Expertise and Methodology in Forensic Linguistics
Pavilion West
2:00 – 4:30 PM

Organizer: Carole E. Chaski (The Institute for Linguistic Evidence/George Washington University, University of Nebraska-Lincoln)
Sponsor: The Institute for Linguistic Evidence (TALE)
Participants: John Baugh (Washington University and Stanford University)
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Seung-Man Kang (Chungbuk National University/Institute for Linguistic Evidence)
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Abdesalam Soudi (University of Pittsburgh/Institute for Linguistic Evidence)
Keith Walters (Portland State University)
Steven T. Wax, Esq. (Oregon Innocence Project)

The use of linguistic evidence in American trials has a long history: as far back as the 1800’s, cases in US courts have referred to some features of language as evidence. Early references to language as evidence obviously pre-date the development of modern linguistics in the 1920’s with the advent of structural linguistics (e.g. Boaz, Sapir). In fact, modern linguistic analysis was not brought to bear on linguistic evidence until the 1960’s, when Jan Svartvik, a well-respected corpus linguist, coined the term “forensic linguistics” to describe his syntactic analysis of witness statements in a murder investigation (Svartvik 1968): this was the first case in which linguistics per se was applied to forensic data by an academically-trained and practicing linguist. Forensic linguistics –or the application of linguistics to forensic data--began flourishing in Germany in the 1970’s with Hannes Kniffka’s work, and reached English and the United States in the 1980’s. But even now, the “language expert” might be drawn from many different disciplines, including handwriting identification; law enforcement (interrogation, crisis negotiation, behavioral analysis and polygraphy); English literature; rhetoric and communication; Classics; computer science; psychology; statistics; engineering; foreign language instruction, and, finally, linguistics (Chaski 1998).

Meanwhile, just as the scientific study of language has been developing since the 1920’s, so also have the role of an expert and the definition of expertise in the law been developing in the same time frame, with the Frye ruling in 1923 (Frye v United States 294 F. 1013 (D.C. Cir. 1923)) and the Daubert ruling in 1993 (Daubert v Merrell Dow Pharmaceuticals, Inc. (509 U.S. 579 1993)). In each of these rulings the United States Supreme Court produced guidelines for how judges should determine if an expert witness’ testimony should be admitted into trial or not. These legal standards are used to determine the admissibility of scientific evidence, and have affected how the courts perceive the “language expert.” Linguists who are consulted for their expertise need to be aware of these standards and how the standards affect the admissibility of linguistic expertise.

In this symposium, presenters provide information to answer questions such as:
   What is the role of the expert from the legal perspective?
   What is the difference between investigative and probative evidence?
   How is evidence determined to be admissible –i.e. used in trial?
   What is the role of the linguist as a language expert?
   What can linguists do to make linguistic evidence admissible, or not?
   How can linguists make linguistics relevant and useful?

We focus specifically on three general roles for linguists: first, the linguist can apply already-established linguistics that is directly relevant to a forensic issue; second, the linguist can develop methods based on already-established linguistic analytical techniques to answer a forensic question; third, the linguist can review and if necessary rebut analyses that rely on models of language that inaccurately represent linguistics and language (e.g prescriptivism). Expertise in linguistics thus becomes a prerequisite for and foundation of forensic linguistics.
Abstracts:

**Steven T. Wax, Esq.** (Oregon Innocence Project)

*Expertise and the role of experts in legal proceedings*

The law needs scientific expertise in order to investigate civil and criminal matters, and to assist the jury in understanding the weight and value of evidence in a case. Thus, the law regulates the use of scientific expertise through rules of evidence, often based on rulings of the United States Supreme Court. This talk focuses on how the law regulates scientific expertise in different ways by examining Rule 702: Testimony by Expert Witnesses in the Federal Rules of Evidence.

Points examined include: how the qualifications of an expert are determined, the role(s) of the expert as consulting, testifying and sometimes both; the admissibility of scientific evidence based on the Frye and Daubert factors on methodology (e.g. general acceptability of method, and error rate of method). The talk provides the audience with a legal perspective on what an expert is expected to do, with integrity, in the forensic setting. Finally, we examine how linguistic evidence has fared in a discussion of an important published Federal ruling, *United States v van Wyk* (83 F. Supp. 2d 515 (2000)).

