

# *What is Forensic Linguistics?*

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## **Forensic Linguistics 1**

- 1.1.1. What is forensic linguistics? 2
- 1.1.2. Legal Cases and Proceedings 2
- 1.1.3. The investigative stage 3
- 1.1.4. The trial stage 3
- 1.1.5. The appeal stage 3
- 1.1.6. Private disputes 4

*1.2. History and development of Forensic Linguistics to the present 4*

*1.3. Forensic Phonetics 8*

*1.4. Summary of the development of Forensic Linguistics 9*

*1.5. Forensic Linguistics in the Justice System 9*

*1.1. Glossary 12*

*1.6. Annotated Bibliography and References 13*

**Summary:** This article discusses the discipline of Forensic Linguistics. It begins by describing what Forensic Linguistics is, namely the interface between linguistics (the science of language) and the law, including law enforcement. It then outlines the history and development of Forensic Linguistics from its beginnings in the 1950's and 1960's to the present day. A section on Forensic Phonetics is included, and the article concludes with how Forensic Linguistics works in the justice system and some of the difficulties that linguists and lawyers may have in understanding each others' viewpoints. The article concludes by suggesting that lawyers and linguists work more closely with each other in the interests of justice, and that linguists seek to widen their understanding of international law, of international human rights issues, and of how law and language relate to each other across the globe. The article suggests that the future of Forensic Linguistics will be bright if linguists work on these issues, and also on acquiring skills, knowledge and qualifications in other disciplines in order to better prepare them for working in and with courts.

### 1.1.1. What is forensic linguistics?

In ten words or less, what is Forensic Linguistics? Forensic Linguistics is the application of linguistics to legal issues. That is a starting point, but like all answers it is imperfect and serves only to stimulate more questions. For example, what does '*the application of linguistics*' mean?

When Forensic Linguistics is referred to as an *application of linguistics* or, more concisely, an *applied* linguistic science, the word *applied* is not necessarily being used in the same sense as, for example, in the phrase *applied* statistics, where what is being applied is a theory underpinning a particular science to the practice of that science. Forensic Linguistics is, rather, the application of linguistic knowledge to a particular social setting, namely the legal *forum* (from which the word *forensic* is derived). In its broadest sense we may say that Forensic Linguistics is the interface between language, crime and law, where *law* includes law enforcement, judicial matters, legislation, disputes or proceedings in law, and even disputes which only potentially involve some infraction of the law or some necessity to seek a legal remedy. Given the centrality of the use of language to life in general and the law in particular, it is perhaps somewhat surprising that Forensic Linguistics is a relative newcomer to the arena, whereas other disciplines, such as fingerprint identification and shoeprint analysis, are much older, having a well-established presence in judicial processes.

The application of linguistic methods to legal questions is only one sense in which Forensic Linguistics is an application of a science, in that various linguistic theories may be applied to the analysis of the language samples in an inquiry. Thus, the forensic linguist may quote observations from research undertaken in fields as diverse as language and memory studies, Conversation Analysis, Discourse Analysis, theory of grammar, Cognitive Linguistics, Speech Act Theory, *etc.* The reason for this reliance on a broad spectrum of linguistic fields is understandable: the data the linguist receives for analysis may require that something is said about how the average person remembers language, how conversations are constructed, the kinds of moves speakers or writers make in the course of a conversation or a written text, or they may need to explain to a court some aspects of phrase or sentence structure.

In summary, we can say that the forensic linguist applies linguistic knowledge and techniques to the language implicated in (i) legal cases or proceedings or (ii) private disputes between parties which may at a later stage result in legal action of some kind being taken.

### 1.1.2. Legal Cases and Proceedings

In lay terms, for the purposes of this discussion, we can envisage a legal proceeding as consisting potentially of three stages: the **investigative** stage, the **trial** stage and the **appeal** stage. The investigative stage is also sometimes referred to as the *intelligence* stage. In this part of the process it is important to gather information relating to the (alleged) crime. Not all of the information which is gathered during investigations can be used in court, and so a linguist who assists law enforcement officers during the intelligence stage may, in fact, find that there is no requirement to give evidence at any subsequent trial. Similarly, a linguist whose work is used at trial may not be required to assist the court at the appeal stage, if the content of the appeal does not include linguistic questions. On the other hand if linguistic evidence which was not available at the earlier stages comes to light while the appeal is being prepared, then this may be the stage at which the linguist is called in to give an opinion.

### 1.1.3. The investigative stage

Typically, requests for linguistic analysis originate with law enforcement departments or, in some countries, at the invitation of an investigating magistrate. Examples of linguistics intelligence work have included analysis of ransom notes, letters purporting to provide information on a case, mobile (cell) phone text messages, and specific threat letters. Linguists have also been asked to analyse texts purporting to be suicide notes. Even though the police in such cases may not suspect foul play, it could be important to attempt to establish whether the questioned text can throw any light on the cause or circumstances of death.

