Retiring President's closing address: ethics, best practices, and standards
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The topics announced in my title are such that The International Association of Forensic Linguists, like most scholarly and professional organizations, rarely have time to talk about enough. Perhaps it is somewhat imprudent to take up such topics in the last long speech of the conference—after days in which the audience have heard numerous stimulating academic papers, have been exposed to new ideas and professional challenges, and have made new professional friends and strengthened old ones. But I believe that these are important matters, even for the brain-weary and ambitious, so please bear with me while I explore some aspects of the questions of just why we are here in the first place, and what we might do about the promises that we, as an Association, have made to the world.

I'd like to begin by looking at our web page—specifically, a series of bullet points that list the 'Purpose and Aims' of the International Association of Forensic Linguists that we find there, and that have been there now for many years. These four items are so important that they are listed in the *IAFL Constitution* (2005, Article 2. 'PURPOSE'; for convenience in discussion, I have added numbers where the original had bullets):

> The purpose of the Association is to improve the administration of the legal systems throughout the world by means of a better understanding of the interaction between language and the law. More specifically, the Association aims to promote:
>
> > 1) The study of the language of the law, including the language of legal documents and the language of the courts, the police, and prisons
> > 2) The alleviation of language-based inequality and disadvantage in the legal system
> > 3) The interchange of ideas and information between the legal and linguistic communities
> > 4) Research into the practice, improvement, and ethics of expert testimony and the presentation of linguistic evidence, as well as legal interpreting and translation
> > 5) Better public understanding of the interaction between language and the law

In addition, the IAFL makes additional commitments presented in another section of the web site, 'Further Aims' (<http://web.bham.ac.uk/forensic/IAFL/index.html>); while these are not listed in the Constitution itself, and their author(s) are not listed, they take on a strong measure of authority from having been announced for many years as 'Aims' of the IAFL:

> > 6) Furthering the interests of linguists engaged in research on the development and practice of forensic linguistics

    7) Disseminating knowledge about language analysis, and its forensic applications, among legal and other relevant professionals around the world

    8) Drawing up a Code of Practice on matters such as giving evidence in court, writing official reports etc.

    9) Collecting a computer corpus of statements, confessions, suicide notes, police language, etc., which could be used in comparative analysis of disputed texts

On the whole, we have done rather well in fulfilling many of our stated 'Purposes' and 'Aims' in the twenty-odd years since our founding. Certainly, we have individually and as a group addressed and continue to address the ongoing projects described in (1), (6), and (7). There has been considerable progress in area (9) corpus collection, as well as (3) and (5). In addition, although the 'International' part of 'IAFL' still has a long way to go, progress on that score is obvious just from the broad spectrum of participants at this conference alone. And we have made considerable effort towards fulfilling our obligation (2) to 'alleviate language-based inequality and disadvantage in the legal system'—even if we have by no means succeeded in completely—and I am sure these efforts will continue to be prominent in our undertakings.

However, two items that I especially want to draw attention to are (4) and (8), the commitment to 'research into the practice, improvement, and ethics of expert testimony and the presentation of linguistic evidence', and 'drawing up a Code of Practice'. In committing ourselves to these two announced goals of our Association, we have committed ourselves specifically to deepening and understanding the nature of the ethical implications of our testimony and writing, and then explicitly formalizing them. In these areas we still have work to do. That is, we still have to draw up a 'Code of Practice', and we still have work to do in the area of 'research into the practice, improvement, and ethics of expert testimony.'

These are important goals. We owe it to ourselves to pursue them more vigorously than we have to date. I believe firmly that whatever failures we have had in this regard do not arise from the IAFL being an organization of 'hired guns' who merely pay cynical lip service to ethical considerations and best practices. Rather, we have been working so hard at the projects of IAFL that we have failed to step back and examine as fully as we might have **why** we do what we do, and how best to move ahead ethically, objectively, and with greater scientific certainty.

There is a certain practical efficacy to turning our attention to these questions, precisely because we are not infrequently accused of the very sin of being cynical hired guns who pay lip service to ethical considerations and best practices; hypothetical courtroom interchange:

> *Cross-examining attorney:* And how much are you being paid for your testimony?
> *Forensic linguist:* Well, I am not paid for my testimony, I am paid for the work that I do for the court.
> *Cross-examining attorney:* Yet none of these organizations you belong to even has a statement of ethics? Not one has even the vaguest position on standards of practice or methodology in the area you have just testified about?

