UNIVERSITY OF
COPENHAGEN

Nordic Forensic Linguistics Symposium

December 9-10, 2016
University of Copenhagen, Denmark

Venue: Faculty of Humanities, Njalsgade 136, building 27, room 27.0.09.

Friday 9 Dec

9.30-10.00	*Registration*
10.00-10.15	*Welcome*
10.15-11.00	G. Byrman: Transmediated Narrations in Crime Trials
11.00-11.45	J. Waage: Lawyers are from Mars, linguists are from Venus
11.45-12.30	B. Jacobsen: The powerful role of interpreters
12.30-13.30	*Lunch*
13.30-14.15	E. Lindroos: Legal Linguistics as an academic discipline. Lessons learned and future considerations
14.15-15.00	T. Salmi-Tolonen: Cyberspace. Challenges to Forensic Linguistic Analyses
15.00-15.15	*Coffee*
15.15-16.00	M. Hjortshøj Sørensen: The perfect imperfect speaker
16.00-16.45	M. Riis-Johansen: Investigative interviews of adult witnesses. Communicative mentality and balancing acts
16.45-17.00	*Coffee*
17.00-17.45	P. Bréton + C. Kier: Royal Canadian Mounted Police best practices. Truth seeking vs. Confession driven interviews
17.45-18.30	L. Solan: Using Corpus Analysis to find the Ordinary Meaning of Legal Terms

Saturday 10 Dec

9.00-9.45	F. van der Houwen: The role of the indictment, the right to silence and 'paper voices' in Dutch criminal court
9.45-10.30	L.V. Johansen: Between Law and Common Sense: How Danish Mixed Courts Deliberate
10.30-10.45	*Coffee*
10.45-11.30	J. Engberg: How Linguistics may support statutory interpretation
11.30-12.15	T.A. Gales: (De-)Constructing Victim Credibility and Consent in Cases of Sexual Assault: An Analysis of Evaluative Language within the U.S. Legal Process
12.15-13.30	*Lunch*
13.30-14.15	Y. Byrman: What is the best way to document investigative interviews? A study of Swedish regulations and practice
14.15-15.00	A.L. Kjær: Language Issues in Trade Mark Cases
15.00-15.45	R.A. Leonard: Authorship of texting evidence in a murder case in Waco, Texas
15.45-16.00	*Coffee and goodbye*

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Abstracts

Gunilla Byrman, Linnaeus University, Sweden
Transmediated Narrations in Crime Trials
Trials are a complex medium to gain knowledge about an event – a crime – which cannot be accessed directly, only by transmediations. The event is represented in several oral narratives from different perspectives and involving different modalities and media such as language, body language, images (cf. Heffer 2010). Therefore a trial offers an insight into transmediation and its consequences for communication. In this paper I will present available data from a criminal case.

The focus in the analysis is on the meaning-making and interaction when the narratives are created and transformed in the courtroom (Heffer, Rock & Conley 2013, Holt & Johnson 2010). During court proceedings oral narratives and evidence mediated by photographs are delivered in court by the involved parties. The data in any case are transformed in different ways, but these mediations are seldom explicitly noticed during the trial. I will present the form of the Swedish court proceedings and the media that are used. I will discuss what might causes changes in narratives and how the different parties contribute to the story created during the trial.

The data is from a criminal case of assault, where both the abuser and the abused were too drunk to remember what happened on the scene of the crime. In this criminal case it becomes relevant to study how the legal officials – prosecutors, defender, judge and lay judges – handle the flimsy evidence available in this crime case and how truth claims are put forward. The following questions are asked: How do the parties in the trial patch together the story of the crime and by which media is it transmediated during the trial? How does the court handle the truth claim, i.e. what is the official true story of the crime in the written verdict?

This is work in progress, but so far I have noticed that it is difficult to get a clear picture of what happened at the crime scene, since narratives of the parties are vague and difficult to grasp. Therefore the photo documentation of the crime is highly relevant for the final verdict, and for a layman it is understandable that the man who was sentenced contested the judgment (cf. Sörlin 2008).

