Frameworks for Discursive Actions and Practices of the Law

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Edited by

Girolamo Tessuto, Vijay K. Bhatia
and Jan Engberg

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SERIES EDITOR'S PREFACE

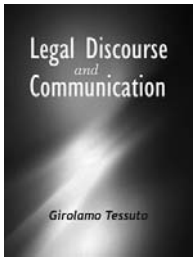
This volume grew out of the 4th International Conference *Law, Language and Communication: Negotiating Cultural, Jurisdictional and Disciplinary Boundaries* (26-27-28 May 2016) organised by the Centre for Research in Language and Law (CRILL) of the English Language Chair of the Law Department of the Seconda Università degli Studi di Napoli, recently renamed Università degli Studi della Campania *Luigi Vanvitelli*. This conference was attended by highly-renowned international keynote speakers, Professors Vijay K. Bhatia, Marina Bondi, Giuliana Garzone, and Maurizio Gotti who lectured on different topics, alongside the impressive response received from national and international scholars and researchers contributing to a totality of 60 presentations. The book, therefore, is a selection from those papers presented at this symposium, reshaped into articles after a double-blind peer review for inclusion in this volume of the CRILL *Legal Discourse and Communication* double-blind, refereed, international series.

I would like to recognise the serious commitment made by some members of the Conference Scientific Committee (Vijay K. Bhatia and Jan Engberg alongside myself) to double-blind peer review the various conference contributions included in this book. Massive thanks too go to other members from the *Legal Discourse and Communication* Advisory Board for their feedback on the ideas and approaches presented by some contributors to this volume. Finally, I also wish to record my thanks to Stephen J. Spedding (member of CRILL Management Unit) for his work in collecting and checking sources as well as performing technical and language editing for this publication.

Girolamo Tessuto
Conference Chair
CRILL Director

Legal Discourse and Communication double-blind refereed international series

Chief Editor: Girolamo Tessuto



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INTRODUCTION

GIROLAMO TESSUTO

Since the 1980s, the interdisciplinary study of law and language has made substantial inroads into academic research agendas influenced by the popularity of discourse analysis across a range of social science and humanities disciplines, including linguistics and communication studies. The relevance attached to discourse analysis as "an interdisciplinary field of inquiry" (Bhatia et al. 2008: 1) should come as no surprise if account is given to discourse as a resource for social research as well as a topic of research. In this sense, and regardless of some theories of discourse analysis, a unique insight into the social has been provided by nearly all mainstream discourse analysts, with researchers from different backgrounds (such as anthropology, law, sociology, psychology and, of course, linguistics) converging around the use of language as an irreducible part of social reality and conceiving of language through discourse as an instrument of social action and social practice.[1] Just as these researchers treat the social materiality of discourse as a melded text and as a resource for social science, so too discourse analysts have taken an interest in 'discourses' as a topic: if a social issue such as abortion, crime, discrimination, gender, or healthcare is also a legal issue in the rhetorical and argumentative organization of text, then it affects the more persistent features of social life and its institutions, and finds its way into a variety of modes of discourse for selective and purposeful uses.

[1] In this sense, discourse analysis in the field of linguistic studies (social linguistics) of the past several decades has been heavily inspired by the work of Gee (1999, 2005, 2014), for whom language serves two closely related functions: “to support the performance of social activities and social identities and to support human affiliation within cultures, social groups, and institutions” (Gee 2005: 1). In this vein, it is through discourse that language, and more precisely “language in use” (Gee 1999, 2005), has meaning in and through social practices. Similarly, reference to ‘language in use’ is focused upon by Bhatia et al. (2008: 1-2) in their discussion of discourse analytical approaches as they apply to the notion of language as social action and social practice.

Where intersections between law and language are concerned, discourse analysis (and its pragmatic model of language use) has not only provided an important tool for understanding the communicative patterns of 'law in action' produced in several diverse contexts of the day-to-day enactment of social life and practice, but has equally mobilized various analytical methods such as genre analysis, critical discourse analysis, argumentation analysis, conversational analysis, multimodal discourse analysis, and so on, tailored to specific types of legal discourse and research questions. Just as the broader terrain of discourse studies has seen ever-increasing institutional success and emerged at the cross-roads of two or more disciplines, so it has been instrumental in advancing the wide interdisciplinary scope of law and language, variously labelled as *legal linguistics* (Galdia 2009; Salmi-Tolonen 2013), *comparative legal linguistics* (Mattila 2013) or *forensic linguistics*[2], to a professionalized organizational field in its own right within the present-day academia and the profession, where specialist knowledge space has been produced by linguists and other disciplinary experts (not just legal practitioners - e.g. lawyers) across an increasingly diverse range of frameworks and perspectives. This way of thinking across the 'soft' disciplines - law *and* linguistics (language), or law *and* other disciplines – has the advantage of "elucidating the blind spots of conventional legal studies" (Engberg and Kjær 2011: 7-8) in the same way as it aligns with the preoccupation of each individual discipline (and the fundamentals of their epistemology) in making the social production of knowledge and meaning through communication and texts of all kinds, and therefore becomes both an object and a mode of looking at today's interdisciplinary law. This way then, weighing the knowledge and novelty of any particular combination among traditional disciplines, and more precisely between law and linguistics, with which we are concerned here, has the most immediate effect of moving professional communication in applied linguistics along an interdisciplinary and interprofessional research enterprise that is needed for *motivational relevancies* to be given voice among contributing disciplines (Engberg 2013: 24-25, original italics, quoting Sarangi and Candlin 2011a/b, and Gotti in this volume).[3]

