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Creating Language Crimes: How Law Enforcement Uses (and Misuses) Language

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serious scholar of surveillance. Indeed, one can only hope that future edited collections will be as intelligent, well constructed and focused as this one. If they are, then there is hope for surveillance studies, and we may well be able to avoid the indignity of ever having to see the publication of *Surveillance and Good Gardening* after all.

Reference

Lyon, David (2003) *Surveillance as Social Sorting*. London: Routledge.

Roger W. Shuy

Creating Language Crimes: How Law Enforcement Uses (and Misuses) Language
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- Reviewed by Lawrence M. Solan, Brooklyn Law School, USA

Creating Language Crimes is the latest of Roger Shuy's books about his participation in the legal system as an expert linguist. This one describes a dozen cases in which he consulted and sometimes testified for the defense in criminal cases involving sting operations. Like its predecessors, *Language Crimes* (1996), *The Language of Confession, Interrogation and Deception* (1998), and *Linguistic Battles in Trademark Disputes* (2002), this book combines a journalistic style with insights from his many years of experience as a scholar in linguistics specializing in the analysis of discourse. The result is an eminently readable and interesting book that discusses issues of concern to those interested in criminal law and criminology, whether or not they have any background, or even interest, in linguistics.

As the title of the book reflects, the state's goal in a sting operation is to create a crime that would not have otherwise occurred. Sometimes, the procedure appears appropriate enough. An undercover officer poses as an individual trying to buy some heroin or cocaine. He approaches someone known to be a dealer who takes out of his pocket a wide assortment of drugs for purchase. The officer completes the transaction, and then arrests the dealer. The creation of crimes in this way is entirely legal. In fact, the Supreme Court has permitted the aggressive use of police activity in creating crimes.

The manufacture of language crimes—solicitation, threats, fraud, bribery, etc.—raises a special set of problems. Unless the government agent or cooperating witness obtains clear verbal evidence of criminal activity from the target, the entire episode can be subject to multiple interpretations, some of them innocent. Whether an actual crime has been created must be determined by inference. This is where Roger Shuy steps in. Focusing on the conduct of both cooperating witnesses and undercover officers wearing a tape, Shuy describes

11 conversational strategies used to create a false impression that the target is involved in criminal activity. Some of them are downright pernicious, for example, turning off the recorder when a target might say something exculpatory or making remarks that imply criminal conduct when the target is out of earshot. Others are more subtle, such as intentionally engaging in vague or ambiguous dialogue that can later sound incriminating regardless of what the target actually had in mind.

The reason for cooperating witnesses to create the illusion of criminal activity when none exists is well known, and Shuy gets it right: 'Cooperating witnesses stand to gain a lot if they help to capture other targets' (p. 10). What is novel and quite important about this book is that it digs into the details about how they accomplish this task. As Conley and O'Barr (1998) point out, linguistic ethnography must begin with a detailed account of what was said and why the way it was said is important. Shuy, largely through reference directly from case records to which he has access as the result of his participation as a linguistic expert, is in a unique position to share just what these cooperating witnesses and undercover agents do to create the illusion of criminality.

The bulk of the book consists of twelve stories of such law enforcement activity, replete with relevant quotations from the recordings that led to the target's indictment. Seven involve cooperating witnesses, five law enforcement officers. Some of them are quite startling. In one case, a cooperating witness creates the illusion of incriminating conversation by making reference to a crime when the target is too far away to hear (p. 91). In another, perhaps the most disturbing example, a Florida police officer interviewing a mentally retarded target continually turned the tape recorder on and off to manipulate the record. When the young retarded suspect spoke inaccurately about the crime, the machine would click off. The next thing on the tape would be the young man incriminating himself by describing the crime accurately. He was convicted of nine murders and released from prison only after DNA evidence taken from a rape kit showed someone else to be the perpetrator (pp. 159–64).

Many of Shuy's examples involve officers and cooperating witnesses speaking vaguely, or using double entendres, so that it becomes possible in retrospect to draw inferences of criminality even if the target did not understand the conversation that way while it was happening. For the most part, these stories are compelling and make good use of Shuy's linguistic expertise. In one case, for example, an agent, attempting to incriminate a young lawyer for conspiring to steal files being used in a government investigation of a client, continually used such expressions as 'get hold of the files' and 'obtaining the files' (p. 114). These words were not incriminating enough to convince a jury that the goal was to get the files through illegal activity. The lawyer was acquitted.

Not all uses of vague language are as obviously part of a scheme to trap the target unfairly, however. People involved in criminal activity often use vague language to mask their activities, precisely to avoid the appearance of criminality. Thus, when cooperating witnesses or the police use vague language in conversation with a target they may simply be acting realistically. In one of Shuy's

stories, an undercover agent who was out to prove that a target was knowingly purchasing stolen goods, used expressions like 'pick off' and 'grab' (p. 125). In one instance, he even used 'steal', although the target did not react affirmatively in that instance. Shuy rightly points out that all of these words (except for *steal*) have innocent-enough interpretations. In the context of these activities, however, which involve the purchase of large quantities of heavily discounted goods from unknown sources, it was not unreasonable for a jury to convict the target, which is exactly what happened.

None the less, almost all of Shuy's anecdotes provide convincing evidence that the police are not afraid to create a misleading record of a target's motives when they believe the person under investigation has a criminal mind. Moreover, in the post-*Daubert* age in which junk science is a serious concern, Shuy's analyses should stand up to scrutiny: their credibility can be measured by how well they resonate with the everyday experiences of the reader. If, as Shuy shows in this and other works, people tend to pay more attention to the fact that criminal activity is being discussed than they do to who is saying what, there can be little risk to the integrity of the system if Shuy or some other language expert points out in a case it was the cooperating witness, not the defendant, whose words are heard on the tape in that context. I have elsewhere argued (Solan, 1998) that linguistic experts are best seen as tour guides, pointing out to the judge or jury salient facts about the language used, but leaving to them the job of deciding what to make of these facts based on their own experience and their own intuitions as native speakers. In this sense, Shuy is an excellent tour guide.

There is legitimate disagreement about the extent to which law enforcement officers should be in the business of tempting people to engage in criminal activity and then arrest them for succumbing. But there should be little or no disagreement that creating a false impression that such a manufactured crime has occurred should have no place in our society. Shuy's book shows just how these false impressions are created. By doing so, it makes an important contribution to our understanding of an unacceptable practice in the system of criminal justice.

References

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