References
Heffer, Chris (2010). Constructing crime stories in court. In Coulthard, Malcolm & Johnson, Alison (eds.) (2010). *The Routledge handbook of forensic linguistics*. 1st ed. New York, N.Y.: Routledge.
Heffer, Chris, Rock, Frances & Conley, John M. (eds.) (2013). *Legal-lay communication: textual travels in the law.* Oxford University Press.
Sörlin, Marie (2008). Förståelsen av domar – En intervju-under-sökning av advokaters syn på klien-ternas förståelse av domtexter. In SOU 2008:106 Stockholm 2008, *Ökat förtroende för domstolarna*, pp. 121–156.
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Judge Jacob Waage, City Court of Frederiksberg, Denmark
Lawyers are from Mars, linguists are from Venus
In criminal proceedings, the judge's role is not primarily to be a lawyer. It is to be "the common sense", "the judge of character", "the one who has the overview" and the one

to ensure the legal rights of the defendant. This role of a judge is universal. Besides that the role of the judge varies all over the world.

In the Scandinavian legal system, one of the most important characteristics compared to for instance the legal system of USA is that the judge de facto has the decisive influence on the process as well as on the assumption of guilt and the sentencing. The judges take an even part in the discussions and voting of the jury and – in larger cases – has the right to veto, if the jury finds a defendant guilty.

It is in general up to the judge to determine if a piece of evidence should be permissible in court. The "free assessment of evidence" is in general accepted in the Nordic legal systems. A case like the well-known O. J. Simpson case could never have played out in Denmark the way it did in the United States, due to the fact that illegally obtained evidence can be presented in Danish courts.

The legal system allows all kinds of evidence. A DNA profile, the guess works of an astrologer, a witness statement, and a forensic pathologist's observation and so on. This does not mean that the different kinds of evidence have the same weight. A DNA profile found on a scene of the crime constitutes almost certain evidence that a person was at the very spot, while a witness who has dreamed of a killer cannot be considered of any importance in the court. The more objective the evidence appears, the greater its value is to the court. Still, all kinds of evidence can be included in a criminal case before the court.

The question if Scandinavian judges will allow forensic linguists as expert witnesses in the future therefore depends on the validity and credibility of the work of the linguists. The biggest challenge is probably that judges do not know you. Many do not even know the difference between a linguist and a rhetorician. Others might believe that linguistics is a science in line with graphology. Nothing could be more wrong. Anybody who has dealt with this area is of course aware of this. In my opinion, linguistics could and should be used as part of the evidence in many cases. It can never stand alone as the only evidence, but in appropriate cases it should be part of the options to be considered by the prosecution or defense lawyers when determining what material the court should be introduced to.

Linguists and lawyers should come together to discuss what is needed from both parties in order for collaboration to be fruitful, and to discuss how such collaboration may be promoted, e.g. through an information campaign. See you in court, please!
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Bente Jacobsen, Høgskolen i Oslo og Akershus, Norway
The powerful role of interpreters
The questioning of defendants and witnesses constitute important evidence in Danish trials. If a defendant or a witness fails to master the Danish language, an interpreter will translate all questions from Danish into the language spoken by the defendant or the witness, and vice versa. Interpreter ethics dictate that interpreters must translate all utterances neutrally as well as accurately and precisely.

Consequently, the presence of an interpreter should have no or minimal impact on the production of evidence. In reality, however, elements such as an interpreter's choice of interpreting mode, familiarity with legal procedure and knowledge of communication strategies may influence not only the way questions are asked and answered but also 1) the court's perception of the competence and credibility of the lawyers asking the questions and the individuals answering and 2) the trustworthiness of statements. It is

my contention, therefore, that interpreters have a much greater impact on the outcome of trials than is often envisaged by legal systems. In my paper, I shall present examples in support of my contention as well as suggestions for how the situation may be remedied.
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Emilia Lindroos, University of Lapland, Finland
Legal Linguistics as an academic discipline - Lessons learned and future considerations
Although the essential nature of language in the communication, interpretation, application and practice of law is undisputable, the field of language and law, or legal linguistics, is yet to gain a solid standing in university curricula in the Nordic countries. The role of legal knowledge in legal interpreting and legal translation (LIT) as well as the relevance of linguistic awareness in the practical work of legal professionals have gained importance in the globalizing world, but this is not sufficiently reflected in the current education and training of these professionals. Defining modern legal linguistics as a joint discipline of legal studies and linguistics and taking into account the different approaches appropriate to specific education or training needs, further efforts are necessary to encourage collaboration and advance the discipline.

