – linguistic or otherwise – *constrain* our potential for identity performance, as well as enabling it.

Following Johnstone (1996) it is our purpose to suggest a unified model of the linguistic individual that draws on both traditional conceptions of idiolect and more contemporary theories of linguistic identity. We propose a novel conceptualisation of identity as neither entirely the result of externally imposed social categories, nor entirely interactionally emergent, we reject the essentialist and deterministic view of identity but nevertheless wish to account for linguistic differences between individuals that persist across different interactional moments. Our clear purpose in the development of such a model is to provide a foundation for authorship analysis work and a new forensic linguistic task which we have been developing, namely, authorship synthesis.

We suggest that a theory which asserts that identities are entirely interactionally negotiated will struggle to account for the persistence of personal identity, and that the persistence of personal identity is a necessary assumption of authorship analysis. In postulating our resource-constraint model of identity we reconcile contemporary discursive understandings of linguistic identity with the theoretical underpinnings of forensic authorship analysis.

Idiolect in authorship analysis, and authorship synthesis

Forensic linguists find themselves confronted with a wide range of tasks within the remit of authorship analysis (see Coulthard, 2010; Grant, 2008) including the sociolinguistic

profiling of an author and comparative authorship analysis: the task of comparing texts of known authorship with one or more anonymous texts to with a view to potential attribution.

Since 2009 we have also been developing methods for a new forensic authorship task – that of authorship synthesis. We have been engaged in training undercover police officers (UCOs) in the specific task of online identity assumption. This work focuses principally on online Child Sexual Exploitation and Abuse (CSEA) and one typical scenario would involve an officer, with proper authorisations and permissions, taking over a child's online accounts to impersonate them in a conversation with a suspected paedophile. The purpose of such an identity assumption is to draw the otherwise anonymous offender out and secure an arrest. This authorship synthesis task is more specific than general disguise tasks such as mere author obfuscation[1]. As part of this work we have been training UCOs deployed in identity assumption tasks to carry out structured linguistic analysis of captured interactions between the child and the abuser before going online to impersonate the specific child. Our research findings demonstrate clear advantages of the linguistic training and of the authorship analysis of the target identity before deployment (MacLeod and Grant, 2017). We show that trained UCOs perform closer to the original identity than do untrained operatives, and experimental simulations show they are harder to detect.

The point of departure for sociolinguistic profiling, comparative authorship analysis and authorship synthesis is an understanding of the causes of consistency and variation in language production.

In profiling tasks, the aim is to establish as much as possible about the sociolinguistic background of the author, purely on the basis of their linguistic choices. This requires a demonstration of differences between groups. Forensic and computational linguists researching these profiling tasks can cite impressive success rates for identifying an author's gender (e.g. Argamon *et al.*, 2003), age (e.g. Koppel *et al.*, 2009), and other sociolinguistic variables. Such work however, appears to treat these variables as social categories which are essential to an individual and biologically determined. Such approaches can be described as essentialist in that the assigning of individual texts to one of just two gender groups relies on external criteria for gender, determined by the researchers, and deterministic because the prediction rests on the assumption that a particular feature of language production is seen as a consequence of membership of a particular group.

In comparative authorship analysis, where an anonymous text is associated with a particular set of texts of known authorship, similar assumptions apply. Coulthard asserts that tackling such problems relies on the idea that 'every native speaker has their own distinct and individual version of the language they speak and write' (2004: 432). Even while this strong assertion can be challenged on theoretical grounds, it has to be the case that comparative authorship analysis rests at least on the idea that a linguistic individual shows consistency of use across different texts and that such consistent use can be shown to be distinctive (see Grant, 2010). In fact no studies seem to exist that would demonstrate individual consistency 'across genre and modes of production' (but see e.g. Kestemont *et al.*, 2012 for worthwhile attempts).

The concept of the linguistic individual, the person who makes the lexical and grammatical choices in a written text or even in a spoken single utterance, remains somewhat underexamined in the authorship analysis literature, but is sometimes equated with the theoretical notion of idiolect as first introduced by Bloch (1948). Idiolect, once defined as 'the speech of one person talking on one subject to the same person for a short period of time' (in Labov, 1972: 192), has since come to be understood more broadly as the language patterns associated with a particular individual (see Coulthard, 2004).

Subsequent to Bloch (1948) and Hockett (1958) the interpretations of idiolect derive largely from a cognitivist paradigm. For forensic linguists working within this paradigm, the notion of idiolect is fundamental to any discussion of distinguishing between individuals' language use (Howald, 2008) and an individual's linguistic output is viewed as an outcome of the structures of their cognition. The idiolect, as 'the totality of speech habits of a single person' (Hockett, 1958: 321) cannot itself be observed – observation is reserved merely for examples which demonstrate the idiolect in an individual's linguistic output. From a cognitivist perspective one's idiolect is 'automatized, unconscious behaviour' (Chaski, 2001: 8), and both individual and group-level patterns are the result of patterning and systematization in language (Howald, 2008: 232).

Forensic linguists adopting a more systemic or stylistic approach on the other hand view this construal of idiolect as arguably less pivotal to methods of assessing authorship, focusing instead on individual style 'whereas in principle any speaker/writer can use any word at any time, speakers in fact tend to make typical and individuating co-selections of preferred words' (Coulthard, 2004: 432). Within Turell's (2010) concept of *idiolectal style*, for example, the focus is not on what linguistic system an individual has, but 'how this system, shared by many people, is used in a distinctive way…the speaker/writer's production…Halliday's proposal of 'options' and 'selections" (Turell, 2010: 217).

In most discussions of idiolect there is a recognition that linguistic choices are generated as a result of an individual's social experiences and the broader context of a specific text's production (Argamon and Koppel, 2013; Grant, 2010). From both cognitivist and stylistic perspectives, then, individual linguistic style is regarded as a product, either of linguistic competence and cognitive capacity on the one hand, or of differing sociohistoric experiences and context on the other. In order to draw out and comment upon the likely background of an author, or to offer an opinion on the similarity or distinctiveness of an author's choices when compared to an anonymous text, the linguist must view an individual's cognitive structures and/or sociolinguistic experiences, including their membership of particular social categories, as to some degree *determining* the linguistic choices they are likely to make when producing a text.

The usefulness of the idea of idiolect in authorship analysis work is also undermined by the fact that its existence may not be empirically provable nor falsifiable. Despite some consensus that demonstration of the existence of idiolect is one of 'the first thresholds' for establishing the sufficiency of authorship analysis techniques (Howald, 2008: 232), it is clear that even vast quantities of linguistic data from many individuals could not fully substantiate Coulthard's strong assertion of linguistic uniqueness as set out above. Since in forensic casework a requirement to compare one writer with an infinite set of candidate authors is highly unlikely, instead some argue for a focus on simple consistency and pair-wise or small-group distinctiveness (Grant, 2013). When it comes

to informing theoretical discussions of idiolect, Grant (2010, 2013), Kredens (2002) and Kredens and Coulthard (2012) all indicate that comparing an individual's linguistic style with a reference corpus of data from a relevant population will be acceptable. Establishing 'Base Rate Knowledge' (Turell and Gavaldà, 2013) for particular linguistic features allows for a deeper understanding of the otherwise idealised phenomenon of idiolect, but one practical difficulty with understanding base rates in linguistics is the identification and sampling of a relevant population. A typical practical answer to this difficulty can be found in establishing base rates in the community of practice on a case-by-case basis (see e.g. Wright, 2013, 2014), but this is time-consuming and may limit forensic casework to only well-funded cases.

As we have seen the practical successes of both stylistic and stylometric approaches to authorship analysis are undermined by assumptions of either an essentialist view of identity or a deterministic view of textual production, or both. The literature takes us some way towards resolving these problems. For example, Bamman *et al.*'s (2014) computational paper on gender differences on Twitter tackles head-on the issue that most profiling papers rest on 'an oversimplified and misleading picture of how language conveys personal identity' (Bamman *et al.*, 2014: 135), and the study attempts to mitigate this assumption by describing gendered language in terms of the gender of the typical interactants of an individual, as well as through the externally defined gender definitions. This goes some way to addressing current understandings of linguistic gender as *performance* (see Butler, 1990), rather than as a pre-determined category.

A more sophisticated view of the linguistic individual is one which accommodates ideas that 'externally imposed identity categories generally have at least as much to do with the observer's own identity position and power stakes as with any sort of objectively describable social reality' (Bucholtz and Hall, 2004: 370). Such a position creates questions for a strong deterministic link between individual and the texts they produce. To address this we move on now to discuss contemporary understandings of identity, to be contrasted with these earlier 'essentialist' approaches.

Language and identity

Le Page and Tabouret-Keller (1985) were arguably the pioneers of modern understandings of language and identity, setting out the 'Acts of Identity' model, which provides the point of departure for the theories that have influenced our own approach to the phenomena. Influenced by Giles' (1973) accommodation theory, their central principle is that individuals produce patterns of linguistic behaviour so as to resemble those of the groups with which at a given time they wish to be identified. Conversely, they may produce patterns that are different from those from whom they wish to be distinguished Le Page and Tabouret-Keller (1985: 181). The model was one of the first to emphasise the role of the individual as a creative agent projecting various identities through their linguistic behaviour, placing it in the category of more recent approaches 'in which the constitutive, agentive role of language is emphasized' (Rickford, 2011: 251). These early explorations of the relationship between language and identity paved the way for contemporary thinking around the issue, allowing sociolinguists such as Bucholtz and Hall (2004, 2005) to further the collective understanding of the role interaction has to play in identity construction. As Johnstone points out, 'it is more enlightening to think of factors such as gender, ethnicity, and audience as resources that speakers use to create unique voices, than *determinants* of how they will talk' (1996: 11, our emphasis).

