INTRODUCTION

LAWRENCE M. SOLAN
PETER M. TIERSMA

Pairing language and law seems so natural. Even mentioning their relationship triggers one interesting question after another: What is it about legal language that sounds so different, even though it must be some dialect of natural language or we would not understand it at all? What linguistic features of laws and other legal documents make them susceptible to lawyerly manipulation, and is there a way to combat this practice? How does the language of police interaction with citizens, or interaction within the courtroom, reflect the power relationships that people experience when they enter those realms, whether voluntarily or otherwise? What happens when a society is comprised of people who speak different languages, but the legal system privileges just one of them? How well can nations with different legal systems practiced in different languages build multilingual, multinational institutions in which the players all understand their rights and obligations similarly? Can the explosion of learning about language and cognition be harnessed to produce reliable expert evidence in the courtroom on such matters as identifying people by the way they speak or write? If intellectual property consists of language, does that mean that a person or company can literally own a part of our linguistic heritage?

We elaborate on these questions briefly in this introduction and, of course, the following chapters of this state of the art *Handbook* address all of these matters. First, though, we wish to explore a foundational issue: What has happened over the past twenty-five years or so that has both enabled and triggered the wealth of learning that has begun to respond to these questions so fruitfully?

We believe that two entirely independent intellectual developments have triggered the advances that have recently been made in the study of language and law. One is the rise of interdisciplinary work in the study of law. The other is the tremendous foothold that linguistics has taken in the intellectual world.

The study of law has become comfortably interdisciplinary in the past thirty years. The major infiltrators were not the language sciences, but rather economics and sociology.

The study of law and economics, driven by the work of scholars such as Judge Richard Posner, has become a booming enterprise. Law and society research has also bloomed. As a consequence, it has become almost impossible to regard law as an autonomous discipline. And through economics, psychology entered the mainstream of legal thinking, in part through the work of such thinkers as Daniel Kahneman and Amos Tversky, whose pioneering research on cognitive biases and heuristics won Kahneman the Nobel Prize in economics after Tversky's death.

Other psychologists (and a few linguists, for that matter) were making inroads into the legal world by addressing such issues as juror comprehension and competence to stand trial. Over time, all of this interest in the contributions of other fields to the study of law has made legal thinkers more receptive to cross-disciplinary thought in general, and open to linguistic research in particular. In the 1990s, linguists were still offering arguments to justify their entry into the study of law and legal institutions. Such arguments are no longer necessary, at least not in the scholarly community.

Outside the academy, the reception has been more mixed. Nonetheless, in some areas, such as reforming jury instructions, policymakers in the United States have welcomed linguistic advice. Similarly, judges have not been afraid to cite the work of those engaged in the study of language and law to justify their decisions. In Britain, linguists have been participating actively in the rewriting of documents used to inform people of their rights in various legal settings. In the rest of Europe, where the civil law tradition dominates, translation theorists have become important in dealing with an increasingly multilingual legal order. There is growing interest in the study of language and law in China, and in Japan linguists have helped implement a new system of lay judges. Throughout the world, linguists have been welcomed into courtrooms as experts on such diverse issues as trademark law, speaker and author identification, and the meanings of statutes and contracts.

All of this activity is made possible because the study of language has grown exponentially since the middle of the twentieth century. Major universities throughout the world now have well-entrenched departments of linguistics, the members of which conduct research into every aspect of language. This is not the place to summarize this work, but we have identified a few basic—and for the most part uncontroversial—advances that serve, at least in general terms, as foundations for the growth in the study of language and law.

First, if the study of language has taught us anything over the past half century, it has taught us that while languages differ from each other, people are largely the same. We are born without any predisposition to learn any particular language. Rather, we come into the world equipped to learn whichever language(s) we are exposed to as children, which means that the languages themselves, while diverse, must somehow be sufficiently constrained in their structure, sound, and meaning to be accessible to whatever capacity we have to learn and use them. We take it that people who speak the same language have, by and large, acquired the same competence. It is this underlying assumption—generally affirmed by our experience in everyday interaction—that permits us to rely so heavily on language in our social institutions, including legal ones. If we all speak and understand our language more or less the same way, then we can put language to work in establishing societal rules of the road. A language-based rule of law assumes a base of language common to all.

Second, whatever we have in common with one another, we are all individuals. What we have learned about our native languages and their usage is personal to us. Our everyday working assumption that others speak, write, and understand language just the way we do is just that—an assumption. Differences among us may lead to misunderstanding, some of which goes unnoticed. And nuances in the linguistic habits of each of us as individuals may create the basis of distinguishing our speech and writing from the speech and writing of others, creating a tool for investigators. How individual our speech and writing are and how well we can draw inferences from linguistic differences are a matter of current research, and a significant amount of disagreement.

