

FORENSIC LINGUISTICS

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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. Forensic Linguistic

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.

1.1.1 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.

1.1.2 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.

1.1.3 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.

1.1.4 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.

1.1.5 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.

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linguistic areas as diverse as phonology, morphology and dialectology have formed part of the argumentation, in social contexts such as historical dialectology and trademark law. In one case a group of recipients of Family Aid brought a class action against the Illinois Department of Public Aid based on comprehensibility issues in a notice sent to aid recipients. Levi's article also discusses the application of other areas of linguistics to criminal and civil work including semantics; syntax and pragmatics (see Glossary below).]

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Biographical Sketch

John Olsson is the Director of the Forensic Linguistics Institute, and is widely consulted internationally on issues such as authorship and plagiarism. He has provided textual analyses in murder cases and other suspicious death cases, cases of product contamination, kidnap, terrorism, missing persons, witness intimidation and hate mail, and has been involved in a number of criminal appeals. He is the author of a number of peer-reviewed journal articles and the textbook, *Forensic Linguistics: An Introduction to Language, Crime and the Law* (Continuum Books, 2004) and is Adjunct Professor in the Forensic Science Program at Nebraska Wesleyan University, Lincoln, Nebraska. His clients include law enforcement agencies, attorneys, corporations, and private clients, including politicians and best seller authors.