Also at the investigative stage, the police may need to have an opinion on a text or an interview tape, perhaps to assist in developing interview and interrogation strategies. It is unlikely that anything a linguist says about veracity (using techniques similar to *statement analysis*) would be acceptable evidence in court, which is why this kind of linguistic analysis is usually confined to the investigative stage.

### 1.1.4. The trial stage

At the trial stage any one of a number of types of linguistic analysis may be called for, including questions of authorship (*Who wrote the text?/Who is the speaker in this recording?*), meaning and interpretation (*Does this word mean x, y or something else?*), threat analysis (*Does the text contain a threat?*), or text provenance and construction (*Was the text dual-authored? Was it written rather than spoken?* etc). The inquiry could be of a civil or criminal nature, and this will determine the level of ‘proof’ acceptable to the court in question. Usually, the forensic linguist is instructed some time before a case gets to court. An expert report is submitted to the instructing legal team — either for the prosecution or the defence (or the plaintiff/claimant in a civil case). Even though the linguist prepares a report for one ‘side’ in a case rather than the other, it is the court for whom the work is really done. The first duty of the linguist — like that of any other forensic expert — is to the court, and not to the client on whose behalf the analysis was originally carried out.

### 1.1.5. The appeal stage

If a defendant is convicted of a crime it is not uncommon, especially these days, for the defence legal team to launch an appeal almost immediately. The structure and nature of appeals varies from country to country, and in some countries appeals centre on the claim that new evidence has been made available, or that existing evidence should be looked at in new ways. It is becoming increasingly common for linguists to be called in to assist legal counsel at the appeal stage, either because there may be some dispute about the wording, interpretation or authorship of a statement or confession made to police, or because a new interpretation of a forensic text (such as a suicide or ransom note) may have become apparent since the conviction.

### 1.1.6. Private disputes

A not inconsiderable part of the forensic linguist's work consists of private cases. By this is meant that the work is commissioned by private individuals not involved in litigation at the time of the commission. Such cases include identifying the author of anonymous hate mail, the investigation of plagiarism for a school or university, or on behalf of a student accused of plagiarism. It sometimes happens that the linguist's report may have an influence on the client's decision to take matters further, either in a civil or a criminal court, but this is not common. Usually, what happens is that the report is submitted and the client deals with the matter internally — either within a university department, a business organisation, or, as may also be the case, within a family.

## 1.2. History and development of Forensic Linguistics to the present

Like almost all sciences it is not possible to say that Forensic Linguistics began at a specific moment in time. Questions of authorship have exercised minds since the times of the ancient Greek playwrights who not infrequently accused each other of plagiarism. Since at least the eighteenth century scholars and amateurs alike have pondered over the authorship of some of the world's most famous texts, including sacred texts and the plays of Shakespeare.

There was some attempt in the nineteenth century to develop methods of authorship attribution, mainly by British and American mathematicians and statisticians, notably Augustus de Morgan, in 1851, TC Mendenhall (1887 and 1901) and in the earlier part of the twentieth century by Udney Yule (1938 and 1944). These studies tended to concentrate on easily measurable attributes like word length average, mean sentence length, and so on. The application of these exercises, though, was hardly forensic and, in any case, had little to do with linguistics. The actual phrase Forensic Linguistics was not used until 1968 when a linguistics professor by the name of Jan Svartvik recorded its first mention in a now famous analysis of statements given to police officers at Notting Hill Police Station in 1953. Timothy John Evans was accused of the murder of his wife and baby at 10 Rillington Place, Notting Hill, London, England, tried at the Central Criminal Court of England and Wales (The 'Old Bailey') and hanged at Pentonville Prison. In the 1960's the statements he had allegedly given to police following his arrest, troubled several people, including a well-known journalist by the name of Ludovic Kennedy, and Svartvik was commissioned to analyse the statements. Svartvik was one of the earliest linguists involved in corpus studies, which is the systematic analysis of language through the collection and study of large bodies (hence *corpus*, pl. *corpora*) of language, and therefore he was able to approach the task of analysing the Evans' statements in a methodical manner. He quickly realised that the statements contained two styles and he set about quantifying the differences, ultimately demonstrating that they were, in fact, an educated written style and a marked spoken style. Along with other evidence collected in the course of many different threads of investigation, the findings of Svartvik showed that Evans could not, as had been claimed at his trial, have dictated the statements attributed to him.

For a long period in English law a set of rules had been established regarding the interrogation of witnesses, in particular how statements were to be taken from them. These prescriptions were known simply as Judges' Rules which laid down that suspects were to dictate their narrative to

police officers, that police officers were not to interrupt suspects, and that questions were not to be asked of the suspect at the statement stage except for minor clarifications.

