Article

The forensic linguist's professional credentials

Ronald R. Butters

Abstract

Under current court practice, it is not difficult for anyone with a PhD in English or linguistics to be allowed to testify as a 'linguistics expert' in many types of cases. Linguists and professors of English may, however, find themselves in ethically questionable and professionally embarrassing situations if they attempt to assert expertise in subfields at the margins of their linguistic specialization. This paper briefly describes some such situations and suggests ways in which linguists, through such organizations as the International Association of Forensic Linguists (IAFL), the American Association for Applied Linguistics (AAAL), the International Association for Forensic Phonetics and Acoustics (IAFPA), and the Linguistic Society of America (LSA), can improve the qualifications of linguistics legal consultants without getting into the business of actually licensing experts or attempting to maintain registries of approved forensic experts. A Code of Practice could recommend such attributes of the qualified forensic linguist as specialized publication in forensic linguistics, teaching courses in forensic domains, and active membership in specialized forensic linguistic organizations and professional organizations dedicated to subfields that are most relevant to one's area of forensic testimony (for example, for trademark expertise, organizations devoted to the study of lexicography). The pros and cons of incorporating credentialing criteria into any 'Guidelines for Consultants' are also presented.

KEYWORDS   ETHICS

Affiliation

Duke University, Durham, NC, USA

email: ronbutters@mac.com

equinox

equinoxonline

Introduction

In the adversarial system of justice prevalent in the English-speaking world and many other countries, both sides in criminal and civil trials commonly have the right to retain scientific experts who may, with the trial judge's permission, submit reports and offer specialized testimony at trial concerning aspects of evidence that may be beyond the knowledge of the ordinary juror or judge. Although the papers on ethics in this volume focus on adversarial systems of justice with special reference to forensic linguistics in the United States, it is hoped that much of the content is generalizable to linguistic legal consulting in other countries.

As Tiersma and Solan note (2002), linguists have been permitted to testify (at least in the United States) on linguistic issues that touch on a wide range of topics, e.g.,

- trademark similarities and differences and the likelihood of their confusion;

- the meanings of disputed passages in contracts, statutes, and allegedly libelous publications;

- the clarity of printed directions and warning labels in product liability cases;

- third-party interpretation of surreptitiously recorded conversations;

- similarities and differences between documents and voices in cases of plagiarism, disputed authorship, and aural recordings.

I am concerned in this article with an important question that Roger Shuy raises in his introduction to the ethics essays in this volume, 'What is an expert?', and the related question, 'What can be done to help insure that would-be linguistics experts are genuinely qualified for the forensic consulting tasks they may agree to take on?' As Stygall's essay in this volume makes clear, a number of professional and academic organizations have wrestled with the practical and ethical questions surrounding the qualification of experts, and they offer several approaches to possible solutions. Within linguistics, however, there is currently little that is actively being done. In this essay, I examine several paths that might promote the retention of experts with good forensic linguistic credentials, suggesting ways in which the current system works well or ill and ways in which it might be made better. While the discussion here is framed largely in practical terms, the underlying ethical issues are clear enough: incompetent testimony is unethical, at least to the extent that the testifier (and/or the attorneys who employ her) knows – or should know – that

the testimony is incompetent. Furthermore, insofar as possible, professional organizations have an ethical obligation to society to do what they can to further the most rigorously competent consulting work, whether in forensic applications or any other.

1   The trial judge as 'gatekeeper'

In America and elsewhere, trial judges themselves are given a great deal of power in allowing or disallowing expert testimony (Ainsworth 2006, Howald 2006, 2008, Tiersma and Solan 2002, Wallace 1986). The trial judge's ruling is generally final and is based on several factors:

1)   What sort of precedent is there for allowing this particular kind of testimony? (For example, there is a long history of admitting linguistic testimony in trademark issues, and a great deal of resistance to linguistic voice-identification.)

