



FORENSIC LINGUISTICS EVIDENCE AND THE DETERMINATION OF MENS REA: ISSUES OF ADMISSIBILITY AND RELIABILITY IN CRIMINAL LAW

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Abstract

This study examines the importance of forensic linguistics evidence in unraveling intent in criminal cases through a multidisciplinary methodology that incorporates linguistics, forensic science, and legal analysis. Linguistic investigates written and verbal communication, such as written text messages, emails, and recorded conversations, through methods such as discourse and sentiment analysis in order to identify linguistic nuances that reveal intent. This study will enlighten legal practitioners, forensic experts, and policymakers on the opportunities and limitations of using linguistic evidence in the criminal justice system, which will eventually lead to the enhancement of intent determination in legal cases.

Keywords: admissibility, criminal law, forensic linguistics, mens rea, reliability

Introduction

Science-based forensics is a key facilitator of truth in legal proceedings, especially in criminal cases (Singla, 2024). Forensic analysis is based on the Latin term forensic, which translates to in open court or in public and entails the careful gathering, evaluation, and interpretation of evidence to determine facts that are significant in legal proceedings (Allan, 2016). One of the branches of study, forensic linguistics, deals with the use of language in legal systems (Chuanyou et al., 2024; Nick, 2024).

Forensic linguistics evidence has been a perfect solution in the past few years in unraveling the mysteries of intent in criminal cases (Eades et al., 2023). Linguistic analysts study different sources of language, including written statements, text messages, and social media posts, to obtain information on the mental status of an individual (Coulthard et al., 2021). The forensic linguistics analysts isolate meaningful information using specialized techniques and software tools, which help to identify intent, which is a key element in criminal cases (Li et al., 2024).

In the real world, case studies can be regarded as the modes of transportation of knowledge about the effect of linguistic analysis on legal results, which illuminates both the methodology and the difficulties of the issue and its overall effects on justice (O’Keeffe & McCarthy, 2022). Forensic linguistics provides a way out of the intricacies of the law, allowing people to examine linguistic nuances that might evade the otherwise specialized knowledge (Nick, 2024). The use of scientific methods that are similar to hypothesis testing makes forensic linguistics accurate and reliable (Singla, 2024).

Research Methodology

This study utilized a systematic review approach to establish its research framework, with its objectives set accordingly (Komba & Lwoga, 2020). Extensive literature exploration on the topic was conducted, as indicated by the research findings being categorized based on

their content (Hiver et al., 2021; Petticrew & Roberts, 2006). It was structured using headings to incorporate this classified information into the study (Gan et al., 2021; Pawson et al., 2005). The study's progression was determined by evaluating the classified information and titles (Page, 2021; Rahi, 2017), ensuring the research subject's contents' integrity (Egger et al., 2022; Victor, 2008).

Literature Review

The broad view of the subject matter highlights the complex nature of the process in forensic linguistic analysis (Nick, 2024). It highlights the fact that forensic linguistics is gaining acceptance as an authentic scientific field (Li et al., 2024). It emphasizes the creation of special journals and organizations that focus on further research and practice in this field, which points to the growing academic attention and recognition of the usefulness of forensic linguistics evidence in legal processes (O'Keeffe & McCarthy, 2022).

This in-depth summary subtly examines linguistic evidence in the context of forensic discourse and its various forms and uses in legal proceedings (Chuanyou et al., 2024). It highlights the complexity of the forensic linguistics evidence, both verbal and written, as well as signed documents, and its ability to give significant information about the intent of the criminal in a court of law (Coulthard et al., 2021).

A subfield of applied linguistics called forensic linguistics studies the relationships between the law and legal procedures (Allan, 2016). In three main areas, linguistics is applied: written law texts, oral law practices and activities, and providing evidence of criminal and civil investigations and judicial procedures (Eades et al., 2023). Today, forensic linguistics is a field of science to be respected (Li et al., 2024). There are many professional journals and associations. The International Association of Forensic and Legal Linguistics (IAFL) was established as a way of uniting those interested in all aspects of language and law (Singla, 2024). It actively promotes and develops linguistic evidence provision, expert testimony, and legal interpretation research, practice, and principles (O'Keeffe & McCarthy, 2022).

Linguistic evidence under discourse refers to any text that is used as evidence in court or in a criminal investigation, including any written, signed, or spoken communication (Nick, 2024). It can include messages, confessions, letters that promote suicide, emergency calls, ransom notes, anonymous letters, and phone calls (Chuanyou et al., 2024). It can be author identification, although the greatest forensic linguists are known to have expert witness evidence (Coulthard et al., 2021). Yet, they also handle other language-related offenses like the cases of intimidation, conspiracy, and bribery, to mention a few (Eades et al., 2023).

