

# **Analyzing huge amounts of recorded oral language evidence**

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This paper describes what I have found to be the most effective ways for linguists to go about analyzing huge amounts of language evidence in criminal cases--and sometimes also in civil cases. Because our linguistic tools and analytical routines are generally unknown to the lawyers and law enforcement officers that we work with, it is important to make our analytical approaches known to them as early as possible and that we show them how important it is to use them in the right sequence. It has been my experience that lawyers I work with seldom conceptualize their cases with a time line that demonstrates the sequence of analyses as they are most effectively used. Not doing this is a grievous mistake, for it obscures or even omits the early factors that can illuminate the later factors. One of the linguist's first steps is to organize their analysis of the language evidence in an appropriate sequence. The reason for this will become clear in what follows.

Perhaps more than in most fields, linguists understand the contextualizing effect that the larger units of language provide in discovering the meaning of the smaller units, such as words or sentences. In contrast, lawyers often find smoking guns in those isolated smaller language units that are often defused when they are contextualized and better understood when seen in larger language units.

My thesis is that our linguistic analysis should start with these larger language units, because each subsequent level of analysis is contextualized by and nested within the preceding one. The analytical sequence I suggest is as follows:

1. identify the speech event,
2. then identify the schemas of the participants
3. then identify the agendas of the participants
4. then identify the speech acts and conversational strategies of the participants,
5. and finally, examine the role of the relevant smaller language units, such as syntactic structures, lexicon, morphemes, and sounds used by the participants.

When relevant issues of language variation and non-verbal behavior are evident, these come into play at their appropriate sequential levels.

Here I will illustrate the application of this analytical sequence with language used in the criminal case of John Z. DeLorean, the automobile maker, who was indicted and tried for conspiracy to traffic in illegal drugs. I will demonstrate that the prosecutor focused only on the smallest language units isolated from the contextual sequence and ignored the larger and sequential language units that contextualized the smaller ones, wherever they occurred in the time sequence.

### **Background of the case**

DeLorean's company in Ireland was originally funded with 400 million dollars provided by the British government. All went well until the company was set up and ready to start producing cars, at which time it ran into serious financial trouble. The British government refused to provide the

additional 50 million dollars that it originally promised him, so DeLorean tried to get loans or investors to buy stock in the company. After failing consistently at this, he met a man claiming to be a banker but who was actually an undercover DEA agent investigating ongoing illegal drug transactions. After six months of discussions, the banker finally told DeLorean that he was unable to secure a loan for the company but that he had a side interest in illegal drug importation from Thailand and that if DeLorean would invest his remaining five million in the drug enterprise, he quickly could make enough money to keep his company afloat. DeLorean did not say “yes” to this offer but he also did not say “no” to it, largely because he thought the banker was still trying to find investors for his company and such investment was his last hope to save him from bankruptcy. His comment to the banker’s drug proposition was, “That would be dangerous.” This, of course, was not enough to indict DeLorean, so the agent kept on trying with no success. In all, there were 64 tape-recorded conversations. In the very last conversation, the government thought they finally got this smoking gun statement that they thought would convict him:

Agent: There were two ways to do it. Either interim financing, which is still hopefully in place—

DeLorean: Yeah, that’s the better way to go.

No matter that the two men held very different meanings about what “interim financing” meant. The prosecutor believed that DeLorean was agreeing to put money into the drug scheme, the smoking gun statement he had been trying to elicit for over six months. The government’s intelligence analysis here is very much like the situation it faces when a detective finally

tape records a confession from a suspect after hours and hours of unrecorded interrogation in which the suspect has claimed innocence. Since the earlier parts of the interrogation were not recorded, we can never have evidence of any coercion that may have led up to the ultimate confession. The big difference in the DeLorean case is that the government DID record all of the conversation leading up to what it considered the smoking gun. These conversations proved to be a great advantage for DeLorean's defense.

So how did we discover what DeLorean really meant when he said that interim financing was the better way to go? The isolated words don't make this clear, but examination of the 64 conversations from beginning to end tells a very different story. We begin with the largest language unit of all, the speech event in which the language occurred.

### **1. Identifying the speech event**

The notion of speech events appears to have begun with Dell Hymes' (1972) proposals made in reaction to Noam Chomsky's (1965) bold proclamation that the proper role of linguistics was to find the internalized rules of language and not, as descriptive linguists had said to that point, linguistic performance. Hymes argued that communicative competence is found in the way speech is used in real life contexts.

