Book Review

Introducción a la Lingüística Forense – un libro de curso

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Introducción a la Lingüística Forense – un libro de curso
Gerald R. McMenamin (2017)
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This book, written in Spanish, uses the term 'Forensic Linguistics' in the broader sense of the study of language in the justice system, but it is mainly concerned with the narrower field that I have called (Gibbons, 2011) "communication evidence". It deals mostly with language evidence in the legal system of the USA, particularly where the Spanish language is involved, often in California. The early chapters examine the background to forensic linguistics, and the book then moves on to case studies in which the author was involved, four on written language, and seven on speech. With regard to the role of the expert witness in Common Law trials McMenamin makes the fundamental point that the expert witness provides information and analysis to the court to assist it in its deliberations, but cannot and should not attempt to dictate the verdict.

Part I. Introduction

Chapter 1. The Socio-Historical Context of California

Rightly, McMenamin believes that this study needs to be contextualised in the geography and social history of California, in particular the ongoing role of Spanish and Spanish speakers. It forms the background of later case studies. He points out that California was established as a Spanish-English bilingual state, and bilingualism was supported by continuing migration from South of the border. He documents the very large numbers of Hispanic migrants in modern California, and points that Spanish speakers have suffered ongoing xenophobic persecution, and vilification, not least by the current US president. The politicisation of judges through an electoral system can exacerbate this.

McMenamin believes that the Forensic Linguist can play a critical role in this troubled context.

Part II. Forensic Linguistics

Chapter 2. Forensic Linguistics

This chapter is a survey of many aspects of Forensic Linguistics in its broad sense of the relationship between language and the law. It consists of 3 main Sections: 'Forensic Linguistics', which attempts provide a basic definition and outline of the field; 'Introduction to some Subdisciplines', which provides brief outlines of various areas of Forensic Linguistic study, and 'What Forensic Linguistics is Not'. The second main section, 'Introduction to some Subdisciplines', begins with spoken language. He discusses recent developments in machine acoustic voice identification (sic), suggesting modern developments of the controversial spectrogram may be more reliable. He then goes on to discuss the communication of rights such as the right to silence, to the presence of a layer, and right to an interpreter – these are sometimes referred to as 'cautions' outside the USA. In the US these are provided by the Miranda warnings, which he notes have been frequently criticised for the comprehension problems that result from their linguistic complexity. He then discusses FL spoken discourse analysis, but puzzlingly only in terms of evidence on intention. However the following material covers other discourse analysis themes, including the detection of deception, and the language of cross examination, followed by the linguistic detection of the origins of asylum seekers, noting that the latter is problematic. Turning now to the written language, he discusses authorship (an approximate written equivalent to voice attribution). He mentions various important studies, most of which have emerged from the Forensic Linguistic centre at Pompeu Fabra University, in Barcelona. This is also true of the next sub-section on plagiarism. Next he briefly mentions plain language and its relative, unclear warnings. He summarises evidence on trademarks. He then mentions various studies of the Spanish of the law and readability formulas. He moves on to linguistic profiling, mentioning a number of interesting studies on Spanish (and contrastive profiling with English and Catalan). This is followed by legal drafting (perhaps misleadingly called 'distintos sistemas jurídicos" – different legal systems). Legal interpreting and translation is briefly overviewed, and then the reader is wisely directed to websites and other sources for more information on this large field.

Corpus linguistics is defined and its importance for forensic linguistics is outlined (it can be used both for the analysis of legal language and the provision of linguistic evidence), and once more the reader is referred to the large literature on the subject. The language of vulnerable witnesses talks of the methods used to obtain reliable testimony from children, and of the appalling ideologies that underpin the questioning of sexual assault victims. Linguistic rights is the topic of the next sub-section, focusing on the right to use minority languages, and the frequent failure to implement such rights, followed by a mention of hate speech/discourse. The final main section, 'What Forensic Linguistics is Not', argues that Forensic Linguistics is not Psychology, Engineering, and Information Technology (which is only a "tool").