   This paper discusses the preliminary results of an ongoing study on the cooperation between police officers and interpreters in Finland and its implications for the didactics of the emerging field of legal linguistics. The study, based on a questionnaire sent to Finnish police officers, aims at identifying possible obstacles to efficient cooperation with interpreters and at highlighting aspects that may have a negative impact on the quality of interpreting. In order to avoid such pitfalls, a module containing additional legal linguistic training is proposed as part of the training of police officers.
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Tarja Salmi-Tolonen, University of Turku, Finland
Cyberspace - Challenges to Forensic Linguistic Analyses
The aim of this paper is to discuss language offences in cyberspace and the current methodological challenges they pose to forensic linguistic analyses. Today, providing language evidence that will assist investigation or the trier of the fact in achieving a just result is becoming more and more internet-related. The relative anonymity and mobility afforded by the internet also offers almost limitless opportunities to the misuse of language. Therefore the requests for consultation and for forensic linguistic analyses increasingly concern texts originally communicated on the internet. In this preliminary report on a work in progress topics such as the most obvious features common to these texts and what they can reveal to a forensic linguist researcher will be discussed.
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Mette Hjortshøj Sørensen, Aarhus University, Denmark
The perfect imperfect speaker
In this presentation I will give a brief introduction to the field of forensic speech science and provide examples of some "typical" cases.

One of the main tasks for the phonetician within forensic speech science is to do speaker comparisons. In these cases, a recording typically exists of an unknown speaker committing a crime or talking about committing a crime and then the voice of one or more suspects is available for comparison (Nolan 2001: 8). Hence, of key issues within the field of forensic speech science is what constitutes the individual speaker – and how unique the individual speaker really is.

Speakers actually give away lots of clues about who they are when they speak, e.g. where they are from, what gender they are, their occupation, their health, how tall they are and so much more. However, as there is no single part of a person's speech which is indelible, the challenge is to find sufficient distinguishing characteristics which at the same set the speaker apart from other speakers. In real life cases (e.g. in speaker comparison cases) it is, of course, an advantage if speakers are "imperfect" in the sense that e.g. their articulators do not meet their articulatory ideal targets but rather have their own habitual way of moving. The more of these "special" or habitual individual characteristics the speaker has, the easier it is for the practitioner to deal with the speech samples. I will address the issue of speaker specific differences in speech as well as some of the practical challenges which occur in forensic phonetic cases including mismatched conditions.
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Marit Olave Riis-Johannsen, Norwegian University of Science and Technology
Investigative interviews of adult witnesses. Communicative mentality and balancing acts
This presentation is based on my PhD-thesis, which is a discourse study of police interviews of adult witnesses in investigations concerning violence and sexual abuse. The data is audio recordings and transcriptions of police interviews, supplemented by observation of the training of police interviewers and document studies of institutional and professional conditions for the interview.

The metaphor "balancing acts" relates to a main finding: The police interview is a conversation where the participants balance different considerations in the situation, such as the institutional requirements of a police interview, the interviewee's need to be seen as trustworthy, and the interviewer's professional knowledge of what creates a good interview. Attentiveness to these crossing considerations in the interview is important to understand the complex role of the police interviewer.

In this presentation I will try to shed light on these balancing acts, and address what sort of implications this understanding of police interviewing has for education and training.
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Cst. Pierre Breton & Cpl. Christian Kier, Royal Canadian Mounted Police
Best Practices in Investigative Interviewing
This talk will focus on the goals of the RCMP investigative interviewing team—*interviews are truth-driven as opposed to confession-driven.*

Highlighted will be successful interviewing techniques such as establishing clear goals, obtaining pure version statements, encouraging open dialog, making tactical use of evidence, and using strategic questioning formats.