In practice this almost never happened. Typically, a police officer would ask a series of questions, take down notes and then write or type the suspect's statement, not in the words of the suspect, but in a form and pattern which police custom had long dictated. Thus, police statements contained phrases like 'I then observed', *etc.* This type of phrasing is not at all typical of how people speak, but rather reflects a way of phrasing which has come to be known as 'police register', itself an area of study within Forensic Linguistics.

The learned judges who formulated the rules for statement taking were not aware that dictating a statement and transcribing it verbatim are difficult — perhaps even impossible — tasks for the average speaker. Learning to dictate a narrative in a coherent, sequential, articulate form is extremely difficult, but the person taking the statement has an even harder task if the speaker is not skilled at pacing his/her delivery. Usually, people do not deliver their statements in a coherent, ordered fashion: they speak too fast, they omit important details, they speculate aloud, they backtrack, and so on. In effect, the Judges' Rules were unworkable. This was why police officers had their own way of taking and regrettably in some cases making statements. It was simply impossible to follow the prescriptions of the Judges' Rules.

This was why in the early days of Forensic Linguistics, at least in the United Kingdom, many cases involved questioning the authenticity of police statements. The first example of expert evidence being given from the witness box on this matter was at a murder trial at the Old Bailey in 1989, where Peter French demonstrated the presence of police register in an incriminating statement the prosecution claimed was entirely in the words of one of the defendants.

Notable cases included appealing against the convictions of Derek Bentley (posthumously pardoned) the Birmingham Six, The Guildford Four, the Bridgewater Three, and so on. These last four cases all relied on the work of Britain's most distinguished forensic linguist, Professor Malcolm Coulthard of Birmingham University, a discourse analyst who had first taken an interest in forensic questions following an inquiry from a colleague.

In the United States forensic work began slightly differently, but also concerned the rights of individuals with regard to the interrogation process. In 1963 Ernesto Miranda was convicted of armed robbery, but appealed on the grounds that he did not understand his right to remain silent or to have an attorney present at the time of questioning. The Court of Appeal overturned his conviction in 1966. In the US there were many *Miranda* cases, as they came to be known. On the face of it the provision of *Miranda* is a simple one: police officers are obliged to advise arrestees that they need not speak unless they wish to, that they are entitled to have a lawyer present, and that anything they say can be used against them in court. However, many issues arose, as discussed by Professor Roger Shuy: (i) a confession must be voluntary, (ii) questioning should not be coercive, (iii) arrestees must be asked whether they understand their rights, *etc.* With regard to the first point Shuy pointed out that an arrestee is hardly in a position to agree *voluntarily* to being questioned. Effectively, the very nature of questioning (as pointed out by the US Supreme Court) is coercive. Shuy (1997: 180) gives a good example of the issue of coercion in an interrogation process. He describes how a suspect, having declined to speak following the reading of his *Miranda* rights, was escorted in the back of a police car to the police station by two officers, who then began to talk to each other about the possibility of the murder weapon in the case (a shotgun) being accidentally stumbled upon by children at a nearby school. The suspect immediately waived his rights and led officers to the location of the weapon. The suspect, a man by the name of Innis was convicted of murder and his lawyers appealed. The issue before the appeal court was whether the suspect had been coerced into making the confession. This in turn caused lawyers and judges to consider the meaning of the word *interrogation*. The Rhode Island Supreme Court concluded that interrogation need not involve the asking of a question, and that in this case subtle coercion had occurred and that this was "the functional equivalent of interrogation". In the US Supreme Court it was thus

appreciated that “interrogation need not be in the form of a question...[and] may involve the use of psychological ploys”. However, it was also realised that the conversation between the officers was probably more in the nature of casual remarks than a deliberate ploy. Shuy raised many important points about Miranda, and vigorously questioned many of its assumptions of simplicity. He cites one case where a fifteen year old boy from Houston, Texas was read his rights and ultimately signed a confession of murder. After analysing tape-recorded interviews between the attorney and the child Shuy concluded that though the boy often said he understood what he was being asked it was clear that his level of comprehension was extremely low. His school confirmed that his comprehension ability was no more than that of an eight year old. Thus in this and other cases Shuy explores the most basic premises of Miranda, and — by extension — similar legal provisions. He does not take even the ‘simplest’ word or concept for granted: what does ‘voluntarily’ mean, does ‘understand’ mean ‘I say I understand’ or ‘I actually understand’?