Through the influence of linguistic knowledge, forensic linguistics can shed light on the intentions, behaviors, and the degree of participation of persons in the legal system (Li et al., 2024). This interdisciplinary area is very helpful in seeking justice in the criminal justice system, revealing hidden information that is essential in legal proceedings (Allan, 2016). Despite these challenges, forensic linguistics continues to evolve, and it is likely to make additional progress in the future in comprehending and using language in the legal context (O'Keeffe & McCarthy, 2022).

Applications of Forensic Linguistics

Forensic linguistics is able to detect deceitful language and tries to find out the intentions of the language one wants to utter (Coulthard et al., 2021). Linguists can evaluate

the consistency of statements, identify evasion, and the use of language to manipulate or deceive (Allan, 2016). One can visualize a detective who employs the use of language to deduce what a person wants to say or whether they have some ill intentions (Singla, 2024).

Language clues can assist a detective or other law enforcement agencies in criminal cases to know whether an individual intends to commit a crime or they have done so (Chuanyou et al., 2024). They read messages such as texts or emails so as to comprehend how an individual conversed in the run-up to the occurrence of a crime (Nick, 2024). They can know whether someone intended to do something bad or if it was unintentional by observing the use of words (Li et al., 2024). People talk in a certain way, like a puzzle to solve (Eades et al., 2023). Such evidence can be especially vital when it is difficult to come up with direct evidence about intent (O’Keeffe & McCarthy, 2022).

1. **Forensic Phonetics:** Forensic phonetics is an essential aspect in criminal cases, especially in voice recordings, to determine evidence. Voice recognition, transcription, signal enhancement, and recording authentication are methods used to identify the speakers and solve contentious content. Forensic phoneticians carry out voice line-ups to help in suspect identification by taking into account factors such as dialect, accent, and pronunciation. Nonetheless, voice identification should be timely, because latencies can result in forgetting of the features of a speaker, even when the witnesses can remember the characteristics of a speaker. Forensic investigation of spoken texts is transcribed to ensure that missing or inaccurately spoken information is put in consideration as a result of contextual or paralinguistic variables. It provides precise analysis since a spoken language strongly depends on contextual clues and is not similar to written discourse.
2. **Authority and Power in Relation to Language:** In most criminal proceedings, the suspect is told that anything they say could be used against them in a court of law, they have the right to counsel, and have the right to remain silent before being arrested or interrogated. It is a demonstration of how the speech activities of the police can create an impression that the search is voluntary, and the interrogation is coercive. Also, the law enforcement power seems to be unequally related to a suspect or defendant.
3. **Mismatch between Police Reports:** Suspect reports and comments should be factual in trials and law enforcement investigations. The accuracy is partly determined by analyzing the relationship between the documents and events, such as the timeliness of the occurrences, their incident notes, and the accuracy of the recollection. Discrepancies between statements, incident notes, and chronological inconsistencies may raise suspicions about police records. However, Pakistan has some problems in this regard, as there are gaps between formal legislation and its application. Other nations, including those in the UK and Australia, have enacted laws such as videotaping to deal with such problems. The development of language can contribute to the comprehension and solution of legal issues in the future.
4. **Cross-Linguistic and Cross-Cultural Varieties in Testimony:** Linguists examine variations and dialects both in and between languages and cultures. Regrettably, law enforcement officers who are involved in making critical decisions concerning the guilt or innocence of a particular person may end up neglecting such cross-cultural language studies. For instance, silence may signify various things in different cultural settings; the interpretation that is given to it may also impact the court's decisions. In some cultural situations, it is not permissible to stay quiet even for a short period of time. Tag questions can sometimes require clarification and clarity, especially in the examination of testimony.

An example of this would be that a negative tag question, or leading question in English, in order to disprove an allegation, would necessitate a negative answer, e.g. You took the money, did you not? Or no, I did not. But the answer to tag questions in some other languages,

like the language spoken in Pakistan and some of the Asian languages, can be either positive or negative. It does not have any other meaning to relatives. Ultimately, an individual can also be convicted because of the cultural differences in the interpretation of a speech, like differences in grammar, tone, or even nonverbal communication used to convey a message.

5. **Authorship Attribution:** Authorship attribution is similar to determining who wrote a text based on its writing style. Forensic linguists achieve this by examining elements such as the length of words, the use of articles, punctuation, and the structures of a sentence. They compare various writings to determine whether an individual was the author of the writing, depending on their writing style and use of words. Each person has their own version of writing, referred to as an idiolect, that assists forensic linguists in identifying writers. It may be difficult to analyze short documents due to the complex style of writing, but longer documents can be easily understood due to the clarity of the style of writing.