This is not to say that we never talk about ethical issues or debate standards and practices. In our individual books and articles, ethical issues are sometimes considered (see, for example, Shuy, 2006: 123—29). Our own journal recently published papers from a colloquium on ethics (Ainsworth, 2009; Butters, 2009; Finegan 2009; Nunberg, 2009; Shuy, 2009; Stygall 2009). And during the past four years, the IAFL Executive Committee has attempted to bring a draft of a 'Code of Practice' to the membership so as to fulfill the aim we announced years ago. But the issue is generally far from central—for example, the index of the impressive *Routledge Handbook of Forensic Linguistics* (2010) indicates that the word *ethics* appears on only two of its 614 pages of text.

Happily, I believe we are ready to accomplish this goal in the next two years. Here is how. As a result of work that began with the colloquium papers just mentioned, the Linguistics Society of America (LSA) has amended their general ethics statement so as to set down principles and guidelines for forensic linguistic consulting in America. (Their statement formerly dealt chiefly only with the relationship between linguists and the people from whom they gather data.) I chaired the LSA subcommittee that drafted this proposal, based upon the papers of that same LSA colloquium. The draft was first circulated to the colloquium speakers and then to a number of LSA members who also do forensic linguistic consulting. It was then vetted on the LSA Ethics Committee blog (<http://lsaethics.wordpress.com/categroy/forensic-linguistics-ethics-statement/>), where it was posted for comment from the LSA membership (which includes many IAFL members). The LSA Ethics Committee further revised the statement in the light of the comments received from the blog responders, and the Committee then sent it to the LSA Executive Committee for final approval. Perhaps I should note that all but one of the members of the original colloquium panel are also members of the IAFL.

The new IAFL president, Maite Turell, has agreed to appoint me to chair the IAFL Committee to attempt to draw up an IAFL Code of Practice far enough in advance of the 2013 meeting that we can very well be ready to adopt one of our own at that time, using the LSA statement as a beginning documents for preparing our own. I have asked Tim Grant to be a member of the committee, and President Turell will shortly appoint additional members. I expect to post a copy of the revised LSA Ethics Statement on the IAFL web site as soon as possible, at which time we expect to set up an online mechanism by which members can post comments about how the LSA Ethics Statement might best be modified in creating our own IAFL 'Code of Practice'. Are there needs specific to an International Organization that are not addressed by the LSA statement? Are there needs specific to LSA that should not appear in the Code of Practice of an international organizations? (I have also attached a copy of the LSA statement in its most recent form as Appendix A to this paper.)

The LSA Ethics Statement is narrower than what the IAFL website bullets seem to indicate is the purpose of an IAFL 'Code of Practice'. In my own opinion, the LSA Ethics Statement does not go far enough in the way of addressing specific issues related to what the IAFL's 'Aims' asserts should be our goal with respect to 'Research into the practice, improvement, and ethics of expert testimony and the presentation of linguistic evidence, as well as legal interpreting and translation'. We need to decide just how deeply the IAFL is committed to creating minimal standards that can be applied to those areas of forensic practice that concern us most.

In the remainder of this paper, I will focus my attention on one such area of endeavor that is of such great interest to IAFL that it is mentioned specifically in our website presentation of 'Further Aims': **How far are we pledged to go towards**

specific requirements with respect to conclusions concerning 'comparative analysis of disputed texts'? I have derived some of the data for my discussion from McMenamin (2011), one of a very few recent forensic linguistic reports submitted to an American court that are also actually widely available in the public record; the author is one of the acknowledged leaders in what he calls 'forensic stylistics' (McMenamin, 2002), and the theoretical and methodological framework displayed in McMenamin (2011) is characteristic of the work of other forensic linguists (e.g., Leonard, 2010; see also Howald, 2008 who critiques another authorship analysis case, as does Butters, 2011 in rebuttal of Leonard, 2010).

While the following questions (**1-10**) are just about authorship analysis, similar issues also arise in other areas of forensic linguistic endeavor. Authorship analysis is not my own primary concern in forensic linguistics, and I hope here simply to stimulate further questioning from those who engage more centrally in the 'comparative analysis of disputed texts.' To this end, I would like to suggest to the IAFL Executive Committee that, at the next meeting of IAFL in 2013, a half-day colloquium be organized that would discuss the issue of standards. As I envision it, such a colloquium would invite scholars from other disciplines—fingerprinting, DNA, voice analysis, to share with us how they approach the question of standards.

1. *Should the IAFL take a specific position on the means and necessity of taking into account (when one is comparing two or more sets of texts) the genre differences between the known set (K) and the questioned set (Q)?* For example, at least for purposes of testimony, shouldn't we require that, all other things being equal, instant messages must be compared primarily with instant messages and business letters compared primarily with business letters?