According to Bucholtz and Hall (2004), language is one of several symbolic resources that are available for identity production, a position decidedly at odds with the more deterministic approaches that we discussed in the previous section. Rather than being a product of one's membership of particular social categories, language is viewed from this standpoint as a flexible and pervasive resource performing a central role in the formation of identities. For Bucholtz and Hall, identities are 'not *entirely* given in advance but are interactionally negotiated' (Bucholtz and Hall, 2004: 376, our emphasis). For some writers however, it appears to have become more or less established that identities *are* in fact *entirely* 'interactionally negotiated'. Scholars tackling the subject from an ethnomethodological or conversation analytic position, for example those represented in Antaki and Widdicombe (1998), construe identities as becoming relevant only when participants orient to and display them through the fine detail of their interaction. Variationist sociolinguistics has experienced a turn in the same direction, with a shift from traditional understandings of identity categories as static and clearly delimited towards a more dynamic interpretation in which identities are *performed* through interaction (for example Eckert, 2000, and see Androutsopoulos and Georgakopoulou, 2003).

It is interesting, therefore, to infer from Bucholtz and Hall's wording that they allow for the possibility that some aspects or degree of identity may be partially 'given in advance'. This acknowledgment creates theoretical space for work in identity theory to better understand that identities are constrained in some way, and this theoretical space is perhaps a reflection of the space in Bamman *et al.*'s (2014) paper which makes room for a less essentialist position on identity in stylometric research.

The problem of a persistent identity

The process of identity assumption such as is required by operatives taking on authorship synthesis tasks, as described above, brings to the fore the theoretical issues concerning the very idea of a linguistic individual. In order to become a specific different linguistic person one needs to understand not only who that person is, but also how *any*linguistic persona is performed and created. This requires an analysis of identity performance in separate and specific interactions, and also an understanding of how the linguistic identity might persist across different interactions where context, mode of production and audience may change. Omoniyi (2006) notes that the focus of interactionist models of identity is and has to be on moments of identity expression, an assertion in line with Coupland's plea that scholarly attention should be focussed on 'particular moments and contexts…where people use social styles as resources for meaning making' (2007: 3). We too recognise that every text and every interaction is indeed a moment of identity expression, but additionally we argue that the very idea of a personal identity also suggests *persistence*. In other words, in order for an author to be identified, or an alternative identity to be successfully performed, there must be some elements of the personhood that remain stable across interactional moments.

A theory which asserts that identities are in fact entirely interactionally negotiated will tend to assume the existence of multiple latent identities and conversely struggle to account for this idea of the persistence of an ongoing personal identity. In the practical work the purpose of identity assumption in forensic contexts is to maintain a persistence in the performed identity, disguising the fact that the UCO has substituted themselves for the child at the computer keyboard. This persistence must permeate all linguistic

levels. As well as low-level structural choices, interactional patterns of topic introduction and rejection evident in the child's genuine language use must be maintained by the replacement UCO – a significant challenge for officers as they strive to avoid potential accusations of entrapment (see Grant and MacLeod, 2016: 59). Identity persistence is important too for authorship analysis work. An attribution problem is essentially a question of generalisation since it involves the observation of features in a set of texts of known authorship and the assumption that these features will carry across to disputed or anonymous texts (Grant, 2007). Creating reasonable grounds for such a generalisation may involve an understanding of 'Base Rates' (Turell and Gavaldà, 2013) for the features and understanding of the sources of variation in style across texts of different genre and modes of production. Essentially, however, this assumption can be understood as the assertion that certain language features reflect an author's persisting identity across the production of different texts.

Persistence of personal identity has long been the focus of discussion in the philosophy literature. Noonan (2003) provides a useful historical review as well as consideration of contemporary positions. Thinking on this issue often starts with puzzles such as the Ship of Theseus. Plutarch, who introduces the puzzle, wonders whether the Ship of Theseus remains the same ship, as over time, plank by plank, parts of it are replaced until ultimately none of the original woodwork remains. An ultimately fluid personal identity which changes according to context and interaction creates a parallel puzzle for the theorist. This is also articulated in Hume's discussion of identity and the observation that he can never perceive his self separate from a particular experience and his conclusion that he is thus just a "bundle or collection of different perceptions" (Hume, 1739: Book 1, part 4, §6). If identity is created and performed through every interaction, and thus difference is created as audiences and contexts change, then there has to be a question of what, if anything, remains the same when an individual moves on to communicate with a different audience in a new context. One stream of philosophy literature from Locke (1689) onwards points generally to the importance of psychological continuity and specifically memories in personal identity. For many philosophers, although memories may be lost or only partial, personal identity is created through a chain of memory leading back to childhood. An adult will have some reliable memories of their teenage years, just as teenagers have some reliable memories of childhood, and so on back to early infancy. A persistent but changing identity can be seen to reside in this chain of memory where each link in the chain involves aspects of sameness and difference. Extreme differences between an infant and adult self are linked through these slowly changing memories (see e.g. Sokol *et al.*, 2017 for a contemporary statement of this position).

Persistence of identity therefore does not require a static and unchanging identity. It does, however, require more understanding about which aspects of identity performance remain stable while the resources we draw on are changing in each specific interactional moment. A theory that accounts for identity, then, needs to resolve these seeming contradictions, not least if it is to be of use to the forensic linguist in authorship tasks.

A resource-constraint model of language and identity

As noted above, Johnstone (1996) suggests that social factors can be seen as resources to be drawn on for identity performance rather than as determinants of linguistic production, and it is useful to consider the complement of possible resources that any individual may draw on in order to 'do' identity through interaction. The idea of what constitutes

or defines a resource can be slippery to define but we here attempt to indicate our meaning by providing an exemplar list of resource categories. We identify four categories of resource – these elements must be present to enable a communicative event which can be selectively drawn upon to thus create variation in linguistic style. These are:

1. The resources of an individual's entire sociolinguistic history.
2. The resources of an individual's physical self, primarily their cognitions as supported by the physicality of their brain, but including aspects of their biology and appearance.
3. The resources provided by the context of a given interaction.
4. The resources provided by the specific individuals and audiences involved in an interaction, including more communal resources derived through participation in a community of practice.

These are non-independent in the sense that there is rich interference between each category. We now briefly outline each of these categories of resource in turn.

An individual's *sociolinguistic history* will include all of their family history including the context of the acquisition of first and additional languages and varieties. This will include geographical, educational, and professional histories. It includes every interaction as an influence on one's personal and unique biography. This resource base is the object of much sociolinguistic research and both Johnstone (2009) and Kredens (2002) develop their theories of the linguistic individual by analysing the sociolinguistic history of particular individuals (Barbara Jordan and Morrissey respectively), showing how aspects of these individuals' identity performance can be traced back to their unique histories.

Physicality as a linguistic resource has been less directly studied in the linguistic literature. An individual's physical appearance, potentially indexing membership of a specific gender or ethnic category, will undoubtedly influence their interactions. The individual may make more or less conscious choices to perform using gendered language or an ethnolect for example, and these choices can be shaped by others' expectations, at least partially based on the individual's physical appearance. Some aspects of an individual's appearance are within their control and may be subject to conscious crafting, while others may be more difficult to change. Even when interacting textually online an individual's interactions will draw on their linguistic habits, which in turn may draw on elements of their physical appearance in this way.

One special aspect of physicality has to be the existence of a brain as a physical object in the world. Indisputably, development of the brain is a resource for developing identity performances. Damage to the brain can limit language perception and production, and ultimately this too will change and possibly limit the possibilities for certain identity performances. Furthermore, the brain has a fundamental role in memory, which supports the on-going availability of sociolinguistic history as an identity resource. Sociolinguists have been relatively uninterested in brain and cognitive resources as having a role in identity performance, but clearly some acknowledgement is necessary.

In contrast to physicality, the *context of interactions* has received considerable attention as a source of language variation at least as far back as Gumperz's (1964) interest in *linguistic repertoires*, Crystal and Davy's (1969) description of 'situational constraint' and Hymes' (1974) classic SPEAKING model. It should be noted that these works

take a largely deterministic view of the relationship between context and language use. Gumperz, for example, talks about how the individual's "freedom to select is always subject both to grammatical and social restraints" (1964: 138), while Crystal and Davy note that "features of utterance are, by definition, situationally restricted in some way" (1969: 66). With the publication of Johnstone's (1996) influential work on the linguistic individual came a shift in understanding of contextual factors as mere constraints to a view of them as resources for identity performance – we return to this point later.

Systemic approaches to language use following Halliday (see Halliday and Matthiessen, 2004 take as a starting point that context explains linguistic variation, and that understanding of the language systems requires understanding the contexts, particularly functional contexts of usage. From such a starting point it is possible to strongly define concepts such as 'register' and 'genre' and so use these in explanations of language variation. Further to this, by understanding and explaining the practices of linguistic production critical discourse analysts reveal, for example, how institutions provide structures of interaction in such a way as to provide a resource of power for some but to deny power to others (see for example Ehrlich, 2001; Thornborrow, 2002). In this literature context is given a privileged position in explaining individual performed identities.

