Capítulo 5
Forensic linguistics: Legal language for the resolution of crimes

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5.1. Introduction

The history of forensic linguistics traces back to shortly after the invention of writing, when civil, penal, and religious codes, as well as legal commentary were born. Thus, the field of language and law emerged in the first place because of the ever-growing need to record political decisions and set and regulate rules within a specific society. One of the earliest legal documents appeared for the first time in Mesopotamia in the early third millennium BCE, the first recorded legal codes that were to follow being written around 2100 BCE (VerSteeg, 2000). Even though there were no codified laws in Ancient Egypt yet, legal decrees did appear around 2150 BCE, but they were not the only ones. Shortly after, many other codes would follow in other countries such as Greece and Italy, specifically in its capital, Rome.

While Roman law would therefore serve as a model for church and secular law throughout a significant number of countries within Europe during later periods, in other parts of the globe such as China there were already indications of written codifications of law or books of punishments in 536 BCE (Bodde & Morris, 1973). This recording increased exponentially as the Middle Ages began, where documents started to gain even more authority for agreements and passing laws as well as transactions. In this sense, a legal culture was established as an essential part of many civilizations but would experience many changes throughout time.

During the 19th century, political documents served as a defining marker for many countries, the United States being a great example of said strategy. *The Declaration of Independence*, written in 1776, was the most important paper to date regarding individual rights which eventually triggered the start of breaking free from European chains; by September 1787, they had already come up with a first draft of what would ultimately become the American Constitution, which intended to be a revision and correction of the shortcomings that the Articles of the Confederation had. Something that had shaped North America's identity from the aftermath of colonization became the starting point for many other decisions that would come and create a space for legal exchanges (Brown, 2017). It was not until the 20th century, however, that Forensic Linguistics was properly defined and separated from the rest of the field itself.

Forensic Linguistics is a discipline within Applied Linguistics which was coined in 1968 by linguistics professor named Jan Svartvik, who used it in his book *The Evans Statements: A Case for Forensic Linguistics*, where he analysed the claims of the protagonist of the famous Timothy John Evans case. Due to Timothy's issues with alcohol as well as his marriage to Beryl Susanna Thorley, who was said to struggle with managing the family's finances and housekeeping, their fights at home were loud enough to be heard by neighbours, including the physical violence that they would display on some occasions. His history, along with his multiple versions of what happened when pleading at court, convinced the jury of delivering a guilty verdict. He was charged with a crime of manslaughter and convicted to prison, where was eventually executed by hanging. Soon enough after his death and after some investigations, the police realised he had been wrongly accused, and that his neighbour John Christie turned out to be responsible for the killings of Beryl and their daughter Geraldine along with the murders of several other women. Acknowledged to be a miscarriage of justice, the case generated much controversy and set a precedent for the need to regulate legal talk (Naughton, 2007).

Forensic linguistics, understood as the language that is employed in legal and forensic processes (Rock, 2006; Kniffka, 2007), provides the prosecutors and lawyers involved in the process with the possibility of going one step ahead on the preparation of the cases. While drawing the relationship that becomes established between language and law, this field constantly redefines which cards both parties are allowed to play, and which ones are actively discouraged. Succeeding in not being fined as a result of a lawsuit, dismissing serious accusations or diminishing a sentence are all potential outcomes of mastering forensic linguistics.

There are three main areas where linguistics applies and elaborates on this language while working in forensic contexts. Firstly, understanding the language of written law, as leaving grey areas when preparing a declaration could turn into a lack of knowledge or resources and potentially lead to contradictory statements. Secondly, lawyers can benefit from using said language in forensic and judicial processes and anticipate potential answers as well as ask the right questions to the opposite team. Finally, providing linguistic evidence can influence the jury towards one of the parties involved within a case (Tiersma, 2008). Hence, a forensic linguist performs language analysis on either

written or recorded documents to help organisations such as federal governments, which hire linguists and specifically forensic linguists for the Foreign Service, the FBI, the CIA, among other departments, to solve crimes.

