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The Role of Forensic Translation in Courtrooms Contexts

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Abstract

The aim of this study is to highlight an in-depth, crucial function of forensic translation and interpretation in legal contexts in general and courtrooms in particular. The study shows that forensic translator/interpreters are usually required and nominated by judges to interpret or translate in trials and proceedings as the judges do not have the right to do the translation themselves in courts of law. The main role of translators is not to act as solicitors, judges, or jury to release or punish wrongdoers. Rather they help the judges and jury in courts of law to make sure that the message is accurately conveyed and justice is done for everyone. The study targeted the legal translators and offenders in gulf countries who play significant roles in legal contexts and courtroom trials. The rationale for this study was due to nonnative speakers of Arabic language who move to this area in search of employment, tourism and other purposes. Those monolingual speakers always need advocates, as well as translators when they are involved in crimes. The study also shows that the linguistic power that interpreters use exerts a coercive force, particularly on witnesses and defendants, and that such linguistic coerciveness on the part of interpreters influences other participants in the judicial proceeding. The forensic translators participate in courtrooms trails through either mitigating or magnifying the culpability of defendants through a variety of linguistic mechanisms. They modify inaccurate lexical choice by the defendants in trials. They focus on the use of source language rather than target language words and phrases, the use of definitions and calques, the improper addition or deletion of repair mechanisms and of hesitation forms such as pauses and fillers, and the addition of polite forms of address to convey solidarity, to adhere to cultural norms, and to avoid face threatening acts. The judges and attorneys are shown to have been influenced by the lexical choices of interpreters. The data were collected from different resources and references, related to law and forensic linguistics and translation. Moreover, some articles related to the field are consulted. The researcher reflects on the term in relation to linguistics and translation in the legal context whether in proceedings in the courtrooms or any other forensic cases. Therefore, this type of translation is urgently needed to ensure the right verdict and avoid flaws that take place in courts of law. Finally, the researcher presents some recommendations.

Keywords: Forensic, Legal Context, Forensic Linguistics, Forensic Interpreter, Courtroom.

1. Introduction

Until recently, linguistics used to be defined as the scientific study of the language; however, the definition of the concept is not conspicuous. This can be attributed to the evolvement and new categorization that lead the term to embody various disciplines. Therefore, new branches arose. For instance, forensic linguistics is a growing area related to applied linguistics. In its broadest sense, "Forensic Linguistics" means the application of linguistics to issues that often connected with any contexts that are somehow concerned with legal or criminal cases.

These days, the term 'forensic' embodies many aspects of different sciences that are relevant to psychology, medicine, law, linguistics and translation. Moreover, the term frequently collocates with linguistics and translation as the need for dealing with legal forensic contexts. However, when it is associated with the ability to single out the perpetrator from the crowd to a high degree of precision, linguists demonstrate forensic linguistics as a peculiar genuine science that supports the criminal law. Just like forensic chemistry, forensic toxicology, it plays a major role in determining reliable, even predictable results.

The term was commonly used in courts of law in the Arab world and in gulf countries due language diversity. The Ministry of Justice in these countries nominates forensic translators and interpreters for non-citizens trails and cases when involved in any position, wrongdoing or in any crimes. However, there are barriers for the communications between those monolinguals due to language, legal systems and cultural differences. Therefore, courts of law are the best place to settle disputes and achieve the justice for all, though language itself is considered the great barrier for communication in legal context. The judges and attorneys are shown to have been influenced by the lexical choices of interpreters because they need to issue the right verdict. To illustrate this field, the researcher provided a thorough background for the origin of forensic translation. The native language used in courts of law in such countries is the Arabic language. The court nominates an appropriate forensic translator or interpreter to hear testimonies of opponents or witnesses especially those who do not speak or understand Arabic. The translator is usually under oath to do translations truthfully and honesty.

2. The birth of forensic linguistics

Forensic linguistics is a new and rapidly growing area of modern applied linguistics that encompasses many branches and different areas. It has been defined as the scientific study of language as applied to forensic purposes and contexts.