[2] In addition to the International Association of Forensic Linguistics (IAFL), the Austrian Association of Legal Linguistics (AALL) and the Legal Linguistics Network RELINE, a range of textbooks (e.g. Coulthard and Johnson 2010, Shuy 2011) are made available within the forensic linguistics discipline.

[3] On a similar point, Gotti (2017) deals with the interdisciplinary analysis of specialized discourse, while Tessuto (2012: 5-7) focuses on legal genres in inter/disciplinary culture-marking schemes.

For linguists and applied linguists interested in the role played by language in creating law and governing its institutions and processes, valuable insights have offered an understanding of the linguistic practices of participants involved in the textual universe of the law - hence the observation that "language is constitutive for the law" (Galdia 2009: 84–85). After all, lawmakers idiosyncratically use language to make *legislation*, judges must provide for the authoritative resolution of disputes in *judgments*, lawyers must elicit favourable facts from witnesses through *cross-examination*, and in all such instances the effect of the use of legal language comes into play to create meanings as to the substance and the process of law. As a result of this role being qualified by a communicative act, and not least the globalization process moving from local to international scales and affecting legal communication, insights from the applied linguistic strand have so far resulted in different concerns about the uses of legal language, with topics ranging from the analysis of written and spoken texts and genres of legal discourse in cross-linguistic and cross-cultural contexts, including their relevance for legal translation and social media technologies, the analysis of language in legal processes along with forensic linguistic techniques, the analysis of the semantic meaning of a text and its legal (normative) meaning alongside the forms of legal reasoning and argumentation from both a logical-philosophical and legal perspective, the analysis of drafting techniques that shape the way laws and regulations are communicated, interpreted and complied with, to the analysis of pedagogical procedures relevant for specific contexts of application. Where the discourse-based analysis is concerned, the upshot has been that legal language has a host of rather different frameworks to opt for, stretching from textual analysis, (critical) discourse and genre analyses to corpus-based and ethnographic analyses, to mention just a few. So, not only has reliance on these applied linguistic approaches, or a combination thereof, generated distinct theoretical and methodological issues about legal discourse as an actual instance of language in use, it has also taken on board the context-bound nature of legal discourse alongside its relationship to social actions, and the power, identity, and ideology-constructing effects that bear upon those who use it in socio-cultural and interactional contexts, such as those that routinely take place at the police station, the courtroom, or other interactional settings. Reasons for how social actions are brought out in the existing discourse do not come in a vacuum since, from the genre analytic perspective, genres can be conceived of as “frames for social action [...] within which meaning is constructed” (Bazerman 1997: 19, and similarly Swales 2004: 61 and Lassen 2006: 505), in addition to being thought of as social action itself

(Miller 1984), or can be conceptualized as a "convergence of social practices [...] for a mediated action to occur" (Scollon 2001: 146), or can even be "said to 'index' or reflect the socio-rhetorical contexts in which they exist" (Tardy 2011: 57). These views thus explain how legal genres, as an inseparable category of our everyday life, grease the wheels of social action and communication in institutions and society through particular language practices, and most importantly become, the reasoning goes, sites for 'law in action' within and across the legal institutions and societal systems where different social actors are involved in particular locations. In other words, how generic products operate, and under what contingencies, within *legislation* and *cases* but also how they are put to practical use in society by those actors. Unsurprisingly, a look at the way the law written in *cases* actually affects people in everyday circumstances and how it changes the law provides just one example of the law being taken in action through rhetorical and linguistic resources.