Third, however we may best characterize our individual knowledge of language, and however completely our knowledge of language is shared by others, language is without question a social phenomenon. And its use is instrumental: We can use language for all kinds of purposes. The language itself is robust enough for us to use it to describe a bucolic scene, or instrumentally: whether for egalitarian goals, to consolidate power in ourselves or others on whose behalf we act, or for a host of other purposes. Through language, we establish societal institutions, including legal ones. These institutions, like the languages through which they are created, differ from one another in salient ways, but also share a great deal of underlying structure. The more we know about the use of language in institutional settings, the better we can study particular institutions—legal ones in particular—and learn about their structure and the relationships among them.

Some of this learning has profound implications for how legal systems perform. Our understanding of the rule of law has at its core the notion that rules and norms can be expressed in language, and that therefore we can govern ourselves according to principles, rather than the personal preferences of individuals. This is the source of the maxim, "the rule of law, and not the rule of men," and it is crucially language-dependent.

Moreover, a great deal of research into the subsystems of language can be put to good use in the study of legal systems and institutions. Work in the areas of phonology and phonetics has taught us enough about sounds and sound systems of language to enable linguists to identify with some level of certainty whether an individual's voice and speech match those of a known individual, either using conventional methods of phonetics, or teaming up with engineers and computer scientists to develop algorithms that perform these tasks automatically. It has also taught us a great deal about which sounds are likely to be confused with one another, an important issue in the law of trademarks. Computational linguists have made impressive progress when it comes to authorship identification. Those trained in syntax and semantics, as well as psycholinguistics and the philosophy of language, have enabled us to better understand the sources of uncertainty in the meanings of laws, and the extent to which this can be remedied.

By the same token, the advent of corpus linguistics and the availability of large samples of language on computers has made it possible to compare questioned samples to reference sets, aiding in such tasks as the identification of authors, the meaning of terms used in a legal setting (an important issue in the interpretation of statutes and contracts), and in determining whether a trademark is legitimately novel. The methods of discourse analysis provide tools for analyzing interactions between citizens and the police, as well as

courtroom interaction. Historical linguistics has uncovered facts that explain some of the peculiarities of legal language. And important progress in the study of pragmatics teaches us about the inferences that people ordinarily draw from acts of speech that can elucidate the complex interactions that occur when, for instance, people are forming a contract.

In short, legal thinkers have become open to contributions from scholars in other disciplines, including those who study language in all its components, at the same time that linguistics and related disciplines have blossomed into significant academic fields with impressive accomplishments. Scholars trained in law, those trained in language-related fields, including psychology, computer science, and the philosophy of language, and those trained in both (like the editors of this *Handbook*) have taken seriously the legal system's openness to new ideas by engaging in a broad program of interdisciplinary research.

This book contains some of the leading ideas that have arisen from this research. It is not encyclopedic. Rather, it is intended to capture the state of the art at the moment, and to reflect what we consider to be some of the most promising directions for continued research. Below are some of the topics covered in this volume. We do not summarize the articles individually, since they speak for themselves. Rather, we identify the issues that we believe can and should be addressed by the cross-disciplinary study of language and law.

Understanding what is different about legal language

One way to investigate the nature of legal institutions is to compare how the institutions use language to how people ordinarily use language, and to draw inferences from the similarities and differences. To the extent that different legal systems make similar choices concerning language, we might conclude that the confluence reflects some inherent aspect of legal orders in general. To the extent that the choices differ, we can examine how they differ and what these differences tell us about the legal orders adopting the various approaches. And, of course, to the extent that legal language is nothing more than ordinary language, with the addition of its own technical vocabulary, we can come to understand how a legal order might expect people's conduct to conform to the language of legal documents as they are ordinarily understood.

This book begins with chapters that characterize aspects of legal language. We will see common threads, such as lawyers and judges clinging to expressions that derive from languages that the legal order no longer uses. In the Anglo-American context, this includes terminology in Latin, and terminology from Law French, a language used in the English court system well after people in Britain stopped using it in everyday discourse. The exploration reveals a number of regularities in the ways that legal language operates, suggesting that legal orders around the world attempt to harness linguistic regularities in an effort to make language both clear and definitive, two goals that sometimes work at cross-purposes.

Interacting with the legal system

Most of the encounters that ordinary people have with the law are language events: interactions with lawyers and with the police, whether in the street, a car, or the courtroom. These are no ordinary experiences in the lives of most people, although they are in some ways structured to create the appearance that they consist of normal interactions. Fortunately, research by linguists, criminologists, psychologists, and legal scholars over the past two decades has exposed some of the underlying regularities in these experiences. Almost universally, they are explained by disparities in power permitting an authority to control the discourse in a manner that advantages the authority and disadvantages the other participant.