Case studies emphasizing the importance of performing a truth-driven interview will include situations where a suspect previously identified as a radical terrorist was cleared, where a foreign suspect's previously unknown aliases were revealed, and where an uncooperative mobster's link to a cell phone used in criminal activities was obtained.
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Lawrence M. Solan, Brooklyn Law School, USA.
Using Corpus Linguistics to Find the Ordinary Meaning of Legal Terms
Legal systems often adopt the presumption that the legislature intends the words used in a statute to be construed in their ordinary sense. There are no hard and fast rules, however, for uncovering the ordinary sense of statutory words and phrases. This presentation will discuss a current trend in U.S. law to use linguistic corpora to determine how words are ordinarily used. In one case, for example, a prominent U.S. appellate judge (Richard Posner) used a corpus to determine that a woman was not "harboring" an undocumented immigrant by having him live with her openly. He found that the verb "to harbor" collocates with words suggesting an effort to hide someone, such as refugees, Jews, criminals, etc. She was not doing that.

The use of corpus linguistics in legal analysis has its limits, though. First, it is not always clear that the legislature really did intend that a word be understood in its ordinary (or prototypical) sense. Sometimes, either a broader or narrower understanding may have been intended, and would better further the purpose of the law. This point applies even more strongly to constitutional analysis, where it may well have been intended that certain rights be construed broadly. Second, it is not always clear what searches should be conducted using a corpus. In one case, the issue was whether the word "information" is limited to truthful statements of fact. The majority of the judges in the court said it was not, citing examples from a corpus of phrases like "inaccurate information" and "false information." The dissenting judges observed that when "information" appears unmodified, it almost always refers to truthful statements. Finally, the presentation will report a study conducted with Tammy Gales of a case pending before the U.S. Supreme Court, in which the issue was whether a person who tricked a bank into releasing another depositor's funds to the defendant had "defrauded" the bank, given that the bank suffered no harm.
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Fleur van der Houwen, Vrije Universiteit Amsterdam, The Netherlands
The role of the indictment, police records and the right to silence in an inquisitorial criminal court system
In this talk I address the discursive nature of inquisitorial procedures in Dutch criminal court. Contrary to adversarial procedures, in inquisitorial courts judges have an active rather than a passive role. Based on the indictment formulated by the public prosecutor, the judge verifies if the charges are indeed supported by documents in the case file. And when examining the *suspect* in court- they are not labeled *defendant* in inquisitorial court - the point of departure is hence a narrative in which the suspect is guilty. The suspect has the right to remain silent but as we will see, this right is not so easily invoked and police records sometimes override this right. In this talk then I show how all this unfolds discursively: 1) how indictments set the agenda, 2) how statements drawn up by the

police at an earlier stage are invoked by the judge and sequentially embedded while examining the evidence in court and 3) how the suspect's right to silence is negotiated.
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Louise Victoria Johansen, University of Copenhagen, Denmark.
From apprentice to expert: How Danish lay judges learn to deliberate in criminal cases
Jury systems rest on the notion that not only specialized judges but also "ordinary" people should judge defendants. Lay judges are supposed to contribute with their mundane common sense, untouched by legal reasoning and knowledge. These ideals are also prevalent in Denmark. However, Danish lay judges are appointed for a four-year period and may even serve several periods. Based on a three-year anthropological study of the communicative exchanges between judges and lay judges, the present paper analyses how these lay judges' repeated participation in Danish criminal cases affects their arguments during deliberation. As they gradually come to understand and use a language and a way of reasoning that is closer to the court and its codes than to their own everyday life, their participation as precisely "lay judges" may be challenged.
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Jan Engberg, Aarhus University, Denmark
How Linguistics may support statutory interpretation
In previous work (Engberg/Kjær 2015) we have suggested three aspects of statutory interpretation, in which linguistics may contribute to creating a better argumentative basis:

1. Assessing possible sources of word meaning
2. Interpreting multilingual statutes
3. Meaning concepts behind the process of interpretation

In my presentation, I will focus upon the last type of contribution: How may better insights into how meanings work help us select efficient bases for legal argumentation? Different traditions for legal interpretations tends to rely upon different meaning concepts. Linguistics can help describe the relations and thus also help test argumentation. In my presentation, I will especially focus upon the links between a cognitive approach to meaning and criteria for good legal argumentation.