Hymes' speech communication rules begin by identifying the speech event. Speech events are identifiable human activities in which speech plays a central role in defining what that speech event is. In fact, such events cannot take place effectively without the language that defines them (Van Dijk 1985, 201). Hymes' insights about the context, culture, and history of

speech events had had a profound effect on analysts of spoken and written discourse as well as on studies of the ethnography of communication.

Following Hymes' model, Gumperz (1990, 9) pointed out that speech events are recurring occasions that have "tacitly understood rules of preference, unspoken conventions as to what counts as valid and what information may or may not be introduced." This means that in order to appreciate the work of the sounds, morphemes, words, and sentences in language, we have to see how they fit into larger patterned structures. The first and largest of these larger patterned structures is the speech event in which the language actually takes place. The speech event predicts the parameters of what can be said by the participants (what counts as valid, in Gumperz' definition) and the sequence in which things can be said during that speech event.

In many such speech events there is an element of power asymmetry as well. Commonly, one person holds a superordinate position (for example, the doctor, the judge, the therapist, the boss, the teacher) while the other person has a more subordinate role (the patient, the witness, the client, the worker, the student). The individual contributions to such speech events are colored by this power relationship. In *The Language of Perjury Cases* (Shuy 2010)

I described eleven perjury cases in which the defendants found themselves in a speech event that they had never experienced before, the courtroom trial speech event. Two defendants, both experienced businessmen, knew that the requirements of that speech event were to tell only that for which they had verifiable knowledge. Therefore, when the prosecutor asked them to speculate, they politely refused to do so, leading the prosecutor and eventually the jury to believe that they were committing

perjuring. For these businessmen, even knowing the speech event led them into difficulty. The first thing for the linguist to point out, therefore, was the conflict between concepts of what this speech event required.

So the first focus in the DeLorean case is to recognize and understand the speech event in which the communication took place, because it determined a number of things about how language was used, who held the conversational power, and who did not. This was a commercial business transaction speech event beginning with a subordinate speaker (DeLorean) trying to market his product (his company) to a superordinate potential investor/lender/buyer. The phased structure of such a speech event is as follows (Shuy 1998, 147-149; Shuy 1993, 21-22):

1. Discuss the business problem
2. Make and respond to an offer while discussing conditions
3. Negotiate the proposal (price, details, payment conditions, etc.)
4. Complete the transaction (agree or disagree, handshake, contract)

The DeLorean case shows a mid-meeting shift in individual power that is rare in normal business transaction speech events. For the first two-thirds of the 64 conversations, DeLorean was the subordinate marketer/seller while the agent was the superordinate supposed purchaser. As such, DeLorean was the less powerful participant, a supplicant who was trying to get the more powerful participant to help him secure a loan or investors. But during the final third of the conversations when the agent introduced the idea that DeLorean could use his remaining money and invest it in a drug transaction, the speech event got turned on its head, reversing the subordinate/superordinate relationship and role. Instead of DeLorean now

being the subordinate marketer, he was now transformed into the superordinate prospective purchaser of the drugs that the now subordinate agent was selling.

Unfortunately, the prosecution did not observe this switch in the power relationship. DeLorean completely missed the power relationship signal and blithely continued in his subordinate role as the seller of his company, and he also completely missed the effort of the agent to transform him into the superordinate role buyer of the drugs. Careful analysis of the language DeLorean used verifies this conclusion. DeLorean preserved his original role in the business transaction speech event as that of seller of his company stock, not the buyer of drugs. The prosecution did not notice that DeLorean's language was indeed odd in a case in which he was accused to wanting to purchase drugs for resale and profit. The two participants were not operating in the same speech event.

## **2. Identifying the schemas**

After we identify the dynamics of the speech event in which the conversation takes place, we next need to discover the schemas of the speakers. Our first clue about their schemas grows out of first understanding the speech event. Participants don't engage in conversation in the absence of their previous knowledge. They bring to each new encounter the information, attitudes, beliefs, and values that they already have, and so when they hear something new, they evaluate and apply it what they already know. The process of bringing previous knowledge to new information was labeled "schema" by Frederic Bartlett (1932), and since has been developed further by other cognitive psychologists.

Today, schemas refer to the mental plans that function as guidelines for action and thought. They serve as the structure for the way people interpret and revise new information in relationship to what they already know. In that sense, schemas are essential to all types of learning, because people exist in a constant state of change as they encounter new information. But their previous knowledge affects how they perceive new information and ideas. Unfortunately, new information also can influence and distort the way they receive and talk about this new information.