Although these issues offer a socially informed theory of genre-based legal discourse owed to the mainstream ESP tradition of genre studies (Swales 1990, 2004; Bhatia 1993, 2004; Berkenkotter and Huckin 1995), they also concur on a basic vision of legal language as a medium for shaping several distinct textual genres according to the requirements for pragmatically effective communication in academic, professional and institutional contexts. Relevant to this vision has been the tendency in many applied linguistic descriptions to bolt genre-based analytical approaches to legal discourse and articulated action onto a broader social context and situation of approved professional practices enabled by a set of culturally influenced discourse practices. Put differently, a general course along which legal genre knowledge is negotiated within the frame of the community and disciplinary culture whose members share common goals, values and attitudes to suit their social needs. Not only this, but the fact that members of the disciplinary community in question demonstrate a strongly developed awareness of "conventionalized discursive actions" (Bhatia 2004: 87) from within the socio-cultural organization of their community also explains the propensity in many such descriptions to identify constraints on communicative purpose(s) as well as structure, content and style of legal discourse, and to account for the natural evolution of the discourse community in terms of genre purpose (Askehave and Swales 2001; Swales 2004) that is shaped within the context of the disciplinary practices and culture under focus. Correspondingly, legal genres or genre-ed renderings are no longer seen as inherently stable and self-contained in character, but are recognized as fluid and interconnected within community and discipline-specific practices, illustrating just how a

socio-pragmatic space (Bhatia 2004) can hardly be ignored in the trajectory of legal genre inquiry, and unearthing a number of other issues concerning the clashes between *generic integrity* and *appropriation of generic resources* (Bhatia 2004). In a similar vein, we understand why contemporary legal genres become much more specific and 'contextualized' in much the same way as they provide researchers with a more nuanced approach to genre-awareness.

Above and beyond such tendencies, however, characterizing the discourse of legal genres around this analytic *space* moves closer towards a more comprehensive conceptual framework for critical genre analysis (Bhatia 2008, 2010, 2012, 2017), where the focus on discursive practice, as well as professional practice, "is meant to describe, explain and account for the discursive performance of professionals in their very specific disciplinary and often interdisciplinary contexts and cultures" (Bhatia 2017: 27), and becomes salient for the far-reaching implications arising from the analytical issues of interdiscursivity, hybridity and contested identities, among others (Bhatia 2017: 36-61). In a context where genre analysis takes account of the characteristics developed by non-linear, multimodal, web-mediated documents, qualifying the discourse of legal genres and the ways they make particular social actions possible also extends (text) analytical methods to a more semiotic rather than solely linguistic approach (Garzone 2002).

In this regard, it is worth noting that more recent investigations (Williams and Tessuto 2013; Bhatia et al. 2014; Bhatia and Gotti 2015; Tessuto and Salvi 2015; Tessuto et al. 2016; Bhatia et al. 2017) into legal discourse, whether spoken or written, have thrown light on the complexity and dynamism of discursive as well as textual practices that are enabled and constrained by community and disciplinary members across various components of context (academic, professional, institutional), including the new and emergent forms of web-mediated discourse. Such studies have made it possible to see those practices in socio-culturally and critically reflexive terms, and opening new avenues of investigation into legal meaning created by the contour lines of "culture", "socio-functional systems" and "interpersonal communication" and taken up into a more inclusive "Knowledge Communication" principle (Engberg 2016: 36-45). More specifically, the issue of complexity and dynamism of legal discourse practices and their representation in genre analysis resonates with the *colonization* process by litigation (Bhatia and Gotti 2015; Bhatia et al. 2017; Bhatia 2017), which provides the analytical site for interdiscursive tensions and asymmetrical power relations to arise from professional discursive practices, and consequently leads to the invasion of

the integrity of arbitration by litigation with the resulting appropriation of generic resources. Allied with these manipulative strategies in professional communicative contexts are the emerging forms of law and justice within web-mediated and social media discourses, where they bring into focus issues of "reconceptualization" and "recontextualization" (Bondi 2015: vii-viii) or, rather similarly, issues of interdiscursively defined versions of professional discursive practices through "recontextualization" (Sarangi 2000; Gotti 2014; Bhatia 2017), and serve to shape, (re)interpret and transform the cultural expectations of law and its popularized discursive character in the public space. Just as the studies in the review are conducive to widening the field of inquiry in the applied linguistics research landscape by encompassing different methodological frameworks and topic areas within their purview, so too they highlight many of the uses of, and concerns about, law as a wider, 'contextualized' discursive action or practice, thus recognizing the ways in which participants socialise and negotiate their roles, identities, ideologies, power, and goals in specialized contexts of communication, and how they interact across other professional practices by transmuting or challenging understandings of legal discourse.

Very clearly, the rationale behind such linguistically and discursively constituted practices that are shaped and enacted in different types of legal discourse emerges as a way of accounting for a functionally situated logic of interests, motivations and indeed activities that are brought to bear on the participants involved in the discursive events, and provides reasons for the existing community and disciplinary practices to be concerned with stability as well as change over time. Consequently, the rationale becomes central to our knowledge of the formal structure and process of law, which shapes the peer constraints on dynamically configurable processes, institutions and procedures of everyday communicative activities. Measured against the collective resources of cultural norms or values, therefore, constraint-driven activities not only take account of all those political and legal changes that are embedded in larger, often dialectic, conflicts between different actors by securing justification for the claimed interests and values and increasing the law's operational flexibility, but most importantly capture the meaning process of law-making use of language as is necessary for any account of the academic, institutional, professional, and of course, socio-cultural contexts of discourse practices.