2. *Shouldn't evidentiary standards be much higher for courtroom testimony than for investigatory enterprises?* For example, shouldn't every report written for the police about whether the forensic evidence suggests that a particular 'person of interest' should be considered a suspect contain some explicit notice to the effect that 'this is for investigative purposes only'—and that further investigation would be needed for courtroom testimony?

3. *Can we establish guidelines on the minimal number and relative strength of the variables that constitute the 'idiolect' or 'unique set of variables' needed to come to a conclusion about authorship?* Certainly, such numbers are a function of various important factors, for example, (a) the strength or quality of the individual variables and (b) the number of tokens found in each document compared. For example, in his recent 'expert report' published online in connection with a high-profile civil case in the United States, McMenamin (2011) offered definitive conclusions based on a list of only nine variables, many of which appear to be as seemingly weak as, for example, noting that the K documents have one-out-of-one instance of the word *internet* (spelled with a lower-case intital *<i>*) and the Q documents have two-out-of-two instances of *Internet* (spelled with an upper-case initial *<I>*)' (see also my Question 10 below).

4. *Can we not require that the validity of every putative marker that we introduce into evidence in authorship analysis be attested to in some significant way, such as comparison to a sociolinguistically valid or a statistically meaningful comparison corpus?* Minimally, validity could conceivably be the sociolinguistic fact that a single Q-document word represents an obscure dialect or lexical grammatical usage that the K author is likely not to have known. Most cases, however, would be more likely to require a fairly substantial (and of course comparable) comparison corpus (as, for example, the appearance of metathesis-like inverted apostrophes in words such as *don't* appearing deviantly as *dont'*).

5. *Could we not begin to establish an official list of variables that have been found, on the basis of solid linguistic research, to be reliable markers of authorship?* As it stands, putatively valid 'expert reports' are based on ad hoc lists of little more than a handful of spelling and punctuation features about which no research has been done whatsoever, yet about which the authors simply declare that, on the basis of their appearing or not appearing in the Q and K texts, Q and K are or are not authored by the same person? Are we really doing 'scientific' and 'linguistic' analysis **at all** when we simply note instances or absences of this or that potentially superficial textual feature? Can we validly claim that a linguist who undertakes such a 'methodology' is professionally more qualified to draw scientific conclusions than would be a reasonably experienced high-school English teacher with a set of colorful marking pens and an agenda to find the 'alikes' and/or the 'unalikes'?

6. *Should we not require that reports state explicitly what are the principles of selection of data in cases in which the K set is so large that it is not practical to select all possible documents for analysis?*

7. *Can we not require that reports list a complete and meaningful set of data and sufficient sentential contexts from which the findings are drawn—not just table summaries and/or the bare examples?*

8. *When reports allude to scholarship, can we not require that the authors cite the specific works upon which the analyst is relying?* For example, in his 'expert report', McMenamin (2011) writes as follows:

> **Syntax: SINGLE-WORD SENTENCE OPENERS**
> It has been shown that words introducing sentences (sentence openers) group as a habitually-used set for individual writers. The set of sentence openers present in the QUESTIONED writings is wholly distinct from that of the KNOWN-Zuckerberg writings.
>
> Questioned: 090203Z Further, / 090203Z Additionally, / 010104Z Thus, / 010604Z Again[,] / 020204Z First[,] / 020204Z Mostly though / 040604Z Paul,
> Known-Zuckerberg: Okay / And / Anyhow, (2X) / Also, / But / But regardless, / Then / However,

The reader is not told where, by whom, and under what conditions 'it has been shown' that 'sentence openers' are valid markers of authorship.

9. *When presenting reports in scholarly publications, ought forensic linguists, insofar as they are legally allowed to do so, make available the complete set of data and take all reasonable steps that will insure replicability?* Even in cases wherein the linguist is not allowed to make data public and/or is simply preparing an opinion for the use of police investigators, the forensic linguist ought to make clear in his or her report the location (in the body of data available for examination) and text of specific examples cited, knowing that linguists retained by the contestant at law will need such access in order to prepare a scientifically accurate critique.

10. *Can we not implore the forensic linguist who examines spelling and punctuation to take into account the fact that automatic features of word processors often automatically make corrections that the author may not even know were made, or was too hurried to change?* For example, as noted above (my Question 3), one of the putatively meaningful variables used by McMenamin (2011) is the variable capitalization of *internet ~ Internet.* Yet many word-processing software automatically

correct 'internet' to 'Internet'. Does this fact not make authorship claims based on such a feature dubious at best?

