



# Linguistic Evidence: What it is and how to use it

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## What is linguistics?

- Scientific study of languages and its structure (OED)
- Is it really a science?
  - Theory building enterprise where [linguists] develop rigorous expectations for [the description of] language" (Levi, cited in Ainsworth 2006)
  - Certain kinds of linguistic research develop testable hypotheses (but not all)
- Linguists "listen" to language differently
  - Arguably increases need for experts
- Forensic linguistics: application of linguistics to law

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## What linguists study

- How people normally talk (discourse/conversation analysis)
  - Patterns in timing, interruptions, length of turns, how "speech acts" are done
- The structure of sentences (syntax)
- Sound patterns (phonology/phonetics)
- What words mean (semantics) and how context affects meaning (pragmatics)
- Regional/social variations in language (dialectology) including attitudes about speakers (sociolinguistics)
- Other communicative forms (non-verbal communication, semiotics)

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## How to identify an expert

- Terminal degree (Ph.D.) in linguistics or a related field
  - Sociolinguistics, psycholinguistics, neurolinguistics, historical linguistics
  - Linguistic anthropology
  - Applied linguistics
- Expertise in the particular area about which they will testify
  - E.g., a phonetician should not testify about discourse analysis
  - Publications in their area of expertise
  - Established body of publications by others in the field on the specific area
  - Not simply an expert in testifying

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## Use of linguistic evidence in court

- Miscommunication because of dialect/language differences
- Interpretation of linguistic actions (interrogation, questioning, discrimination)
- Comprehension and intelligibility
  - legal documents and statutes
  - jury instructions
  - Miranda warnings
  - text vs. audience
- Meanings of specialized languages, dialects or codes

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## Use of linguistic evidence in court

- Trademark cases
  - Similarity of names
  - Whether name is offensive
  - Genericness of name
- Author attribution
  - Profile or individual identification
  - Source/style of digital texts
- Whether taped conversation is natural or staged
- Technical expertise (may not require a linguist)
  - Acoustic engineering

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### Difficulties with linguistic expertise

- Law is essentially about language – potentially always relevant
- Daubert’s “common sense” attribute is tricky
  - Everyone “knows” language – “we have a jury, so who needs a linguist?”
  - Judges reluctant to admit testimony on English, though other languages are fine
- When should an expert be brought in?
  - Is a lawyer or linguist an expert in legal language? (similarly a doctor on medical language?)
  - Although lawyers are experts in legal language, they’re not experts in how language works
- Assumption that linguists determine the intentions of a speaker
  - Rather, should testify to the likely interpretations of someone’s speech/writing

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### Difficulties with linguistic expertise

- Often not based on experimental research, thus seems less scientific
  - Impossible with naturally occurring language
- Negative conclusions often easier to support
- Linguistic analysis is often descriptive, not prescriptive
- Quantitative vs. qualitative evidence
  - E.g., acoustic vs. auditory analysis of phonetic material (former is machine-based, latter based on human ear)
  - Linguistic analysis often uses both

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### Admissibility of linguistic evidence

- *Reliability* does not require *replicability*
  - Not all linguistic analyses are replicable, especially qualitative methods
  - *Kumho Tire* decision validates qualitative methods – based on “technical” or “specialized knowledge”
- Linguistic analysis often relies on a combination of qualitative and quantitative methods
  - An analysis of a given conversation as “natural” backed by information from corpus data
  - Opinion of a particular person’s comprehension level backed by surveys

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### Admissibility of linguistic evidence

- Rule 702: 1. "testimony is the result of reliable principles and methods"
  - If the *method* is proven reliable, the analysis for the case does not have to be submitted to testing
  - Methods should be tested outside of litigation contexts
  - Certain areas (phonetic analysis) have undergone more robust testing than others (voiceprints)
- Relevant linguistic features to analyze may not be apparent up front
  - E.g., authorship analysis may be based on dialectical or lexical features
  - Thus "replicable method" may not be identifiable
  - "Proficiency" may be a better model (Solan 2009)

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### Use of linguistic evidence in court

- Staged vs. natural conversation: *U.S. v. Weiss* (M.D. Fla., 1999)
  - Bank fraud case, multiple defendants
  - Some defendants taped others as part of a plea deal
  - Question about whether some of the taped conversations were spliced and/or staged
  - Roger Shuy brought in as expert - determined tapes were not staged
  - Based on research of the structure and form of natural conversations
    - Interruptions and overlap
    - Unfinished words/sentences
    - Vagueness and ambiguity

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### Use of linguistic evidence in court

- Staged vs. natural conversation: *U.S. v. Weiss*
  - Testimony challenged via *Daubert* – not based on experimental analysis, thus not "scientific method"
    - "uncharted waters with little indicia of reliability"
    - Technique used "is not generally accepted in the scientific community"
  - Judge ruled against permitting the testimony
  - Method may be tested, while its *particular application* has not been
    - Still within the parameters of reliability
    - Relates to peer review and publication as well

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### Use of linguistic evidence in court

- Voice identification: *Tennessee v. Looper*
- Defendant accused of murdering political opponent
- Tape recording of someone planning to frame Looper
- Based on phonetic, lexical, and discourse features
  - Pronunciation of words
  - Timing of speech (pauses)
  - Common discourse markers (yeah, well)
- Found not to be the voice of the alleged framer
- Tape not admitted into evidence for other reasons

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### Use of linguistic evidence in court

- Trademark case: *Auto Nation, Inc. v. Acme Commerical Corp dba Carmax*
- Was "AutoNation USA" confusable with Carmax's "AutoMation"?
- Were slogans "The better way to buy a car" and "The new way to buy used cars" too similar?
- Expert linguist called on each side
- Report summarizing linguistic issues:
  - phonetic similarities ("o" in auto), morpheme differences (meaning of "auto"), pragmatic differences (reference different things – used car store and computerized system)
- Neither ended up testifying

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### Recommendations

- Linguistic evidence should be used primarily to inform juries of potential interpretations of data, not to make definitive conclusions
- Testimony shouldn't be excluded if it doesn't provide a definitive opinion
- Expert as a "tour guide" for the jury (Solan 1998)
- Use linguists to enhance jurors' interpretations – "assist the trier of fact to understand the evidence" (Rule 702)

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## Recommendations

- Allow linguists to testify on interpretations and comprehensibility of legal documents
- Identify the connection between analysis of particular language sample and established research on the *method* of analysis
- Allow for novel applications of tested methods

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## References

Ainsworth, J. (2006) Linguistics as a Knowledge Domain in the Law. *Drake Law Review* 54:651.

Castelle, G. and R. Shuy (n.p.) The Reliability of Linguistic Testimony about "Staged" vs. Natural Conversation: Perspectives on Linguistics and Law.

Gibbons, J. (2011) Towards a Framework for Communication Evidence. *The International Journal of Speech, Language and the Law* 18(2):233-260.

Shuy, R. (2007) Language in the American Courtroom. *Language and Linguistics Compass* 1:1-17.

Solan, L. (1998) Linguistic Experts as Semantic Tour Guides. *Forensic Linguistics* 2:87-106.

Solan, L. (2009) The Expert Linguist Meets the Adversarial System. *Brooklyn Law School Legal Studies Research Papers* 178.

Solan, L. & P. Tiersma (2005) *Speaking of Crime*. Chicago: University of Chicago Press.

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