In the last 40 years, interest in the study of Law has increased for academics from disciplines not related to it (Butters, 2011), since legal interpretation is also essential for the defence and presentation of conclusive evidence. In Spain, María Teresa Turell was the pioneer of Forensic Linguistics until her death in 2013, editor of the first book in Spanish in this discipline: *Forensic Linguistics, Language and Law: Concepts, Methods and Applications* (2005) and since 2011 she became the Chair of the International Association of Forensic linguists. Currently, the leading forensic linguist in Spain and in Spanish-speaking countries is Sheila Queralt, who advocates for the consolidation of forensic linguistics in the Spanish-speaking world, both in terms of professional practice and academic research. She is the founder and director of the SQ-Forensic Linguists Laboratory.

Within the English language, research in this field began to have a greater weight with the contributions of Mellinkoff (1963) and Tiersma and Solan (2002), although it acquired a separate identity from the 1980s and 1990s in Great Britain (Perkins, 2021) and the sources have expanded ever since. The characteristics of 'legal talk' – the language used in court and police interviews – differ from other linguistic fields, since a cautious treatment of language and its correct formulation can radically change a verdict.

5.2. Different perspectives on forensic linguistics

Forensic linguistics can shape many layers of an investigation (Husa, 2012), which largely depend on the nature of the case, the number of people involved, and even external factors such as the level of education or the previous experiences that they have. On the one hand, the advantages of knowing these techniques are numerous: there are more possibilities to approach a case and it is therefore easier to detect the opponent's resources; on the other hand, it is precisely the potential controversial manipulation of language that can have direct consequences for those involved should it be actively encouraged or passively accepted.

5.2.1. Language manipulation techniques: police

There are multiple ways in which written and oral language can be manipulated. In England and Wales, making sure that the arrestee knows what he or she is entitled to while being held in custody is a priority in their judicial system. According to the official website for the UK government, the following police caution must be read by the custody officer along with an explanation of rights when putting anyone under arrest:

> "You do not have to say anything. But, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence".[1]

Although one may not answer questions for one reason or another, and forcing someone to reply is illegal, the official UK website also warns that every conversation will be recorded and that there might be consequences should the detainee refuse to cooperate. Therefore, another (socio)linguistic aspect, the way of transmitting these rights, is beyond important. Those who fail to understand that they have these rights or do not fully realize when or how they can be used might undergo an unfair treatment in custody. Thus, a detainee may be harmed by shortcomings in the presentation or a deficient communication of their rights. Language manipulation, however, can occur in all phases of a judicial process.

Professionals that use a microphone or ask questions undercover as part of a judicial intervention might end up in a deliberate or undeliberate manipulation of the conversation to make the suspects look or sound guilty. The reason for this phenomenon to go rather unnoticed relies perhaps on the fact that audio or videotaped language data, which represent a major part of evidence, appears to be more problematic for the legal process due to its orality. During said recording of suspects, police officers or cooperating witnesses can sometimes employ language techniques, be they conscious or unconsciously, that imply that the suspect is indeed involved in the crime that is being investigated or has already committed a criminal act in the past (Bartol & Bartol, 2018).

During police questioning, some suspects may break down due to growing pressure and admit to crimes they never actually committed. This is generally known as a false confession and was the key to what happen in the case of Timothy John Evans, who was mentioned earlier within the chapter. Evans was kept up to be "questioned for hours into the night" (Guðjósson, 2003: 167), which could have altered his own confessions due to sleep deprivation. Lack of sleep, along with food and water or not being allowed to use the restroom, or receive free legal advice are just some of the causes for a potential false confession.

During trial, prosecutors may also use language strategies that can make defendants appear guilty and be charged for crimes that they never actually committed (Shuy, 2006). To make matters worse, even when police interrogations are recorded, these excerpts might not include the entire interview process, but the parts that feel relevant to the person who is presenting said recording. The manipulation of language here usually occurs due to the difference of power that the two parties within the recording hold: while the person who conducts police questioning begins their work with a clear advantage and can eventually cross-examine witnesses at trial, those with whom they speak are usually not aware that what they say might be used against them.