Minor Issues

It is very difficult in a short survey in single chapter to cover the full richness of the field of Forensic Linguistics (something that I have failed to do on many occasions). Rightly,

in a book in Spanish, McMenamin prioritises material on and in Spanish. Nevertheless, I am puzzled by some of his exclusions. For example in the discussion of acoustic voice identification, he does not mention the FBI's claim that it has highly reliable automatic voice attribution, and in the 'communication of rights' sub-section he does not mention the key study by Rock (2007) which reveals many variables that hinder communication of rights, not limited to linguistic structure. Similarly when discussing trademarks, he mentions Shuy (on English) but not Oyanedel and Samaniego (2001) (on Spanish). Given his many and significant contributions to the field it is certain that the author is very well cognitively organised, but this organisation is not always made explicit in the text. He does not place topics into categories such as 'description of the nature of legal language', 'linguistic human rights', and 'communication evidence' (Gibbons, 2011). Although these fields overlap, categorisations are useful in a textbook. At a lower level, 'linguistic profiling' is not associated with its cousin 'writer attribution', nor is a connection drawn between 'plain language' and 'legal drafting'. Almost any scholar in the field will have some aspect that they believe omitted or under-played: for example, there is no mention of a particular preoccupation of mine, the teaching of legal language in countries where the language of the law is not the mother tongue of the lawyers – such as the legal English used in some territories formerly ruled by Britain, the USA and New Zealand. This issues raised here may in part be due to the lack of reference to major texts on Forensic Linguistics, for instance the work of Tiersma, Levi and more recently Heffer.

Chapter 3. Linguistic expert witnessing

McMenamin notes that forensic linguistic witnessing is becoming more relevant as many Hispanic legal systems adopt oral examination and citizen judge/jury procedures. In the section on FL reports he talks about the inadequacy of testimony based on opinion without supporting data, the rules of evidence that courts apply, and the procedure to be used to satisfy these rules. He then goes on to argue that evidence should be totally explicit about source texts, data, methods, findings and conclusions. He provides a likelihood scale for the presentation of authorship opinions. He then goes on to discuss the typical Common Law court witness appearance genre, and recounts Shuy's view that the essential prerequisite for expert witnessing is an in-depth linguistic training. Shuy also suggests that some preparation for the court process is useful, along with information on how to prepare a report for the court.

'Practical Considerations' (section 3.7) begins with Finegan's description of the process leading to expert witnessing in court, and notes the difficulty of presenting in a way that meets the expectations of courts. He also states very clearly that it is not the expert witness's role to judge the case, but purely to present communication evidence, even if they believe their client to be in the wrong, or even if the actions they are helping to defend are morally repugnant – neutrality is essential. This includes rejecting any attempt by their lawyer to convince the expert witness of the rightness of their case. Maintaining objectivity and impartiality is fundamental to expert witness ethics. He then goes on to make a spirited case for linguists to work in groups to do forensic analysis, in order to bring in multiple perspectives.

Section 3.8 is a translation of a text on expert witnessing by Susan Morton of the San Francisco police force, which covers many of the very practical issues of appearing in court, including clothing, nervous habits, etc.

Minor Issues

The use of likelihood scales has come under strong challenge in IJSLL; although they are still in wide use, it might be good to mention this issue. Some of the material in this chapter is relevant only to the American form of Common Law, for example asking to conference with the judge.

Part III Forensic Stylistics

Chapter 4. Style

This chapter is a summary of the nature of 'style' – a term that is used in many different ways – and argues that it is a valid form of analysis that can be used for evidence in US courts, which have unusually strict limitations on the nature of evidence. He begins by discussing style in general, particularly within the plastic arts, and noting that there can be stylistic schools, as well as individual styles. He then goes on to work through the history of writing on style beginning with the Ancient Greeks, revealing that much of modern stylistic theory has early roots. Later in the chapter he discusses the important topic of style as options and choices, and the degree of conscious awareness of this. Every linguistic act involves a choice among options. These options may involve propositional meaning, but it is options among social meaning that are more associated with style. 'Style' is the author's selection from various linguistic options. He then goes on to suggest that another definition of style is 'deviations from a norm', from the anomalous to the 'incorrect', and it becomes clear that such 'incorrectness' is often dialectal, sociolectal, temperolectal or register variation. He ends the chapter with a sweeping critique of the rejection of forensic linguistic evidence in *U.S. v. Van Wyk*.