The work of Roger Shuy, and other US linguists, has encompassed many areas of civil and criminal practice, but right from the beginning, the law itself was, as it were, subject to questioning: what does this law mean? How do different people perform when asked if they ‘understand’ their rights? There is a very readable review of early Forensic Linguistics in the United States, written by Judith Levi (Levi 1994). In her account Levi recalls a case in which she was asked to analyse a ‘bad news about your social benefits’ letter written by the Illinois Department of Public Aid to recipients of child benefit payments whom they had categorised as ‘non-cooperative’. One of the tasks Levi undertook was to determine whether the vocabulary selections made by the drafters of the letter had used technical and bureaucratic language in place of ordinary, everyday language. Also included in the analysis were pragmatic questions such as inferencing (Were inferences made by recipients of the letter justified by the facts of the case? Did the writers of the letter “provide incomplete information which could lead...to the making of misleading inferences”? Was the reader forced “to infer information that should have been made explicit”?). The result of Levi’s work was a stunning success for the recipients of the letters. Most of the recipients of the benefit were single mothers who had suffered real hardship as a result of the State’s actions. The judge in the case awarded \$20,000,000 to the beneficiaries and ordered the State to rescind its classification of ‘non-cooperation’ until it had complied fully with the court’s consent order. Finally, the State was ordered to re-write the letter in terms comprehensible to the beneficiaries (Levi 1994: 18). An important point noted by Levi is the comment by a linguist acting in another case, namely that the legal system is “linguistically naïve and vulnerable” (Levi 1994: 22). This point is referred to in the next section.

Another early application of Forensic Linguistics in the United States related to the status of trademarks as words or phrases in the language. An early case involved a dispute surrounding an aspect of the brand name ‘McDonald’s’, owners of the multi-national fast food chain. In this case the linguists were Genine Lentine and Roger Shuy (as reported in Levi 1994: 5). Quality Inns International announced their intention of opening a chain of economy hotels to be called ‘McSleep’. ‘McDonald’s’ claimed that the attachment of the ‘Mc’ prefix to many unprotected nouns, such as ‘Fries’ in ‘McFries’ ‘Nuggets’ in ‘McNuggets’, *etc.*, barred Quality Inns from use of the ‘Mc’ prefix. In this case the plaintiff was not just claiming implicit ownership of a name, but over a morphological principle, namely the attachment of a particular prefix to any noun. It appears that the claim was inherently one of a “formula for combination” (Levi 1994: 5) and it was this formula for which protection was being invoked. ‘McDonald’s’ also claimed that they had originated the process of attaching unprotected words to the ‘Mc’ prefix and had run advertising campaigns which illustrated this. In their evidence Lentine and Shuy showed that the ‘Mc’ prefix had had previous commercial applications, and that as ‘McDonald’s’ had not objected to any of these they had no grounds for doing so in the present instance. Despite the overwhelming evidence presented by Lentine and Shuy, judgement was for the plaintiff’s and Quality International Inns were unable to launch their chain of motels under the ‘McSleep’ banner.

In Australia linguists began meeting in the 1980's to talk about the application of linguistics and sociolinguistics to legal issues. They were concerned with the rights of individuals in the legal process, in particular difficulties faced by Aboriginal suspects when being questioned by police. They quickly realised that even such phrases as 'the same language' are open to question. An important instance of this is the dialect spoken by many Aboriginal people, known colloquially as 'Aboriginal English', wrongly thought by many white Australians to be a defective form of the English spoken by whites. It is in fact a dialect in its own right. Thus, when being questioned by police, Aboriginal people bring their own understanding and use of 'English' to the process, something which is not always appreciated by speakers of the dominant version of English, *i.e.* 'white English'. More than this they bring their own interactional, culturally-based, styles to the interview. An individual's own interactional style, if perceived to be at variance to that of the dominant culture, might compel responses to questions in particular, non-confrontational ways which could lead to a false assumption on the part of a questioner that the suspect was being evasive or, worse still, that an admission of guilt was being made.

Other Australian research focused on how Aboriginal witnesses and defendants understood the legal processes involved in land claim hearings and examined the impact of cross-cultural differences between white settlers and Aboriginal people on the presentation and even outcome of cases. In this context Gibbons (1994: 198) observes "the...system...around interrogation in the courtroom is alien to Aboriginal culture". Gibbons is the author of two major books on Forensic Linguistics, 'Language and the Law' (Longman, 1994) and 'Forensic Linguistics: An introduction to language in the justice system' (Blackwell 2003). In these books he not only summarises some of his own considerable experience as a Forensic Linguistics expert in the court system, but also details much of the history of the development of Forensic Linguistics.