To take one important example, police have the right to stop motorists and to order them to produce required documentation. Yet they do not have the right to search a vehicle without probable cause. Nonetheless, police do search vehicles as a matter of routine, because motorists permit them to do so. Linguists and psychologists are beginning to explain the reasons for this dynamic. Part of it, no doubt, results from the fact that the same police officer who has ordered the driver to produce a driver's license and other documents is now requesting that same individual to permit a search of the vehicle, without specifying that the interaction has shifted from the obligatory to the optional. Moreover, the police often use the same speech acts to "request" consent as they do to give an order ("May I …").

Once at the police station, efforts to assert one's rights become quite difficult, at least in the United States. Asserting one's right to remain silent by actually remaining silent may not be good enough. At least in some circumstances, one has to say that one does not want to speak. Asserting one's right to counsel is not a simple matter either. A person being questioned must state in clear terms that he is demanding a lawyer in order for the courts to recognize that he has asserted that right. All of this is in stark contrast to the linguistic benefit of the doubt given to police officers when they "request" that citizens allow a search.

Sometimes linguistic interactions can themselves constitute crimes, such as committing perjury by lying under oath, or hiring someone to commit a crime, or arranging for a bribe. Many of these interactions share a characteristic: on the surface they appear to be ordinary encounters between two individuals who are simply trying to communicate with one another. But a deeper look shows that quite a bit more is going on. Here, courts are usually perfectly reasonable in weighing the literal and the pragmatic in determining whether a crime has been committed.

Once in the courtroom, the roles of various actors become well-defined, with the structure of power clear to everyone involved. Depending on the legal system, the lawyer or the judge asks the questions; the witness answers and has little control over the experience. As much as legal systems appear to differ, especially between the adversarial and accusatorial systems that roughly distinguish between the United States and

Commonwealth countries on the one hand, and civil law countries on the other, courtroom discourse is structured similarly enough to allow linguistic analysis to explain a great deal about who is in charge and who is not.

All of these interactions are well-studied, with new research filling in gaps and expanding our knowledge on a regular basis. This volume contains some excellent contributions to this area, both in criminal law and in courtroom discourse. We have intentionally invited contributions from different legal orders so that readers can themselves examine the similarities and differences among various legal systems with respect to many of the issues discussed above.

Interpreting laws

Laws are written to be followed. The very fact that there is some doubt about their interpretation means that something has gone wrong. For the most part, understanding and describing the linguistic issues that generate legal interpretive problems is a task for linguists, psychologists, and philosophers. With respect to the interpretation of statutes, the problems are largely conceptual. While all kinds of interpretive issues arise from time to time, the biggest problem is to decide whether statutory language should be construed broadly, within the outer boundaries of a word's set of meanings, or more narrowly, to include instances of ordinary usage. This, in turn, motivates a detailed exploration of the kinds of indeterminacy that arise in statutory cases, including vagueness, ambiguity, and the use of broad language that is not vague or ambiguous, but which is not sufficiently informative either.

Deciding what the legal system should do about the problems once they are identified is a legal matter, not a linguistic one. Moreover, interpretive problems arise not only with respect to statutes, but with respect to other authoritative legal documents, including constitutions and contracts. Each of these has its own set of issues, both linguistic and legal. For example, contract formation involves a complex set of interactive speech acts, which in turn feed into a set of interpretive principles. Whether or not one considers a constitution to be a kind of social contract, its formation occurs by virtue of an entirely different set of events, which in turn generate a different set of interpretive issues. In the chapters that follow, scholars from the fields of linguistics, philosophy, and law investigate these important issues.

Law in a multilingual world

Ten of the chapters—fully one quarter of this book—deal with issues that arise from the fact that we do not all speak the same language. They illustrate two different and, in many ways, conflicting aspects of the life of the law. First, we live in a time of unparalleled

effort to create supranational legal systems that cut across legal cultures and national boundaries, and to harmonize the laws of individual legal systems so that cross-border transactions are not impeded by the fact that the participants do not communicate in the same language, and at times do not even share the same legal concepts. Thus, while the laws of most countries are written in a single language, the European Union currently enacts twenty-three equally authoritative versions of each law. Canada enacts two, and struggles further with the fact that Québec is a civil law province, while the federal government and other provinces share a common law orientation. And most countries in the world are parties to various treaties that obligate them to enact domestic legislation consistent with the terms of the treaty in an effort to create a fairly uniform set of legal rights and obligations, especially in the area of international commerce.