Peoples' schemas are often closely related to the speech event in which they occur, because their schemas about that speech event color the way they talk during what they believe to be that speech event. If they discover that they are not in the speech event in which they thought they were, it's often too late to take back what they have already said. Language has that type of permanence, especially when it is recorded for later listening and evaluation. Things that they said in the context of what they believed to be a normal business transaction speech event can then be viewed as possibly relevant to an illegal event.

One might think that it would be a simple matter for the persons caught in an altered speech event to stop and explain that they were confused about what that event really was. But most people are not linguistically gifted enough to do this very well, if at all. People can request clarification when they don't understand individual statements that the other person says, but clarifying the larger contextual confusion is much more difficult. For one thing, most people don't even know about the language category of a speech event. They might be able to say something like, "I thought the purpose of this meeting was something else." But even saying that can be difficult, because it can be taken as a face-threatening statement that could suggest

either the incompetence or deliberate trickery of the other speaker. DeLorean didn't want to turn off a business contact that might be able to find investors for his sinking company. A further difficulty is that admitting this could point to their own social incompetence about understanding what they were talking about. Better to go along assuming the best.

DeLorean's schema, as revealed consistently by the language he used, was that the agent, as he originally announced, was trying to help him find either investors or a bank loan to save his company from bankruptcy. The agent's schema was revealed by the context of the event as well as by the language he used. The goals and purposes of criminal investigations are important and clear—to capture illegal acts in progress. In fact, it is safe to say that this is their only goal and purpose. One danger is that the undercover investigators' schemas of guilt can overwhelm the linguistic purpose of gathering the evidence during those events. That is, when your schema is that the other person is guilty, virtually everything the other person says can be understood to support that schema, whether or not it actually does.

That proper purpose of a criminal investigation is to discover whether a crime is being committed, will be committed, or has been committed, but that purpose does not allow the investigator to hold the schema that every target will fulfill this purpose. This danger is not limited to the agents who gather the information. The information analysts, who are normally the prosecutors who evaluate the evidence gathered, share it equally.

The investigator's most common schema is that the target will agree to the illegal proposal. When this happens, the government's operation is successful. But when the events begin with the targets holding a schema of a normal business speech event that the investigator then transforms it into an

illegal speech event, the targets have to alter their schemas and severely reinterpret the entire speech event up to that time. Based on their new schema, targets have to rethink everything that has been said to that point. Not realizing which speech event they were in can lead innocent targets to be considerably less clear than they might otherwise have been, especially when they had understood it to be an legal speech event all along. Their earlier willingness to go along with the things that were previously not-illegally represented can be difficult to repair post facto. Everything they said remains in the recorded conversation and it can appear that they had been in agreement from the start.

So here we are. After the agent tried to transform the legal business speech event into the illegal speech event, the language of both men continued to be conducted in the spoken business register, which falls somewhere between standard business language and more casual talk, depending on the topic and the previous relationships of the participants. Language genre plays a significant role in this. After the agent gave the first hint of his illegal intention, the language genre here continued to be that of a business transaction event. Even though the agent offered DeLorean the opportunity to invest in the drug scheme, there was none of the slimy talk that one might expect an illegal event to have, and there were no other clues in the investigator's language that might cause DeLorean to adjust his schema to one that related his own involvement in a covert or illegal activity. Whatever thoughts he might have about the agent's drug scheme, DeLorean's schema remained constant. In short, DeLorean maintained his original schema from beginning to end. He was there to get the agent to invest in his company, not to participate in a drug conspiracy.

Summarizing to this point, the agent and DeLorean held different speech events and had very different schemas about the activity they were in.

### **3. Identifying the agendas**

Discovering possible intention is important in virtually all litigation. For example, we can try to discover the intention of a statute, what a contract writer intended by the wording in that document, what a maker of a last will and testament really intended to leave to the heirs, and what people intended by what they said in tape recorded conversations. We can see the words that are written and we can hear the words that are spoken, but no science can reach into the minds of writers or speaker to know with any degree of certainty what they were actually thinking or intending. Although there is simply nothing like DNA evidence to inform us about intentions, there are *clues* to intentions that are often present in the language evidence, especially when it is spoken language evidence. These clues are the subject of linguistic discovery and analysis.

