

# How I Got Started as a Forensic Linguist

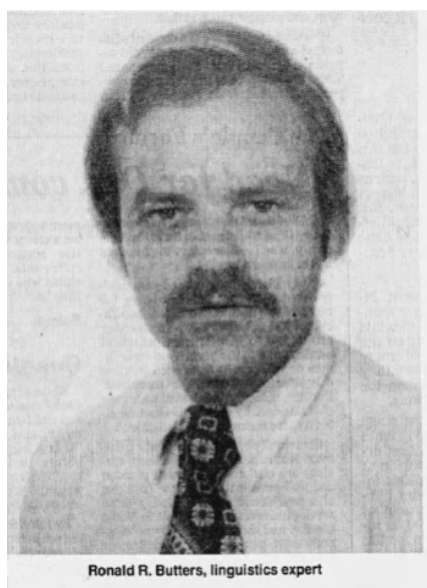
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My academic interests in language and law as well as my practical career in linguistic legal consulting have two different origins and began over a decade after I received my doctorate in English Literature and Linguistics. My first (and only) academic appointment was in the Duke University English Department as a specialist in English linguistics (1967–2007), where I taught courses in the structure and history of the English language, expository writing, and the understanding and appreciation of poetry and fiction. My earliest research began in linguistic theory as a follower of Noam Chomsky, but my interests very soon shifted to the American sociolinguistic school that was inspired by the early publications of William Labov, coupled with an increased interest in the work of the earlier dialectologists such as Raven McDavid. Throughout the 1970s and early 1980s, sociolinguistic approaches to American English were the focus of my scholarly interests, and as editor of the American Dialect Society’s journal, *American Speech*, I grew increasingly interested in lexicology and lexicosemantic change.

Speech variation in Southern States English generated a good deal of interest in the local press, and my outreach to the North Carolina community led me to speak to educational and civic groups and to give numerous interviews with the local press. One such interview led to a feature publication in the *Raleigh News and Observer* (October 2, 1983) of a column (by reporter Guy Munger) naming me as “Tarheel of the Week” for my research on speech variation. The headline was, “Studying the language that makes man unique,” and the article included my photo, with bushy 1980s moustache and a full head of hair, looking confidently at the camera:



The article, with the earnest photograph, caught the attention of a Raleigh criminal lawyer, Howard F. Twiggs, one of the attorneys whose firm had been retained to defend the North Carolina lieutenant governor, James C. “Jimmy” Green, who had recently been arraigned in state criminal court for allegedly accepting a bribe. Mr. Green was then beginning a political campaign for state governor and had established a campaign fund that legally solicited contributions. However, an FBI undercover agent (one Robert Drdak, alias Tom “Doc” Ryan), was assigned to pose as a gangster who attempted to influence Mr. Green to illicitly use his government office to permit “the Detroit mob” to open a legal gambling casino in eastern North Carolina. A series of surreptitiously recorded conversations between the two made up the crucial evidence supporting the state prosecutor’s allegations that certain passages (and, indeed, Mr. Green’s willingness to continue meeting with Agent Drdak) constituted unambiguous evidence of a criminally culpable quid pro quo—campaign “contributions” in exchange for political favours.

Although Mr. Twiggs and Mr. Green disputed the charges, the defence had no way of contradicting Agent Drdak’s sworn assertions as to Mr. Green’s allegedly intended meanings short of putting the lieutenant governor on the witness stand. However, when Mr. Twiggs read the October story about my work in linguistics, it occurred to him that a linguist could give expert witness testimony contradicting Agent Drdak’s interpretation without subjecting the accused to relinquishing his right not to testify against himself.

And so, Mr. Twiggs called me up. He described some of the passages that were at issue. I described what a linguist could reasonably say about the passages, based upon elementary pragmatic linguistic concepts and conversation analysis. For example, the following passage records how Green responded to the request of “Doc” for the Post Office Box number for campaign contributions:

GREEN: Well, as I told you the last time I saw you, uh, if something comes up where I can be of assistance, uh, without, uh, jeopardizing myself, well, I’ll always be glad to help.

“DOC”: Okay. Ah, the last time we—we got together you, uh, you didn’t—you didn’t have your box number for the, the uh—you remember you mentioned the campaign, ah, your campaign box number, . . . the uh

[GREEN gives mailing address]

“DOC”: Okay, ah, well that, that’s good. Ah, we, ah, we were, we were kinda wonderin’ if, ah, you know, if since, you know we haven’t talked in a while that if, ah, we, you know, if our minds are still workin’ along the same, same avenue as before, if, if we’re . . .

GREEN: Yes.

“DOC”: we’re in the right ballpark.

GREEN: Yes.

“DOC”: Are we?

GREEN: Yes.