Against this backdrop, further opportunities still arise from diverse and complex contexts of discursive practices where the formal structure and system of the law function through the agency of language use and other semiotic modes of communication to create knowledge about the various

kinds of discursive activities and practices. This, then, is the whole thrust of this co-edited book, which focuses on several different legal discourse-framing practices from academic, professional and institutional contexts, and extends many of the insights which have developed within discourse and communication studies by representing an accurate account of interdisciplinary research agendas.

Content of this book

In weaving these objectives into a tight thread and pulling together academics, researchers, and practitioners from different backgrounds, the twenty chapters included in this volume are intended to be descriptive and interpretive of a variety of issues involved in the analysis of legal language. For this purpose, significant contexts and situations for legal discourse and practice (academic, professional and institutional) are provided within the socially and culturally-informed topic areas of language, law and communication research - namely, conflict resolution, corporate social responsibility, research paper writing, court and out-of-court interaction and strategies, traditional and digital media, alongside translation, linguistic skills and communication strategies. As a result, a multifaceted overview of the ongoing research highlights the analytical dimensions offered by the contributors on a range of issues that fall within the scope of individual articles, where specific perspectives, varied applications, and different methodological procedures are presented in qualitative and quantitative data sets to account for a host of legal texts and genres (spoken or written) in different discourse-shaping actions and practices.

The book opens with the keynote paper delivered by **Maurizio Gotti**, *Interactions Between Linguists and Legal Practitioners Within and Across Professional Practices*, offering a combination of theoretical as well as analytical perspectives from which conflict resolution methods can be seen to operate successfully within and across disciplinary and other boundaries. In this opening chapter, the author provides several fascinating insights into some of the joint activities carried out by applied linguists interacting with professional experts and ties it into important research where an integration of professional and linguistic theories accounts for an understanding of law as a discursive practice. The author is clear about the views expressed, these being drawn from the relevant literature as well as from direct experience in interdisciplinary research projects relating primarily to the field of international commercial arbitration. The author does so by examining three main issues: the generic integrity of legal

discourse in international commercial arbitration in multilingual and multicultural contexts, the increasing 'colonization' of arbitration practice by litigative processes, and the complex variety of arbitration procedures and textualizations in Asian countries. The analysis of these issues, the author claims, implies a number of important processes and procedures which come together to represent intercultural, interdisciplinary, and inter-jurisdictional practices. In this chapter, the author thus draws the reader into an understanding of valuably considered findings that bring notice to the high degree of contribution required from all stakeholders engaged in a mutual action and pursuit of a successful investigation of a complex professional reality.

The way in which approaches, methods and perspectives chart new courses in existing research on discursive and professional practices goes forward with evidence-based data of investigation in the second chapter *Anatomy of a False Confession: The Linguistic and Psychological Characteristics of False Confessions* by **Janet Ainsworth**. In her study, the author draws attention to advances in forensic science over the last few years, where the use of DNA testing in particular has revealed thousands of cases in which innocent people have been convicted of serious crimes. As many as one in five of these cases involve, the author informs, convictions in which the defendant we now know to be innocent actually confessed to the crime. Based on this, this chapter analyzes an American case in which several innocent people serially confess to a murder. Examining how the false confessions occur in that case reveals linguistic attributes of police interrogation that can, often unwittingly, produce the conditions for false confessions. In addition, certain characteristics of criminal suspects can make them vulnerable to the discursive strategies that are often employed in police interrogation. This case study concludes with the saga of the twenty-year legal process that ultimately unravelled the wrongful convictions in this case.

In generating different data for analysis, method and theory about the discursive contexts, activities and practices of professional genre writers, the third chapter *CSR Between Guidelines and Voluntary Commitments* by **Marina Bondi** and **Danni Yu** looks at variation across core and peripheral genres of legal discourse - those which determine legal principles or notions and those which communicate them. The authors represent the 'big context' for their study by informing the reader about the scholarly debate over the problems of mapping the extraordinary diversity of legal discourse in such a way that attention to peripheral genres has only been paid more recently. Using a small corpus of EU documents on corporate social responsibility, including examples of both commissive and directive

genres (policy documents, resolution, directives, guides), the authors take the specificities of "social responsibility" (and its mostly voluntary basis) as their starting point in order to examine how the discursive practices of policy-making and public communication are effectively shaped to reconstruct and transform the representation of social actors. The language focus of the analysis in this chapter resides in pragmatic and interpersonal aspects, such as polyphony and interpersonal distance (textual voices and modality), including the representation of the directive authority, the parties involved and the degree of commitment. The authors thus refine this focus as they proceed with their research in a manner that encourages the reader to pursue the full content of this engaging chapter.

