

## 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 Waletzky, 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 Waletzky, 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 Waletzky, 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, Saakashvili 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 Nishibayashi'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 that 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 these sentences in a way that is characteristic of 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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