# SOCIOLINGUISTICS
# Spring 2014

## FORENSIC LINGUISTICS

# What is Forensic Linguistics?

- **Sub-discipline of Applied Linguistics**

  - concerned with the relationship between language and the law

  - field first developed by Prof Jan Svartvik in 1968

  - Professional organisation – 'The International Association of Forensic Linguists'

  - 'The International Journal of Speech, Language, and the Law' (formerly 'Journal of Forensic Linguistics')

# Areas of investigation and research include:

i. Language of the law (e.g. legal documents; statutes);

ii. Language use in judicial (court room discourse) and/or forensic (e.g. police interviews; prison) proceedings;

iii. Legal evidence (speech; writing; multimodal; signed texts);

iv. Issues of social (in)justice arising from legal contexts;

v. Teaching & learning of legal language;

vi. Translation & interpreting in and for legal/forensic work.

# Text types

- Text implicated in a legal or criminal context: forensic

- Example: a will, a letter, a book, a contract, etc.

- Examples of forensic texts: a forged will, a statement alleging sexual assault, 'suicide' letters, hate/terror emails, plagiarised texts, confessions, ransom notes

# What is the role of the (socio)linguist?

- Expert witness

- Areas of disciplinary expertise include *inter alia* e.g.:
  - Forensic dialectology; which language/dialect does a person speak?
  - Forensic phonetics – voice identification; phonetic similarity in trademark cases (sound similarity of two names?)
  - Forensic stylistics & stylometry – author identification; determining the author of a particular text by comparing it to known writing samples of a suspect
  - Critical forensic linguistics: language of origin

# Key areas of Testimony

Tiersma & Solan (2002:221)

- 'probable origin of the speaker [/writer]
- the comprehensibility of the text
- whether a defendant understood the *Miranda* warning/'arrest caution'
- the phonetic [& other] similarity of trademarks'

Police Officer: Do you speak English?
Jose: Yes. Police Officer: Where are you from?
Jose: Yes

ROTTENeCARDS

# Testimony
## (T & S p226ff)

- **Lexical expertise: The meaning of languages/registers/terms other than the standard**

e.g. Contract cases

- 'Hunt' - Shoshone-Bannock (State v. Tinno, 497 P.2d 1386 (Idaho 1972))



**'An expert in Shoshone-Bannock was allowed to testify how the Shoshone might have understood the English term hunt in a treaty. The linguist testified that the Shoshone-Bannock translations would not systematically distinguish between fishing and hunting, but referred to gathering wild food in general.'**

- 'Argot/code' (criminal activity) – 'the boyfriend, the boy, transcripts, briefs, motions' > heroin 'the girl, them broads' > cocaine (United States v. Simmons, 923 F.2d 934 (2d Cir. 1991))

- Professional euphemisms/terms

# Testimony

- **Forensic Dialectology**

E.g.

- Ann Arbor case - Martin Luther King Junior Elementary School Children v. Ann Arbor School Dist. Board, 473 F. Supp. 1371 (E.D. Mich. 1979).

http://www.languagepolicy.net/archives/king.htm

- Linguists identifying dialects e.g. Prinzivalli case. (Labov & Harris, 1994); the suspect had a New York accent, whereas the questioned samples contained linguistic features characteristic of a New England accent

http://www.pbs.org/speak/speech/sociolinguistics/labov/

# Labov's account

All of the work and all of the theory that I had developed since Martha's Vineyard flowed into the testimony that I gave in court to establish the fact that Paul Prinzivalli did not and could not have made those telephone calls. It was almost as if my entire career had been shaped to make the most effective testimony on this one case. The next day, the judge asked the prosecuting attorney if he really wanted to continue. He refused to hear further statements from the defense. He found the defendant not guilty on the basis of the linguistic evidence, which he found "objective" and "powerful."

Afterwards, Prinzivalli sent me a card saying that he had spent fifteen months in jail waiting for someone to separate fact from fiction. I have had many scientific results where the convergence of evidence was so strong that I felt that I had laid my hands on the reality behind the surface, but nothing could be more satisfactory for any scientific career than to separate fact from fiction in this case. By means of linguistic evidence, one man could be freed from the corporate enemies who had assailed him, and another could sleep soundly on the conviction that he had made a just decision.'

http://linguistlist.org/studentportal/linguists/labov.cfm

# Testimony

- **Comprehensibility (&/or readability of text)**

e.g. James Free (United States ex rel. Free v. Peters, 806 F. Supp. 705 (N.D. Ill. 1992)) in Tiersma, 1995