In the fourth chapter *Plea Bargaining as an Occluded Genre in Common Law Jurisdictions: Investigating the U.S. Case* **William Bromwich** sets the context of his discussion in the realm of occluded genres. First, the author discusses trial by jury, which has long been celebrated as a defining characteristic of the common law system, and argues that within this institutional practice the discourse taking place in the jury room is an occluded genre, as transcripts and recordings of jury deliberations are outlawed, and jury members may not discuss the case outside the jury room. As a result, our understanding of jury room discourse is more limited than, say, in cross-examination. The author then goes on to cast light on a related occluded genre in the U.S. judicial system: plea bargaining, that in 2013 accounted for 97 per cent of federal criminal charges. Unlike trial by jury, plea bargaining takes place behind closed doors, not necessarily under the supervision of a federal judge. In highlighting the role played by plea bargaining, the study examines the methodological constraints deriving from this occluded genre.

As an explanation for their study on *Rhetorical Variation in English and Italian Law Research Article Abstracts: A Cross-linguistic Analysis* **Silvia Cavalieri** and **Giuliana Diani** set forth beforehand the importance of genre-based studies on English research article (RA) abstracts, which have received quite a lot of scholarly attention across different disciplinary fields as well as across cultures. Yet, the authors argue, one notable exception to current research is a lack of attention to Italian-drafted abstracts. With this in mind, the authors' aim is to compare English and Italian RA abstracts in the field of criminal law in an attempt to investigate whether there is rhetorical variation in the abstract genre from a cross-linguistic perspective. To do so, the authors draw from two English and Italian comparable corpora of RA abstracts in the field of criminal law and show that the rhetorical structure of RA abstracts written in Italian conforms to the international conventions based on the norms of the

English academic discourse community. However, the authors find, abstracts written by Italian law scholars are less rhetorically complex than the English abstracts - they only present some of the basic structural moves which constitute the different sections of the underlying research article. The English abstracts, on the other hand, reflect these moves more closely. The authors explain such rhetorical variation through differences in intellectual styles and cultural patterns, as well as differences in the relationship between the writer and the discourse community s/he addresses.

In the chapter *Argument and Persuasion: The Function of Literary References in Common Law Judgments* **Ross Charnock** explores citations from extra-judicial sources. Although literary citations are common in English legal judgments, it is unlikely, the author argues, that they would continue to be so frequently used if they were merely devices intended to demonstrate the superior cultural background of the judge. Given that judicial opinions are likely to be better received if the judge can demonstrate his membership of the relevant judicial community, it is more plausible to assume some benefit to the judicial institution. If so, the author maintains, then the function of cultural citations may be less argumentative than rhetorical.

In their contribution *Lawyers as Ventriloquists: A Contemporary Approach to Understanding Credibility in the Courtroom* **Vincent Denault** and **François Cooren** start from the premise that Aristotle's rhetoric of courtroom allows us to identify elements of persuasion that lawyers can rely on when pleading their case (McCormack 2014). In the authors' view, however, this remains somewhat vague when it comes to identifying the interactional details that contribute to the building of the argumentation itself (logos), the empathy lawyers inspire in judges (pathos) and the lawyers' character or authority (ethos). Their study thus aims to address this issue by showing how a ventriloquial perspective on communication (Cooren 2015) can inform and complete a more classical theory of discourse - Aristotle's rhetoric. In order to achieve this objective, an in-depth analysis of excerpts of a courtroom interaction from the Charbonneau commission, a public inquiry into potential collusion and corruption in the construction industry, is conducted to understand and detail how the ventriloquial perspective on communication can emphasize the underlying discursive mechanisms of lawyers to persuade judges that their client is the one that deserves justice.

The chapter "*Can You Express It So We Can Understand It?" Metapragmatics in the Courtroom* by **Michela Giordano** examines interaction between legal and medical experts in the courtroom through the

lens of metapragmatics, with communicative behaviours and utterances being evaluated and judged in the negotiation of meaning. Through metapragmatic strategies, participants in court proceedings express their ideology and assessment on communicative behaviours within specific speech situations. Data for this study are drawn from the transcripts of two trials, which are investigated for metapragmatic strategies used by lawyers and expert witnesses along with metadiscursive information addressing the adequacy, clarity, relevance and truthfulness of their utterances. The interactive events between lawyers and experts are scrutinised for instances of insinuations, objections, accusations, requests for clarification, reminders of questions and procedural directives (Janney 2007). Given the extremely normative code of conduct in courtroom contexts, findings for the sequential organization of talk appear to be influenced by powerful metapragmatic techniques, presumably the result of group identity, power asymmetry and negotiation of interdisciplinary boundaries.