Reference
Engberg, Jan / Kjær, Anne Lise (2015): Hvad betyder sproget for juridisk fortolkning? In: Kjær, Anne Lise / Adrian, Lin / Cederstrøm, Cecilie Brito / Engberg, Jan / Gabrielsen, Jonas / Rosenmeier, Morten / Schaumburg-Müller, Sten (eds.): Retten i sproget. Samspillet mellem ret og sprog i juridisk praksis. København: Jurist- og Økonomforbundet; 265-272
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Tammy Gales, Hofstra University, USA

(De-)Constructing Victim Credibility in Cases of Non-Stranger Assault: An Analysis of Evaluative Language in Witness Cross-Examinations

"It has been said that the victim of a sexual assault is actually assaulted twice – once by the offender and once by the criminal justice system" (*State v. Sheline*, 1997). The principal player in the revictimization narrative is typically the defense lawyer who cross-examines the complaining witness (Taslitz, 1999). Previously, this occurred by introducing a witness's prior sexual history, which led a jury to judge the witness's moral propriety. However, Rape shield laws, which were passed to help protect witnesses from such judgements, have been found to be ineffective (Anderson, 2002).

In research examining the laws' inefficacy, no one has examined the extent to which the actual questioning by counsel in these cases differs from the questioning of other prosecution witnesses in similar cases. Thus, this study asks: other than the fact that the crime is so personal that the situation itself revictimizes those who come forward, what is different about the language of sexual and non-sexual assault trials?

Colleague Larry Solan and I obtained two trial transcripts: a non-stranger sexual assault crime and a non-stranger assault crime. We analyzed the questions posed during the cross-examinations using Appraisal Analysis (Martin and White, 2005), which identifies a speaker's stance toward another person or proposition. The findings revealed that both cases utilized similar legal strategies; however, differences in the kinds of judgements made by each lawyer revealed subtle ways in which rape shield laws were upheld, but the witnesses were effectively discredited. As a valuable approach to such questions, steps for further research will be discussed in light of existing laws aimed at protecting rape victims against such re-victimization.

References

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Taslitz, Andrew E. (1999). *Rape and the Culture of the Courtroom*. New York: NYU Press.

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Ylva Byrman, Gothenburg University, Sweden

What is the best way to document investigative interviews? A study of Swedish regulations and practice

The way (police) interviews during pre-trial investigations are documented for the subsequent criminal process varies between countries. In England, suspect interviews are audio-recorded and transcribed verbatim by law (Haworth 2013), while the Dutch police studied by van Charldorp (2011) do not audio-record at all, but type a summary during the interview. Even within one single legal system, documentation practices may vary substantially, as shown in my study of the Swedish tax fraud unit (Byrman 2016). Some investigators audio-record the interview and write the report afterwards, others type while interviewing, while yet others regularly interrupt the interview to dictate oral summaries onto a tape that is transcribed afterwards.

My paper will analyse how Swedish tax fraud investigators are told to conduct and record interviews – by law and in their training programmes – and contrast this with the

reality of their actual everyday practice. The focus will be on how investigators, prosecutors and law makers reason about what is good practice.

The study draws on two types of data, collected within a larger ethnographic study: naturally occurring data: laws, policy documents, training materials, field observations of investigator training and audio-recorded investigative interviews, researcher-generated data, elicited through questionnaires and interviews with investigators and prosecutors, where I ask about their views and practice.

The results show that practice is shaped not only by explicitly formulated rules, but also by local tradition and tacit norms, as well as what is practically convenient and preferred by the individual investigator. Furthermore, investigators receive contradictory instructions – e.g. they are told both that a good interview requires full attention and that they should write up the summary while interviewing. Finally, the question of whether to audio-record turns out to be complicated, since it is still unregulated and intertwined with core concepts of Swedish law and constitution.