Comprehensibility of jury instructions: Free was sentenced to death for murder. He challenged his death sentence, 'arguing that the instructions given to the jury were misleading and obscure. The trial court listened carefully to various experts, including a linguist, and decided that jurors likely did not understand instructions on how to decide whether to impose the death penalty. But the court of appeals had an almost disparaging attitude towards the research and quickly affirmed Free's death sentence'. (Tiersma & Solan, 2013: 227)

- **Linguistic proficiency of a person**

United States v. Gutierrez- Mederos (965 F.2d 800 (9th Cir. 1992))

# Testimony

- **Linguistic proficiency of a person**

United States v. Gutierrez- Mederos (965 F.2d 800 (9th Cir. 1992))

'The court admitted testimony by a linguist supporting the defendant's claim that when he consented to allow police to search his possessions, his cultural background and limited English proficiency prevented him from understanding that he had a right to refuse'. (Tiersma & Solan, 2013: 228)

# Testimony

- **Trademark cases:** is the name that a person or company using for a product confusingly similar to an existing trademark?
e.g. phonetic similarity – Aveda v Avita
- morphological similarity – McDonald's v McSleep

# Testimony

- Aveda vs. Avita: 'A professor of English and linguistics testified that intervocalic **t** and **d** are often pronounced the same in these words, and that the middle vowels (**e** and **i**) may also be. Thus the marks may be-or may almost be-homophones. Based in part on this evidence, the judge granted an injunction that prohibited the defendant from further use of Avita.' **McDonald's vs. McSleep**: 'The court eventually decided that Mc- was tied to the McDonald's Corporation, rathert hanb eing an ordinaryE nglish prefix. Thus, McDonald's was entitled to protect its 'morpheme' from being used by a chain of inexpensive McSleep motels.' (Tiersma & Solan, 2013: 228)

# Information of interest to the law

- Authorship - > reliable?

- Impediments to/problems of communication and meaning

# Authorship

- Crucial for investigations of e.g. suicide/ransom notes; voice recordings (terrorist);

- Linguistic knowledge of indexes of social and geographic differentiation of speakers/writers;

- Issues of text structure – genre & style

- Identification – may not be based on identifying one individual but many…e.g. police collusion

# Stylistics

- Interpretation and analysis of texts (spoken/written) with respect to linguistic style.
- Identify, describe and measure a writer's individual style/idiolect: analysis of her linguistic choices

- Determines principles underlying speaker/writer language choice (idiolects/sociolects) – including genre, dialects, registers.

- Common features – regional accents; dialects; grammatical choice (e.g. active v passive voice); sentence/utterance length; lexical choice; discourse markers etc.

# Stylometry

- Counting words & measuring concurrence of linguistic items e.g. 'the + adjective + noun'.

- Statistical technique – 'cusum'

- Controversial (Forensic Linguistics, 1998)

- Similarity in vocabulary choice (examined via word counts) - > promising (Johnson, 1997)

# Ransom notes

Linguistic analysis must comply with evidentiary standards – use scientifically validated techniques

# Mobile 'phone text
## Olsson & Luchjenbroers (2014:229)

| Feature | Test feature | Last instance | Comparison feature | First instance |
|---|---|---|---|---|
| have to | have2 | 2 | ave2 | 12 |
| -ing/in | Inconsistent throughout | | | |
| off as of | as off | 9 | as of | 13 |
| phone/fone | fone | 8 | phone | 13 |
| shit/shite | shit | 12 | shite | 13 |
| see you | cu | 8 | cya | 12 |
| good/gud | Both occur early in set | | | |
| doesn't/don't | doesn't | 8 | don't | 13 |
| I am/not | Im/im (not) | 11 | I am (aint) | 13 |
| my/me(self) | my(self) | 11 | me(self) | me dad 12 meself 13 |
| 2 not followed by space | back2sleeep | 9 | ave2 go | 12 |

# Oral evidence Trial, 2008:6 (A)
## Olsson & Luchjenbroers (2014:229)

Comparison of victim + defendant txt messages:

'For each of a set of nine significant items for which the two sets of text messages, the known and the suspect, display two options [her] usage is fixed: she uses only one of the forms. For six of these items, the sender of the suspect text messages uses only the other option.'

(Prosecution Expert Report, 2008)

# Creation of baseline data from corpora

# PHONETIC ANALYSIS & SPEAKER IDENTIFICATION

- Role of phonetician (& sociolinguist):
  - to enhance and/or interpret speech on recordings;
  - identify phonetic variables & carry out spectrographic analysis, e.g. to identify a tape-recorded voice as belonging to a particular speaker, usually the defendant in a criminal case.