The emergence of forensic linguistics dates back to the 1950's and 1960's. However, it was not used until 1968 when a linguist named Jan Svartvik observed it during the analysis of a statement given to police in 1953. In 1968, when Jan Svartvik analyzed the statements of Timothy John Evans who was hanged for the murder of his wife and baby and posthumously pardoned–he coined the term forensic linguistics. However, for years, little has been developed in this field. (Olson, 2004).

In the early days of Forensic Linguistics in the United Kingdom, many cases involved questioning the authenticity of police statements were considered. 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.

In the United States, forensic linguistics began slightly differently, but also concerned the rights of individuals with regard to the interrogation process. 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, p. 180) gives a good example of the issue of coercion in an interrogation process. He describes how two officers escorted a suspect, having declined to speak following the reading of his Miranda rights, in the back of a police car to the police station. Another early application of Forensic Linguistics in the United States related to the status of trademarks as words or phrases in the language.

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 realized 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 that is not always appreciated by speakers of the dominant version of English, i.e. 'white English'.

In the Arab world, some countries like Iraq, Saudi Arabia and the United Arab Emirates adopted the inclusion of forensic translation in their forensic courts of law. The purpose of nominating the forensic translators was to translate and interpret the communication taking place in court of law involving all parties of the trails and speech by witnesses, defendants, judges, jury and so on. In the UAE, forensic translation had become part of legal articles, especially, article 70 of the penal code procedures. The article states, "Investigations should be conducted in Arabic language however, in case the accused or the opponents or witness do not know Arabic language, they should recourse to interpreters. The interpreter is usually under oath". In the years since Forensic Linguistics began to establish itself as a discipline, its scope has grown considerably. Linguists have been called on to give evidence in many different types of cases, 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. Forensic Linguistics was characterized 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.

Some like Coulthard and Johnson consider Forensic Linguistic as a discipline that has now come of age. It has its own professional association: The International Association of Forensic Linguists, founded in 1993; its own journal: International Journal of Speech, Language and the Law, founded in 1994; and a biennial international conference.

3.Facts about Forensic Linguistics

Forensic linguistics is also defined by Olsson (2004) as the application of linguistic knowledge, methods and insights to the forensic context of law, language, crime investigation, trial, and judicial procedure. It is a branch of applied linguistics. There are principally three areas of application for linguists working in forensic contexts - understanding language of the written law, understanding language use in forensic and judicial processes and the provision of linguistic evidence. The discipline of forensic linguistics is not homogenous; it involves a range of experts and researchers in different areas of the field. Briefly, we can say forensic linguistics applies to linguistic knowledge and techniques to language implicated in legal cases or proceedings or private disputes between parties, which may at later stage results in legal action of some kind being taken. Thus, forensic linguistics like many disciplines is considered as an integral part in applied linguistics that draws on the scientific aspect of the language to solve forensic problems.

The forensic linguistics revolves around different areas of applied linguistics such as written language of law, interaction in the legal processes especially criminal cases and forensic translation. In this regards, Coulthard & Johnson, (2010, p. I) states:

> *"Forensic Linguistics is the study of language and the law, covering topics from legal language and courtroom discourse to plagiarism. It also concerns the applied (forensic) linguist who is involved in providing evidence, as an expert, for the defense and prosecution, in areas as diverse as blackmail, trademarks and warning labels." Page number*

4.Application of forensic linguistics

Linguistics is a broad and multidisciplinary area that has been branched into many types. Each types deals with a particular area of language study and language function. Applied linguistics, for instance, deals with teaching and learning beside practical field of language. Forensic linguistics, on the other hand, studies the language in the field of law. The applications of forensic linguistics include voice identification, interpretation of expressed meaning in laws and legal writings, analysis of discourse in legal settings, interpretation of intended meaning in oral and written statements (e.g., confessions), and authorship identification. The language of the law (e.g., plain language), analysis of courtroom language used by trial participants (i.e., judges, lawyers, and witnesses), trademark law, and forensic interpretation and translation when more than one language must be used in a legal context (McMenamin, 2002).