2)   Is the methodology that the expert proposes to use valid, accepted within the scientific community, and properly applied to the case at hand?

3)   Can the lawyers who are seeking to have a linguistics expert admitted convince the judge that the expert's knowledge of linguistics is really needed? It is sometimes argued that everybody who speaks English knows pretty much how to interpret the language – so an expert on language is simply unnecessary. On the other hand, it is just as often argued that expert linguistic testimony will be so complicated and recondite that it will merely confuse the jury about questions to which common sense dictates obvious answers. Moreover, mindful that courtroom time is expensive, judges sometimes seem to place a great deal of importance on the relative determinative value of linguistic evidence as compared to other types of admissible evidence.

4)   Is the putative expert really well enough qualified to give reliable scientific opinion on the questions to be addressed?

At least in the United States, item (4) appears to be the least important in the practice of judges. In general, legal professionals usually know little about linguistics, so if the judge is satisfied about points (1), (2), and (3), it often takes little more than a PhD in English literature – not even in linguistics, and sometimes not even a PhD – to establish the candidate as a scientific 'expert' in the English language for many of the types of cases noted above. In addition, once someone has been admitted to testify, that in itself can be argued as precedent for admitting that person again.

Thus judges sometimes do not allow qualified linguists to testify, while in many other instances they permit 'experts' to testify who are thoroughly unqualified to discuss the issues that confront them. Attorneys sometimes find such people simply by calling up English departments at universities and asking for teachers who specialize in grammar. Some putative experts advertise themselves on the internet and with listing services but have little record of actual research, publication, membership in relevant professional organizations – or even linguistics teaching. Furthermore, many who are bona fide linguists are often qualified only in subspecialties of linguistics that have little or no relation to the issues raised in the particular case in which they are permitted to give testimony.

In short, although judges are given the power to prevent useless, misleading, and unqualified testimony – what is sometimes called 'junk' or 'cargo-cult' science – the results are often the admission of 'experts' who are not at all persons who would please qualified linguists as representatives of the profession.

2   The trial process as filter

One reason that the law sets the bar low is surely practical: judges do not have the time or the academic resources to judge the actual qualifications in all of the fields in which lawyers seek the approval of scientific experts. In addition, the legal system also depends on the adversarial system itself to separate the wheat from the chaff – in the course of the trial. As the United States Supreme Court noted (in an important decision in a civil case captioned *Daubert v. Merrell Dow Pharmaceuticals, Inc.,* 509 U.S. 579 [1993]):

> Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. [*Daubert* at 596]

It was in the *Daubert* ruling that the Court assigned a 'gatekeeper role' to the trial judge to eliminate the most egregious putative experts and methodologies (*Daubert* at 597). By the same token, however, the *Daubert* authors expected that trial judges would be spared the seemingly impossible task of having to make highly sophisticated judgments about the possibly 'shaky' professional admissibility of a wide range of types of prospective expertise in many different fields. Opposing qualified experts are expected to demolish the unqualified ones in their reports, in their own testimony, and in their advice to the attorneys who have retained them.

In actual practice, of course, it does not always work out that way. A qualified expert who is working with a weak lawyer may come off looking less knowledgeable than a less-than-qualified expert who is consulting with a brilliant

lawyer on the other side. And of course the writing and speaking abilities of the experts will be a factor in their credibility. Moreover, frequently owing to the complexity of the material, the experts for the two sides will merely cancel each other out, however superior Expert A's credentials – and analysis – may be to those of Expert B.