Minor Issues

This is a long and learned disquisition on Style which, for practical purposes, could be summarised more concisely. It is probably sufficient to say that there are no absolute stylistic characteristics; rather style is the sum of probabilistic choices within phonology/graphology, lexis, grammar and discourse. These features tend to form groupings, as Biber reveals in his valuable statistical studies: constellations of features that probabilistically co-occur. (I would also argue that 'standard' language descriptions conceal considerable variation in all aspects of language.) There is little need to journey through Aristotle and Saint Augustine to reach this conclusion. In his summary of linguistic approaches to style, he hardly mentions the notion 'register', and while mentioning Biber, does not reference the substantial work done on this in Systemic Linguistics.

Chapter 5. Forensic Stylistics

The chapter begins by revisiting the concepts in Chapter 4, and by defining such linguistic concepts as 'Variation' and 'Linguistic Variable', and gives examples of variation of various types found in the literature. Then discusses literary stylistic analysis. He

describes qualitative stylistic analysis before moving on to quantitative analysis. He illustrates from a menu from a US taco restaurant which has various unusual characteristics, and shows how to calculate the probability of occurrence of some of the competing variables by comparing with Spanish corpora, including some specialised ones. He use the CREA Spanish corpus for his calculations. He defines forensic stylistics as concerned only with written language. He then discusses the nature of norms, and idiolects, problematising both, but he maintains the importance of the concept of norms, suggesting that these may emerge from corpus linguistics rather than prescriptive norms. 5.5 provides an excellent description of the means of author attribution. Poorly translated by me, it says:

> The unique style of an individual is the combination of individual traits and collective (class) traits in the language of a single author. That is, the overall style of the writer does not lie in the presence of a single idiosyncratic characteristic …but …in the features selected from all the possibilities.

He also mentions the interesting possibility of detecting authorship of computer coding (analysis of informatic style). Although he supports the notion that forensic linguistic analysis should be replicable, he strongly doubts whether a single analytic program can automatically detect authorship (a top down approach), maintaining that a bottom up analysis of identificatory traits is a necessary pre-requisite (a point I have also made in Gibbons, 2011. He does not mention that this view is challenged by the Spanish academic Turell (2010) (although she was writing in English). He then discusses the knotty issue of whether writers/speakers have conscious metalinguistic awareness of their stylistic choices – which is important in the analysis and presentation of linguistic evidence, and he mentions Labov's preference for variables that are not consciously monitored, because they are more consistent. However, he points out that it is difficult to know of which variables an individual is actually aware – there are certainly more such variables in written language, because writing is in part learned through conscious processes. The issue becomes in part which elements of the writing process have become automatised. Finally he discusses the issue of meeting American evidence rules in court.

Minor issues

This is truly a minor quibble, but I notice that he gives non-standard examples from the Spanish writing of Christopher Columbus (Cristoforo Colombo) which traces these to interference from Portuguese. As Columbus was Italian, this may not always be correct.

Part IV. Case Studies: Written Language

McMenamin does not provide official case names and numbers in the text (they are available in an annex at the end), so they are not used in this review.

Chapter 6

An authorship case – *California v. Armas*

This case dealt with the death of a girl who had suffered physical injuries. The prosecution stated these were the result of abuse, while the defence argued they were the result of falling down stairs. The linguistic evidence was to do with the authorship of

a hand-written confession after an unrecorded police interview. There were linguistic experts for both sides, who disagreed on the authorship of this document.

McMenamin used the standard technique of comparing known writing by the author with the confession for linguistic differences and similarities. These were non-standard punctuation, spelling and morphological division – some of these features are common in the Spanish writing of poorly educated Mexicans. McMenamin found 5 similarities and 21 differences in the use of non-standard features, which he states is sufficient to prove beyond reasonable doubt that the confession was not written by the accused.

Chapter 7

An authorship case – *'Company' v. 'Employee'*

A woman sued her company over harassment by her boss. One strategy that she used to fight the harassment was to send anonymous letters to the boss and his wife in a mixture of English and Spanish. The company wished to know whether the woman had in fact written the letters. He compared her writing with the anonymous letters, proved authorship, and the woman confessed to sending the letters.