Surprising as it may seem, the thread which connects many of these different forensic activities is **authorship**. Essentially, in considering the question of whether an individual dictated a statement, or whether a statement was in the words of its alleged speaker, analysts were actually asking the question 'Who was the author of the statement attributed to X?' This applied to the statements of Derek Bentley, Timothy Evans, the Birmingham Six, the Bridgewater Three in the United Kingdom (and many others), as well as to Australian Aboriginal defendants who claimed that police had 'verballed' them (*i.e.* altered what they had said). In the case of US defendants whose Miranda rights were being investigated, there was a slightly different kind of authorship nexus of questions which included: 'Did the putative authors of statements (such as the 15 year old Houston boy, or Mr Innis) make their statements voluntarily, knowingly and in full possession of their rights?' In other words, the issue here relates to the conditions of authorship: a series of questions put by police, for which answers are required, structures and even distorts a narrative of events; answers which appear vague, ambiguous or reluctantly given may slant a narrative in a way which is disadvantageous to the defendant and, as pertinently, to the apparent truth of the narrative. In any case, the assymetric nature of the relationship between authority figures (the police) and the defendant — who may be (i) illiterate (ii) a speaker of another language than the language of interview (iii) young/disabled/ethnically disadvantaged, *etc.*, can result in a text (such as a record of interview, video or audio recording or written statement) which is considerably at variance with what the suspect would have said had he/she been given the opportunity to make a statement in a non-coercive or less threatening environment.

In a broad sense to be an author is to possess the language you are using. It is the use of language to produce a text over which you as the author have control, and whose course you are free to direct. Illiterate, young, disabled, language minority speakers are scarcely in control of the authorship process when 'giving' a statement to powerful authority figures. We can realistically challenge almost any text produced under conditions of duress even where the duress may not have arisen through the intention of questioning police officers, court officials, or any other authority figure within the justice system. If a suspect's way of using language is at some remove from that of the

officials with whom the suspect is dealing then the potential for distortion of the authorship process is clearly exacerbated, probably in proportion to the differences of perspective, interactional styles and cultural norms between the institutional, authority figures on the one hand and the suspect on the other. This is not to suggest any malice or intrinsic lack of fairness or justice on the part of officials: they work within institutional structures which are not always the most conducive for taking individual circumstances into account.

In Germany, an early case involved an alleged slander by a tenant in an apartment complex of a fellow tenant (Kniffka, 1981). The issue at stake was whether the word *concubine* was an insult. Linguists advised that for some speakers the word might be amusing, for others a way of addressing each other as a joke, while yet others might find it insulting under some circumstances: it was not possible to say that a given word or phrase, on its own, was an insult, or constituted verbal injury. Rather, the relationship between speaker and hearer, the context of situation, the speaker's education level — all needed to be taken into account. A word does not have a single, universally-agreed, meaning within a speech community. Other issues which emerged in the early days of Forensic Linguistics in Germany involved authorship attribution, and the development of methodologies for doing so. An early case, reported by Kniffka, concerned the theses of twin sisters whose previous academic performance was, according to university authorities, at a much lower level than the theses they submitted for their final examination. Kniffka argued that an authorship attribution in the case was not possible because the language used was essentially the meta-language of the law and that it was not easy to attribute such language to any given individual. He suggested the university authorities subject the students to a written examination on their theses to test their knowledge, rather than relying on subjective comparisons with their previous, known, work.

In the years since Forensic Linguistics began to establish itself as a discipline its scope has grown considerably. From its beginnings as a means of questioning witness and defendant statements, linguists have been called on to give evidence in many different types of case, including authorship attribution in terrorist cases, product contamination cases and suspicious deaths; the interpretation of meaning in legal and other documents, the analysis of mobile (cell) phone text messages to establish a time of death. The list continues to grow. In the next section, an important area within Forensic Linguistics will be considered: Forensic Phonetics, the analysis of speech through auditory and acoustic means and its application in the legal and criminal arena.

### 1.3. Forensic Phonetics

This article is about Forensic Linguistics rather than phonetics, but no account would be complete without some mention of the science which deals with questions of speaker identification, resolution of disputed content of recordings, the process of setting up voice line-ups and ear line-ups and related topics. It has a more established presence in the legal forum than Forensic Linguistics and its progress has been assisted by recent advances in acoustic engineering. Phoneticians are able to analyse the distinctive speech characteristics of a speaker relative to other candidate speakers in an inquiry much more easily than as little as 20 years ago. An important ethic within Forensic Phonetics is that no means exists which can infallibly identify an unknown speaker in a legal case (such as a hoax or bomb threat caller to an emergency service). Rather, like all branches of science Forensic Phonetics examines a set of phenomena, in this case aspects of recorded speech, and offers opinions based on the observations arising from the analysis. Among the earliest British forensic phoneticians were John Baldwin, Stanley Ellis and Peter French, while

in Germany Hermann Künzel was also active. Künzel (with Eysholdt) considered many aspects of speech production with reference to social situations, including the influence of alcohol on speech (Künzel and Eysholdt, 1992). Kniffka's (1990) collection contains accounts of some of the early forensic phonetic cases – see especially Ellis's and Baldwin's contributions to that collection. The earliest recorded voice identification testimony in the UK was in 1965, given by Stanley Ellis at Winchester Magistrates' Court.