[1] For more information, please visit GOV.UK: https://www.gov.uk/arrested-your-rights

Because suspects firmly believe that they are just engaging in everyday conversation, they are often less alert and can come across as less careful about how they portray or recall events. As a result, they might say things that are untrue nonchalantly to which they will have to own up to later simply because they were uninterested in the conversation or preoccupied with something else (Olsson, 2008). By contrast, the people who go on a covert operation get to decide when to record, when to stop, and sometimes even how much to show in the jury. Even so, the police officer's question is set to be objective, even if it is open-ended: the lawyer's question is not designed in this way: the nature is more subjective, since they try to convince or persuade the jury.

5.2.2. Language manipulation techniques: lawyers

The language used by the lawyer to reconstruct the story when standing before the courtroom demands a specific set of responses from the detainee or witness and aims to create specific emotions from the jury (Johnson, 2010). When cross-examining a non-cooperative or even hostile witness, a lawyer will be more inclined to employ language that might potentially limit the witness's response, so that the presentation of conflicting evidence by the witness is prevented. For instance, the smartest move would be to encourage yes/no questions that are as specific as possible and leave little room for elaboration. On the opposite side of the coin, interrogative questions such as who/how/what that allow elaboration are more likely to be given by the lawyers should the witness be beneficial for the defending.

The tactics that attorneys employ are carefully intertwined to help both themselves and their witnesses to appear as truthful as they can to the jury and the people in the courtroom that might have a say on the final verdict (Bowers, 2014). Depending on the impression that he or she wants to convey, a lawyer may choose to refer to the witness by their first name or a nickname that can aid the humanization of the witness so that they seem relatable to the jury; they can also speak using slang if the conditions allow them to in order to create a feeling of having a closer relationship between themselves and the courtroom. Nonetheless, an attorney can also completely avoid using informal language and deliberately use complicated legal terminology in an attempt to differentiate themselves from the rest of the people in the courtroom and establish their status or even confuse the person that they are questioning.

Lawyers work in the construction of the language of the legal process of the courtroom. Thus, the more likely they are to master a fairly large vocabulary, the more experience they have in the very nature of his work. Witnesses can still answer the lawyer's questions in different ways, and the lawyer must be prepared to establish new questions that could favour their case. There are several factors that could influence witnesses' interactions, including socioeconomic differences, their educational level, gender or even previous experiences, and lawyers must always adapt to the reaction that they get from them. In other words, lawyers have more grey areas that they can work with in which they have the right to use certain expressions or try to avoid, evade or provoke a specific reaction. This can vary from country to country: for example, in the United Kingdom the defendant

is more protected than in the United States, where they are very lax with the approach that the defence can take. This is why lawyers and linguists can and should work more closely with each other in the interests of justice, since "not only should linguists improve their understanding of law issues but also the lawyers should benefit from the hindsight experiences of linguists as consultants" (Ariani, Sajedi & Sajedi, 2014).

Conversational strategies can be used and given to witnesses, suspects or agents. Not all of them are immediate manipulation, but they can lead to it if using them intentionally (Olsson, 2008). One of the most obvious ones, ambiguity, is common to all sides: if, for instance, a witness admits to having *heard* a door closing, he or she can never be accused of having *seen* said door being shut. Blocking the suspect's response by interrupting or talking over as well as ignoring the suspect's repeated negation when asked about a crime can prevent a confession that the person who questions does not wish to happen. In front of the jury, intentionally overlooking information, lying or incorrectly rephrasing the suspect's testimony plays a pivotal role on the development of the case. Even disguising illegality by casually talking about performing illegal acts as if they were acceptable are within the limits of legal talk.