In other cases, the presence of two experts can give a judge the opportunity to cherry-pick the testimony to find 'evidence' that bolsters an argument that he has already decided on other grounds. For example, in a case (which created considerable negative comment among American linguists), a professor of English testified that the trademarks *Lexus* and *Lexis* are not likely to be confused because they are VERY DIFFERENT in pronunciation, arguing as follows:

> Of course, anyone can pronounce 'lexis' and 'lexus' the same, either both with an unstressed I or both with an unstressed U, or schwa – or with some sound in between. But, properly, the distinction between unstressed I and unstressed U, or schwa, is a standard one in English; the distinction is there to be made in ordinary, reasonably careful speech. [Expert testimony quoted in *Mead Data Central, Inc., v. Toyota Motor Sales, USA, Inc., and Toyota Motor Corp.,* 875 F.2d 1026 at 1029, 1030 (2d Cir., 1989)]

This testimony was mentioned favorably in the written opinion of one of the judges, who was on the majority side of the case. The linguist Geoffrey K. Pullum commented (2004: 1–2):

> [The judges] got the wrong answer, because they perceive (or mis-perceive) that they pronounce unstressed syllables differently from one another. … [The analysis is a] tragically under-informed piece of linguistics.

> … On a matter as subtle as this, the expert witnesses should not be working for the disputing parties; they should be hired by the judge to work for the court. It's too easy, otherwise, for the experts to tell only the side of the phonetic story that backs up the people who are paying them, and that's what often happens in cases where expert witnesses are employed by plaintiffs' or defendants' counsel.

Pullum's suggestion that the neutrality of experts would be secured if the courts hired them runs counter to the fundamentals of our adversarial system (and is not without its own flaws: how do we assure that the expert is really neutral? Who is there to point out when the neutral expert is simply wrong?). In England and Wales, in an attempt at guaranteeing some measure of neutrality, experts are required to place in every report submitted to the courts (1) a 'declaration which confirms that you understand your duty to the court in respect

of disclosure' (of, e.g, 'all the material you have in your possession in relation to the investigation') and (2) 'an acknowledgement that you will inform all parties and, where appropriate the court, in the event that your view changes on any material issue'. In addition, the expert is admonished to 'ensure that due regard is given to any information that points away from, as well as towards, the defendants' (Crown Prosecution Service [2009]).[1] It strikes me that it would be a good idea if American experts voluntarily added such disclaimers to all reports.

Moreover, in theory at least, experts are sworn to be advocates for neither side, regardless of who is paying them (see the contributions of Ainsworth and Finegan in this volume). Even so, Pullum's distress at the judge's naïve acceptance of the 'expert' opinion is nonetheless something that any linguist might well share.[2]

As practicing linguists, members of IAFL, IAFPA, AAAL, DSNA, and LSA would like to insure that we are represented in court as often as possible by responsible, knowledgeable members of our profession with the highest level of professional competence. It can be embarrassing and demeaning to see ourselves represented in court by would-be experts who write unprofessional reports and give incompetent testimony. Twenty years ago, Hollien (1990: 38), wrote:

> … most experts dread those trials where they have to explain their findings and conclusions to a court that is unaware that the witnesses for the other side are only superficially competent and actually lack the scientific and/or professional expertise necessary to comment on the relevant issues. Small wonder that many scientists and practitioners simply refuse to testify or even offer their talents and expertise on a consulting basis.

The presence of such persons on the witness stand may serve to keep really qualified colleagues away (and add little to the strength of the arguments of the attorneys who engage them in good faith) – and it makes the whole of forensic linguistics seem like cargo-cult science indeed when judges and juries are offered a view of what linguistics is from a professor whose expert testimony runs counter to obvious linguistic reality:[3]

> Lawyer: You say in your report that when the trademark *TarMan* is uttered in rapid speech, the /m/ is frequently deleted. Is that true?
>
> Expert: Yes.
>
> Lawyer: Will you please pronounce it that way for the court?

To the general amusement of the court, the expert managed to utter something like [tărʔãn] – with a glottal stop replacing the /m/ and nasalization spread across the two vowels.