## 1.4. Summary of the development of Forensic Linguistics

The early years of Forensic Linguistics were characterised by two critical issues:

1. The need to discover the scope and effectiveness of Forensic Linguistics as a form of expert testimony within the court system.
2. The need to improve methodologies within Forensic Linguistics and to make these transparent to non-linguists.

These issues are still ongoing. It is tempting to add a third point to the above: the need to develop a theory of authorship as a socio-cognitive process, the relationship between individual and community or social authorship and the nature of institutional authorship. However, the scope of such a discussion is beyond the present article.

Like all sciences — even new ones — a discipline's scientific methods, the need to educate non-specialists and the constant testing of the limits of the science are always key issues. To some extent these questions will be addressed in the following section.

## 1.5. Forensic Linguistics in the Justice System

In the previous section we saw the kinds of cases which forensic linguists routinely advise on, but it is important to consider the mechanisms which underlie the use of Forensic Linguistics in the world's justice systems, and the institutional and other factors which relate to the further development of Forensic Linguistics and its rôle as an adviser within the legal process.

In this section the following aspects of linguistics in the justice system will be considered: the relationship between language and the law; the relationship between linguists and lawyers; the conflicting goals of linguists and lawyers; meaning and clarity in judges' directions to juries, and the process of admitting linguists as expert witnesses.

The relationship between the two abstract notions, **language** on the one hand and **the law** on the other is key to understanding how linguists can contribute to the forum of the law. It has often been said that the law *is* the language that enshrines it. Not only do we need language to frame the law, but we need language to understand the law. Law and language are inseparable. For this reason it was perhaps only natural that, as linguistics developed throughout the course of the twentieth century, linguists would take an increasing interest in the relationship between the two, specifically: the language of the law, the use of language within the law, and language in the court system. An

early concern was the way in which the law is framed: it was often seen as abstruse, impersonal, vague or ambiguous. Lawyers were frequently viewed as wordy and hyper-precise and many linguists questioned the assumption that lawyers were experts in the language. On occasion this led to tensions between lawyers and linguists, with lawyers questioning the need for linguistic testimony in the court system and occasionally seeking to exclude it. One judge remarked to a phonetician: “A linguist...is someone who speaks a lot of languages, so what exactly are you doing here?” (Storey-White 1997: 281). In another case a linguist was told by the judge that ‘Surely there are only two kinds of English — correct English and incorrect English?’ However, notwithstanding difficulties many lawyers and linguists have learned to work with each other. It is now realised in some legal circles that the language of the law is often archaic, and that lawyers — in an effort to protect their clients — will frequently use expressions whose meanings are not always transparent. However, it is not enough to say that lawyers and non-lawyers have different ways of using language. They bring to encounters with each other different perspectives and hence different discourse practices. Jackson made a close study of some aspects of language and the law, one aspect of which was the rôle of narratives in the legal process (Jackson 1995). In an earlier section of this article it was discussed how the police statements of Derek Bentley and Timothy John Evans could not have been dictated, as claimed by police officers at the time. Such police statements are the kinds of document Jackson studied, except that his reference point was their use in the courtroom rather than their method of construction. Citing the example of a murder trial, he considered, for example, the fact that the prosecution is always able to present their narrative first in a courtroom, and that the defence has not only to dislodge this narrative, but to create a convincing one to replace it. This, Jackson claimed, inherently puts the defence at a disadvantage. As an example of the ordinary person interfacing with the law Stratman and Dahl considered the language of temporary restraining orders, and the difficulties ordinary speakers may have in comprehending them. They cite a case where a man served with a temporary restraining order drove to his partner’s apartment and slipped a letter under her door in order to elicit from her what the problems in their relationship were and how they could address them. The court argued that he had violated the restraining order’s injunction not to ‘molest, interfere with or menace’ his partner (Stratman and Dahl 1996: 212). It was clear that the drafters of this particular law had a different conception of the words *molest*, ‘*interfere with*’ and *menace*, since it is highly likely that most people would not ordinarily consider placing a letter under someone’s door to be an act of molestation or menace on its own. In court judges often refer to dictionaries for the meaning of words which occur in legislation. However, this approach has been criticised. Generally speaking, linguists view dictionaries as imprecise and limited. Meanings are probably best not taken from a dictionary, but from experimentation and observation of how words are used. It is generally agreed that words have a core meaning and a number of ‘fuzzy’ meanings (see Goddard 1996: 254). While the core meaning is probably well understood by ‘most’ people, it is as the word approaches the boundaries of its semantic envelope that difficulties arise. We would probably all agree that dogs, cats and hamsters are pets. But what if a prospective tenant in a block of apartments which allows pets were to bring a chicken or a crocodile and claim such an animal as a pet? How does this kind of meaning difficulty equate with interpretations of words in our previous example, such as *molest* and *menace*?