All of this creates a myriad of challenges, often engaging translation theorists, comparative law experts, and those trained in linguistics. Even within monolingual jurisdictions, interpreters and translators are needed in legal settings when one of the parties does not speak the language of the legal system, or when crucial evidence is presented in another language. We consider these efforts to make the world smaller to be among the most important aspects of the study of language and law today. And we consider it a wonderful tribute to our common human heritage that the efforts have not fallen apart to date. On the contrary, they have been quite successful. Several chapters in this *Handbook* help to explain why that is so.

At the same time, the world's linguistic diversity has a shadow side. Those who speak a minority language may not always enjoy the same rights and privileges as do the majority. In some instances, the problems appear complex, with even sympathetic societies having difficulty balancing the respect for linguistic and cultural diversity on the one hand, and the efficiency that comes from a standard vehicle of communication on the other. In other instances, the struggle to gain minority language rights is a symptom of the struggle of minorities to gain civil rights in general. That these problems arise in such seemingly diverse contexts around the world suggests that the struggle reflects a dark side of human nature. Scholars from very different legal and social cultures explore these issues here.

Owning language

In an era characterized as the Information Age, those who have proprietary rights over the language used to convey the information surely have something of value. Intellectual property law is generally divided into patent law, copyright law, trademark law, and the law governing trade secrets. All of these protections include aspects of language, but copyright and trademarks are directly linguistic in nature. Plagiarism, while more an academic concept than a legal one, consists of using the language or ideas of another without attribution. Copyright, in contrast, protects language, but not the ideas that are expressed by the language. That is, a copyright creates a monopoly in the copyrighted

language, unless an alleged infringer can legitimately claim to have independently written the same language. Trademark law actually gives businesses the right to exclude competitors from using the same or similar language, if doing so might cause confusion among products. Enforcing intellectual property rights is a powerful tool to use in a competitive market.

Not surprisingly, a host of linguistic issues arise in determining whether a trademark or copyright owner's rights have been violated, or whether a student or faculty member has committed plagiarism. For example, under what circumstances are individuals most likely to confuse one product with another when the names are not identical, but sound similar? This is a psycholinguistic matter with important legal consequences. To take another example, the strength of a trademark depends upon how much the name appears to be an ordinary description of the product. The more generic or descriptive the name, the weaker the trademark protection. Whether a trademark is descriptive of the product is certainly a question of language use. By comparing the trademark to a corpus of language in which the same expression appears, it is possible to determine how closely the trademark matches everyday speech.

By the same token, how close one expression must be to another for it to constitute either plagiarism or copyright infringement is a matter of legal policy. But the investigation of similarities and differences can be accomplished using linguistic tools. This book contains four chapters that deal with the detection of plagiarism, and trademark and copyright infringement.

Forensic linguistic identification

In the 1990s, the United States Supreme Court decided three cases that set standards for the admissibility of scientific evidence in court. These have become known as the *Daubert* trilogy, named after the first of the cases to be decided. Although the decisions apply only to federal courts within the United States, the *Daubert* regime has had worldwide influence over the discussion of what evidence should be admitted, and what evidence should not. Without doubt, the overriding issue is whether a forensic science should be adequately tested in the laboratory (or its equivalent) before it is admitted in court. The goal is to ensure that methods have been developed in a scientific manner, that the application of the methods to the case at hand follows the appropriate practice, and that the scientific community knows the rate of error—or to put it more positively, knows how likely the method is to produce an accurate result.

Linguistic identification has not been at the center of the controversy of forensic identification, but it has been making significant headway in two areas: speaker identification and authorship attribution. As for speaker identification, new algorithms are being developed and honed by computer scientists, while phoneticians who are trained in the area develop lists of features that they use in case analysis. More or less the same holds true in the realm of authorship identification, with some work relying on corpora that

serve as a reference set with which to compare a questioned document's features. The work in both of these areas is proceeding at a rapid pace, with more and more promising results revealing themselves regularly. In this volume, we hope to have captured a sense of this progress.

These are not all of the ways in which language and law interact, and even within these topics our discussion is more schematic than encyclopedic. Nonetheless, we think that these themes address some of the most interesting issues that arise when the interactions of the fields are studied. Most importantly, we believe that all of the topics that we address are important ones, and of independent concern to the legal system. The starting point of all good interdisciplinary research is an important problem, the discussion of which will be enhanced by working across conventional disciplines. We have identified the problems addressed in this *Handbook*. The chapters, written by scholars well-versed in their specialties, do more than meet the goal of enhancing discussion. They demonstrate a state of the art that shows enormous progress in this interdisciplinary endeavor, pointing the way for future inquiry.