11. *Shouldn't a set of standards also suggest criteria for evaluating how meaningful an aggregated small number of variables can truly be in indicating the authorship of Q and K documents?* For example, McMenamin (2011) relies upon only three tokens involving the capitalization of *internet*. Thus a mere three bits of data make up one of the nine total 'unique set of variables' upon which his 'expert report' relies. Moreover, in the same report, McMenamin also reports as follows:

Spelling: CANNOT
The word 'cannot' appears as two words in the QUESTIONED writing but appears multiple times as a single word in KNOWN-Zuckerberg.

> Questioned: 020604Z can not [2 words]
> Known-Zuckerberg: cannot [1 word] (6x)

When the seven tokens that make up the *can not ~ cannot* set are added to the three tokens that make up the *internet ~ Internet* set, it is apparent that McMenamin's conclusion about the authorship of the Q and K documents is formed on the basis of 2/9 of his criterial set that in turn are comprised of only ten tokens (ones that, moreover, have not been demonstrated to be other than meaningless as discriminators). And this is not all; another variable is likewise dependent upon a very small number of tokens:

Punctuation: SUSPENSION POINTS
Suspension points appear in threes and are spaced in QUESTIONED. Three suspension points appear in KNOWN-Zuckerberg but are never spaced between each other or away from words.

> Questioned: 073003Z . . . I've been tweaking the search engine today / 010104Zb I'll just get this site online as quickly as I can ...'
> Known-Zuckerberg: So let me know... (3x) / boxes...there (3x)

Thus one-third of the 'unique set of variables' upon which McMenamin (2011) bases his firm conclusion that the Q and K authors are very likely different are composed of exactly 18 reported tokens. A similarly small number of features make up the other members of the unique set. It seems reasonable to at least begin to question the scientific validity of a methodology that bases definitive conclusions on so little data—conclusions, moreover, that are intended to be probative in litigation that may involve hundreds of millions of dollars and in criminal proceedings where a death penalty may be at stake.

One can argue that, at least in America and perhaps elsewhere, even if testimony is allowed on the basis of a report, the adversarial system of justice allows for rebuttal by other experts who question the methodology and results. Furthermore, the use of 'expert reports' in such circumstances at least allows expert testimony on both sides, which might conceivably be more in the interest of justice, since having no forensic linguistic reports at all would leave judges and juries to speculate about the likelihood of authorship on their own. That is, triers of fact left to their own lay knowledge might reach the same invalid and unscientific conclusions that putatively expert linguists might, with no expert testimony to set them right. However, as Solan and Tiersma point out (2005: 167—68), once an expert witness testifies—even if

allowed only to present the questionable data without giving ultimate conclusions as to authorship (as is often the case in the United States)—a good deal of damage may be done, because even merely drawing a jury's attention to data of dubious value can mislead and confuse them. Moreover, it is an unfair burden on a litigant who has few financial resources to have to hire a linguist to rebut the report of an opponent who has been engaged by a wealthy one.

I want to make it clear that I am not indicating a general disbelief in the possibility of authorship analysis. I can point to the work of numerous cautious and conservative practitioners, most of whom are active members of IAFL (e.g., Chaski, 2001, 2005; Coulthard, 2004; Grant, 2007; Howald, 2008; Turell, 2010), and many papers presented at this conference are themselves contributions to exactly the sort of increased knowledge that is needed (Fitzgerald and Schilling, 2011; Kredens, 2011; MacLeod and Grant, 2012; Nini, 2011; Shuy, 2011; Tomblin, 2012; Wright, 2011). Rather, I am suggesting that we at least consider how we can—and that we should—forestall the use of putative authorship analysis that is in fact not up to the high scientific standards of the IAFL that have been represented in general by the papers that have been presented here in the past few days. I am not even going to go so far as to say that the IAFL 'Code of Practice' is the proper place for the enunciation of standards and guidelines. But I do think that our statement of 'Goals, Aims, and Further Aims' points in the direction of making some kind of summarizing statement on Best Practices with respect to Standards in Authorship Analysis.

Appendix A: Linguistic Society of American Proposed Code of Ethics for Linguists in Forensic Linguistics Consulting [revised September 13, 2011]

Preamble
The following principles of ethical conduct are intended to guide those members of the Linguistic Society of America who engage in forensic linguistic research and legal consulting and testimony; other scholarly and professional associations (for example, the International Association of Forensic Linguists) may have additional ethical codes that members of those organizations should also consult.