Our fellow *interactants* might be seen as a kind of 'micro-context' and as resources on which we can draw for our identity performances. This has been studied through an interest in the mechanisms of linguistic accommodation (Giles and Powesland, 1975), which at the most basic level is concerned with the extent to which individuals adapt to, or distance themselves from, each other's communicative behaviour (see also Giles *et al.*, 1991). Attention has also been paid to how communications are designed for specific audiences (Bell, 1984), demonstrating that stylistic shift can occur as a consequence of who one is addressing, or the topic under discussion (Rickford and McNair-Knox, 1994). Lastly, we can study and understand how communities of linguistic practice (Eckert and McConnell-Ginet, 1992) can provide groups of individuals with specific linguistic resources through which they can accomplish different tasks and different identity performances. A means of grouping individuals according to some shared activity, the notion of a community of practice has been shown to be invaluable for the understanding of situated language use, including in online contexts (see Herring *et al.*, 2013).

These four areas of (i) sociolinguistic history, (ii) physical resources, (iii) context, and (iv) interactants and communities of practice, provide a catalogue of resources from which we can select in the process of identity performance. Together these resources provide a richness that can be drawn on by any individual in every interaction and enable one individual to perform a portfolio of differing identities. The identities performed by that individual in each moment might be very different depending on the specific resources which are employed in an interaction. Thus the expression of one's identity as a professional academic writing a journal article will be very different from one's identity as a husband or wife interacting with one's spouse. This resource model creates a powerful explanatory framework and understanding of how individuals can actively 'do' identity in different aspects of their lives. It also begins to articulate what we might understand as a unified identity and as a basis for some consistency amongst a wealth of very different identity performances.

Constraints

One process that featured prominently in early explorations of linguistic style but which is less often articulated within the resource model is the possibility that identity performances will be *constrained*. The resource model does not suggest that an individual can in any moment of interaction be whoever they choose. The resources available constrain individuals to a large but specific portfolio of identity performances. This constraint can occur in two ways. First, there are constraints imposed by the non-availability of specific resources. Above, we noted that a reduction in cognitive resources through brain damage might restrict an individual's identity performances, but constraint does not have to be as dramatic as this. Just as learning the norms of communication for a new genre, or learning a new language or language variety will extend the resources at someone's disposal, so too they are constrained at any particular moment by the limited number of genres, languages or varieties with which an individual is accustomed. Further to this, just as education and new experiences will expand an individual's identity resources, so to a restriction on these experiences will result in fewer potential resources and so allow for less richness in potential identity performance. The availability of identity resources can change as new resources are acquired and others are lost. Acquisition can be through unconscious acculturation or active learning and loss or partial loss may occur through sustained lack of contact with a particular community of practice or through gradual forgetting and decline in an aspect of language use or competence.

The second way in which the resource model suggests constraints on performance is that in a particular moment of interaction drawing on one set of available resources might preclude simultaneously drawing on a different set of resources. This can be clearest in consideration of contextual resources – drawing on institutional resources, for example, may be at odds with the use of more personal resources. For example, in a forensic context, the institutional opportunity to provide a victim impact statement will enable a certain performance-to express the damage caused in a crime—but reciprocally the generic constraints of a victim impact statement make it harder in this context for the individual to perform an alternative identity—that of a strong survivor of a trauma. A slightly different example may be where an interaction might draw on and thus index membership of a particular community of practice. Sometimes membership of one community of practice will preclude membership of a different, community of practice. The most extreme examples of this oppositional language use are demonstrated by the existence of linguistic shibboleths. In Northern Island, during the sectarian troubles, one such shibboleth was the pronunciation of the letter 'H'. Unionist and largely protestant communities would use the variant 'aitch' whereas the nationalist and largely Catholic communities would use the variant 'haitch'. This distinction was heard as a strong and sometimes dangerous community identity marker, so much so that there are reported incidents of individuals being stopped on the street and asked to recite the alphabet, putting them in a situation where, through their speech, they would have to identify with one community or the other. Less extreme examples include individuals who may be able to choose between street slangs and more standard varieties of English. Code switching between standard and non-standard varieties within or between interactions is strongly performative of specific and sometimes oppositional identities (see Grant, 2017 for a broader discussion). Forensic tasks involving sociolinguistic profiling use this indexing to identify resources an individual can draw on to indicate their membership

of different communities, and conversely UCOs engaging in online identity assumption have to master the resource sets of their targets to adequately assume their identity.

Johnstone (1996) elucidates, 'each of the sources of constraint on discourse… is also a source of options for discourse' (p. 28). While Johnstone reformulates the question of sources of *constraint* to focus almost exclusively on how individuals draw on their own sets of *resources*, we approach these two as inextricably linked. As we have seen at any given moment, a factor relating to the context, or an individuals' sociolinguistic history, or their physicality, and so on, may be simultaneously operating as both a constraint on, and a resource for, their identity performance. Constraints on identity performances are implicit aspects of the resources available to an individual in interaction and it is because of this that we refer to the model of identity as a resource-constraint model.

Persistence of resource

This resources-constraint model of identity and authorship does not of itself resolve the issue of how our understanding can move from the idea of a chain of momentary interactions indexing a variety of identity positions to a more continuous understanding of an on-going personal identity. That is to say the resource-constraint model of identity alone does not account for the persistence of identity beyond each interactional moment. We have seen that many of the resources on which an individual can draw – for example the specific interactants and contexts – can change radically between moments of interaction. Conversely we might find other resources that are more constant. This is an important dimension and is crucial to our view of the persistent linguistic identity. We draw distinctions between *dynamic identity resources* and *stable identity resources*. (It seems to us that it is unlikely that there are entirely *static identity resources*). Dynamic resources can typically be identified as the contextual resources which can be observed to change rapidly from interaction to interaction. Across mode of production, for example, I draw on differing resources when speaking or writing; or across different types of speech events or genres, I will draw on aspects of differing audiences or institutional expectations to inform my identity performances. Although sometimes interactants and contexts can also be stable (and limited) for many individuals, stable identity resources might most typically include the resources of our sociolinguistic history and of our physicality. It is not the case that these resources are static resources. Our sociolinguistic histories, for example, continue and accumulate over time, but do so slowly and perhaps imperceptibly. We can also deliberately choose to accelerate the acquisition of new resources, for example by consciously attempting to learn new languages or taking opportunities for novel experiences, but without this effort they remain largely stable. Our physicality too is subject to slow change. Our bodies and brains develop, mature and may be subject to deterioration or even catastrophic accidental change. However, it is in these two areas, the sociolinguistic and the physical, where change of available resources tends to be more gradual, and thus it is in these areas that there is room to find an explanation of persistence of identity over different interactions and over time. An individual is constrained in their identity performances to choose from within all of the resources available, and the stability of their physicality and accumulated sociolinguistic history helps create a set of habitual identities which tend to draw on similar resource sets over time.

Implications of the resource-constraint theory for authorship analysis and synthesis

The resource-constraint model has implications for authorship analysis tasks and authorship synthesis tasks.

In comparative authorship analysis, understanding constraints will be a focus as it is these constraints to identity performance that will create the most robust differences between individuals.

In such casework the analyst needs to focus on linguistic resources which are stable across known and queried texts (K and Q texts respectively). This requires an appreciation of any genre variation between K and Q texts, any difference of audience etc. In the Birks case described in Grant (2013) it was noted by the investigators that prior to the crucial point in the time line Amanda Birks frequently ended her texts "Xxx" but after that point this was rare. The investigators believed this to be a significant marker indicative of a switch of authorship but an analysis of audience quickly showed that this use was reserved for close family members. After her husband had taken control of the phone there were fewer texts to close family, and it was this that explained the decline in use. "Xxx" was not a marker of the authorial style but a marker of the relationship with the recipient. Sometimes the explanation of language variation between K and Q texts will resolve to contextual or generic resources, in which case these features are not strong authorship markers, but in other cases such differences might indeed be explained more in terms of an individual's own habitual choices. Sampling strategies for the collection of comparison data in comparative tasks will need to control for dynamic resource change e.g. by selecting relevant texts for comparison in terms of context and audience, to throw into relief those variations in style which might be drawing on more stable resources. We might also expect as a prediction of the theory that features relating to more stable resources may be more consistent over time.

In sociolinguistic profiling the task is now recast as an examination of the text to understand the resources that the author is drawing on to produce that text. The most important resource set will be that of the individual's sociolinguistic history, and the physical self will be secondary to the performances within that sociolinguistic history. A profile may, for example, include the comment that a text contains features of a specific ethnolect, but this will be a comment only on the influence of a linguistic community on the author's linguistic output. Inferences about ethnicity would be an additional step, and one the linguist should be unwilling to take. In one of our profiling cases the use of the repeated dialect term "bad-minded people" and "bad-minded men" was identified as drawing on Jamaican English. In the report a careful distinction was drawn – that this evidenced the individual's language contact with Jamaican English, but that this indexed familiarity with a community of practice not the ethnicity of the author. When the individual was finally identified he in fact turned out to be a black British man of Jamaican origin, but the analysis would have rightly allowed for the possibility that he was a white British reggae fan. In the research context, as we have seen, Bamman *et al.* (2014) were able to identify individuals who draw on aspects of female language style, but for some individuals who appeared to be biological males, their female language style was actually explained by the fact that most of their interactants were women.

Expert authorship synthesis requires analysts to recognise and acquire some of the language resources that the target identity is drawing on. These will include the dynamic

resources of context and audience but more important are the stable resources of the individual's sociolinguistic history and cognitive linguistic habits. Again, authorship features might be categorised into those which would be better explained by dynamic resources, and those better explained by more stable resources. If the UCO cannot draw on a similar resource set to the target identity, then their identity assumption will be constrained and may be more easily detected. In addition to the acquisition of new resources the model suggests that the UCO performing a target identity will need to suppress resources available to their own linguistic production but not available to the target identity. Thus a further prediction of the model is that less competent or less well-trained identity assumption will be subject to identity 'leakage'. That is to say where identity assumption is unsuccessful we will expect to find hybrid identities which draw on both the home resource set of the UCO and also on those of the target identity.