Discovering the clues to intentions does not mean that we have firmly established these intentions. Language clues do no more than lead linguists to the next possible steps of understanding in the same way that detectives use the clues of fingerprints and tire tracks to aid their understanding. Linguists find the clues, put the clues together and, based on the structural rules of language, point out what these clues *can* mean and what they *can't* mean. It is always up to the triers of the fact to conclude what these clues mean as they deliberate and decide. But discovering the language clues about intentions is an important task that most people, including triers of the fact, normally cannot do, which is why linguistic analysis can play a much-needed role in law cases.

These clues to intentions are, of course, found in the conversational language evidence itself. People talk because they have something that they want to say, and what they want to say constitutes their conversational agendas. When they talk, they reveal clues to their intentions and agendas. It's true that people can say things that they don't want to say or that they can speak falsehoods, but since conversation is by necessity a cooperative endeavor, non-cooperative activity is not natural for them, nor is it natural to the principles of cooperation that underlie all conversation. Grice (1975) outlined these principles as:

1. say as much as necessary and no more;
2. say that which is true;
3. be relevant; and
4. be clear and unambiguous.

When speakers violate these principles, the conversation is turned on its head and in most cases this change can be noticed. Speakers can ramble on and on with unnecessary language, make untruthful or unverified statements, be irrelevant, and be unclear. When this happens, they can be challenged about their accuracy or truth, told to stick to the topic, urged to say things that are relevant, and to clarify themselves. It is when they are not challenged in these ways that conversations can go awry. People are often reluctant to challenge, however, since this violates common rules of politeness and are sometimes even face threatening.

It's also the case that spoken language can be either clear as a bell or mysteriously ambiguous, whether intentionally unintentionally. We tend to think we are clear when we are not. We sometimes assume that the listeners understand us when they do not. What seems relevant to the speaker often is not relevant to the listener. These conversational problems are often related

to how direct or indirect the speakers really are. Rules of politeness are part of the problem. We usually don't want to offend our listeners by telling them things that they already know, so we either hint with various types of conversational indirectness or we simply assume that our listeners know what we're talking about. In short, rightly or wrongly, we believe that we are relevant and clear.

People normally think of agendas as written list of topics distributed to participants who are about to attend a meeting. If the discussion rambles away from the list of agenda items, the chairperson can call it to the rambler's attention and move the meeting back onto the proper agenda. Other people at the meeting may have different personal agendas, but this doesn't matter because the format is set and the rules are clearly laid out.

In contrast, conversational agendas are usually not well prepared in advance. We may know what we want our conversation to accomplish and do our best to keep it on track, but there are no strong guides to tell us how this must happen. So how can we tell what the speakers' conversational agendas really are? There are only three ways (excluding mind reading, of course). First, we can ask them bluntly what their agenda is. Language has available the very useful feature of requesting clarification when we don't understand. But since politeness rules can make this difficult, sometimes instead of requesting clarification.

When this happens, we can choose the second way: assuming and inferring that we understand the speaker's agenda, blindly going on and responding as though we did understand it. This can be dangerous, because our assumptions can be very wrong.

Third, we can analyze whatever language clues we can extract from what they say, even though doing so can be very difficult to accomplish on

the spot while the conversation is taking place. This task is usually too difficult for listeners who are busily immersed in the conversation and have many other things on their minds, including their own different agendas. But when the conversation is recorded, this provides the opportunity for linguists to use all the tools in their arsenal to analyze it.

The most effective and reliable indicator of a person's intentions is what they choose to talk about and how they choose to respond to the topics of other speakers in the same conversation or in a series of relevantly connected conversations.

### **3.1 Identifying the topics**

The onset of a new topic usually is marked semantically, phonologically, and through various discourse conventions. Most conversations of any length contain several topics and it is important to set them off from each other so we don't get confused about what they were talking about. Complicating this is the fact that there can be one or more turns of talk that are nested within a single topic. For example, a new topic can be introduced, then amplified, clarified, responded to, or disputed by both or all of the participants until one of them introduces another topic. And that same topic may be recycled at some later point in the conversation, especially after the person who introduced it does not feel that it has been satisfactorily resolved.

Semantic signals of a new topic are found when a speaker changes the conversation's focus to something meaningfully different from that which had been talked about previously. Often this change is clear, but sometimes the new focus is simply an addition, modification or amplification of the preceding topic, meaning that the original topic is actually being continued.

Of the markers of topic change, the semantic shift is usually the clearest signal.