Thus, while the word *pet* encompasses a range of familiar domestic animals in the minds of most of us which may or may not exclude such creatures as a chicken or a crocodile, words like *molest* and *menace* have status as legal terminology. Though legal drafters are nowadays obliged to use words in a meaning as close to ordinary language as possible, words like these do present special problems, since they may have been used in legal language for hundreds of years in a more or less fixed fashion, yet in ordinary language their meaning will probably have changed considerably. Linguists have proposed a number of ways of dealing with this kind of difficulty, including carrying out semantic surveys. However, this approach has not found universal favour among linguists. For example, Solan notes: “People cannot explain what, for instance, makes a snake a snake, a game, a vehicle, *etc.* Generic categorisation is a matter of induction and intuition, which we are rarely able

to describe” (cited in Goddard 1996: 259). Goddard notes that it would be absurd for forensic linguists to promote themselves as experts in the meaning of legal words, because this is really the province of judges. Using surveys, for example, to determine the meaning of a word, could produce contradictory results. He suggests that if linguists confine themselves to non-legal words, this may make more sense, but in any case, he points out that semantics is still a relatively under-developed area of linguistics and that there is still considerable disagreement among semanticists as to methodology. Corpus linguistics has allowed the semantic survey approach to flourish because in the technological age it is easy to collect many samples of a word in its ordinary usage. However, an important competing process is that of semantic reduction (the ‘reductive paraphrase’ — Goddard 1996: 269), which puts into practice Plato’s dictum that a definition must use words which are simpler than the word which is being defined.

Another area of potential conflict with regard to word-meaning is in the directions given by judges to juries. It has often been pointed out that such directions are full of legal terminology, some of which may be present in the language as ordinary, everyday words. How are jurors, by definition ‘ordinary citizens’, to understand whether a word is being used as a technical term or as an ordinary word, let alone understand the legal terminology? Would all the jurors in a case agree as to the meaning of a particular word? In recent years, in England and Wales at least, judges have received recommendations to illustrate their jury directions with visual presentations, to avoid giving directions about the law, and to keep reminding juries throughout the jury direction phase what the issues in the case are. In the US in some jurisdictions, judges are now being trained in how to talk to juries.

When it comes to linguists giving evidence in court, it is clear that lawyers and linguists have different goals. The job of the lawyer is to convince or persuade the jury that the defendant is guilty or innocent. The job of the linguist is to present an opinion and to explain that opinion. The lawyer may interrupt the expert witness, use rhetoric, ‘spin’, guile, and may choose to ignore anything the expert witness says. It is safe to say that it is not necessarily the case that the lawyer is intent on discovering or promoting the ‘truth’. The linguist, on the other hand, mindful — among other things — of Grice’s famous Cooperative Principle will attempt to be *informative, truthful and relevant*. However, if the evidence is injurious to the party the lawyer is representing — prosecution or defence — the linguist must expect various lawyerly stratagems to suppress or distort that evidence. Lawyers can also play on the notion of ‘cooperative’. The linguist will usually attempt to be cooperative, but linguist and lawyer may conflict about what *cooperative* means in practice in a given instance. This, again, will be due to the differing discourse practices of lawyers and linguists. The lawyer will in all probability bring a folk-semantic meaning to the idea of *cooperation*: ‘Why aren’t you cooperating with the court? After all, it’s a *simple* question.’ The linguist on the other hand, mindful that the lawyer is attempting to direct the discourse away from the evidence, struggles with the lawyer’s notion of *cooperative*: to the linguist cooperation here means that lawyer and linguist *cooperate* to uncover the truth.

Finally in this section, it is important to consider some aspects of the different methods of admitting expert witnesses into courts, in particular linguists. In the US each state has its own rules of evidence, some of which will be applicable only to district courts, and some to higher courts. There are also Federal Rules of Evidence and these differ in kind from the evidence rules of lower courts. The rules governing expert evidence are complex and not always understood. They require that scientific evidence meets certain standards. Generally, the ‘Daubert’ standard is what is insisted upon. This requires, among other things, that witnesses demonstrate the known error rate attached to their opinion. This of course implies that the linguist must present quantifiable data. However, in linguistics it is not always possible to present quantifiable data, and it may indeed be misleading to do so. Some courts have interpreted ‘Daubert’ more flexibly than this, and it is an ongoing debate in legal and linguistic circles, with some insisting that any authorship attribution analysis must be backed up by the use of inferential statistics, which is the only way to demonstrate a known error

rate in a particular case. However, contrary to popular belief there is in reality no such thing as a 'linguistic fingerprint' and it is not always possible to quantify a view that a particular individual is the author of a questioned text in a case.

In other countries it is sufficient that the method on which the expert bases an opinion should be acceptable to the scientific community, and that the expert should be qualified to give it. Both Canada and Sri Lanka, for example, follow this method of accrediting a witness and accepting an opinion.