- Admissible in court?
  Not always - '…hearing is within the ability & experience of the trier of the fact' (Beech Aircraft Corp. v. United States, 51 F.3d 834 (9th Cir. 1995)).

# 'Voice prints': form of spectrographic analysis
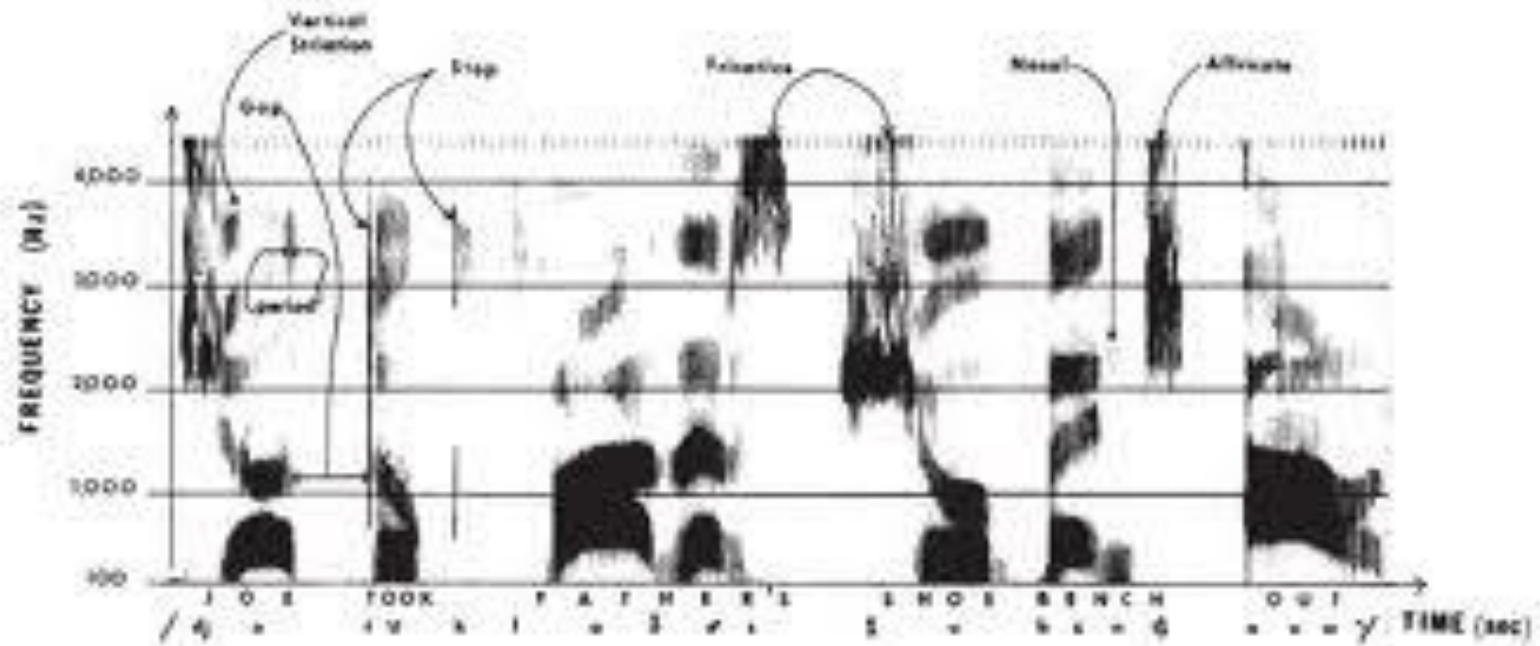
# Reading on Phonetic Analysis

- See Jessen 'The Forensic Phonetician' Chapter 25 in the Routledge Handbook (2010).

# Discourse Analysis

- Rape trial (Tyson v. Keane, 159 F.3d 732, 736 (2d Cir. 1998)) – defendant forced into confession.

- 'A key piece of evidence was a tape recording in which the defendant, according to the prosecution, admitted raping the victim…the defendant denied at trial that it was his voice on the tape, but the jury apparently thought otherwise and convicted him. On appeal, he was awarded funds to hire a linguistic expert. The expert concluded that it was indeed the defendant's voice on tape, but that because the defendant appeared weak-willed and easily dominated, his comments on the tape were not probative of guilt. The defendant then petitioned the federal courts for assistance, arguing that if he had been given funds to hire the expert earlier, he would have known better than to deny it was his voice on the tape; instead, he would have had the expert testify that his recorded statements were not an admission that he raped the woman. The Court of Appeals for the Second Circuit had little sympathy for his argument, pointing out that courts have generally not admitted testimony on 'linguistic discourse analysis '.