The prosecution averred that when Mr. Green furnished, as requested, his legal campaign fund address, he was thereby agreeing to use his influence to assist “DOC” in an illegal scheme. They (and of course Agent Ryan) interpreted “without jeopardizing myself” to mean ‘without getting caught making an illegal bargain’ rather than (as Mr. Green claimed he intended) ‘without doing anything illegal’. No clearly culpable “quid” is established: Agent Drdak’s vague post facto “our minds still workin’ along the same, same avenue as before – in the right ballpark” does not explicitly constitute an agreement to do anything illegal. I noted that Green’s first “yes” is simply a conversational back-filler meaning no more than ‘I hear you, I am with you in this conversation, fill me in on what you mean’, and that Green’s other “yes” responses do not explicitly indicate more than an understanding of “same avenue” as he claimed—a perfectly legal promise to fulfil his legitimate role as a government official—“to be of assistance” to the public, if he can do so without “jeopardizing myself” – ‘putting myself in jeopardy by being involved in an illicit scheme’. The prosecution, of course, alleged that it could only mean ‘put myself in jeopardy of being caught in an illicit scheme’.

In the end, I did not testify in this case, sparing my being subject to the prosecution’s cross-examination of a witness who had never testified before (however appealing the earnestness of my newspaper photograph may have made me seem). My forensic contribution thus consisted of pointing out to Mr. Green’s attorneys the inconclusiveness of the evidence at each juncture that the prosecution put forth as supporting allegations of corruption. Mr. Twiggs reasoned that the linguistic arguments in support of their position were so powerful that they merely used the details of what I told them in cross-examination of Agent Drdak and in their summary remarks.

The jury stayed out a little more than two hours and found Mr. Green not guilty on all four charges. I like to think that my contribution carried the day, although there was a well-known back story here that may also have influenced the jury. While the investigation was carried out by federal agents, the federal prosecutor refused to prosecute; the case went to state court instead, ultimately under the jurisdiction of the North Carolina Attorney General, who was Mr. Green’s political rival in the contest for governor. In the end, neither Mr. Green nor the Attorney General ever became governor.

When Mr. Twiggs contacted me, I was at most only dimly aware that Roger Shuy had already done some innovative and exciting analysis in tape cases and had even begun to write about them in 1981 and 1982.<sup>1</sup> Once my contribution to the Jimmy Green case was finished, I wrote to Roger about my own fledgling attempt, and he responded generously. His fame among criminal lawyers was already bringing him more cases than he had time to take on himself, and he began to recommend me for the overflow.

Since the Jimmy Green case I have testified as a forensic linguistic expert in over 70 cases and consulted in perhaps 250. Roger recommended me for a number of different kinds of cases, and as time went on attorneys recommended me to other attorneys. It became increasingly clear to me that I was much less interested in the forensic analysis of surreptitious conversation than in cases that focused on the lexicographical and pragmatic meanings of individual words and phrases in statutes, contracts, and especially trademarks. In 1995 I testified in my first trademark case, *Circuit City Stores, Inc. v. Speedy Car-X, Inc.*; at issue was the putative likelihood of confusion between the marks *Car-X* and *CarMax*.<sup>2</sup> Since that case, the majority of my consulting work and forensic academic interest has been on trademark issues (chiefly genericness and likelihood of confusion). In my most recent courtroom appearance,<sup>3</sup> I gave evidence establishing that the term *fire cider*, a herbal remedy and condiment based on apple cider vinegar, is a term that has been in generic use for decades among those most likely to have purchased the product; in 2019, the judge ruled in favor of the clients for whom I testified. (See the judge's ruling at <https://tinyurl.com/ya7hdjmc>; and my paper, "Fire Cider," Dictionary Society of North America, Indiana University, Bloomington, Indiana, May 10, 2019, a copy of which I will be happy to send as a pdf file to anyone who requests it, ronbutters@mac.com).

## Notes

<sup>1</sup>See "Can Linguistic Evidence Build on Defense Theory in a Criminal Case?" *Studia Linguistica*, 35(1-2) (1981): 33-49; "Topic as the Unit of Analysis in a Criminal Law Case." In D. Tannen (ed.), *Analyzing Discourse: Text and Talk*. Washington, DC: Georgetown Univ. Press (1982): 113-126; "What Did the Abscam Tapes Really Say?" *Linguistic Reporter* (May 1982): 3-4; "Entrapment and the Linguistic Analysis of Tapes." *Studies in Language*, 8.2 (1982): 215-34.

<sup>2</sup>The details of my contribution to this case are discussed in "Trademarks: Language that one owns," *The Routledge Handbook of Forensic Linguistics*, ed. by Malcolm Coulthard, Alison May, and Rui Sousa-Silva (Routledge, 2021), 364-79.

<sup>3</sup>*Shire City Herbals, Inc. v. Mary Blue, d/b/a Farmacy Herbs, Nicole Telkes d/b/a Wildflower School of Botanical Medicine, and/or Wild Spirit Herbs, and Katheryn Langelier d/b/a Herbal Revolution*, United States District Court District of Massachusetts, Civil No. 15-30069-MGM).