# ***What is 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.

### 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.

### 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.

### 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.

### 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.

### 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.

### 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.

## 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.