5.The significance of forensic translation

Forensic translation includes court interpreting and translation within any legal context. It is also known as legal, judiciary, or forensic interpreting, refers to interpreting services provided in courts of law and in legal cases of any sort. According to Gonzalez. et al. (1991), legal interpretation refers to interpretation that takes place in a legal setting such as a courtroom or an attorney's office, wherein some proceeding or activity related to law is conducted. Legal interpretation is subdivided according to the legal setting into (1) quasi-judicial and (2) judicial interpreting or what is normally referred to as court interpreting. In the interim, forensic linguistics has grown exponentially, both in the number of people with an interest in practicing it and in the number of disciplines and sub-disciplines within its ambit. For instance, forensic

translation is a new multidisciplinary discipline that emerging in Translation Studies and plays a vital role in forensic analysis, forensic evidence and criminal investigations. This type of translation is considered significant for a number of reasons. First, it protects the legal rights of the suspect/defendant. May be an innocent suspect is jailed and guilty is set free, so a translator or interpreters can infer to help the judge issue the right verdict. They are involved in many areas that relate to crime, both solving crime and absolving people wrongly accused of committing crimes.

6.The forensic text and context

Any text or item of a spoken language is potentially a forensic text. If a text is somehow implicated in legal or criminal context, then, it is a forensic text. A parking ticket could become a forensic text, a will, a letter, a book, an essay, a contract, a health department letter, a thesis – almost anything (Olsson, p. 5). In practice, however, forensic linguists have mostly confined their attention to small number of text types, some of which are included in the forensic text.

Its context is dynamic and socially constructed through and by discourse – both in its linguistic and non-linguistic semiotic modes – and we know that the legal world is context-rich. It is peopled by a hierarchical mini-nation of judges, lawyers, police and law-enforcement officers and then the common person and woman (Coulthard and Johnson, 2010). Therefore, bilingual interaction between those people is required to enhance forensic development.

Lawyers and judges usually spend more time in linguistic analysis like interpreting legislation, and thus tend to be excellent language users. In short, our use of the word 'forensic context' encapsulates all stages in the judicial process, which includes legal cases and proceedings, which comprises of three stages: the investigative stage, the trial stage and the appeal stage. Each stage needs forensic translator/ interpreter involvement.

Because forensic texts are typically short, they represent only small samples of human behavior. A crucial difference in legal context on the way forensic experts are dealt with is whether the legal process is broadly, what is known as 'adversarial' compared with being 'magisterial' (or 'inquisitorial', as it is often called). The former, more characteristic of English-speaking nations, has a distinct prosecution and defense that are played out in an open court in front of a jury, which is typically a random selection of members of the public who live locally. The crucial point about a jury, and thus a major distinction between the two systems, is that they are deliberately chosen because they do not have any special knowledge, understanding, or experience of the law. By contrast, the 'magisterial' system is one in which one or more professional judges (magistrates) make all the decisions. Sometimes, this is done mainly based on documents presented to them without the extensive courtroom debates that Hollywood, based in the U. S. adversarial system. Furthermore, in many jurisdictions the magistrates also oversee the actual investigation of the crime.

7.The Right of having a Forensic Translator

The right to have an interpreter is an integral part of the right to a fair trial in international law. The International Covenant on Civil and Political Rights and the European Convention on Human Rights, among others, grant those accused of a criminal charge, the right to the free

assistance of an interpreter where he/she does not understand or speak the language used in court.

The right to an interpreter is essentially a procedural right that derives from the right to a fair trial: everyone charged with a criminal offence has the right to certain minimum procedural guarantees, and these include the right to the free assistance of an interpreter where s/he cannot understand or speak the language of the concerned court. This right exists in many constitutions. The right to assistance of an interpreter or translator during criminal proceedings is laid down in Article 6 (3) of the ECHR (Vandenberghe, 2003; Vanden Bosch, 2003). Pursuant to this provision, every defendant has the right to free assistance of an interpreter, if s/he does not understand or speak the language. For anyone who cannot speak or understand the language used in court, the right to receive the free assistance of forensic translators, without subsequently having claimed back from him payment of the cost thereby incurred.