Any theory is best tested by making predictions from the theory and then by subjecting such predictions to empirical testing. We do not have space here to elucidate all the possible predictions from the theory but it is possible to explore briefly the prediction of linguistic leakage in identity assumption with reference to data collected during experiments we carried out as part of a wider project investigating the relationship between language and identity in online contexts (see Grant and MacLeod, 2016; MacLeod and Grant, 2016.

Linguistic leakage can be found in both low level stylistic features and higher level discursive features of identity assumption. Figure 1 below gives us an insight into two lower level features in the habitual style of two experimental participants – the use of clause boundary commas and the use of initialisms such as "lol" or "brb".

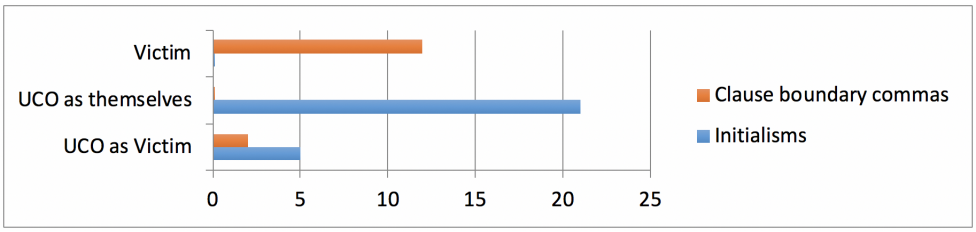

Figure 1. Linguistic leakage of stylistic features.

What can be seen here is the victim in the simulation uses clause boundary commas but not initialisms. In contrast the 'UCO', chatting as themselves, does not use clause boundary commas but does use a large number of initialisms. When the UCO attempts to assume the victim's identity they are at least partially successful in that they are now using some clause boundary commas. Thus, they have been successful in changing their style and this can be theorised as drawing on the victim's historic language as a resource, noticing, mimicking, and so acquiring a new feature and opportunity for identity expression. However we can see that they are unable to entirely suppress their natural inclination to use initialisms. In terms of the resource-constraint model they have studied the victim's chat and this has given them the resource to become more like her. But they are also drawing on language resources which were unavailable to or unused by the victim. This predicted observation of linguistic leakage and the performance of hybrid identities is not limited to lower level features – in other examples we see

UCOs unable to suppress discursive or pragmatic habits. This is of course a long way from demonstrating the theory to be true, but other predictions can be made from the theory and tested. Categorising linguistic features for authorship analysis tasks into those which are better explained by dynamic as opposed to stable features is also worthy of consideration.

Conclusion

In this paper we have proposed a detailed model of the linguistic individual, and shown how this model can provide a theoretical basis for forensic linguistic casework in authorship analysis and synthesis. The model is neither essentialist nor radically interactionist. It explains identity performance as a process of drawing on the resources available for an interaction and addresses the problem of the persistence of identity across moments of interaction. We believe this persistence is best explained through the recognition that some resources which are drawn upon for identity performance are stable and subject to only slow change. Further to this we have discussed how the theory helps support the tasks of the forensic linguist in comparative authorship analysis, in sociolinguistic profiling and in training UCOs in identity assumption. Finally we briefly explore one prediction of the theory that identity assumption is likely to lead to linguistic leakage and the observation of hybrid identities and show that this prediction can be supported. We are further examining and developing the theory for other predictions which might be empirically tested.

Notes

[1]See http://pan.webis.de/clef17/pan17-web/index.html for more on specific authorship tasks

References

J. Androutsopoulos and A. Georgakopoulou, Eds. (2003). *Discourse Constructions of Youth Identities*. Amsterdam: John Benjamins.

Antaki, C. and Widdicombe, S. (1998). *Identities in Talk*. London: Sage.

Argamon, S. and Koppel, M. (2013). A systemic functional approach to automated authorship analysis. *Journal of Law and Policy*, 21(2), 299–315.

Argamon, S., Koppel, M., Fine, J. and Shimoni, A. R. (2003). Gender, genre and writing style in formal written texts. *Text*, 23(3), 200–225.

Bamman, D., Eisenstein, J. and Schnoebelen, T. (2014). Gender identity and lexical variation in social media. *Journal of Sociolinguistics*, 18(2), 135– 160.

Bell, A. (1984). Language style as audience design. *Language in Society*, 13(2), 145–204.

Bloch, B. (1948). A set of postulates for phonemic analysis. *Language*, 24(1), 3–46.

Bucholtz, M. and Hall, K. (2004). Language and identity. In A. Duranti, Ed., *A Companion to Linguistic Anthropology*. Oxford: Wiley, 369–394.

Bucholtz, M. and Hall, K. (2005). Identity and interaction: a sociocultural linguistic approach. *Discourse Studies*, 7(4), 585–614.

Butler, J. (1990). *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge.

Chaski, C. (2001). Empirical evaluations of language-based author identification techniques. *Forensic Linguistics: The International Journal of Speech Language and the Law*, 8(1), 1–65.

Coulthard, M. (2004). Author identification, idiolect, and linguistic uniqueness. *Applied Linguistics*, 24(4), 431–447.

Coulthard, M. (2010). Experts and opinions: In my opinion. In M. Coulthard and A. Johnson, Eds., *The Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, 473–486.

Coupland, N. (2007). *Style: Language Variation and Identity*. Cambridge: Cambridge University Press.

Crystal, D. and Davy, D. (1969). *Investigating English Style*. Abingdon: Routledge.

Eckert, P. (2000). *Linguistic Variation as Social Practice: The Linguistic Construction of Identity in Belten High*. Oxford: Blackwell.

Eckert, P. and McConnell-Ginet, S. (1992). Think practically and look locally: Language and gender as community–based practice. *Annual Review of Anthropology*, 21, 461–490.

Ehrlich, S. (2001). *Representing Rape: Language and Sexual Consent*. London: Routledge.

Giles, H. (1973). Accent mobility: A model and some data. *Anthropological Linguistics*, 15, 87–105.

Giles, H., Coupland, N. and Coupland, J. (1991). Accommodation Theory: Communication, Context, and Consequence. In H. Giles, J. Coupland and N. Coupland, Eds., *Contexts of Accommodation*. New York, NY: Cambridge University Press.

Giles, H. and Powesland, P. F. (1975). *Speech Style and Social Evaluation*. New York: Harcourt Brace.

Grant, T. (2007). Quantifying evidence in forensic authorship analysis. *International Journal of Speech, Language and the Law*, 14(1), 1–25.

Grant, T. (2008). Approaching questions in forensic authorship analysis. In J. Gibbons and M. Turell, Eds., *Dimensions of Forensic Linguistics*. Amsterdam: John Benjamins.

Grant, T. (2010). Txt 4n6: Idiolect free authorship analysis? In M. Coulthard and A. Johnson, Eds., *The Routledge Handbook of Forensic Linguistics*. Abingdon: Routledge, 508–522.

Grant, T. (2013). Txt 4N6: Method, consistency and distinctiveness in the analysis of SMS text messages. *Journal of Law and Policy*, 21(2), 467–494.

Grant, T. (2017). Duppying yoots in a dog eat dog world, kmt: Determining the senses of slang terms for the Courts. *Semiotica*, 216, 479–495.

Grant, T. and MacLeod, N. (2016). Assuming identities online: experimental linguistics applied to the policing of online paedophile activity. *Applied Linguistics*, 37(1), 50–70.

Gumperz, J. J. (1964). Linguistic and social interaction in two communities. *American Anthropologist 66*, 6(2), 137–153.

Halliday, M. and Matthiessen, C. (2004). *An Introduction to Functional Grammar*. Abingdon: Routledge.

Herring, S., Stein, D. and Virtanen, T. (2013). Introduction to the pragmatics of computer-mediated communication. In S. Herring, D. Stein and T. Virtnanen, Eds., *Pragmatics of Computer-mediated Communication*. Berlin: de Gruyter, 3–32.

Hockett, C. F. (1958). *A Course in Modern Linguistics*. New York: MacMillan.

Howald, B. (2008). Authorship attribution under the rules of evidence: empirical approaches in the layperson legal system. *The International Journal of Speech, Language and the Law*, 15(2), 219–247.

Hume, D. (1739). *A Treatise of Human Nature*. London: John Noon.

Hymes, D. (1974). *Foundations in Sociolinguistics: An Ethnographic Approach*. Philadelphia: University of Pennsylvania Press.

Johnstone, B. (1996). *The Linguistic Individual: Self-expression in language and linguistics*. Oxford: Oxford University Press.

Johnstone, B. (2009). Stance, style and the linguistic individual. In A. Jaffe, Ed., *Sociolinguistic Perspectives on Stance*. Oxford: Oxford University Press.

Kestemont, M., Luyckx, K., Daelemans, W. and Crombez, T. (2012). Cross-Genre Authorship Verification Using Unmasking. *English Studies*, 93(3), 340–356.

Koppel, M., Schler, J. and Argamon, S. (2009). Computational Methods in Authorship Attribution. *JASIST*, 60(1), 9–26.

Kredens, K. (2002). Towards a corpus-based methodology of forensic authorship attribution: a comparative study of two idiolects. In B. Lewandowska-Tomaszczyk, Ed., *PALC'01: Practical Applications in Language Corpora*. Frankfurt am Mein: Peter Lang, 405–437.