Chapter 8

An authorship case – *María Aguinda et al v. Chevron Corp*

The case involved a group of indigenous people in Ecuador suing Texaco/Chevron for environmental damage to the ecosystem, and consequently their health, society and agriculture. An Ecuadorian court awarded damages of millions of dollars. The authorship of expert evidence on the environmental damage was challenged by Chevron, who stated that it had been edited by an American company rather than being the sole work of the expert who presented it as his own in the first person. Chevron also challenged the authorship of the judgment in the case. McMenamin showed that the expert evidence showed various markers of the influence of English grammar – suggesting the role of the American company. Turell provided supporting analysis. He showed that the editing was for both language and content, and was able to reveal the likely process of development of the testimony. Concerning the judgment, on the basis of formatting, including numbers and punctuation, he found a conclusive dissimilarity between the judgment and other writing by the judge. These challenges were justified – in both cases, the real author later confessed to authorship. He finishes by appealing for reform to the Ecuadorian justice system to ensure that such cases, involving the devastated lives of the indigenous, receive due process.

Chapter 9

Comprehension of Written Text – *California v. Defendant*

This case involves a legal requirement that sex offenders update their personal information each year within five working days of their birthday. The Public Defenders Office was worried that a man who had not done so may not have understood the written document; therefore this case is not one of authorship, but what I call 'meaning transfer' – it involves a matching of the linguistic proficiency of the reader with the linguistic demands of the text. The defendant was a Tongan with limited English proficiency. The

form he was expected to complete required verification that the defendant had understood the document, but no means of actually checking. The form that the man had signed was clearly defective in this regard, and had been changed in the subsequent year to move the onus to the offender. Furthermore, despite a requirement that such forms be written in 'plain English', this form did not meet this requirement. In addition to intelligibility issues, the legibility of the Arial 6.5 typeface was low (the defendant was 67 years old). To test the readability of the text the expert used the Flesh Readability measure, which showed the complexity of the text. His analysis of the defendant's police interview showed his limited English proficiency. Overall then, there was a mismatch between the demands of the text and the defendant's capabilities, so it was doubtful that he understood the text. Although cultural factors were not mentioned in the report, there may have been cultural issues concerning sexual abuse, the concept of time and the nature of communication (compare Eades's and Walsh's work with Australian Aboriginals).

Minor Issue

The Flesh Readability measures used by McMenamin have been frequently challenged – there are better measures of linguistic complexity.

Part V. Case Studies: Spoken Language

This section consists of 7 chapters discussing cases where evidence was given on spoken language.

Chapter 10

Miranda Rights – *California v. Defendant*

This case involved comprehension of Miranda Rights by a Spanish monolingual. The case begins with McMenamin's opinion (an interesting departure from the structure of previous chapters) that the defendant could not have understand it because of his low level of education, which poorly matched the demanding linguistic complexity of the Spanish version of the Miranda Warnings, and the presentation – the police officer read the Miranda Warnings in Spanish rapidly and unclearly.

Chapter 11

Miranda Rights – *California v. Defendant*

In this case, the questioner's poor Spanish and the defendant's responses to the reading of the Miranda Rights meant that it was not certain that he had received these rights.

Chapter 12

Miranda Rights – *California v. Ceja*

In this case, the Miranda Rights were administered in English to a Spanish speaker with limited proficiency in English without the assistance of an interpreter. Her first response, that she would understand better in Spanish, was ignored. Subsequent attempts to confirm she has understood were equally questionable because they expressed her limited

understanding, or were 'mmhmms' (i.e. backchanneling). On this basis McMenamin stated in court that it was uncertain if the defendant understood her rights, and there was evidence of coercion, and asked for the record of interview to be dismissed as evidence. McMenamin (following a distinction made by Cummins) based his testimony partly on her mastery of BICS expand in English, but not CALP expand. This was specifically dismissed by the court. McMenamin details many more such rejections of his expert testimony. The court's responses in my view indicate a poor understanding of language and language proficiency, and a refusal to accept expert testimony on these, a not uncommon response from lawyers and judges. This is worsened by various ad hominem attacks on him in the judgment. His evidence was rejected by the court, the record of interview was accepted, and the defendant was punished by permanent imprisonment without parole. This chapter is disquieting.