8.The Role of Forensic Translator

A good legal translator also knows that even within the legal field there are completely separate areas of law that require specific translation techniques: a contractual document has little in common with a will, an administrative certificate, a judicial decision, or a statute, to name a few examples. The translator knows that he or she must consult not only a monolingual legal dictionary, but also a treatise regarding the subject matter, and those bilingual dictionaries, while useful, should be used with caution. The professional legal translator must understand the intended use of the translation, which has as much bearing on his or her approach as the text of the document itself. Terminology, phraseology, syntax, registers (tone). Because text documents are not always well-written or clear, the translator must first decide, in the words of author Holly Mikkelson, whether the source text is "unintelligible to the laymen but not the expert, or simply unintelligible." In this case, the translator would have to decide whether a faithful translation of the meaningless original should be equally meaningless in the target language, despite the pain of deliberately creating nonsensical text. Because offenders deserve fair trails, a forensic interpreter/translator plays a major role in the courtroom. This role is represented in understanding and interaction interchangeably between defendants, lawyers, judges and the jury. There are basic requirements that should be owned by forensic translator. A faithful interpreter is required so not to put words in speakers' mouth. In the American legal system, there is a forensic translator and interpreter in the trial of nonnative speakers. The linguistic role is to manipulate language to shift blame structure, affect, and change speech style into formal, politeness and appropriateness when needed. Sometime euphemism is needed. Moreover, the forensic translator attend case trail to ensure justice for those who are unaware of the language, legal systems and cultures. Forensic interpreter is always there for those kinds of people but s/he should be impartial, faithful and convey the truth.

9.Principles and skills required for Forensic Interpretation/ Translation

According to Hewitt and William (1995), there are skills expected of a professional forensic interpreter/translator and the code of professional responsibility related to interpreter performance are the following:

a) Knowledge and Skills
b) Accuracy and Completeness

c) Impartiality and Avoidance of Conflict of Interest.
d) Confidentiality
e) Limitations of Practice
f) Professional Development

The interpreters /translator must produce spoken utterances, as full, accurate and unbiased transcription in the source language as well as a full, accurate and unbiased written translation, in dialogue form, in the target language.

10.Forensic Interpretation /Translation: Modes and Procedures

The nature of law and the legal language contributes to the complexity and difficulty in legal translation. This is compounded by further complications arising from crossing two languages and legal systems in translation. Specifically, the sources of legal translation difficulties include the systemic differences in law, linguistic differences and cultural differences. All of these are closely related. The absence of an exact correspondence between legal concepts and categories in different legal systems is one of the greatest difficulties encountered in comparative legal analysis. On the other hand, Sarcevic (1997, p.11) divides legal documents into prescriptive and descriptive texts, plus hybrid texts that contain both functions (e.g. judicial decisions, appeals, petitions). Texts with a primarily expressive function are excluded from this definition.

In forensic interpretation, there are three main modes used in courtrooms; consecutive, simultaneous and sighted translation. In consecutive, the interpreter starts after the speaker has stopped speaking and interpreters can take notes to help them recall what has been said. In simultaneous, the interpreters present the oral translation at the same time someone is speaking. However, in sight translation, the interpreter is asked to read a document written in one language and then speak it aloud into another language. In the whole modes, the interpreter should reflect a good working knowledge of court procedures and court rules. The interpreters also should have the ability to work effectively with judges, court staff and jury. They should have excellent oral and written communication skills.

11.Forensic Linguists: When does a Lawyer need one?

A long time ago, speaker identification were needed in courts of law to clarify the opinion raised by witnesses. Definitely, everybody in the court has different goals. The lawyer, for instance, seeks to convince or persuade the jury that the defendant is guilty or innocent. Whereas a linguist seeks to present an opinion and to explain that opinion intended by the defendant. Both of them cooperate to serve the case and uncover the truth, though they have different views when then they are acting in the courtrooms.

12.Cultural aspects of forensic translation and interpreting

The source of difficulty in legal translation is cultural differences. Language and culture or social contexts are closely integrated and inter- dependent. Halliday (1975, p. 66) has defined ‘culture’ as ‘a semiotic system’ and ‘a system of meanings’ or information that is encoded in the behavior potential of the members.