Kredens, K. and Coulthard, M. (2012). Corpus Linguistics in authorship identification. In P. Tiersma and L. M. Solan, Eds., *The Oxford Handbook of Language and Law*. Oxford: Oxford University Press, 504– 516.

Labov, W. (1972). *Sociolinguistic Patterns*. Philadelphia: University of Pennsylvania Press.

Le Page, R. B. and Tabouret-Keller, A. (1985). *Acts of Identity: Creole-Based Approaches to Language and Ethnicity*. Cambridge: CUP.

Locke, J. (1689). *An Essay Concerning Human Understanding*. Indianapolis: Hackett Publishing.

MacLeod, N. and Grant, T. (2016). "You have ruined this entire experiment... shall we stop talking now?" Orientations to the experimental setting as an interactional resource. *Discourse, Context & Media*, 14, 63–70.

MacLeod, N. and Grant, T. (2017). "go on cam but dnt be dirty": linguistic levels of identity assumption in undercover online operations against child sex abusers. *Language & Law / Linguagem e Direito*, 4(2), 157–175.

Noonan, H. W. (2003). *Personal Identity*. Abingdon: Routledge.

Omoniyi, T. (2006). Hierarchy of identities: a theoretical perspective. In T. Omoniyi and G. White, Eds., *The Sociolinguistics of Identity*. London: Bloomsbury Publishing, 11–22.

Rickford, J. (2011). Le Page's theoretical and applied legacy in sociolinguistics and creole studies. In L. Hinrichs and J. T. Farquharson, Eds., *Variation in the Caribbean: From creole continua to individual agency*. Amsterdam: John Benjamins, 251–272.

Rickford, J. and McNair-Knox, F. (1994). Addressee and topic-influenced style shift: A quantitative sociolinguistic study. In D. Biber and E. Finegan, Eds., *Sociolinguistic Perspectives on Register*. Oxford: Oxford University Press, 235–276.

Sokol, Y., Conroy, A. K. and Weingartner, K. M. (2017). The cognitive underpinnings of continuous identity: Higher episodic memory recall and lower heuristic usage predicts highest levels of self-continuity. *Identity*, 17(2), 84–95.

Thornborrow, J. (2002). *Power Talk: Language and Interaction in Institutional Discourse*. Harlow: Longman.

Turell, M. and Gavaldà, N. (2013). Towards an index of idiolectal similitude (or distance) in forensic authorship analysis. *Journal of Law and Policy*, 21(2), 495–514.

Turell, M. T. (2010). The use of textual, grammatical and sociolinguistic evidence in forensic text comparison. *The International Journal of Speech, Language and the Law*, 17(2), 211–250.

Wright, D. (2013). Stylistic variation within genre conventions in the Enron email corpus: Developing a text sensitive methodology for authorship research. *International Journal of Speech, Language and the Law*, 20(1), 45–75.

Wright, D. (2014). *Stylistics versus Statistics: A corpus linguistic approach to combining techniques in forensic authorship analysis using Enron emails*. Unpublished phd thesis, University of Leeds.

Do Perverted Justice chat logs contain examples of Overt Persuasion and Sexual Extortion? A Research Note responding to Chiang and Grant (2017, 2018)

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Abstract. *Studies by Chiang and Grant (2017, 2018) on the rhetorical moves of online child sexual abusers suggest that interactions between offenders and adults posing as children differ in various ways from those between offenders and genuine child victims. They point specifically to the use by one offender of moves identified as Overt persuasion and Extortion in his interactions with real children noting that these were absent from data featuring adults posing as children. The current study investigates whether these more coercive and forceful moves are in fact absent in sexualised interactions between offenders and adult decoys by applying corpus linguistic techniques to a corpus of 622 chat logs. It is shown that overtly persuasive language is rare in the texts, and that no extortion occurred. This finding supports Chiang and Grant's claim and their assertion that data featuring adult decoys is not truly representative of interactions between child victims and their abusers.*

Keywords: *Child abuse, CSE, CSEA, grooming, sexual abuse, CMC, computer-mediated communication, IRC, moves.*

Resumo. *Estudos de Chiang and Grant (2017, 2018) sobre os passos de retórica de agressores sexuais de crianças online sugerem que as interações entre os agressores e os adultos disfarçados de crianças diferem, de diversas formas, daqueles que ocorrem entre agressores e genuínas vítimas infantis. Esses estudos apontam especificamente para a utilização, por um agressor, de passos identificados como Persuasão direta e Extorsão nas suas interações com crianças verdadeiras, destacando a ausência destes passos nos dados relativos a adultos atuando como crianças. O presente estudo investiga se estes passos mais coercitivos e forçados estão, de facto, ausentes das interações sexualizadas entre os agressores e os adultos usados como engodo, aplicando técnicas de linguística de corpus a um corpus de 622 registos de conversas. Este estudo revela que a linguagem abertamente persuasiva é rara nos textos e que não se registou qualquer ocorrência de extorsão. Este resultado reforça o argumento de Chiang e Grant e a sua afirmação de que*

os dados com adultos atuando como engodo não são verdadeiramente representativos das interações entre vítimas infantis e os seus agressores.

Palavras-chave: *Abuso de crianças, CSE, CSEA, aliciamento, abuso sexual, CMC, comunicação mediada por computador, IRC, passos.*

Introduction

Chiang and Grant (2017) investigated the rhetorical moves (Swales, 1981, 1990) used by online groomers in sex abuse conversations. Following many researchers from psychology, criminology and computational text analysis work (e.g. Williams *et al.*, 2013; Marcum, 2007; Cano *et al.*, 2014, respectively) their data comprised transcripts taken from the perverted-justice.com (PJ) website, in which the potential offenders are actually interacting with adult 'decoys' posing as child victims, rather than interacting with real children. Chiang and Grant (2018) is the first linguistic study to analyse the naturally occurring sex abuse conversations between adult offenders and actual children and this analysis pointed to a set of further persuasive and coercive linguistic moves used by the offender which appeared to be absent from the PJ data. This brief research note reports a more comprehensive investigation of that observation, in an attempt to confirm whether or not the PJ data does indeed differ in this regard from the naturally occurring data, and if so what the implications of that are.

Chiang and Grant (2017) took a small set of seven PJ transcripts and noted that the different offenders in these transcripts used common moves in their interactions. These clustered around themes of victim selection, rapport and various assessments and sexual activities. Example moves included *Rapport building, Assessing likelihood and extent of engagement*, and *Maintaining/escalating sexual content.* They comment particularly that in the complex network of moves and strategies used by offenders, no obviously persuasive moves were identified in the transcripts.

In Chiang and Grant (2018), a subsequent study into online abusive interactions between an adult offender and genuine child victims, however, they noted the presence of two previously unseen moves which they labeled *Overt persuasion* and *Extortion.* They argue in that paper that these moves occur (at least in part) as a result of the victims being genuine children, who display a degree of resistance to the offender's sexual advances. This contrasts with the adults posing as children in the PJ data, and causes the offender to occasionally resort to the more coercive, forceful moves. Although Chiang and Grant (2018) note that several other studies using PJ data also fail to observe overtly persuasive or coercive moves (e.g. Black *et al.*, 2015; Lorenzo-Dus *et al.*, 2016; Winters *et al.*, 2017), their 2017 study was based on a small sample – just seven transcripts, each detailing a single interaction. Furthermore, the selection made by Chiang and Grant was also based on the presence of some preparatory rapport building work in the chat; those transcripts where explicitly sexual topics were introduced at the outset were excluded. This study therefore aims to further investigate the possible presence of coercive linguistic behaviours by taking the entire PJ dataset of 622 conversation transcripts and using corpus linguistic techniques to try and identify examples of overt persuasion or sexual extortion.

Data and Methods

A corpus of chat log transcripts was created comprising all 622 chat logs from Perverted-Justice.com's archive (as accessed in January 2018). Two scripts were written in Python

3.6 to achieve this. The first script was used to download the raw chat log files into a local folder and to remove unwanted material such as HTML, metadata and the adult decoy's comments and also to automatically extract a list of usernames from the corpus. The second script (and some manual editing) was used to further clean up the files and create a usable corpus.

Using AntConc (Version 3.4.3, Anthony, 2014) wordlists and lists of bigrams and trigrams were created, excluding a stop list of the usernames. Keyterms (words, bigrams and trigrams) were also elicited using the Brown corpus as a reference corpus (Francis and Kucera, 1979). Each of these lists was manually examined for words that might indicate direct persuasion, coercive or threatening language and these items were labeled as such and added to a list of search terms. Further to this a second set of search terms was generated from Chiang and Grant (2018) through an examination of the moves they had labeled as Overt Persuasion and Extortion. Finally, synonyms of search terms were identified using a synonym dictionary and related terms were also added to create a final list. The full collection of search terms (see Table 1 below) was then used to query the corpus of chat logs and examine their use in context.

Findings

The approach described above led to the list of 50 search terms shown in Table 1 below.

as I say	if u	tell you
bitch	if u don't	telling u
dare	if you	telling you
do it	if you don't	told to
don't u dare	just do it	told u
don't you	know where u	told you
don't you dare	know where you	trouble*
dont	lil slut	trubbl*
dont eva	little bitch	u better
dont ever	little slut	u remember
dont you ever	my bitch	wet*
enjoy*	need to	what I say
fault*	now	where u live
fault for being	or I	where you live
fault that	remember	white slut
hard*	slut	you better
i know where	tell u	

∗ these terms suggest victim blaming/complicity and are discussed further below.

Table 1. Search terms used to look for evidence of overt persuasion or sexual extortion

Using these terms the searches provided examples in context of persuasive or coercive language in the PJ corpus. These were generally a small number of isolated cases, which were categorised into orders, conditional threats, and instances of victim blaming/complicity. Occurences for each of these categories are shown below.

