Chapter seven.

forensic linguistics.

Introduction.

Compared with forensic psychology, forensic linguistics is a newer and smaller discipline. Forensic linguists share many areas of interest with forensic psychologists and the two disciplines are likely to become increasingly entwined. The purpose of this chapter is to survey some of the areas of forensic linguistics, demonstrate where the two disciplines overlap and highlight some areas of forensic linguistics where forensic psychologists have yet to make a contribution.

Consider the following situation:

You are on holiday abroad eating in a restaurant. You speak the language a little and are getting by; you know a little of the vocabulary and some useful phrases; you know how to say please and thank you. With your phrasebook and a lot of sign language you are having a good vacation. At the next table there is a group of young men talking and arguing and laughing. They gradually become louder and more animated to the obvious consternation of the staff in the restaurant. Finally two of the men stand up angrily and start throwing punches. One of them falls into your table and as you push him away he trips over and is hurt. Two policemen arrive and it is obvious that they want to speak with you. You understand that they want to take you somewhere. You try to explain the situation but can’t make yourself understood. You don’t know quite what is happening and you don’t know your rights in this country. One of the policemen says something to you in a slightly ‘sing-song’ voice. It is clear that what he is saying he has said many times on other days. He is not listening to the meaning of his words and the full meaning is difficult to catch. You gather that essentially they want you to tell them what happened but also you don’t have to. There is a question about whether you’ve under- stood. You nod uncertainly. You have been read your rights.

Now turn the tables. Someone with limited English finds himself/herself in a similar situation in your local restaurant. The police may decide that the person should be arrested and at this point the law is clear that the person has to be informed of his or her rights. In the first instance this information will be given verbally by the police officer. The caution for the UK is ‘You do not have to say anything. But it may harm your defence if you do not mention when questioned something you later rely on in court. Anything you do say may be given in evidence.’

In the United States the equivalent right to be read a caution is called a person’s Miranda rights (after the court case which established them). The wording of Miranda rights varies slightly from state to state but the minimal Miranda warning, as outlined in the Miranda v. Arizona case is given below.

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.

The purpose of the caution is to tell arrested individuals just what their rights are under the law, but the language used to express these rights is not straightforward. Even if English is your first language your rights may not be easy to understand. At a stressful time you need to understand what has been said to you and apply it to your situation. For example, in the case described above if the police officer asks you what happened, should you answer straightaway? Would it be better to stay quiet until you have spoken with a lawyer? What would be the best thing to do? These questions obviously involve points of law but they also involve issues of comprehension.

Any rights under the law have to be communicated through language. What makes the language of the law easy or difficult to understand is one of the topic areas in forensic linguistics. From this understanding forensic linguists can suggest reforms to legal language to make it easier to understand. Whilst this area of forensic linguistics does not have a direct parallel in forensic psych- ology, in other areas there are overlaps in topics and approaches. Linguists, for example, can use their expertise in language practices to examine the peculiar language that is used in the courtroom. Language reveals lot about the relationships between people and analysis of it can throw light on, for example, power relationships within a courtroom setting.

Forensic linguistics, however, does not restrict itself to under- standing the language of the judicial process. Occasionally linguists may be involved in giving evidence in the courtroom. In the example of whether a caution was understood, a linguist might argue that without an interpreter the person’s rights were violated and any conviction would thus be unsafe. Two other areas in which linguists might give expert evidence include questions of identification and questions of meaning and use. Identification questions might concern either spoken language using voice analysis or written language. If you received a telephone threat or an abusive letter a forensic linguist might be able to help identify who was behind them. With regard to disputes of meaning, usually these fall to lawyers to debate, but sometimes a linguist can assist. In one case Jerry McMenamin, a Californian forensic linguist, examined the common understanding of the word ‘accident’ to argue that under an insurance claim a cot-death might constitute an accident. An example of a linguist giving evidence of language use is discussed below. Roger Shuy, an eminent American forensic linguist, argues that although John DeLorean, a sports car manufacturer, was set up to be involved in a nefarious drug deal, examination of the covert tapes show that he did not understand that this was the case and that because of this he never consented to take part (Shuy 1993).

identification evidence.

Forensic linguists tend to agree that there is no such thing as a linguistic fingerprint; a consistent way in which an individual uses language across different situations and contexts. As discussed in the chapter on profiling and case linkage, however, it does seem that we fall into habits of repeating behaviours and in this tendency language behaviour is no different. In language individuals seem to reuse words, phrases and linguistic constructions, and this can be useful if the author of a text needs to be identified.