In a similar circumstance, a judge issued a biting condemnation of a 'linguistics expert' whose testimony ran counter to what the judge viewed as elementary common sense (emphasis added):

> [The plaintiff] presented evidence from … a linguistics expert who was retained to testify that the marks [*Mooo Tracks* and *Moose Tracks*] are dissimilar [as brands for ice cream]. **The Court finds [the expert's] testimony completely unpersuasive. The testimony was not shown to have any scientific support.** As an initial matter, [the expert's] testimony is based on the premise that 'Mooo' is not a real word and must be considered as the sound a cow makes. Even if it were factually correct that 'Mooo' is not a word, trademark law approves trademarks for words that are not 'real' words. … **[The expert] then pronounced the word 'mooo' by imitating a cow and testified that people would naturally pronounce the word in that manner,** [but] provided no basis for his view that lay people will interpret the word 'mooo' as he intellectualizes. [The expert] testified that he heard individuals in the courtroom during the hearing pronounce the word 'mooo' as if imitating a cow on several occasions. As the factfinder, the Court wholly disagrees. [The expert] was the only individual to imitate a cow with emphasis on an elongated 'o' (unless another person 'quoted' [the expert]).
>
> **[The expert] then further undermined his already unconvincing testimony** by repeatedly testifying that he was unable to express an opinion – either professionally or as a lay person – regarding the similarities between any terms other than those for which he had been retained (at the rate of $400.00 per hour). [The expert's] testimony that his opinion regarding the dissimilarity between 'Mooo Tracks' and 'Moose Tracks' was reached only after close study and investigation, and his professed inability to give any opinion as a lay person on any other pairs of phrases, indicates that **his opinion in this case is irrelevant**.[4]

A second class of 'bad' experts are otherwise competent linguists who extend their testimony into subfields that are too far from their own (for additional discussion, see Finegan's essay in this volume). Judges and attorneys are rightly impressed by the credentials of such scholars, because they have taught and published in the field and are respected members of the profession. Whether motivated by hope of fees, fame, social agenda, or the simple desire to be of service to justice, linguists who are approached for the first time by lawyers may find themselves in ethically questionable and professionally embarrassing

situations if they attempt to stretch their expertise into subfields that are on the margins of their linguistic specialization. It is easy enough to think, 'Oh, I'm a linguist – I know more than the lawyers do about the field: I have taught Introduction to Linguistics and can therefore take on any linguistic question that they might ask me to answer'. Novices who are governed by such thoughts are at the top of a potentially slippery slope that can lead to opining 'with full scientific certitude' just about anything that the lawyer wants them to say. As Finegan points out, it is difficult to know what the whole truth is if the linguist's view is (1) strongly influenced by the desires of the attorneys who are paying the bill or (2) in response to a social cause the expert strongly supports and that underlies the attorney's case. And it is painful to realize that one has skirted ethical peril and subjected oneself to no little personal embarrassment when the opposition expert counters with a lacerating rebuttal report or gives devastating rebuttal testimony, and when the opposition lawyer presents excruciating cross-examination.

In short, while the courtroom itself may act as a filter, it can do so at the expense of the linguistics expert who lacks the qualifications for the task at hand. Thus, in addition to the paramount ethical goal of furthering justice by preventing meretricious testimony, there are two practical reasons why professional linguistic organizations should seek their own ways to enhance the credentialing of linguistics experts: (1) to prevent the public from forming an inaccurate view of linguistics and (2) to protect linguistics professionals from unwittingly interjecting themselves into professionally perilous situations.

3   Licensing and registries of approved linguists

As Stygall points out in her contribution to this volume, some professions in the United States – notably engineering and medicine – license their forensic experts. Stygall does, however, draw a sharp line between the 'practicing' professions such as medicine and engineering and the academic professions such as linguistics, and she indicates that there are strong reasons why organizations should not get into the business of formally credentialing linguistics experts for the courtroom or elsewhere. Not only does formal credentialing run counter to the predisposition of the courts to depend on point-counterpoint procedures, it would also be a formidable and forbidding financial and organizational undertaking. For small organizations, finding the experts who have time (and the qualifications themselves) to oversee such a complex and diverse operation – and the resources to pay them for their services – seems an impossible task. The recent demise in Britain – for lack of government financial support – of the Council for the Registration of Forensic Practitioners (which was intended to generate lists of approved forensic experts in a number of fields including