Orders by offender:

***Examples*:**

- Offender 1: dress as I say
- Offender 2: you be daddys little bitch do as you are told to

These examples show attempts by the offender to control their victim using the authority they have or believe they have over them. There is no indication in these instances of any consequence that might arise from the victim not following these 'orders'.

Conditional threats by offender:

***Examples*:**

- Offender 3: i will break it then
- Victim 3: break what
- Offender 3: our relation, if u dont open your cloths or dont love me when we meet

- Offender 4: do it now
- Offender 4: do it now or I'm not coming.....very serious about this....

- Offender 5: you better not be going any place today or i'm going to be upset.....today is OURS!! I love you@;-

These examples show the offender using some leverage against the 'victim' (who is in reality the adult decoy). The first two examples suggest the threat is to break off the relationship, the final example is emotional, if the victim does not do as asked this will upset to the offender.

Victim blaming and complicity:

***Examples*:**

- Offender 6: I didn't talk u into
- Offender 6: don't u dare blame me, we both talked and were happy 2 do it

- Offender 7: its your fault for being a hottie
- Offender 7: so i blame youi

- Offender 8: and you have to take my shirt off remember

- Offender 6: cause if anyone knows we will be in big trouble

- Offender 9: ya I don't wanna get in trbl

These examples are attempts to coerce the victims by convincing them that their activity has made them complicit in the interaction and that they are responsible for their own abuse. This line of argument might result in a real victim being more open to more direct extortion.

Discussion

These findings are different from the examples found in Chiang and Grant (2018) both in the quantity of overt persuasion and direct extortion and in the nature of the moves in the interaction.

First, the examples of overt persuasion were rare – the ten examples from the nine offenders provided above constitute the complete set of definite examples from the 622 chat logs. There are a further 15 borderline examples which were excluded as being contextually ambiguous and therefore not clear examples.

Second, no examples of explicit sexual extortion were found, and there were no borderline cases to consider as 'possibles'. Chiang and Grant (2018: 10-11 advance access) cite direct examples such as '*… ill just send the pics/vid to all ya contacts*'; and examples which are less direct, '*[I've] got the vide*o'; or less specific, '*ill fuck u around*'. These tend to occur when the child has already provided indecent images of themselves and the PJ organisation specifically states that their volunteers will not transmit such images in their activities. This may provide a partial explanation for the difference as discussed below.

Of course Chiang and Grant (2018) studied just a single offender who used both overt persuasion and extortion and this clearly does not provide a measure of prevalence across offenders but recent academic studies do suggest a broader prevalence for this behaviour with some offenders (see Açar, 2016; Kopecký, 2017; Wolak *et al.*, 2018). There does seem to be a clear distinction between naturally occurring activity and the PJ chat logs.

Third, where examples were found in the PJ data, these do seem to be parallel to examples found in Chiang and Grant (2018: 10-11 advance access) for example, Chiang and Grant also report threats to leave the conversation, e.g. '*get ur cam workin…* or *im goinn*' and instances of victim blaming, for example '*just remember u caused this…*'.

Overall, this study supports the hypothesis that the PJ data set is different from the naturally occurring data. It is our view that this difference occurs not only because of the difference in participants age (between actual children and adult decoys pretending to be children), and the fact that the offender will not receive indecent images from a decoy (which may become the basis of extortion), but also because of the contextual differences. To us it seems crucial that the child's and adult decoy's understandings of and footings in the respective interactions differ. PJ volunteers posing as children are indirectly but actively trying to get the offender to be sexually explicit and to arrange an offline sexual encounter. The decoys thus seem willing to maintain conversations even when those conversations might be uncomfortable for the child persona they are performing (as predicted by Williams *et al.*, 2013). In this way, they act differently from actual children. From the offenders' perspective this may present the decoy as an ideal victim and seems to create a situation where there is no need for the offender to employ overtly persuasive techniques.

The importance of this finding, that PJ data is not a perfect proxy for naturally occurring child abuse conversations, may depend on the focus of a particular research study and PJ data may still be useful for asking some important questions. Our strong conclusion though is that researchers across disciplines ought to be aware that in analysing

PJ chat logs they are not in fact analysing conversations which involve the abuse of children.

References

Açar, K. V. (2016). Sexual Extortion of Children in Cyberspace. *International Journal of Cyber Criminology*, 10(2), 110–126.

Anthony, L. (2014). AntConc (Version 3.4. 3).

Black, P. J., Wollis, M., Woodworth, M. and Hancock, J. T. (2015). A linguistic analysis of grooming strategies of online child sex offenders: Implications for our understanding of predatory sexual behaviour in an increasingly computer-mediated world. *Child Abuse & Neglect*, 44(140-149).

Cano, A. E., Fernandez, M. and Alani, H. (2014). Detecting Child Grooming Behaviour Patterns on Social Media. In A. L. M. and D. McFarland, Eds., *Social Informatics, Lecture Notes in Computer Science, 8851.* [online]. ed.

Chiang, E. and Grant, T. (2017). Online grooming: moves and strategies. *Language and Law / Linguagem e Direito*, 4(1), 103–141.

Chiang, E. and Grant, T. (2018). Deceptive identity performance: Offender moves and multiple identities in online child abuse conversations. *Applied Linguistics*, To be publ.

Francis, W. N. and Kucera, H. (1979). *The brown corpus: A standard corpus of present-day edited american english.* Providence, RI: Department of Linguistics, Brown University.

Kopecký, K. (2017). Online blackmail of Czech children focused on so-called "sextortion" (analysis of culprit and victim behaviors). *Telematics and Informatics*, 34, 11–19.

Lorenzo-Dus, N., Izura, C. and Pérez-Tattam, R. (2016). Understanding grooming discourse in computer-mediated environments. *Discourse, Context and Media*, 12, 40–50.

Marcum, C. (2007). Interpreting the intentions of internet predators: An examination of online predatory behavior. *Journal of Child Sexual Abuse*, 16(4), 99–114.

Swales, J. (1981). *Aspects of Article Introductions: Aston ESP Research Reports No. 1.* Birmingham: Language Studies Unit, Aston University.

Swales, J. (1990). *Genre Analysis: English in academic and research settings.* Cambridge: Cambridge University Press.

Williams, R., Elliott, I. A. and Beech, A. R. (2013). Identifying Sexual Grooming Themes Used by Internet Sex Offenders. *Deviant Behavior*, 34(2), 135–152.

Winters, G. M., Kaylor, L. E. and Jeglic, E. L. (2017). Sexual offenders contacting children online: an examination of transcripts of sexual grooming. *Journal of Sexual Aggression*, 23(1), 62–76.

Wolak, J., Finkelhor, D., Walsh, W. and Treitman, L. (2018). Sextortion of Minors: Characteristics and Dynamics. *Journal of Adolescent Health*, 62(1), 72–79.

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)
Newcastle upon Tyne: Cambridge Scholars Publishing

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[1]. 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

[1]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

Fishman, C. S. (2006). Recordings, transcripts, and translations as evidence. *Washington Law Review*, 81(3), 473–523.

Fraser, H. (2014). Transcription of indistinct forensic recordings: Problems and solutions from the perspective of phonetic science. *Language and Law/Linguagem e Direito*, 1(2), 5–21.

Gilbert, D. W. (2017). Electronic surveillance and systemic deficiencies in language capability: Implications for Australia's courts and national security. In D. Caruso and Z. Wang, Eds., *Proof in Modern Litigation: Evidence law & forensic science perspectives*. Adelaide: Barr Smith Press, 123–142.

Wald, B. (1995). The problem of scholarly predisposition: G. Bailey, N. Maynor, & P. Cukor-Avila, eds., The emergence of Black English: Text and commentary. *Language in Society*, 24(2), 245–257.

Book Review

Detecting Deception: Current Challenges and Cognitive Approaches

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Detecting Deception: Current Challenges and Cognitive Approaches

Pär Anders Granhag, Aldert Vrij & Bruno Verschuere (eds) (2015)
London: Wiley Blackwell

Introduction

Detecting Deception is part of the Wiley Series *Psychology of Crime, Policing and Law.* The purpose of this series is to inform practitioners involved in the many aspects of the judicial process about the latest research findings which may have implications for real-world policy and practice in crime investigation, detection, policing, and Law. *Detecting Deception* is effectively an update on two previous books in the series, *Detecting Lies and Deceit: The Psychology of Lying and the Implications for Professional Practice* (2000) and *Detecting Lies and Deceit: Pitfalls and Opportunities* (2008) by Aldert Vrij, Professor of Applied Social Psychology at the University of Portsmouth. However, this latest publication is an edited book, with fourteen chapters written by leading psychology researchers in the field, providing readers with the most comprehensive review of the state of deception detection research, theory, and practice at the present time.

The content is conveniently subdivided into three sections which look at: deception detection practices currently in use (5 chapters); current and emerging practices and the challenges they face (3 chapters); and new and encouraging developments in the field (6 chapters). Each chapter focuses on a specific lie detection approach, beginning with useful overviews of the tools, followed by comprehensive assessments of their strengths, weaknesses, and limitations of the research, and ends with a comprehensive reference list.