In the near and medium term future it is likely that the question of how linguists verify their opinions will be given a great deal of attention. Some have argued that linguists have inhabited the ivory tower of academia for too long. For this reason moving into the rough and tumble arena of the law, where they are required with great rigour to justify what they do, say and believe, has been a culture shock for many. Understanding of this culture is critical: some would argue that it is not productive to describe the law as alien or hostile to the linguistic viewpoint. The law is blind: it has no favourites and nor should it. It is surely necessary for linguists to accept this culture and adapt to it, while remaining true to their discipline.

In this section an attempt was made to illustrate some of the issues linguists face when interacting with the legal system. It is now seen as imperative among linguists that both they and legal professionals work towards a better understanding of each other's perspective. If linguists claim that lawyers are ignorant of linguistics, then it is up to linguists to ensure that this situation does not continue. Lawyers can equally claim that linguists are ignorant of the law and it is certainly up to linguists to ensure that this gap in their knowledge is addressed as a matter of some priority.

It will also be important for linguists, in this age of international courts, to understand the discourse practices of international law, and to familiarise themselves with the customs and mores of other countries' legal systems, as Forensic Linguistics moves into a new millennium and an uncertain terrain in a world of organised crime, international terrorism and human rights abuses in many countries. It is likely in the future that increasing numbers of those seeking to enter the field of Forensic Linguistics will have additional qualifications in areas such as the law and mathematics and statistics, and to gain greater understanding of scientific techniques, methods and presentation. Many universities are already equipping their undergraduates with some of this information. With a broad but accurate insight into the law and an appreciation of how science is 'done' in other fields than their own, forensic linguists of the future will have greater means at their disposal than the founding fathers and mothers of the discipline and the future for Forensic Linguistics will be bright.

## Glossary

**Authorship attribution:** the activity of attempting to assign a particular text to one or more candidate author (see 'authorship').

**Authorship:** the process whereby language is produced by an individual writer or speaker, or by a group of writers or speakers.

**Candidate author:** in an authorship inquiry the candidates are those individuals who are suspected of being the author of a questioned text. Some inquiries have only one candidate author.

**Inflection:** the morphological attachment of a prefix, suffix or word ending, *e.g.* '-ed' to indicate past tense in English, 'pre-' as a prefix to a word. In general, if a word cannot take an inflection it is non-lexical (see 'lexical word').

IPA. The International Phonetic Association. A group of leading phoneticians who concern themselves with the sound systems of all of the world's known languages and their transcription. The IPA Chart, which records most of the phones in the world's known languages, is an essential reference for anyone interested in or working in phonetics. The IPA Chart can be used for transcribing any language.

Lexical word: a lexical word is one which is said to have meaning, *e.g.* 'dog', 'cat', 'table', as opposed to words like 'the', 'of', *etc.*, which essentially carry the grammar of the language, see non-lexical words. Lexical words are also called 'content words'. See also 'inflection'.

Linguist: one who studies linguistics. However, in some courts a linguist is an interpreter or translator.

Linguistics: the systematic, scientific study of language.

Morpheme: the minimum grammatical unit of a language, *e.g.* in the word *dog* there are two morphemes, *dog* and *-s*. Neither of these morphemes can be reduced further. Morphology is the study of the system of morphemes in a language. It is now largely the domain of those studying syntax (see 'syntax' below).

Non-lexical word: a word which is said not to have meaning or content, such as *in, for, therefore, etc.* There are approximately 250 common non-lexical words in English.

Phoneme: the minimum contrastive sound unit of a language, *e.g.* /b/, /k/, *etc.* English has about 44 phonemes depending on the language variety under discussion.

Phonetics: the study of the sounds of a language, usually written in phonetic symbols (see IPA).

Phonology: the study of the sound system of a language.

Plagiarism: the activity of using other people's written or spoken language to originate a text, particularly where the plagiarist intends to pass the work off as his/her own.

Plagiarist: one who plagiarises (see plagiarism).

Pragmatics: the study of the application of speaker-addressee context, as well as external contextual factors, to communication, closely related to 'semantics' (see below).

Questioned text: a text whose authorship is unknown, or whose authenticity is doubted.

Semantics: the study of meaning, either theoretically or empirically. Semantics deals with truth conditions, sense and reference and the (broadly) metaphoric relations between words (such as metonymy, meronymy, *etc.*).

Syntax: the study of the grammar of the sentence. In traditional syntax, as proposed by Noam Chomsky and his followers, the focus of the study (and much of linguistics at the time) was to understand how native speakers of a language acquired competence in the language, by which was meant the ability to generate and understand an infinite number of sentences.

Text Measures: attributes of a text which can be measured, *e.g.* text length (the number of words in a text), lexical density, the number of lexical words divided by the total number of words, *etc.*

## Annotated Bibliography and References

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