Minor Issue

McMenamin used Cummins's terms BICS and CALP to explain the defendant's lack of mastery of English. Cummins himself abandoned those terms in the 1990s, and refers to Biber's work on register instead (see for example Biber and Conrad, 2009). There is also valuable complementary description of register in Systemic Linguistics. A more adequate register model (lacking in much American Forensic Linguistics) might be helpful.

Chapter 13

Bilingual Interpreting – *Texas V. Cortez*

This is an interesting historical case from 1903 that shows the consequences of poor quality interpreting, and the legal system's endemic prejudice against Hispanics. McMenamin includes this case on the basis that it is representative of an ongoing problem up to the present day, and that there is consistent misrepresentation of the conditions of detention of border crossers. McMenamin did not present evidence on this issue.

Chapter 14

Bilingual Interpreting – *United States v. Defendant*

In this case, English written translations of Spanish voice recordings were used as evidence that the accused played a significant role in drug dealing. Some of the most inculpatory recordings were retranslated into English by two independent interpreters working together. They revealed significant errors in the earlier translations, some caused by inadequate mastery of local Spanish, and others seemingly caused by the government interpreter's bias. McMenamin reveals the problem of inadequate legal translation/interpreting – which is found in many parts of the world. He does not mention the impact on the case of the new translation, which was used by the defence to challenge the official version.

Chapter 15

Pragmatic Meaning – *'Employee' v. 'Company'*

This case dealt with the meaning of the nickname 'negrito'. The online Spanish dictionary says bluntly:

> The word "negro" means black and "negrito" means "little black." Lots of folks in Latin America will call certain friends "negrito" as a nickname when he has dark skin. It's not an insult.

However, this article from the Independent newspaper makes it clear that the term can be regarded as racist in certain contexts: http://www.independent.co.uk/sport/football/news-and-comment/simeon-tegel-is-the-term-negrito-racist-sadly-for-the-fa-yes-and-no-6277646.html. This is the treacherous water into which McMenamin ventured. The company employed a team of Spanish speaking workers with one African American member. The Spanish speakers addressed him as 'negrito', and also used the term to refer to him. The company asked McMenamin to investigate two questions – the meaning of the term, and whether there was any negative or discriminatory intent when the term was used in this context. McMenamin decided that, in this context, the use was not discriminatory, but a marker of solidarity. He points out that courts tend to value dictionary meanings rather than taking into account the pragmatics of use. In his analysis he points out that the *-ito* diminutive ending is often used as a solidarity marker, particularly in nicknames. I would add however that it can also be patronising. By careful research into Spanish nickname practices, he supports the view that the Hispanic employees intended the term to be one of inclusion and affection, but he says that the African American did not experience it in that way.

Minor Issue

The Hispanic employees' intention may not have been discriminatory (the illocution), but given the history of the term 'negro' in America, the African-American employee may well have experienced the term as negative (the perlocution). McMenamin could give more weight to the perlocutionary force.

Chapter 16

English pronunciation – *Jazmin and the Spelling Bee*

This the case of young Punjabi speaker in the USA whose pronunciation of the written letter 't' led to her losing the Spelling Bee, because the jury heard it as a 'd', which was assessed as a spelling error. McMenamin performs an exhaustive analysis of the pronunciation of this dental sound in English and Punjabi, and shows that Jazmin was in fact pronouncing the written letter 't' – but her lack of aspiration was consistently different from the US English norm. McMenamin states that the policy of the Spelling Bee organisation needs to change on such issues, especially as the organisation encourages the participation of new migrants with English as a Second Language.

Conclusions

This book is very important, because, while there is extensive publication on Forensic Linguistics in English and on English, there is relatively little in other languages, with the possible exception of German. I do not have access to all material published in Spanish, but this may be pioneering work. It is well written, clear, and mostly well organised. It is

a brave book, because, like his previous work, the author is willing to place his cases and the methods used on record, where they are open to criticism, and where he believes he may have been in error, he says so. This book is a 'must read' for all Spanish speakers interested in Forensic Linguistics, and I congratulate McMenamin.

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