While there is very little actual linguistics in this book, if one subscribes to Chomsky's claim that linguistics is a "branch of cognitive psychology" (1972), then there is much to interest the linguist in terms of current psychology theory as to why language

might be produced in the way it is, and what meaning may be derived from it. The approaches to deception analysis discussed lie entirely within psychological frameworks of behaviour, almost all of which are non-verbal. Of particular interest to linguists will be the chapters dealing with language production in certain contexts such as interview-interrogation and cross-cultural communication scenarios, where the psychology behind the language variation observed by linguists are discussed in detail. It should be noted that we are reviewing this book as linguists (specifically forensic linguists) and, as such, there are some chapters, especially those dealing with physiological and cognitive responses to deception stimuli, that we are less able to comment on.

Section 1 – Established Approaches

Section 1 describes existing practices relating to deception detection, beginning with a chapter on 'Verbal Lie Detection Tools'. Vrij provides a general overview of the background and methodological approaches to three speech-based lie-detection tools: Statement Validity Analysis (SVA), Reality Monitoring (RM), and Scientific Content Analysis (SCAN), with a detailed look at the individual criteria used by each tool and the research surrounding them. All three tools focus on the structure and informational content of witness evidence. SCAN would be of most interest to linguists as it is the only approach which looks at details of language change as a deception indicator. Vrij also does an excellent job of comparing and contrasting the tools and how well (or not) they meet the five Daubert criteria, used by the United States Supreme Court for admitting expert evidence in US Federal courts.

Chapter 2, 'New Findings in Non-Verbal Lie Detection' (Bond, Levine and Hartwig), looks at physical behavioural cues associated with lying. It contains interesting background on the main theories which explain variations in physical behaviour which deceivers are said to exhibit when managing their deception. Most of this will be familiar to researchers interested in physical behavioural cues associated with deception, and their conclusion comes as no surprise – no individual cue or collection of cues consistently identifies deception. In fact, one new finding is that the more a cue is studied, the weaker becomes its discriminatory value.

Chapter 3, 'The Polygraph: current practice and new approaches' (Meijer and Verschuere) addresses the practice of measuring physiological responses to identify deception. The article questions its validity and highlights the gulf between polygraph practice and academic validation.

Chapter 4, 'Forensic Application of Event–Related Brain Potentials' (Iacono) and Chapter 5,'Deception Detection Using Neuro-imaging' (Ganis) focus on the controversial analysis of brain signals as a deception detection tool. The former relates to the "Guilty Knowledge" (GKT) Test associated with the polygraph and covered in Chapter 3 (as "Concealed Information Tes" or CIT), while the latter deals with brain imaging. As with Meijer and Verschuere, Iacono argues GKT has potential, while Ganis concludes that neuro-imaging is "not even remotely suitable for field applications" (p. 117).

Section II – Current Challenges

Despite being the shortest section, Section II holds some of the most interesting chapters for linguists. Overall, this section favours posing questions rather than answering them, but that can be of great benefit to those interested in researching deception. It contains

three chapters focusing on current challenges facing deception detection, valuable to anyone wanting an overview of the field. Although not the explicit aim of the section, it highlights areas that might benefit from linguistic research while giving a moderated view of the existing research. For example Taylor *et al.* call for researchers to "derive a better understanding of cultural differences in cues to deceit" (p. 194), an area we believe linguists could certainly contribute to.

Chapter 7 focuses on 'Discriminating between True and False Intentions' (Giolla, Granhag and Vrij), an area that is of obvious interest to threat assessment work, which has itself been turning more to forensic linguistic research. The chapter differentiates between implicit and explicit beliefs about what constitutes deception and demonstrates through numerous studies that lay people and supposed experts are not particularly accurate in their beliefs. Unsurprisingly, the authors find that criminals are more accurate than many other groups at determining deception.

Chapter 8 looks at 'Cross-Cultural Deception Detection' (Taylor *et al.*) and hence would be of interest to anyone interested in deception in multi-cultural groups or anyone interested in intercultural communication.

Section III – Improving Lie Detection: New Approaches

Section three looks towards the future of lie detection. Through six different chapters, it introduces techniques and methodologies that are new and which the editors believe are constructive approaches for detecting deception. As such, these methodologies are frequently still evolving. Vrij's chapter on 'A Cognitive Approach to Lie Detection' discusses the role of cognitive loading to increase the production of lie cues during interviews. The linguist reader would be interested in how psychologists identify plausibility and measure amount of detail and response length, but this is not described in the article.

Chapters 11 and 12, which focus on using brain stimulation methods (Ganis) and reaction times (Vershuere *et al.*) respectively to identify deception, are highly technical and aimed at quite a specific audience of practitioners or psychologists. We were, however, particularly impressed with Ganis's inclusion of a short discussion on ethics.

This section has several chapters that focus more on the physiological responses (particularly chapters 11 and 14), so might be of less interest to linguists. Nonetheless, it might be beneficial to linguists interested in deception detection to see the current trends and identify how they could contribute to make the field even stronger,

Chapter 13 (Clemens and Clemens) would be of particular interest here. As the approaches in this section are still evolving, the limitations could have been discussed further. There was also next to no mention of the role of different cultures and the potential impact that might have, which is a shame as it was discussed brilliantly in Chapter 8, and is clearly relevant for some of the approaches here.

Conclusion

Overall this book has many elements that are relevant for those with an interest in forensic linguistics. It provides a nice introduction to the current state of the art within deception detection, and is suitable for a wide range of audiences, as it does not require any overly specialist knowledge to understand its content. Readers unfamiliar with the reporting of statistical results might find these areas daunting but these are accompanied by clear explanations as to how the findings are interpreted. The book is aimed at legal,

law enforcement, and investigative deception detection practitioners with the intention of influencing best practice in the field. It leans towards a strong cognitive approach to deception analysis, largely ignoring the anxiety-based approaches which work on the premise that emotions theoretically associated with deception leak out into verbal and nonverbal behaviour. One criticism is that several of the chapters, and the book overall, would have benefited from a discussion of the definition of deception and lies. The chapters tended to take these terms given, and there was little discussion of how understanding of the terms might differ across socio- or cultural-groups. In our opinion, this resulted in the occasional problematic assumption.

To conclude we would recommend this book to anyone who has an interest in deception, as well as academics or professionals with an interest in intercultural communication, interviewing, or the intersection of psychology and linguistics. This book would be of interest to students, researchers and lecturers in the area off linguistics – particularly, but not exclusively, those with an interest in deception detection – and to people interested in interviews or text production where deception (or the perception of potential deception) is likely.

References

Chomsky, N. (1972). *Language and Mind.* New York: Harcourt, Brace, Jovanovich.

Direitos Humanos e Crítica Teórica

Recensão de Anabela Costa Leão

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Direitos Humanos e Crítica Teórica
Paulo Sérgio Weyl Albuquerque Costa, Alfredo Culleton & Virgínia Colares. (Org.) (2015)
Porto Alegre: Entrementes

Como se assume no Prefácio, esta obra tem por "fio condutor" um conjunto de questões anunciadas de forma mais ou menos explícita no primeiro dos textos que integra, o ensaio *Entre la pluralidade y la universalidade, desafios para los Derechos Humanos*, de Alfredo Culleton e Vicente de Paulo Barreto. Aí se discutem os desafios que a globalização coloca ao Direito e se problematizam múltiplos desafios à teoria democrática e constitucional. A história do século XX atesta a necessidade de um Direito assente em valores morais como salvaguarda da dignidade da pessoa humana, valores esses que correspondem a um direito suprapositivo que apela a uma dimensão moral e, assim, religa a ordem moral e a ordem positiva (p. 17), conferindo aos direitos humanos o estatuto de instrumento de legitimação das ordens jurídicas. Esta universalidade moral e jurídica dos direitos humanos é limitada pela invocação das soberanias estaduais (p. 189) mas, igualmente, pela globalização (melhor seria dizer, globalizações), que põe a nu a insuficiência das respostas clássicas centradas no Estado-Nação e no seu Direito perante a deslocação real do poder dos executivos para uma plêiade de agencias reguladoras, a pluralização de níveis e tipos de poder que conduzem a relações desiguais, protagonizadas por empresas multinacionais, ou os desafios resultantes de correntes migratórias, de problemas ecológicos, da pobreza e das desigualdade sociais (p. 23). A efetivação dos direitos humanos exige uma redefinição da sua extensão e fundamentação, mas também das suas fontes e formas de garantia em sociedades globalizadas, multiculturais e em constante transformação (p. 25), tornando-se imperativo pensar um conjunto de valores básicos (não princípios) comuns a todas as sociedades humanas que possam servir de referência

à formulação e atualização dos direitos humanos como "referente moral e político" (p. 25), cujo processo de determinação e concretização efetiva deixam, contudo, em aberto.

A diversidade cultural patente no interior dos Estados, fomentada pelas migrações, ainda que a elas não se circunscreva – vejam-se as minorias históricas e os povos indígenas – representa um importante desafio para a pretensa homogeneidade cultural subjacente ao Estado-Nação, como bem ilustram Natalia Gonçalves e Fernanda Bragato no seu contributo *As políticas públicas de saúde para povos indígenas no Brasil: entre a exclusão histórica e a reivindicação de cidadania diferenciada*, exigindo à teoria democrática e constitucional a abertura à proteção das identidades culturais, à cidadania diferenciada e a um entendimento complexo da igualdade como questões de justiça, o que leva a repensar as funções dos direitos humanos como instrumentos de, diríamos nós, "inclusividade constitucional".

A angústia pelas promessas não cumpridas dos direitos humanos, pela inexistência de consensos em torno de uma "era dos direitos" anunciada no pós II Guerra, ressurge no texto de Jean-François Deluchey, *Profanar os direitos: as crianças no campo de batalha.* O autor evidencia o enlace entre o político e o jurídico, entre a dimensão de "luta política" e de "conquista social" do Direito e dos direitos e a sua consagração jurídica, sustentando que a realização efetiva dos direitos não se basta com a sua *consagração*, exigindo a *profanação* através da luta política que os mantém vivos e significa, para o autor, a superação do jurídico pelo político (p. 52-53).