References

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Haworth, Kate. 2013. Audience design in the police interview: the interactional and judicial consequences of audience orientation. Language in Society (42 (1)):45–69.
van Charldorp, Tessa. 2011. From police interrogation to police record. Amsterdam: Vrije Universiteit.
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Anne Lise Kjær, University of Copenhagen, Denmark
Language Issues in Trademark Cases
Principles of trademark protection and infringement rely heavily on linguistic and semiotic knowledge. However, reasoning in trademark cases is seldom based on linguistic evidence, and in many cases judges tend to base their decision on a hunch rather than a systematic analysis of the language and meaning of the disputed trademarks. This paper will address the need for basing legal judgment on linguistic and semiotic knowledge. The paper will build on theories developed by American forensic linguists, esp. the work by Roger Shuy, but will address cases from Danish courts and the Court of Justice of the European Union.
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Robert A. Leonard, Hofstra University, USA.
Authorship of texting evidence in a murder case in Waco, Texas
A murder occurred in Waco, Texas. In the investigation the police took Rickey Cummings' phone and viewed the contents.

The phrase "Take dem bullets out the house" was deleted from his phone, but had been sent from it. This is the key text.
Also sent from the phone was item 116 "Straight up love u too and wit who".

The State claims that these texts were authored by Rickey Cummings because they were both sent from his phone. The State claims that these texts, especially the first, show a knowledge of, and an attempt to dispose of, the bullets used in the murder, and that this demonstrates his intimate involvement in the murder.
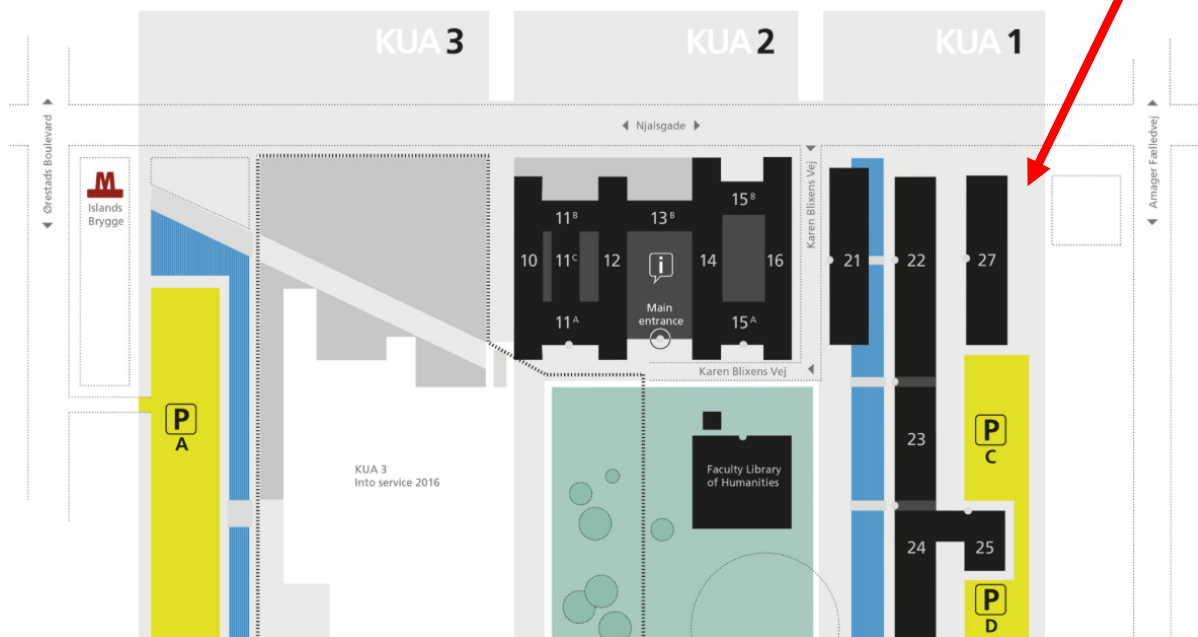
Cummings was sentenced to death.

I was brought to Waco to testify about our analysis of all the texts found on his phone, and whether the evidence supports, or does not support, the hypothesis that Rickey Cummings was the actual author of those two texts.

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Map

Venue:
Njalsgade 136, 2300 CPH S
building 27, room 27.0.09

NB! Interactive maps of UCPH here (look up The Faculty of Humanities, Department of Nordic Research): http://findvej.ku.dk/english/#top