Forensic Linguistic's Concept and Techniques

Forensic linguistic skills apply patterns of language to identify the writer of a piece of writing or its origin (Coulthard et al., 2021). It is like using detective work with words (Allan, 2016). Sometimes the gap between theory (how things should work) and practice (how they work) exists, and it is difficult to comprehend how they work (Nick, 2024).

When performing forensic analysis, the second important thing is to verify the outcomes to make sure that they are correct and, according to the law, they should be (Eades et al., 2023). There is a fuzzy way of doing things, like the way individuals may perceive what conceptual analysis is (O'Keeffe & McCarthy, 2022). Even with these difficulties, forensic linguistics analysis is effective in solving crimes, plagiarism, and author identification through writing style and the use of words (Singla, 2024).

1. Stylometry: Stylometry is a method to study the language style of a text to ascertain the authorship of a piece of text, involving the use of frequency analysis and machine learning. It finds application in authorship attribution, plagiarism detection, and the mood or intent of an author. **Technique:** Stylometry is a statistical approach that employs statistical techniques to determine patterns, including word frequency, sentence length distribution, and the use of function words. It entails examination of different linguistic characteristics to identify authorship, plagiarism, or writing styles.

2. Syntax Analysis: Syntax analysis is concerned with the usage of words and phrases to unravel special patterns or structures in the writing of an author. It checks the syntactic form of input strings and makes sure that they conform to the rules of grammar. **Technique:** It involves studying sentence structures, analyzing the syntactic complexity, and parsing sentences to derive grammatical information.

3. Lexical Analysis: Lexical analysis is the study of vocabulary and word usage in a text, which is essential in forensic linguistics to determine who wrote the text and in legal investigations. **Technique:** The study of unique vocabulary, the analysis of lexical richness, word frequency, the study of collocations, semantic analysis, and the density of lexicon gives some understanding of the linguistic fingerprint of an author.

4. Authorship Attribution: Authorship attribution. The attribution of the author of a certain text by means of stylometry, machine learning, and linguistic analysis. **Technique:** Comparative analysis, machine learning models, and stylometry, such as N-gram and function word analysis, are used to achieve a good authorship attribution.

5. Forensic Phonetics: Forensic phonetics examines the sound recordings of speech to identify a speaker and linguistic testimony in a court of law. **Technique:** Reliable forensic phonetic analysis is done by using the following techniques: Speaker identification, voice comparison, spectrographic analysis, formant analysis, phonetic transcription, prosody analysis, and acoustic-phonetic analysis.

6. Discourse Analysis: Discourse analysis is the study of the form and content of discourse to reveal patterns or idiosyncrasies, especially in legal situations, to discover meaning, intent, and authenticity. **Technique:** Discourse markers and cohesive devices in the context of forensic linguistics decode linguistic style in the law. Discourse pattern analysis reveals motive and sincerity, adding depth to the legal inquiry to gain a more complex view of linguistic evidence and promoting justice in the legal field.

Establishing Intent in Criminal Cases

In criminal cases, establishing intent is essential in establishing guilt and innocence (Li et al., 2024). Intent or *mens rea* means the mental attitude that motivates a crime, and is the difference between criminal and innocent actions (Allan, 2016). The legal system acknowledges varying degrees of intent, from purposeful to negligent (Coulthard et al., 2021). Direct evidence, like the explicit statements of intent, and circumstantial evidence, which indicates intent based on the circumstantial evidence, are used by prosecutors to prove guilt (Eades et al., 2023).

Specific intent crimes involve demonstrating a certain mental state, such as premeditation, and general intent crimes look at the mental state in general (Nick, 2024). Errors in establishing intent may result in convicting the wrong person or acquitting him/her, and therefore, courts give extensive consideration to all evidence provided (Singla, 2024). Finally, intent will have to be proved to bring about fairness and justice in the law system (Chuanyou et al., 2024).

Specific Vs. General Intent

Linguistic evidence can be crucial in differentiating between specific and general intent in criminal cases. The way people speak and write words can give information about their psychological condition, their intentions, and their consciousness. It is where linguistic evidence can be different in specific and general intent crimes.

1. **Specific Intent:** In specific intent, linguistic evidence can consist of statements where the accused demonstrates an intention or intent to accomplish something. An example of this is linguistic evidence that would be applicable in a case where the person said that they intended to harm someone with a particular intention.

2. **General Intent:** In cases of general intent, linguistic evidence may encompass utterances as to an awareness of the intended act but not a particular wish for a particular outcome. As an example, the communication, which recognizes the desire to have physical contact but does not determine the severity of the harm, may be applicable.