The way in which linguistic research improves our understanding of professional courtroom interaction takes a change of direction with the contribution *Spoken Interaction in an Academic Legal Context: The Discourse of the Arbitration Moot* by **Christoph A. Hafner**, who addresses the issue of communicative competences and discursive practices required for the academy. The basic assumption behind this chapter is the tradition of Language for Specific Purposes (LSP) where little work has been done on spoken interaction in an academic legal context. With this in mind, the author aims to fill this gap by providing a description of the linguistic and discursive strategies observed in the spoken academic genre of the arbitration moot. A mock arbitration is one in which law students respond to simulated facts and take on the role of counsel, representing a party at a simulated arbitration hearing. The students' task is to orally present their arguments to one or more arbitrators, who chair the mock proceedings. In doing so, the author draws from spoken data gathered from a single mooting team at a university in Hong Kong as they prepared for a high-stakes, international arbitration moot competition. Specifically, his analysis focuses on the generic structure of the arbitration moot, the use of questions by arbitrators, and the use of concession and stance by counsel.

In his contribution *Generic Appropriation in 'Fictional' Legal Discourse: The Case Of Genre Embedding in Legal Drama* **Adriano Laudisio** draws attention to recontextualization of law within fictional contexts where it takes place through legal dramas - TV series staging lawyers debating cases and real legal issues before a judge, often involving a realistic representation of the legal system. By embedding a variety of

legal specific genres, ranging from trial phases (witness examinations, hearings, opening statements and closing arguments) to Alternative Dispute Resolution, legal drama is considered by the author as an example of 'genre embedding'. In other words, it is the phenomenon in which "a particular generic form [such as] a poem, a story or an article [is] used as a template to give expression to another conventionally distinct generic form" (Bhatia 2004: 78). With this in mind, the author provides a detailed analysis of legal drama as a 'hybrid genre' where generic resources are borrowed from courtroom discourse and staged to the audience in an entertainment perspective. To do so, the author draws from a representative corpus comprising the scripts of scenes from three legal dramas: *The Good Wife*, *Suits*, and *Boston Legal*. Inspired by "text-internal" factors in Bhatia's (2004: 119-132) analytical framework, the author investigates the main phases of trial - i.e. opening statements, closing arguments and witness examinations. Findings reveal that the appropriation of 'text-internal resources' in fictional reproductions of trials (legal dramas) takes place on various discursive levels (rhetorical structure, textualization, vocabulary, morpho-syntax), contributing to the debate on new hybrid forms arising from the popularization of legal discourse.

In *Communicating Linguistic Theory and Analyses To Judge and Jury in the Highly Adversarial US Justice System: Theatrical Cross-examinations Vs. the Facts* **Robert Leonard** testifies as an expert forensic linguist in a 2009 US murder trial. He compares transcripts of the two cross-examinations by the defense lawyer, who, during the Frye pretrial evidentiary hearing (in front of a judge and no jury) conducted a sober, detailed cross-examination dealing with data and analysis. But at trial, with a jury present, the defense lawyer's cross-examination quickly deteriorated into wild theatrics that dealt very little with data or analysis, apparently intending instead to distract jurors from the unwelcome linguistic facts—and to attack the messenger of those facts. The lawyer pounded on reports and exploited the occurrence of obscenities in the data to shout them in the linguist's face from an arms-length away, and, when intimidation tactics failed, smirkingly switched to insinuating that the expert was a drug user. This event, then, is situated in the context of a comparison between "adversarial" common law systems (truth emerges from conflict) like that of the U S, and "inquisitorial" ones (truth is to be found by an investigator-judge).

In their contribution *"If Only Everything in Life Was as (Un)reliable as a Volkswagen". A CDA of the Online Popularisation of the Dieselgate Notices of Violation* **Antonella Napolitano** and **Maria Cristina Aiezza**

provide the set of facts that surround their study - in 2015 Volkswagen was notified for infringing the Clean Air Act by the US Environmental Protection Agency after manipulating emission tests of some diesel engines. Under these circumstances, the authors compare how the notifications and following investigations, updates and measures were communicated online by EPA and VW. In doing so, a CDA framework is taken to the sections of EPA website and VW Group corporate site which convey information about the case. Considering that the popularisation of the legal case appears to serve different functions and to be influenced by contrasting interests, this study focuses on the rhetorical strategies adopted by Volkswagen and EPA to address the legal issue and to state their own professional identity. The study reveals that the violation of the law is clearly stated and recounted in the EPA notices and efficiently popularised online, while VW communications show a lack of managerial coherence, an exploitation of scapegoating and excuse strategies along with a promotional purpose.