The concept of culture as a totality of knowledge, proficiency and perception is fundamental to the integrated approach to translation as advanced by Snell-Hornby (1988, p. 42), an approach adopted in this study. In this connection, a legal culture is meant those 'historically conditioned attitudes about the nature of law and about the proper structure and operation of a legal system that are at large in the society' (Merryman, et al., 1994, p. 51). Law is an expression of the culture, and it is expressed through legal language. Legal language, like other language use, is a social practice and legal texts necessarily bear the imprint of such practice or organizational background (Goodrich 1987, p. 2). Each country has its own legal language representing the social reality of its specific legal order (Sarcevic 1985, p. 127). Legal translators must overcome cultural barriers between the SL and TL.

13.Forensic Translation Training

Forensic translation/interpreting is a highly complex activity requiring theoretical and practical knowledge and skills, for which specialist training is essential. Being 'bilingual' or highly proficient in two languages is merely a pre-requisite to be able to train as an interpreter. The interpreter plays a pivotal role in courtroom trails and proceedings. S/He has first to listen to the speaker, understand and analyze what is being said, and then resynthesize the speech in the appropriate form in a different language ..." (Jones, 1996, p. 6). Therefore, no translation is perfect and cannot go without saying or commenting about their mistakes and errors. However, these mistakes in interpreting and translating in a multilingual courtroom could potentially be the difference between life and death. With an increase in criminal and terrorist acts, intricate and minor details play a great role in a court case. Due to interpreters' oath, one can guarantee high quality interpreting from an interpreter who does not have the necessary competency (Berk-Seligson, 2002, p. 204). For these reasons, forensic translators should be trained to develop the following qualities:

1. Language skills: (Frishberg, 1986; Gentile et al, 1996) emphasize the breadth code of ethics has the greatest impact on the interpreter's work in legal settings (which is why Gonzalez et al devote an entire 42-page chapter to the subject), ethics are major considerations for all interpreters (Frishberg, 1996; Sussman and Johnson, 1996).
2. Speaking skills: Most people associate speaking skills with appearances before large audiences at public events such as congresses, assemblies, or press conferences and public speaking is indeed a key component in the training of all types of interpreters (Weber, 1984; Frishberg, 1986; Gonzalez, et al., 1991).
3. Cultural knowledge: Court interpreters are also expected to consider culture, although they are much more restricted in their ability to educate their clients about cultural differences (Gonzalez, et al., 1991).
4. Subject knowledge: all experts on interpreting recognize the need to acquire technical terminology and content knowledge in relevant fields (Seleskovitch, 1978a; Gonzalez, et al., 1991; Frishberg, 1986; Gentile, et al., 1996; MMIA, 1995).

14.Conclusion

This paper highlighted the salience of forensic translation and interpretation in courtrooms. It identified the role of translators, judges, juries and lawyers. The paper proposed the application of forensic translation in courts of law in countries where no means of communication other than

translation because the majority of the offenders are monolingual so that fair trials and justice are required. It described the required the forensic translator as competent interpreter with advanced linguistic skills and bicultural knowledge. S/He should display memory sensitivity, ability to build rapport and inspire confidence, objectivity, diplomacy, patience and tolerance. S/he should develop cultural, social and political awareness. S/He should also demonstrate the ability to listen, analyze, and repeat the message, excellent language worked in the awareness of specific aspect of countries, their culture and subject matter. Good hearing, a clear peaking voice, physical and mental stamina and strong nerves are required when doing forensic translation.

15.Recommendations

Based on the research findings, the following recommendations are made:

1. Training forensic translator to do the job properly.
2. Its Focus should be drawn to police investigation and courtroom cases.
3. Establish a training unit affiliated to ministry of justice.
4. The need for specialized legal interpreting university training and accreditation.
5. Conduct future research studies dealing with forensic interpreting.
6. The recognition by government and the legal system that forensic interpreting is a highly complex activity requiring university training and commensurate remuneration.
7. Training for lawyers and the judiciary on how to work with interpreters effectively and other basic principles, such as the meaning of accuracy and the role of the interpreter in legal contexts.

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