Sobre este enlace, que é também tensão, entre o Direito e a política, escrevem Daniel Romaguera e João Paulo Teixeira em *Para além do soberano; uma crítica à herança moderna e legitimação do exercício de poder na atualidade*, mostrando como a pós-modernidade não afastou o político nem a soberania (p. 63), antes os lançou para lá das fronteiras do Estado-Nação, e evidencia a contradição entre "o discurso legitimador da soberania" e "o exercício do poder na atualidade" (p. 66), sendo que a soberania "tem o papel de conferir voz à lei" e, ao mesmo tempo, "é elemento legitimador do exercício soberano" (p. 68), o que se reflete, necessariamente, na conceção de Estado de Direito democrático.

O pós-guerra é *o tempo dos direitos humanos*, o que não pode ser dissociado da crítica ao positivismo, acusado de não ter impedido a existência de um Direito hostil à dignidade humana em Estado totalitários mas juridicamente regulados. A crítica ao positivismo foi, designadamente, empreendida contra o juspositivismo de cariz normativista de Hans Kelsen e dá o mote a dois dos contributos da obra, ao texto de Paulo Costa e de Ricardo Martins, intitulado *Os princípios jurídicos em Hans Kelsen e a reviravolta linguístico-pragmática na filosofia contemporânea: superação de um paradigma interpretativo do Direito* e ao texto de Saulo de Matos, que se ocupa da T*eoria Pura do Direito e Nazismo: uma análise a partir da crítica de Gustav Radbruch.*

A tese central do artigo de Saulo de Matos é, nas palavras do autor, a de que não é procedente a crítica de Gustav Radbruch à suposta vinculação histórica e prática entre a construção do Estado nazista na Alemanha e a Teoria Pura do Direito de matriz kelseniana (p. 102). Assim, não só "não há relação histórica entre a atitude e o pensamento dos juristas nos períodos anteriores e posteriores à tomada do poder pelo regime nazista" (p. 109), como a teoria pura do Direito poderia ter sido um instrumento ao serviço da crítica do Direito nacional-socialista, apesar de sustentar que a questão da validade

das normas é independente da justiça, precisamente porque a desvinculação entre validade e legitimidade poderia, no entender do autor (p. 107), contribuir para a crítica da conceção "moral" do Estado nazi e do método teleológico que serviu de base à interpretação. O positivismo de Kelsen é também acusado de não ser capaz de dar resposta aos novos problemas com que o Direito se debate e, designadamente, de se adequar à centralidade assumida pelos princípios jurídicos (pese embora a sua indeterminação). O texto de Paulo Costa e de Ricardo Martins, Hermenêutica filosófica e o papel do aplicador do Direito, debruça-se sobre a presença e relevância dos princípios na obra do jurista austríaco, para concluir que a sua teoria pura do Direito nunca rejeitou a sua presença no ordenamento nem a sua aplicação pelo juiz (p. 80). Porém, aprisionada no esquema "sujeito-objeto" (p. 83), insere-se num paradigma filosófico ultrapassado em relação ao qual a viragem hermenêutico-fenomenológica se oferece como alternativa. Esta exige a convergência do método teórico com "o modelo político e ético do Estado democrático de Direito defensor da dignidade da pessoa humana", que é o espaço do neoconstitucionalismo, o que o positivismo de Kelsen não pode assegurar porque incapaz de impedir o decisionismo judicial.

O sucesso da referida viragem pós-positivista do pensamento jurídico-filosófico contemporâneo no Brasil merece reflexão crítica de Paulo Costa e Ricardo Taxi no texto *Hermenêutica filosófica e o papel do aplicador do Direito*. Os autores propõem-se discutir se e em que medida a hermenêutica filosófica permite iluminar a prática jurídica ao ponto de eliminar a discricionariedade presente no ato de interpretar, num contexto pós-positivista que contesta a separação entre Direito e moral e a distinção entre compreensão e interpretação (p. 88) e leva em conta as consequências morais da aplicação do Direito, com preocupação de descortinar o reflexo desta perspetiva (ou sua ausência) na formação dos juristas. Os autores notam que, no Brasil, a discussão se centra no problema da discricionariedade judicial e na solução supostamente trazida pelos princípios jurídicos, capazes de garantir uma iluminação moral do Direito. Cientes do risco da ditadura do judiciário propiciada por uma abertura ética acrítica e legitimadora de uma relativização da lei em prol da moral (p. 89), ressalvam que do que se trata é de fundamentar uma aplicação do Direito em princípios morais intersubjetivos, na esteira da teoria interpretativista de Dworkin, cujo potencial emancipatório se considera, todavia, não ter sido devidamente aproveitado pelos juristas brasileiros, ao reconduzirem os princípios a direito posto (p. 92) e confundirem discricionariedade judicial com arbitrariedade.

A questão da discricionariedade judicial é retomada por Manuela Pickerell em *A proporcionalidade como uma questão de integridade*, no qual, após afirmar que, independentemente da previsão constitucional, os princípios devem ser pensados como "significados que acontecem num horizonte de sentido dado pela história" (p. 155), a autora sustenta, com respaldo no *Direito como integridade* de Dworkin em diálogo com a conceção de Alexy, que aqueles não são cláusulas de abertura do sistema, antes operam o fechamento hermenêutico justificando a decisão do intérprete "no interior da prática interpretativa que define e constitui o Direito" (p. 157). O sistema de regras e princípios de Alexy deixa ao intérprete – *maxime*, ao juiz – uma discutível margem de apreciação na realização das operações de ponderação e na determinação da relação de "precedência condicionada" em caso de colisão de princípios, mostrando-se incapaz de permitir a superação do "positivismo e sua perniciosa discricionariedade" (p. 163), que tem de ser eliminada por conduzir à arbitrariedade.

A liberdade interpretativa do juiz e a sua discricionariedade, desta feita escrutinadas pelo prisma da Linguística aplicada ao Direito (p. 114), ressurgem no texto de Virgínia Colares intitulado *Hermenêutica endoprocessual: aproximações entre as teorias do processo e análise crítica do discurso jurídico*, que faz apelo a uma perspetiva transdisciplinar por intermédio da qual dialogam Direito e Linguística, Hermenêutica Endoprocessual e Análise Crítica do Discurso Jurídico. Virgínia Colares debruça-se sobre a linguagem usada numa decisão judicial referente a um pedido de retificação de Registo Civil, a decisão n.º 0013781-87.2011.8.19.0038, identificando "diversas estratégias típicas de construção simbólica materializadas na superfície textual" que remetem para diferentes modos de operação da ideologia, pistas que apontam no sentido de a pretensa objetividade do juiz poder estar enviesada (p. 134). Partindo da hipótese de que "o Estado, quando faz uso de leis abstratas e ideias para promover a democracia assegurada pelo direito processual constitucional, promove um ocultamento ideológico que forja a ideia de que a linguagem é neutra e produzida num vácuo social" (p. 114), conclui que não existe a "almejada objetividade na prolatação da decisão" prevalecendo ao invés "a subjetividade natural às linguagens ordinárias humanas" (p. 111). Não existe "discurso inocente": "todo dizer está comprometido com a inevitável materialidade do mundo, nossos espaços e tempos sociais" (p. 134).

Numa linha de criminologia crítica, Carolina Medeiros e Marília Mello analisam, em *A revitalização da prisão: impactos da Lei Maria da Penha no encarceramento de agressores*, as repercussões do endurecimento do tratamento penal preconizado aos agressores de mulheres pela Lei Maria da Penha (Lei n.º 11.340), aprovada em 2006 e tida como um marco na luta contra a violência doméstica e familiar contra as mulheres. Com base numa pesquisa empírica de caráter documental, as autores concluem que a referida Lei relegitima paradoxalmente um sistema punitivo em rutura, "falido e deslegitimado" (p. 143), reforçando o recurso à prisão mesmo em situações de "baixa lesividade" e mostrando-se incapaz de dirimir os problemas domésticos, pelo contrário reproduzindo "dor e violência" (p. 150).

Em suma, não obstante a diversidade dos contributos e perspetivas adotadas, é possível divisar algumas inquietações fundamentais transversais, às quais são dadas respostas nem sempre convergentes: o conceito de direitos humanos e a discussão do papel que lhes está reservado numa nova ordem mundial em construção e numa realidade jurídica cada vez mais multinível, o conceito de Direito e a finalidade – descritiva ou justificativa – da teoria jurídica, associada à questão da (re)ligação entre Direito e moral, operando pela via dos valores subjacentes aos direitos humanos e à dignidade da pessoa humana ou pela via (promissora, mas igualmente perturbadora) dos princípios, a possível objetividade e o *quantum* de liberdade do juiz na interpretação à luz de exigências de justiça e segurança jurídica e a legitimidade e legitimação do Direito, e relação entre este e o político Questões que não sendo, em rigor, novas, reclamam, como a obra demonstra, uma perspetiva dialogante[1], crítica e aberta a compreensões diversas num cenário que é de reconfiguração do Estado, do político e também, e necessariamente, do Direito.

Notas

[1]A obra *Direitos Humanos e Crítica Teórica* reúne um conjunto de trabalhos realizados no contexto de redes de pesquisa e cooperação académica entre docentes e discentes de pós-graduação da Universidade Federal do Pará, da Universidade Católica de Pernambuco e da Universidade do Vale do Rio Sinos, com financiamento CAPES.