The chapter *A Case Study of Complex Prepositions in L2 English Translations of Written Pleadings Before the European Court of Human Rights* by **Jekaterina Nikitina** addresses the combination of conventional (overrepresented) and creative (transferred) tendencies in written pleadings before the European Court of Human Rights translated by L2 translators from Russian into English, including forms of interference (discourse transfer) and translation universals. The assumption behind it is that regularities of the targeted domain – legal English – tend to be reflected to a greater extent in translation under the influence of the overrepresentation phenomenon. At the same time, discourse transfer markers transpose source-text specific elements into the target texts. The analysis is carried out at the level of complex prepositions, comparing corpora across languages. The research study uses both qualitative and quantitative investigation tools, and makes recourse to corpus linguistics using *WordSmith Tools 6.0* and *AntConc 3.4.3* software for lexical analysis and text search. The results, the author argues, may be of some use for Russian-to-English translators, helping them avoid use of unnatural or overly conservative patterns.

In *Challenging UK Home Office Immigration Decisions: An Investigation of the Judicial Reviews of Women's Asylum Claims* **Maria Cristina Nisco** provides the basis for her study in several distinct pledges to implement the policy of "deport first, appeal later", amongst others, with the UK government now removing the right of foreign nationals to appeal against deportation from within the country. According to the author, this seems to be compounded by women's asylum claims

presenting highly complex and challenging issues. Indeed, the author adds, concern has been expressed regarding how the UK Border Agency (BA) officers and immigration judges handle such cases. Against this backdrop, the author investigates the extent to which a gender perspective can be detected in the judicial reviews of denied asylum claims, especially after gender guidelines were introduced in 2004 to provide UKBA officers with guidance on assessing women's claims appropriately. To this aim, a representative corpus of appeals made by women asylum seekers from 2004 to early 2016 is collected and analysed for discursive instances and linguistic patterns that confirm or disconfirm a gender-sensitive treatment in the rulings issued by both the UK Asylum and Immigration Tribunal and the Upper Tribunal (Immigration and Asylum Chamber) over the last decade.

In *Linguistic Competences in Mediation: Increasing Language Awareness and Developing Communication Skills*, **Giulia Adriana Pennisi** highlights concerns for communicative competences and discursive practices required for the workplace. The author sets her analysis in the context of legal expert practices which have increasingly moved beyond advisory and representative roles towards neutral, non-aligned interventions by developing new professional techniques in aid of new settlement strategies. Despite cultural diversity and variations over time, the different contexts within which informal principles of justice have often been found reveal a prevalent trend to create alternatives to adjudication for handling disputes, such as negotiation and mediation processes. Against this backdrop, the author focuses on the linguistic skills and communication strategies that experts need to know and apply when conducting mediation. The author demonstrates that one of the mediator's initial tasks is to clarify that the persons are not the problem but the issue under discussion is the real problem, so they must jointly reconsider it. Eventually, the author states, reframing and construction begin with the idea that a story of cooperation already exists and only needs to be uncovered.

In their contribution *Video Evidence, Legal Culture and Court Decision in Brazil* **Vicente Riccio**, **Amitza Torres Vieira** and **Clarissa Diniz Guedes** examine how video evidence is discussed by second-level jurisdiction Brazilian courts. Civil and Criminal Decisions from Courts of Justice of São Paulo and Minas Gerais States are selected and analyzed. According to the authors, video evidence is a new method of proof and its presence in courts is increasing. How does the incorporation of images take place in the context of legal process? Do judges rely on images to sustain a decision? Which arguments legitimate video evidence? Based on a qualitative approach, the authors discuss the arguments used to sustain,

deny or partially consider videos brought as evidence in criminal and civil cases. The authors find that judges do not consider video evidence as a strong form to sustain a decision alone. Decisions are accompanied with other kinds of evidence such as witnesses and documentary ones. There is no oral debate over video evidence and judges express their opinions through written statements.

In highlighting concerns for the development of language curriculum and teaching pedagogy for legal translation, the contribution *Negotiating Meaning in the FL: The Children Act, from Fiction to Fact* by **Bruna Di Sabato** and **Bronwen Hughes** draws attention to the issue of 'moving' students attending a course in specialized translation 'closer' to specific linguistic and cultural domains. This issue is generally acknowledged as complex because the students' *forma mentis* is mostly forged on the basis of humanistic disciplines such as history, art and most of all literature. Consequently, students often balk at investigating more 'technical' discourses and meanings. In line with Vygotskyan theory, particularly the well-known zone of proximal development, the approach proposed by the authors stems from similarities (rather than differences) between what learners are already familiar with and the new input. Drawing upon McEwan's novel *The Children Act*, the authors plan and carry out a short module on legal translation from English into Italian at postgraduate level at an Italian university. With the help of the teacher, and having access to the language lab computers as well as to their personal tools, students searched for pertinent information, gradually shifting towards legal glossaries and original documents available from official UK judiciary websites; progressively moving from the world of legal fiction to the world of legal fact.