5.2.3. Language manipulation techniques: witnesses

One of the main consequences of language manipulation is that witnesses are easily influenced by different people at different stages of a judicial process. As previously stated, some ways to make their experience lack reliability is the way a lawyer decides to conduct a jury hearing, or how a police officer can create a memory that actually never existed by choosing to ask a certain set of questions as opposed to others. For instance, very much like in some television crime series, a witness might be asked to be part of an identification parade to help identify the responsible for a criminal act (McGorrery & McMahon, 2017). If there is a line up of 5 suspects for said crime, the witness might feel pressure to decide on one person, should he or she be introduced to the process by saying something along the lines of "this is an examination to see who has committed the crime". Notice how employing *who* instead of *if* – as in "if someone has committed it" – makes the witness think that the culprit is indeed one of the people in the room, even though perhaps none of them is actually involved. Furthermore, if more people have already identified the alleged culprit, and the witness knows which one has been chosen the most, he or she might join in due to peer pressure without necessarily being sure of what they recall.

There are times when witnesses have even claimed to have seen people who were never part of a case as a result of phrasing questions incorrectly. Assuming the gender of an attacker when the only information that is known is that they are about 1.70 metres tall is misleading, as there are many men and women that fit that description. Nevertheless, since it is more common for men to reach that height, a police officer might ask specifically about a man. In doing so, the witness assumes that they know that the culprit was a man, and hardly ever questions if the people that are conducting the police examination are wrong. Inquiring about colours and clothing can become another of way of asking a

leading question, like looking for confirmation as opposed to leave the question open. If a police officer or a lawyer says "the man was wearing a red sweatshirt, right?" rather than taking a more general approach and say "what was the man wearing?", the respondent is more likely to falsely recall said red sweatshirt instead of coming up with their own version based on what they actually remember. To this we must add that human memory is very unreliable, and that clear memories of an event are eradicated in just a few days, including the recapitulation of events (order, time) as well as visual recognition (Weiner and Hess, 2006).

5.3. A case study of Forensic Linguistics: suicide notes

The field of law is generally more comfortable dealing with the written word, which lacks the particularities of oral speech. Audiotapes capture voice intonation and pause length, among other orally transmitted indications of meaning, which do not exist in documents, reports or even transcriptions. The written word, however, is also pivotal for the resolution of a crime, and forensic linguistics has proved to be extremely helpful with it: this is the case of suicide notes.

Suicide notes have experienced a growing interest in research from a forensic linguistic perspective, the results of which up until now have shown a specific set of characteristics that are a common thread in most of them. Leaving a piece of writing implies that there is a recipient (or recipients) to which it is addressed, so the content must be relevant for both them and the writer, and potentially any type of relationship that they might have: the content might even be intended to make the addressee suffer or feel guilty, but ultimately see this act not as the best option but as the only one. This is the reason why they usually include sentences that allude directly to the act of ending one's life or the method of suicide that was chosen and carried out as well as how this would be communicated later (Zaśko-Zielińska, 2022).

A credible suicide letter makes a definite and unambiguous proposition about the act that makes sense within a specific context, and the language that is usually employed is therefore simple (Jasim and Jaafar, 2022). Actual suicide letters are short, usually under 300 words, and go straight to the point, even if they often present a degree of evasiveness towards what they are doing or why. The analysis of these notes has determined the outcome of some cases throughout the last decades.

Said analysis does not start with a suicide note, as suicidal thoughts, and some attempts can be detected and prevented through the analysis of written and oral word, as "specific words and language patterns may tell about the speaker's state of mind even when they are not overt" (Ophir et al., 2022). Similarly, this analysis can be carried out on the language that has been used over the past few weeks – for instance, on social media, given the countless texts that are published on a daily basis – as well as the linguistic differences between attempters and completers (Handelman and Lester, 2007).

Apart from contribute to prevention, there are multiple occasions where forensic linguistics have helped to identify crucial elements within a suicide note, such as Kurt Cobain's note analysis that allowed a better understanding of his mental state under which he had taken said action (Sudjana and Fitri, 2013); another well-known example is American politician R. Budd Drwyer, whose writing was visibly filled with anger towards others, whom he blamed for the circumstances that he experienced by using clear reasoning (Fata et al., 2021). Both were confirmed to have been written by the deceased and without anyone else's interference: this analysis was needed since, for instance, Cobain's body had been found a few days later and the note could have been manipulated. All in all, albeit being an undoubtedly helpful study, there have been some other cases that have turned rather problematic, such as the alleged suicide of Paula Gilfoyle.