(Tiersma& Solan, 2013: 233)

# Discourse Analysis

- Discourse analysis (according to the court): the field has not been proven reliable or received general acceptance in the scientific community.

- 'discipline allowing [the expert] to determine the intent of the speaker in covertly recorded conversations' (State v. Conway, 472 A.2d 588, 608 (N.J. Super. Ct. 1984)). If the discipline is defined as a means of determining the actual intentions of a specific speaker in a tape-recorded conversation with minimal contextual cues, it is no wonder that judges find it unreliable, or at least, unproven'. (T & S, 2013: 233)

# Critical Forensic Work



- E.g. 'Language Assessment to Determine country of Origin' (LADO)

- Article 14 'Universal Declaration of Human Rights' states that 'Everyone has the right to seek and to enjoy in other countries asylum from prosecution.'

- See Eades 2004, 2005, 2010; Patrick 2010a, b and 2012

# LADO

- How should this be administered?

- What factors need to be taken into account?

- How might the test and procedure be altered to accommodate this?

# Summary & Conclusion

- Forensic Linguistics – young but diverse field

- Role of the 'socio-linguist' – pertinent

- Areas for further reading – e.g.
  **CA perspective** – court-room genres –e.g. prosecution & defense opening and closing speeches/arguments (e.g. Hobbs); questioning of witnesses (Gibbons); **CFL** – youth & gang language; vulnerable witnesses.

- Developments – corpora; analysis of multimodal texts (video & writing/speaking); terrorism (how to protect rights of citizens and accused); cross-disciplinary engagement (computational specialists; lawyers & linguists)

# Recommended Reading

- **Textbooks**

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

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

Olsson, J. & Luchjenbroers, J. (2014) *Forensic Linguistics*. London: Bloomsbury Academic.

- **Readers**

Coulthard, M. & Johnson, A. (2013) *The Routledge Handbook of Forensic Linguistics*. Oxford: Routledge. Routledge.

Gibbons, J. & Turell, M. (2008) *Dimensions of Forensic Linguistics*. London: John Benjamins.

Tiersma, P. & Solan, L. (2012) *The Oxford Handbook of Language and Law.* Oxford: Oxford University Press.

- **Monographs**

Cotterill, J. (2003) Language and Power in Court: A Linguistic Analysis of the OJ Simpson Trial, Basingstoke and New York: Palgrave Macmillan.

Eades , D.(2008) Courtroom Talk and Neocolonial Control, Berlin and New York: Mouton de Gruyter.

Heffer, C. (2005) The Language of Jury Trial: A Corpus-Aided Analysis of Legal–Lay Discourse, Basingstoke/New York: Palgrave Macmillan.

Heydon, G. (2005) The Language of Police Interviewing: A Critical Analysis, Basingstoke: Palgrave Macmillan.

Rock, F. (2007) Communicating Rights: The Language of Arrest and Detention, Basingstoke, London: Palgrave Macmillan.

Patrick, P.L. (2010a) Linguistic rights in the asylum context. *Linguistics Matters!* Cambridge: Cambridge University Press.

- **Articles/chapters cited in lecture**

Eades,D. (2004) Understanding Aboriginal English in the legal system: a critical sociolinguistic approach. *Applied Linguistics*, 25 (4):491-512.

Eades, D. (2005) Applied Linguistics and language analysis in asylum seeker cases. *Applied Linguistics*, 26 (4): 503-26.

Eades, D. (2010) – see chapter in Routledge Handbook.

Labov, W. & Harris, W. (1994) Addressing social issues through linguistic evidence. In John Gibbons *Language and the Law*. London: Longman. Pp265-305.

Patrick, P.L. (2010b) Language variation and LADO, in K. Zwaan, P. Muysken and M. Verrips (eds) *Language and Origin. The role of language in European asylum procedures: a linguistic and legal survey.* Nijmegen: Wolf Legal Publishers, pp 73-87*.*

Patrick, P.L. (2012) – see chapter in Tiersma, P. & Solan, L.  (Oxford Handbook)

Tiersma,P. & Solan, L. (2002) The Linguist on the Witness Stand: Forensic Linguistics in American Courts. *Language* 78 (2): 221-239