

# Introduction to Forensic Linguistics

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July 2017

## Course Description

By examining actual litigated cases involving interpretation (notably defamation), trademark (infringement and genericide), and authorship, this course will help prepare you to do several things essential to being a reputable forensic linguist:

- deal with attorneys seeking your assistance on behalf of a client
- assess your potential role as an expert
- write competent reports and declarations
- conduct yourself honorably under the gun at deposition and trial.

This is a hands-on class, critically assessing cases involving prominent Hollywood figures, famous brand names, and highly contested authorship attribution disputes. We focus on testimony by linguistic experts on one or both sides of a litigation. Testimony will be critically assessed by teams of students, who will enact mock interviews with attorneys, mock expert reports, and mock depositions. This course aims to come as close as feasible to a real-life forensic linguistics experience.

In what ways can an expert linguist serve  
the interests of the legal system and of litigants?

# Are Legal Ideals Undercut in Our Discourse?

“The law no longer returns fugitive slaves, treats women as the property of their husbands, or excludes African American citizens from juries.

If [now] the law is failing to live up to its ideals, the failure must lie in **the details of everyday legal practice—details that consist almost entirely of language.**” (Conley and O’Barr)

## In the Beginning

In 1968, Jan Svartvik “demonstrated that disputed and incriminating parts of a series of four statements ... made to police officers by Timothy Evans about the deaths of his wife and baby daughter, had a grammatical style measurably different from that of uncontested parts of the statements and thus **a new area of forensic expertise was born.**”

Coulthard and Johnson, 2007:5

## **Linguistics**

The study of the structure and use of language, including sounds and sound systems, words and word systems, syntax, semantics, pragmatics, discourse, language variation ...

## **Forensic Linguistics**

The use of scientific (or systematic) methods and technology to investigate and establish facts in courts of law or in matters relating to law.

(Issues of validity and reliability.)

Some tasks asked of linguists

- *Contract interpretation*—what is the internal and contextual evidence for one interpretation over another?
- *Word interpretation*—what is the meaning of a word in a particular context—for example, when its meaning has been evolving as with “sex” and “gender”?
- *Readability assessments*—given its linguistic character, could an ordinary reader have understood an insurance policy, mortgage agreement, liability waiver?
- *Advertising claims*—in their broad context how would an ordinary reader likely interpret words in advertisements—and how might pictorial representations affect an interpretation?
- *Voice identification*—is that voice the same as hers or his—or not—or can’t a definite determination be made?

- *Trademark legitimacy*—descriptive, generic?
- *Trademark infringement*—does one mark (*So Sexy!*) infringe another (*Sexy Hair*) because likelihood of confusion?
- *Authorship attribution*—who wrote that?
- *Speech act identification*—what do particular words (text) say, and—in context—what do they do?

Were the speakers conspiring?

Did she confess?

Does that constitute an apology, an accusation, a threat, a retraction?

## Advice to Experts



- Remember: attorneys tell you only what they want you to know and—perhaps—what you inquire after.
- What attorneys tell you inevitably frames your perception of the case—so take positive steps to imagine the other side of the story, what the opposing expert may have been told, how she'd view it, etc.
- Never judge a litigated case based on the limited knowledge provided the expert by the retaining attorney.

## Advice to Experts



- Recognize and acknowledge the narrow limits of your expertise in the patchwork of legal issues at contest.
- Ensure that you understand exactly what questions you are being asked to address.
- Ensure that the retaining attorney understands what information you need to know and what documentation you need to have in order to opine on a matter.

## Advice to Experts

- Keep careful records of documents consulted and how your time is spent.
- Consider keeping a record (perhaps pdfs) of “soft” searches.
- Ask questions when needed but be mindful that in some jurisdictions conversations may *not* be privileged.



## Advice to Lawyers



Understand in a practical way that, while your job is to win for your client, the linguistics expert will likely see things in a more nuanced way. Because they deal with language and because the nature of language is not rigid and not fully understood, most linguistic opinions will necessarily be “softer” than, say, DNA evidence.

## Advice to Lawyers



Be explicit about the questions you are asking the expert to address or work with the expert to define the questions.

Be sure to explain the legal issues clearly so as to focus the linguist's attention on the critical points.

## Advice to Lawyers & Experts



*In his conclusions, Beatz's expert addresses issues of price, impulse buying, and cost disparity between products marketed by Beats Electronics and Merkury Innovations. Counsel has given me to understand that these are not relevant to the issue here before the Trademark Trial and Appeal Board, and I do not address them in this rebuttal.*

## Communication between lawyers & experts

- Initial contact & presentation of case
- Inquiry as to possible conflict of interest?
- Document exchange & agreement
- Expert offers preliminary assessment
- Retainer agreement (whose?)
- Report or declaration drafted
- Discussion & refinement (sensitive)
- Final report or declaration
- Deposition (often)
- Trial (seldom)



## Premises for a Forensic Linguist

- FL requires attention to context (co-text, world knowledge, multi-modal representation).
- Advocates tell linguists only selected facts about a case.
- Expert opinions address only narrow questions--not basic questions of dispute resolution (or justice!), which are the prerogative of the finder of fact.
- Experts serve as consultants, not advocates.
- Courts, juries, litigants decide outcomes—not linguistic (or other) experts.

## Premises for a Forensic Linguist

- Just outcomes don't fall within an expert's purview.
- Both drafting and rebutting an expert report *can* advance methods of analysis, the status of the field, and—most importantly—justice by helping triers of fact understand how language works generally and in particular cases.
- Rebuttal opinions help minimize effects of framing by advocates and should not be crafted as personal attacks on opposing experts. (Remember: their frame likely differs from yours.)
- Wise and helpful strategy: imagine a linguist retained to rebut your analysis: anticipate the critique.

*New Yorker*, July 23, 2012

Roger Shuy believes that forensic linguistics can do for language crimes, such as bribery, blackmail, and extortion, **what DNA has done for violent crimes**: it could offer a counterweight to the many old-school methods, like lineups and unrecorded police interrogations that are heavily relied upon despite their serious flaws.

**“I won’t claim that we have anything remotely like DNA in this work,”** Shuy said, “but we are a whole lot better than a lot of the crazy schemes that cops are being taught.”

*Never let your sense of morals  
get in the way of doing what's right.*

*Isaac Asimov*