linguistics) indicates just how difficult it is to maintain such a credentialing body (CRFP Board 2009). Even more unpromising would be a blacklist of poseurs, fools, quacks, zealots, and greedy folks who are seemingly willing to say anything that an attorney asks them to say. In addition to the problem of just who would have the authority to make such judgments and how to go about organizing the procedures, lists of either approved or disapproved experts could lead to lawsuits instigated by those who were excluded.

4   Codes of ethical practice

The most promising path for linguistics organizations to take with respect to credentialing issues is one that a number of professional organizations have already taken (as Stygall's article indicates): a set of practical and ethical guidelines for linguists to take into account as they consider taking on a legal consulting assignment.[5] This is in fact one of the 'Further Aims' of the IAFL, as announced in 2006 on the IAFL website ('drawing up a Code of Practice on matters such as giving evidence in court, writing official reports, etc.'), and while it has not to date been implemented, it is the subject of official committee consideration with implementation as the expected outcome. Following Shuy's suggestion (in his introduction to these essays), a set of recommended criteria that lawyers should consider when they set out to look for a consulting linguist could also be useful. Such a set of recommendations could also be of use to judges in deciding whom to disqualify. The Linguistic Society of America has recently generated a general Code of Ethics to which a consulting subcode could now be added (see Stygall's article).

A considerable amount of the beginning work has already been done. Importantly, as Stygall notes, the IAFPA already has a useful, though too-brief (one-page), 'Code of Practice' (IAFPA 2004). Several presses have just published or are in the process of publishing handbooks on language and law (Gibbons and Turell 2008, Johnson and Coulthard 2010, Solan and Tiersma forthcoming). Several of the books that Roger Shuy has written on various aspects of linguistic consulting offer brilliant introductions for both the linguist and the attorney, especially his (2006) *Linguistics in the Courtroom: a practical guide.* These books could be listed as must-read works, and they can be judiciously mined for summarizable information that will get the linguist started.

Hollien's article contains a number of specific recommendations that could also act as a starting point (1990: 35–36):

> Nearly any well-educated professional will affirm that he or she is competent to testify in court about those data, theories and relationships that are relevant to his or her specialty. … [However, increasingly one can be expected

to have had] some sort of forensic-related training and/or experience. …
[An expert should exhibit]

1) Graduate and undergraduate degrees in the relevant field of expertise

2) Specialized training in the subject area as it relates to forensics …

3) Evidence of experimentation, teaching, and publication within the specialty area

4) Prior disciplinary experience that is direct and relevant to the issue(s) being considered

5) Publications [relevant to the testimony] that appear in reviewed scientific journals

6) [Reliance on] scientifically acceptable tests and/or procedures

7) Association with, and leadership in, appropriate professional and scientific societies [including those devoted to forensic work]

8) Experience as an expert witness (acknowledging of course that it is impossible to have experienced experts who do not begin as inexperienced)

Concerning Hollien's proposals, Tiersma (1993: 122) makes a critical observation:

All too often, expert witnesses are viewed as 'hired guns' who will reach whatever conclusion is advantageous to the party paying their fee. … Of course, an expert must be competent in a field that has practical application in the courtroom. And educating academics on ethical standards in the courtroom would be quite appropriate. But specific training on how to be an expert witness could well backfire. Such training makes it appear that the linguist may be trying to become a professional expert, a fact that can be exploited by the opposing side as indicating a desire to profit from testifying. … In a sense, the most effective expert is one who is so successful in her area of expertise that she is reluctant to divert her energies into the courtroom as an expert. Furthermore, her limited experience as an expert will favor both plaintiffs and defendants.