**Carole E. Chaski** (Institute for Linguistic Evidence)

*Three approaches to expertise in forensic linguistics as linguistics*

In forensic linguistics, there are at least three models of language from which analyses arise: prescriptivism, the dictionary, and linguistics. “Language experts” who function as “forensic linguists” come from a wide range of fields, not just linguistics. But empirical tests of various methods have demonstrated, not surprisingly, that forensic linguistic methods rooted in linguistics are more accurate and more reliable than non-linguistic methods (Chaski 2013). The primary focus of this talk is the question of how do methods in linguistics get translated (or not) into a forensic application for use in an investigation or trial. Another way of asking this question is: how is forensic linguistics an application of linguistics? There are three approaches to forensic linguistics as linguistics. These three approaches are (i) immediate application (where the linguistics can go directly to the forensic issue, such as identifying non-native English in a trade secrets case and a defamation case; (ii) building a forensic method using other standard methods in linguistics, such text-typing for threat assessment and suicide note assessment in murder investigations; and (iii) defending linguistics in forensic linguistics when the linguistic method is either applied incorrectly or not actually a linguistic method such as incorrect and misleading use of terminology in linguistics in a trademark case; Lakoff’s masterful dealing with prescriptivism in the Unabomber case, Crystal’s (1994) critique of forensic stylistics regarding linguistic norms, and Nunberg’s piercing assessment of forensic stylistics for authorship in a custody case.

**Keith Walters** (Portland State University)

*Applying linguistics: US court cases involving Speak-English-Only in the Workplace rules*

This presentation focuses on the ways research methods and findings from linguistics have been applied in building support for arguments in court cases involving Speak-English-Only in the Workplace rules in US courts, including some of the challenges of doing so. Drawing on my experience as expert witness in three such cases, two of which involved the Equal Employment Opportunity Commission as named plaintiff and all of which settled out of court, I discuss the analysis of (a) information and data related specifically to the case, including (i) depositions, (ii) data collected from the plaintiffs, whether these are behavioral or report data; and (iii) discussions with the plaintiff’s attorneys; (b) claims based on published research; and (c) the use of hypothetical examples, a common method for illustrating phenomena in linguistics textbooks but far less common in legal discourse. Predictably, key relevant issues in these cases include the nature of bilingualism and the systematicity of codeswitching (e.g., Bhatia & Ritchie 2012). However, depending on the details of the case, topics from other subfields of linguistics can quickly become relevant (e.g., whether a letter from a manager to an employee that is characterized by the defendants as a letter of apology should, in fact, be construed as such). In contrast, the most vexing challenges are those arising from the very different understandings of bilingual language “choice” held by sociolinguists and psycholinguists, on the one hand, and the general public and courts (Ainsworth 2010), on the other.
Carole E. Chaski (Institute for Linguistic Evidence/George Washington University)
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Building forensic linguistic algorithms, cross-linguistically

Forensically-significant questions can produce research questions for linguistics. One such question is authorship identification. What are the linguistic characteristics of authorship such that an author can be identified with a particular text? This question does not have an answer that can be directly retrieved from standard linguistic analysis. Instead, this forensically-significant question requires building a method specifically for the forensic issue using standard methods in linguistics. Chaski developed ALIAS SynAID (Automated Linguistic Identification and Assessment System Syntactic Author Identification), using computational linguistics and syntactic theory. The ALIAS SynAID method requires 2000 words and/or 100 sentences and has attained strong reliability with 95% and 94% cross-validated accuracy on forensically-feasible data from experimental collection and known documents in casework, respectively (Chaski 2013), and it has been accepted in Federal and State courts as admissible testimony. Meanwhile, researchers such as Peng et al (2003) have presented a cross-linguistic method based on graphemic characters alone, with up to 100% accuracy on their datasets. We report on a character-based method (UniAIDE, or Unicode Author Identity Estimator) using Arabic, Korean and Spanish datasets vetted for authorship (Chaski 2014) and on building a method for forensic authorship identification using standard syntactic analysis and corpus and computational linguistics, cross-linguistically. This work extends ALIAS SynAID, so that it can be used in other languages, such as Korean, Spanish and Arabic.

John Baugh (Washington University in St. Louis/Stanford University)
Defending linguistics in pursuit of justice

Many criminal and civil court cases coincide with evidence that is frequently related to language usage and other forms of linguistic content. Many non-linguists evaluate this evidence during various legal proceedings without the benefit of (potential) rigorous linguistic assessments. This discussion surveys a host of different cases where informed linguistic analyses could make the difference between winning or losing in a court of law. Some of the civil cases under consideration will describe instances of linguistic profiling, with specific references to cases of housing discrimination and employment discrimination, while criminal cases will introduce illustrations from murder trials, robberies, and sexual assaults.

Although there are some circumstances where professional linguists might disagree about the relevant facts regarding language usage that could be central to any specific case, thereby presenting opposing expert evaluations, the vast majority of cases where linguistic expertise is likely be beneficial do not represent instances where professional linguists are in disagreement, but where non-linguists have been hired to evaluate the crucial language that may be central to the outcome of the case. Unfortunately, there have also been instances in which linguists have presented prescriptivist analyses of language use.

The paper concludes with specific policy suggestions regarding important limitations associated with linguistic contributions in both civil and criminal cases, and recommendations about how best to defend linguistic findings during legal proceedings, particularly so when opposing experts lack any linguistic expertise. The ultimate goal is to advance efforts that enlist linguistic science in forensic linguistics.