Paula Gilfoyle was found dead in the garage of her family home when she was eight and a half months pregnant, along with a handwritten suicide letter. After careful investigation, David Canter, a psychology professor, stated that her suicide note showed signs of having been faked (Petherick et al., 2009). Among said signs was her allusion to having *decided* to end her life, which sounded strange to linguists because mental action was emphasized over physical action; how it says "put an end to everything" but then mentions a "chapter". The act of committing suicide is final for the person who does it, and it was thought that it could be a chapter for someone else, for whom Paula's death was indeed the end of a chapter. The following excerpt from Robins (2018: 1989) shows the opening paragraph, which seemed like the start of a speech rather than a brief suicide note:

> "I've decided to put an end to everything and in doing so ended a chapter in my life that I can't face up to any longer. I don't want to have this baby that I'm carrying. I wish now that I had got rid of it. When I was thinking about it I wouldn't be hurting the way I am now."

The writing style seemed to have a tendency to use couplets such as "pain and heartache", "goals and dreams" or "change and alter" (Blackwell, 2009). These synonyms, which were often written next to one another, did not contribute or add anything new to the note, which was expected to be a brief explanation of the act. Thus, their usage made it unnecessarily longer, and came across as suspicious to the linguists that were helping out with the case. In addition, professionals also came to the conclusion that there were two styles between paragraphs, which only made the entire speech more confusing. On the one hand, there were paragraphs that contained short words and informal expressions that simulated spoken language; on the other hand, there were some others that were full of longer and more formal words and therefore simulated written language.

Paula's husband at the time, Eddie Gilfoyle, was convicted for murder and sent to prison. He repeatedly stated that he was innocent and never confessed to having committed the crime, but the linguistic evidence was thought to be too strong and

therefore the evidence that he provided was dismissed. Years later, he was released on parole and scholars began to question whether he had actually forced Paula to write the note, and his case is seen by some as a miscarriage of justice in the British legal system (Robins, 2018).

Given that forensic linguistics is a relatively new field, there have been all sorts of outcomes – both fortunate and unfortunate – including these two cases. The studies that have been carried out regarding this field so far, however, have significantly contributed to solve crimes in the past and could benefit from further research, which would refine and improve their scope and ultimately lead to better results.

5.4. Conclusion

Not only is a proficient usage of language useful on a piece of paper as a way to catch culprits or potentially dismiss false alibies but is also a powerful tool when it comes to speech analysis. As shown throughout this chapter, in forensic linguistics, written documents are analysed in hopes of spotting deficiencies, drawing patterns or comparing writing styles with previous notes from the alleged author; there are also, however, videotapes and voice recordings that provide extra information on oral particularities that can complement previous evidence and ultimately determine the result of a case.

Being informed about how language is used at the courtroom, however, does not necessarily have to be controversial. The more resources one has, the more ways there are to go around a case and the more nuanced the approach will be. Hence, research on this topic has increased in recent years, especially because of the ever-growing integration of more sophisticated technology. The relationship between law and linguistics can be therefore strengthened through reciprocal collaboration as well as the mutual need to comprehend all steps within the judicial system better. Not only does this enhance academia, but also the resolution of daily situations.

All participants within a judicial process – including police officers, lawyers, witnesses or culprits – can undergo or use language manipulation techniques themselves, or even experience both at the same time. Whether this is done deliberately or not, it sets the scene for the development of legal language. On top of that, there are specific applications of this field of Applied Linguistics – including the analysis of suicide notes – that can completely shed light and completely change the verdict of those who have been charged with a crime. Mastering forensic linguistics can therefore also help to unveil the truth and solve a crime where evidence might be problematic.

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