Phonological signals of a new topic include a change in stress and loudness of the speaker who introduces it. Another signal is often found when there is a long pause between turns of talk.

Discourse conventions are also sometimes helpful in marking either the continuation of an existing topic or the start of a new one. For example, when speakers say, “Not to change the subject, but...” we can be relatively certain that they are indeed changing it. In contrast, when a speaker begins a turn of talk with discourse markers like “well,” “so,” “I mean,” or “and,” it usually signals a continuation of the preceding topic, while markers such as “y’ know,” “or,” and “but,” are trickier because they are sometimes markers of a topic change.

In the DeLorean case, we find important evidence based on the topics he and the other participants introduced in the first 63 conversations. DeLorean’s topics were consistently about the virtues of his company, its great potential, and his need to find investors or loans to keep it afloat. He introduced and recycled far more topics than the agent up to the time when the agent introduced the idea that he could get DeLorean lots of money if he would invest in his alleged drug scheme. During these conversations the agents introduced far fewer topics, mostly about the possibilities (and eventually lack of success) in obtaining loans and investors for the company. What better evidence can there be that DeLorean’s motives were not only consistent, but also legal?

After the agents introduced the drug investment topic, however, DeLorean avoided giving them a flat-out ‘no.’ He even told lies to try to discourage the agents, first telling them that he had no money left to invest

in their scheme and later that he was getting the money from powerful people in Ireland, clearly hinting that these powerful people were the IRA. Why didn't he just say "no" and walk out? Because he still perhaps naively held out the possibility that the agent was still trying to find investors in his company. By the 64<sup>th</sup> and final tape, when the government mistakenly thought they had him in their grasp even though DeLorean introduced only 18 of the 77 total topics in that conversation, virtually all of them being questions about investing in his company. The major agenda clearly was the agent's, yet DeLorean was accused of having an interest in the drug scheme, despite the fact that the only statement he made about the proposed drug scheme was, "it would be dangerous," far from any indication that he wanted to be involved in it.

When speakers recycle their topics (bring them up again after having introduced them previously), several things are apparent. One is that this topic is important enough to the speaker to keep reintroducing it, no matter what direction the conversation has gone during the interval of different topics. Recycling, therefore, is a very good indication about what is on that speaker's mind or what his conversational intentions really are. Topics can be recognized, responded to, ignored, modified, or amplified by the listener.

DeLorean almost endlessly recycled his topics about the promise and success of his car company. The only topic he introduced about the agent's plan was that it was dangerous. Clearly that was not his agenda.

### **3.2 Identifying the responses to the topics of other participants**

Another clue to the agendas of speakers is found in the way they respond to the topics introduced by others. They can respond in a number of ways. They can respond positively, negatively, indifferently, offer a feedback marker such as "uh-huh," change the subject completely, or say

nothing at all. The significance of the *type* of response is very important for discovering clues to the intention of a participant.

DeLorean responded positively every time the agent reported progress about locating investors or possibly securing a loan. In the alleged smoking gun tape (tape 64), he responded by requesting clarification about what the agent meant by “interim financing.” When the agent ignored this and became clearer about the nature of his proposed drug business, DeLorean responded by changing the subject and offering an indirect “no”, telling him, “I’m getting money through an Irish group.” To this the agent understood and threatened, “either we go ahead or we end.” To this, DeLorean responded, “Is *their investment* as a loan or equity investment.” If anything showed what DeLorean thought was going on, this question did so rather clearly. He still believed the agent might be able to find him some investors. The agent then asked, “can you turn a few cars loose?” After DeLorean ignored this question, the agent told him that from that point on he’d be dealing with another person named Jim. The phone then rang and the agent spoke briefly with another agent who was monitoring the conversation from an adjacent room. After he hung up, the agent then quickly started talking about Margaret Thatcher, the Prime Minister who refused to honor the original deal with DeLorean and provide his company with an additional 50 million dollars once the cars were in production. Thatcher was a hot button topic for DeLorean, who proceeded to talk for a couple minutes about how badly she had treated his company, and the conversation ended with the government getting only DeLorean’s agreement that investment was a good thing. No matter that the two men were on different pages about who would invest in whom.

#### **4. Identifying the speech Acts**

Once the macro picture of the language evidence was contextualized in the speech event, the schemas, and the agendas, the next step is to examine the smaller language units, the ones where the smoking guns usually reside. Already we can see that Delorean and the agent thought they were in different speech events. It's clear that they held different schemas, and they had very different agendas. Everything else is contextualized by these large language units.