Intent's Legal Significance

Linguistic evidence is a powerful piece of criminal law evidence, especially when it comes to intent. The way people speak or write can serve as a great source of information about their mental condition, intentions, and guilt. Linguistic evidence is important to analyze the mind of a criminal in order to help legal professionals comprehend the reasons for the crime.

1. **Expression of Intent:** Linguistic evidence may be verbal or written statements that directly show the intent of an individual. Explicit linguistic evidence of intent can be confessions, threats, or statements describing criminal plans. These statements, which are duly acquired and verified, can be of great persuasion in the case of the prosecution.

2. **Criminal Intent:** *Mens rea* is what many legal systems shed light on. Linguistic evidence helps to establish intent that an accused needs to perpetrate a certain crime. Through an example, when one expresses a desire to kill or harm, it provides a chance to infer on what is needed to prove an action of *mens rea* to prosecute someone.

3. **Interpretation of Unclear Statements:** Linguistic experts can be invited to provide an interpretation of vague or coded statements of the accused. The context, tone, and wording used might be very important in determining the actual meaning of a statement. This meaning

will help in establishing whether the statement expresses criminal intent or is simply an expression that can be construed in various ways.

4. Communications in Conspiracy Cases: Linguistic evidence is crucial in a case of conspiracy. The existence of conversations, emails, or any other type of communication involving conspirators can indicate planning, coordination, and common intention to commit a crime. Such communications may be significant in proving up a criminal conspiracy.

5. Threats and Harassment Cases: In the threats, harassment, or stalking case, the linguistic evidence is usually at the center in proving the intent of the perpetrator to harm or create fear. To prove that the behavior is criminal, it is important to analyze the content, frequency, and context of the threatening communications.

6. Credibility and Witness Statements: Linguistic evidence is not only confined to the accused but also to the witness statements. The credibility of a witness can be determined by analyzing their consistency and coherence in statements throughout a period of time. The study of languages may help to determine an irregularity or possible lies in the testimonies of witnesses, which would impact the intention.

7. Forensic Linguistics: Forensic linguistics is a discipline that involves the use of linguistic analysis in legal matters. Forensic linguists can be used in cases where language is a key element, or in cases where messages are coded, where language patterns can be analyzed, or where the genuineness of written documents can be determined.

8. Context and Circumstances: Linguistic evidence is best used when weighed together with other types of evidence and the context of the case. By finding out the context of the linguistic expressions, one is able to have a more detailed outlook of the intent.

Conclusion

Language evidence is an effective tool of the establishment of intricacies of purpose in a criminal case. Analysis of language patterns, tonal variations and expressions that cannot be seen readily provides a sensitive understanding of the state of mind of a specific individual. It throws light on motives, premeditations, and potential involvement in unlawful activities. Nevertheless, we must recognize the natural constraints of linguistic analysis since language is a flow and situation-specific medium. The danger of a false interpretation underscores the importance of using linguistic evidence coupled with other types of forensics and circumstantial evidence.

Recommendations

1. Increase publicity on the role and importance of forensic linguistics evidence in criminal justice, bust the myths, and build confidence in the validity and reliability of forensic linguistics evidence.

2. Integrate cultural sensitivity training into language forensic processes to consider cultural differences in language use and interpretation, thus reducing the possible biases in analysis.

3. Invest in research projects and funding to develop forensic linguistics evidence, such as longitudinal studies, experimental studies, and technology.

4. Promote policy changes to acknowledge the worth and the significance of forensic linguistics evidence in a criminal justice trial, and its full inclusion and acceptance in the legal systems.

5. Promote the cooperation between linguists, forensic experts, psychologists, and legal members to deepen the knowledge and use of forensic linguistics evidence in criminal matters.

6. Promote the sharing of forensic linguistics skills and information among forensic linguistics professionals and organizations in the world in order to help spread cross-cultural studies and best practices.

7. Promote the use of forensic linguistics evidence in the legal standards and guidelines so that it is accepted and admissible in a court of law.

8. Provide forensic linguists and legal professionals with continuing education and professional development opportunities to keep up to date with new trends and best practices in forensic linguistics analysis.

Research Limitations

Forensic linguistics evidence in proving intent in criminal cases presents a good insight, yet a number of limitations should be considered. To begin with, there can be difficulties in the linguistic analysis with interpretations of the language context in a particular scenario, especially when it comes to other cultural and linguistic backgrounds. It could lead to misinterpretations or incomplete analyses, impacting the reliability of linguistic evidence. Also, there is a risk of linguistic analysis errors or bias in interpreting the data when the linguistic analysis is done with the help of technological tools and software, which are not properly calibrated or validated. Further, the sources of linguistic data (recorded conversations or written documents, etc.) might be insufficient or of low quality, which can compromise the strength of the analysis.

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