The chapter *Negotiating Constraints on Legal Translation Performance in an Outsourced Environment* by **Juliette Scott** presents a theoretical framework of constraints on legal translation performance developed specifically within an outsourced environment where, unlike staff translators at institutions, law firms or corporations, self-employed practitioners have access to far fewer resources, and are subject to restricted information flows. The constraints are arranged into those arising upstream, during, and downstream of translation performance. Upstream constraints are viewed through a lens of various norms; while in-performance constraints encompass issues bearing upon the production of the target per se. Regarding downstream constraints, the focus is on reception of the target text, in terms of quality standards and specifically fitness-for-purpose, with noteworthy implications for translator liability. Logistic constraints and briefing inadequacies, on the other hand, are seen as crosscutting

issues throughout the process. Illustrations are provided from a recent global market survey, and conclusions drawn with potential relevance for practitioners to enrich practice-based theoretical models.

In *"When You Say Over Here, You Mean ...". Reformulation Strategies in Confrontational Institutional Talk* **Magdalena Szczyrbak** sets forth beforehand that one of the discursive practices pursued by speakers in confrontational settings is that of reformulating, and subsequently challenging, prior talk. Even more so in the legal context, where opposing parties lay claim to epistemic priority and compete to have their accounts of events accepted by the audience. In view of this, the author demonstrates how questioners and respondents mobilize selected reformulation strategies in courtroom talk and police interviews to achieve their immediate interactional goals and to position themselves vis-à-vis their interlocutors. Her findings reveal that reformulations with *when you say* are exploited chiefly by participants controlling discourse, i.e. the judge and the interviewer, respectively. The author also shows that *when you say* is typically found in three patterns: *when-you-say-A,-(do)-you-mean-B?*; *Are-you-saying-A,-when-you-say-B?* and *When-you-say-A,-are-you-saying-B-or-C?* At a more general level, her study indicates that reformulation is a tool for asserting power and controlling interaction in settings, where speakers represent competing discourses and where they account to authority.

Finally, the chapter *"I Hope Somebody Can Help Me": A Linguistic Analysis of British Law Forums* by **Judith Turnbull** closes this section. The author examines four British law forums, where ordinary people may not only post a query about their own legal problems, but also give information and advice in reply to other people's messages. Forums are just one of the many tools on the Internet that people use today to share information, advice and opinions, often blurring the boundary between experts and lay people. The author analyses the communicative and cognitive strategies adopted in the posts to transfer legal knowledge by both professional and lay members of the forums. The threads selected for the analysis deal with divorce, a question which affects many people in the course of their lives and raises many delicate issues, thus making the communicative strategies particularly important in preparing the ground for and framing the advice so that it is acceptable.

Concluding remarks

The contributions included in this volume from selected topic areas illustrate a number of outstanding concerns in applied linguistic research

and reflect the whole host of vantage - indeed intriguing - points from which law, language and communication can be studied conceptually and methodologically to justify the complexity of the object under focus through a combined corpus and discourse as well as other integrated analytical approaches. As such, the contributions provide systematic insights into the way discourse analysts and other experts perceive the 'living' usage of language and other participatory multimodal semiotic resources in building and performing the law across different legal contexts (academic, professional, institutional), where specific questions arise from the meaning and function of legal text, discourse and genre in constituting and enabling conventions, albeit dynamically, and account for the socially and (inter)culturally influenced forms of discursive actions and practices constructed within those contexts and situations. With all the differences in focus and/or approach, this collection of insightful and innovative contributions thus sheds lights on the processes by which the choice of linguistic and discursive realizations structures the communicative practices of participants as social agents, and provides the wide scope for the study of legal discourse and its communicative attributes in establishing and negotiating the range of interactive patterns of (inter)disciplinary identities, relations, shared values, and ideologies by those involved in the discursive events, thus being paradigmatic of the process of knowledge construction and activity system that is accomplished by specialized discourse in significant sites and practice context of analysis and interpretation.

As interdisciplinary research across the boundaries of law, language and communication is dynamic and evolving in the face of changing socio-legal contexts and the resulting less stable social structuring of language across its textual and generic forms of communication, we believe that this publication provides readers (linguists, legal practitioners and others in their own communities and identities) with a usable platform to engage with novel insights from and about scholarly practices, where the main terms and ideas are discussed and the theory and complexity in this reverberant field reflected upon.

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