Speech is not just a matter of making sounds, words, and grammatical connectors. It's getting things done with language. Even though most people don't realize it, they get things done in an orderly way by following structured rules they were never directly taught, and probably never even thought about. Our language (and most other languages I would suppose) enables us to report things, ask questions, request, agree, deny, claim, confirm, conjecture, apologize, offer, promise, warn, bribe, advise, admit, threaten, warn, regret, praise, accuse, complain, give opinions, and congratulate, among other things. Sometimes we don't even recognize it when efforts to get these things done are not accomplished effectively, or not accomplished at all.

Linguists trained in speech acts, however, can identify one that is made felicitously from one that is not. For example, people may think they are apologizing when they say, "I'm sorry you feel that way," but this is a far cry from an acceptable apology. Or they may believe they are warning someone when what they are saying is actually threatening.

Since the notion of speech acts was introduced by Austin (1962) and amplified by Searle (1965), linguists have been applying speech act theory to many areas of language use, including the field of law. The legal issue

about whether or not a threat was made is important in many criminal cases. Whether or not a felicitous offer was actually made and accepted can be central to contract disputes. Whether lawyers are advising their clients about their rights or encouraging them to make false insurance claims is important in cases involving suborning perjury. In alleged bribery cases, it is crucial to determine whether or not bribes were actually offered felicitously or accepted felicitously, or whether the speech acts of offering and agreeing ever even took place.

In the DeLorean case it was critical to determine whether DeLorean agreed, disagreed, or said nothing at all to the offers posed to him by the agents. The first 63 conversations record his clear positive agreement speech acts to the agent's offers to help his company find new investors and the offer to help him get a loan. These speech acts provided a clear template of what DeLorean's agreement looked like. The prosecution made much of the following brief exchange in the 64<sup>th</sup> tape, claiming that DeLorean was agreeing to be involved in the drug scheme:

Agent: These are Columbian folks. They have a dope program. The second level will yield five million.

DeLorean: It'll be dangerous.

DeLorean's observation above was, of course, not his agreement to get involved. It was an evaluative comment about the legal dangers that the agent's group might face if they did that sort of thing. Compared with all of DeLorean's previous felicitous speech acts of agreement, this contrasted sharply. His previous speech acts of agreeing provided a template of the way

DeLorean handled the speech act of agreeing, against which the government's hopeful claim was absurd.

Immediately following this exchange, the agent rolled out some charts and spread on the coffee table between them. Leaning over, he explained:

Agent: An 800,000 investment returns 40 million. There are two ways to do this. Interim financing, which is quicker, or this: buy 100 kilos, a 300 investment, that will return 14 million in ten days. Our biggest concern is if you can't follow through. An absolute confirmation would be to invest it again.

DeLorean: I'm getting money through an Irish group, so it's gotta be legitimate...I'll get hold of them. I want to do it, but they have to confirm it.

Now the agent was finally explicit about what he wanted DeLorean to do. DeLorean's speech act of disagreeing did not occur often in the previous conversations, except for a few choice words about Margaret Thatcher's unwillingness to keep Britain's part of the original bargain. As a seasoned business executive, DeLorean was loath to be directly negative about most things. And he was not directly negative here either, but his indirectness was pretty clear. He had someone else who could give him the money he needed, thank you, and he clearly preferred to do this legitimately. It actually helped him in his defense that his reference to the IRA was a bald-faced lie. He'd rather tell a lie than go along with the drug plan.

Closely related to speech acts are the conversational strategies that people use in conversation. There is much to be learned by the way speakers

reveal their intentions in their discourse strategies, whether they do this consciously or unconsciously (Shuy 2005, 13-29).

Schemas and agendas both contribute heavily to conversational strategies; schemas because they guide speakers in how they perceive things and agendas because they constitute the conversational goals. If the schemas and agenda are that targets are probably or obviously guilty, the strategy is to get them to say something inculpatory. When the targets say, or look like they are about to say something exculpatory, one available conversational strategy is to interrupt them from saying it before they can get it out.

Another conversational strategy is to say something that sounds inculpatory, and then change the subject quickly before the targets can respond to it (the hit and run strategy). This contaminates the taped record. The inculpatory words are on the tape, even if it was the agent, not the target, who spoke them (the contamination strategy).