I. Integrity
A. Mindful of their obligations to furnish valid, reliable, and accurate linguistic information and analyses to the justice system, consultants must recognize that their duty is to provide objective scientific evidence that will assist the court in arriving at its conclusions—a duty that overrides any obligation owed to the retaining attorney or litigants who have engaged them. Under no circumstances will consultants knowingly provide linguistic analyses or conclusions that are misleading to an accurate fact-finding process.
B. Linguists who are engaged in forensic linguistic consulting will not enter into any arrangements in which compensation is dependent on the outcome of the case.
C. In appropriate cases (usually where clients are unable to pay full fee), consulting linguists may provide their services at reduced-fee rates or without charge, not only for the sake of the advancement of science but also as a duty to linguistic science, society, and the judicial system.
D. Testimony and reports must be based upon the linguist's professional knowledge and expertise, and upon meticulous research that uses established and accepted scientific linguistic knowledge and methodology.

E. Consultants will not add to, delete from, or otherwise alter their reports at the request or suggestion of the retaining attorney or law-enforcement agents if doing so would materially affect the accuracy or reliability of their analyses or conclusions. If material within a report must be deleted because it is legally privileged or inadmissible, consultants should carefully consider whether such deletions materially affect the validity of their analyses or conclusions, and they will inform the retaining attorney or agent if the emended report would be inaccurate or misleading to the fact-finding process.

II. *Objectivity and Professional Competency*

A. Consultants undertaking forensic linguistic analyses will state in their reports the methods they have followed and provide all relevant details of the data, equipment, statistical-reliability tests, and computer programs used.

B. In making their analyses, consultants will take due account of—and act diligently in accordance with—the technical and professional methods available at the time and their appropriateness to the purposes of the inquiry and the data under examination.

C. In reporting on cases where judgments concerning the consultant's level of certainty of an opinion or conclusion are scientifically possible, consultants may indicate levels of their certainty of opinion or conclusion, expressed either quantitatively (e.g., '80% certainty') or on a discursive scale (e.g., 'with the highest degree of scientific certainty').

D. Consultants will maintain awareness of the limits of forensic linguistic analysis and of their own knowledge and competencies when agreeing to carry out work, making certain that they possess or can with certainty acquire the specific professional knowledge and skills at the level necessary to ensure that their linguistic analysis is performed at the highest level of competency.

III. *Confidentiality and Conflict of Interest*

A. Consultants will not disclose confidential information acquired as a result of consulting relationships or negotiations leading towards the establishment of consulting relationships without proper and specific authority, unless there is a legal obligation to do so. Duties of confidentiality must be maintained even in a social or academic setting—both during the pendency of the case and thereafter—unless confidentiality is waived by the party to whom the duty is owed or the information that the linguist discloses is a matter of public record.

B. In any publication or conference presentation that makes use of material or analysis generated by forensic consulting work, or of material that bears directly on the matters at issue in the work undertaken, linguists will reveal the nature of the consulting origins of the generated material. Moreover, when making such use of material generated by forensic linguistic consulting work, the consultant will, whenever feasible, obtain a waiver from any party to whom a duty of confidentiality is owed. If waiver is not feasible or is refused, and to the extent that the regulations of the government and the scholar's Institutional Review Board allow, the consultant should consider whether anonymizing the factual presentation of the material will adequately protect confidentiality. When confidentiality cannot be protected and is not waived, the consultant must forego academic use of such material.

C. To avoid appearances of impropriety, during the pendency of a case consultants should avoid unnecessary contacts with an opposing party's expert witnesses or attorney outside the formal litigation process.

D. Consultants should not accept an engagement that would result in the consultant's conflict of interest with respect to the potentially engaging party and another party on whose behalf the expert is currently a consultant. Before accepting an engagement that could present such a putative conflict, the consultant will reveal the nature of past, current, and proposed consulting engagements to the attorneys representing both parties so that the attorneys may determine whether a conflict of interest exists or potentially could arise.

IV. Recommended Practices

A. Consultants may wish in their written reports to state explicitly that they are aware of the contents of this Code of Ethics. A statement to this effect might read in whole or in part as follows:

> This report is based on my professional knowledge and expertise, and on my research using established and accepted scientific linguistic knowledge and methodology. The data and sources that I considered in forming the professional opinions expressed here are referenced where relevant throughout the report. If sworn as a witness, I could testify competently to the matters stated herein. I understand that my duty in providing written reports and giving evidence is to assist the court—and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty. My compensation is not contingent in any way on the outcome of this case.

B. Consultants should also be mindful that their forensic work may be of utility and scientific importance to other linguists; in this respect, consultants are encouraged to share their results through active participation in the meetings and publications of appropriate professional organizations and related societies.

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