One of the highest profile cases where this tendency has been useful involved an FBI investigation into an individual who became known as the Unabomber. On 19 September 1995 The Washington Post published a 35,000 word supplement entitled ‘The Industrial Society and its Future’ which became known as the Unabomber Manifesto. The publication was a result of threats from ‘the terrorist group FC’ to continue and escalate a bombing campaign which had begun with a letter bomb in May 1978. The language of the manifesto was analysed by a variety of linguists (and others) at different stages in the investigation. For example, Roger Shuy (1993) analysed the text and provided the FBI with an indication of the sort of individuals who might have written the Manifesto in terms of their social and educational background. A further analysis by FBI agent Jim Fitzgerald attempted to identify what seemed to him to be unusual linguistic features and turns of phrase. Fitzgerald’s analysis proved particularly useful when some comparison texts were brought forward. These texts were produced for the FBI when the sister-in-law of a Montana recluse, Ted Kaczynski, recognized in the manifesto his particular style of writing. In letters and other texts from Kaczynski some of the striking turns of phrase were repeated. A good example of one of these phrases is, ‘You can’t eat your cake and have it too.’ This turning round of the more common formulation appeared both in the Manifesto and the known writings of Kaczynski. The linguistic evidence was reanalysed and defended in court by Don Foster, a Professor of English literature, and led to a search of Kaczynski’s mountain cabin and the discovery of bomb-making equipment and other evidence leading to his conviction.

Technical acoustic analysis can also play a part in providing forensic identification evidence. On 9 September 2001, Major Charles Ingram of the British army became a contestant in the game show Who Wants to be Millionaire? The structure of the game is very straightforward: to win a million pounds the contest- ant simply has to answer 15 multiple choice questions in a row correctly. The Major, however, answered the questions in a curious way: when asked a question he talked through each of the four possible answers and whilst he was doing so a cough indicating the correct answer was heard from the audience. The Special Investigations Branch of New Scotland Yard approached forensic linguist and phonetician Peter French to see if he could identify the person producing the cough. Close analysis of the positions of the television studio microphone ‘feeds’ and the recorded decibel level (volume) of the coughs indicated the coughing had to come from the microphones directed at five of the ten candidate contest- ants known as ‘fastest finger first’ contestants. As one of the five contestants was a woman and the coughs definitely male, this left just four possible candidate coughers. One of the suspect coughs was different from the others; it seemed to be followed very closely by the muffled exclamation ‘No!’ possibly indicating to the Major that he was about to choose the wrong answer. Technical voice comparison indicated that the voice of the person saying ‘No!’ was consistent with instances of the word ‘no’ in the police interview of one of the candidates, Tecwen Whittock. This analysis was used in the trial of Charles and Diana Ingram (Ingram’s wife) and Tecwen Whittock and all three were convicted of conspiracy.

Considering these two cases raises a major issue about linguistic identification evidence. In phonetic evidence there are, in fact, a few features of voices which are relatively constant within individuals or change in predictable ways. For example, the basic pitch of a person’s voice, known as the formant frequency, is one such feature. Because variation in formant frequency (between different groups, such as men and women) is fairly well understood and can be described, this measure can be used straightforwardly in identification or exclusion questions. For example, a man with a high voice may be relatively unusual and so will be easier to identify than a man with a mid-range or deep voice. However, for most aspects used to describe voices and for nearly all of the factors concerning the choice of words or the grammatical construction of sentences, information like this on the distribution of features is not known and may be impossible to acquire. Language provides enormous possibility for variety and people use this variety creatively, both consciously and unconsciously. We use language differently with our lover, our colleagues and our boss; differently when we write or dictate, speak on the telephone or in face-to-face conversation; and we use language differently if we are happy, excited or depressed. Coping with this natural variation in individuals’ language is one of the big challenges in forensic linguistic identification and it is an area in which much research is being carried out. What this research attempts to understand is how an individual’s language is likely to behave across different situations; if this can be achieved, comparison and identification evidence will be able to move further down the road from a matter of opinion to a scientific discipline.

evidence of meaning and use.

So far two sorts of linguistic evidence have been discussed, evidence of linguistic competence – Could the speaker understand or communicate sufficiently for the judicial process? – and evidence of identification – Did the person say this or write this? The final area in which linguists have tended to give evidence is over disputes of meaning and use. A good example of this is Roger Shuy’s defence of John DeLorean the manufacturer of DeLorean cars. At the moment his business was about to go bust, DeLorean was subject to a sting operation by the US Drug Enforcement Agency (DEA). The DEA alleged that DeLorean had knowingly agreed to take money from the illegal drugs trade in order to finance his business. Shuy carried out a close linguistic analysis of the tapes between DeLorean and the DEA’s undercover agent (actually a known con man acting to reduce the charges against him) and argued that DeLorean never agreed to the deal.

The basis of Shuy’s work is a straightforward form of conversation analysis known as topic analysis. Even the more general findings from such an analysis can be revealing. For example, Shuy noted that in the passage he analysed, DeLorean introduces only a quarter of the topics whilst three-quarters of the agenda is set by the DEA agent. At the finer level Shuy shows how ambiguity in the conversation is used by the agents and how in particular one topic, ‘interim financing’, is understood by DeLorean to mean financing for his car business and understood by the agent and the prosecution to mean financing for the drug deal. Shuy argued that the prosecution were in a sense caught by their own sting. Because they understood the conversation to be about drug dealing they thought they had shown DeLorean discussing a drug deal. The close analysis reveals that from DeLorean’s perspective the conversation was about financing for his car business. DeLorean was acquitted of the charges.

Shuy’s and others work shows that close linguistic analysis can assist in trials such as DeLorean’s. They show that it is not the case that presence at a conversation about drug dealing necessarily implies agreement to a deal. Linguistic analysis can reveal where presence at a discussion of illegal activity moves to agreement in participation in that activity and where it does not.