The most common strategy, however, is that of presenting information ambiguously, letting the targets misunderstand or wrongly interpret references such as “it,” “they,” “before,” etc. The reverse of this occurs when the agent reinterprets the target’s statement as a signal of illegal intention.

The agent in the DeLorean case used these conversational strategies at various times during the 64 conversations he recorded. For the purpose of this talk, however, I focus here on only the last conversation, the alleged smoking gun tape. One example of the agent reinterpreting DeLorean’s question about whether the group would provide him with interim financing was as follows:

Agent: We have had delays.

DeLorean: Prior to the interim financing?

Agent: My group has the ability to provide 30 million.

The agent then went on to describe how his group works with a Columbian dope program, leading to DeLorean's wonderful lie about his getting the money he needs from the IRA.

The agent used another conversational strategy toward the end of this conversation. After he was called by the monitoring agent in the next room, they undoubtedly believed that they had all they needed on DeLorean. Probably upon the advice of the monitoring agent, the agent then drastically changed the subject to Margaret Thatcher, knowing full well that this would divert DeLorean's attention and cause him to talk at length about her bad treatment of him and, as a result, prevent him from allegedly changing his mind.

### **5. Identifying the smaller units of language**

To this point, my focus has been on the larger chunks of language evidence: the speech event, the schemas of the participants, their agendas as revealed by the topics and responses, the speech acts used to get things done, and the agent's conversational strategies. Now we turn to the smaller chunks of language: the sentences, phrases, words, and sounds. As I noted earlier, both undercover agents and prosecutors tend to focus their search for culpability at this level. They tend to focus on only the individual statements that they consider the smoking guns of guilt. But as pointed out above, individual sentences, words, phrases, and sounds are all nested and contextualized in larger language units. These larger units provide important understanding about what the smaller ones mean.

I've already shown where the prosecution went awry. The major error was in the government's failure to see what DeLorean meant by the word, "investment," as opposed to what the agent meant by it. Neither DeLorean nor the agent clarified their own meanings. They felt they didn't need to do this, because their schemas and agendas seemed to tell them otherwise.

"Interim financing" was another undefined expression that both speakers defined differently. To DeLorean, it meant investors who could provide him with interim financing so that his company would not have to go into bankruptcy, while the agent used "interim financing" to refer to the financing that DeLorean would have when he invested in the drug scheme.

The agent was not alone in producing ambiguous words and phrases that led the government to speculate about DeLorean's guilt. For example, after telling the agent that he was getting money from an "Irish group," the following exchange took place:

Agent: Either we go ahead or end.

DeLorean: I'll get hold of them...I want to do it, but they confirm it...  
What should I do? \

Agent: We'll probably move in two to four days. I built the other program in because it's within my control...how long will it take to get confirmation of the funds available?

Unclear pronoun referencing often gets people in trouble. DeLorean did not make explicit here who "them" referred to or what "it" really meant. The prosecution failed to trace the grammatical relationship of his pronouns to their most recent noun references, which were clearly the "Irish group," not the drug scheme. Nor was the agent clear about what his "the" referred

to when he asked how long it would take to get the funds available.” To the agent, this meant how soon DeLorean could come up with the money to invest in the drug scheme, but DeLorean understood it to be asking him how long it would take him to get funding from the IRA.

Shortly after this, DeLorean continued his ambiguity, saying “ I’d like to do this anyhow.” Indexicals like “this” or “that” often also lead to confusion. It would have been helpful to DeLorean’s defense if he had specified the meaning of “this.” The agent took it to mean agreement with the drug scheme, of course, responding, “Not many people could pick up 30 million in three or four days.”

### **Putting it all together**

I am reminded of a line in T.S. Eliot’s poem, *Four Quartets*, in which he wrote: “What we call the beginning is often the end.” In law cases containing large amounts of language evidence, it is common for the prosecution to begin with the smoking gun at the end rather than to begin with the language units that that can explain the smoking gun evidence. These larger units, the speech event, the schema, the agenda, the speech acts, and the conversational strategies all enlighten and contextualize the smaller units nested within them. My advice to forensic linguists is the same as my advice to prosecutors and defense lawyers who are presented with large amounts of language. As noted throughout this paper, the sequence looks like this:

#### **1** speech event

1. shemas
2. agendas (topics and responses)
3. speech acts and conversational strategies

4. syntax
5. lexicon
6. morphemes
7. sounds

As T.S. Eliot so aptly observed, what we call the beginning is indeed the end.