Tiersma's preference for experts who are reluctant to testify seems to me to err too far in the opposite direction – as does his view that the 'limited experience as an expert will favor both plaintiffs and defendants'. On the contrary, professionalism in linguistic consulting is not per se a bad thing – indeed, the perception that a witness is a mere hired gun who will say anything for pay results from a *lack* of genuine scientific professionalism, not an excess

of it. Furthermore, Hollien's criterion concerning '[reliance on] scientifically acceptable tests and/or procedures' is less likely to be within the powers of one who (as Tiersma puts it) 'is reluctant to divert her energies into the courtroom as an expert'. As I noted earlier, the Court in *Daubert* requires that an expert rely upon methodologies that are not only professionally accepted but are also appropriate to the case at hand. Tiersma and Solan (2002: 225) point out that in *Kumho Tire Co. v. Carmichael* (119 S.Ct. 1167 [1999]) the United States Supreme Court amplified the *Daubert* ruling to place special emphasis on the validity of methodology. In light of the *Kumho* decision, Rule 702 of the Federal Rules of Evidence was modified to read as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or educa-tion, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The more thought a linguist has given to the research and scholarship in foren-sic linguistics, the better equipped such a linguist should be in understanding the nature and reliability of the available methodologies as well as what facts are indeed relevant to the case. (See also Solan, 2010.)

Hollien's list of criteria must of course be viewed as cumulative rather than absolute. But, in the end, his list by and large specifies some of the kinds of qualifications that linguistic consultants should exhibit. And, though Hollien does not specifically say so, the criteria must be interpreted differently depend-ing upon the type of case that one is involved with. For example, in trademark cases it is generally imperative that an expert have a good working knowledge of lexicography, familiarity with the scientific literature and methodology in the social and regional dialects of American English, and competence in phonology, morphology, semantics, psycholinguistics, and discourse analysis (Butters 2007, 2008a, 2008b, 2010, Shuy 2002). I believe that some understand-ing of semiotic theory is vital as well.[6] On the other hand, scholars whose specialization focuses primarily on linguistic theory, or acoustic phonetics, or medieval literature, will not normally be professionally equipped to deal with most aspects of trademark issues, unless they do considerable professional retooling on their own.

No single one of Hollien's criteria is in itself enough to disqualify someone as an expert. An attorney attempting to apply his list to someone's curriculum vitae and (if there is one) testimony record might start by simply totaling up the number of plusses and minuses and compare several linguists for their

adequacy (though they will also be looking for how well the candidate speaks and how generally credible she may seem as a courtroom witness). More important, a linguist who might be thinking about getting into the consulting business would do well to take such a list seriously before committing to participation in a legal dispute.

Let me return briefly to the issue of justice. Although the role of linguists in the forensic setting is rarely the most important evidence that is presented to a jury, we obviously have something to contribute to winning cases or lawyers would not be so keen to engage our services. I have a good deal of sympathy for attorneys who must select an expert witness in a field that is, for most of them, unfamiliar to the point of arcane. In my experience, attorneys are far more likely to get what they really need in an expert if they can find and retain persons who are informedly honest and genuinely qualified – as opposed to those who are (as Tiersma terms them) 'hired guns' willing to say anything that they think the attorneys want to hear (whether their motivation is money or to further a social or political cause with which they are in philosophical agreement).[7] If the major linguistic organizations will present the legal profession with specific advice (as Shuy notes, 2002: 182–83), lawyers will be better able to select the sort of linguist needed for a particular case. And with criteria clearly established, they will have a better sense of how a potential expert might survive the filtering effect of the normal process – and even how well the same potential expert would fare before a judge in a gate-keeping *Daubert* hearing.

If the relevant linguistic organizations can involve themselves in this way in the credentialing process, lawyers will get better linguists and the cause of justice will be better served. Organizational involvement, to the extent that it is feasible, is needed simply in the name of being good citizens.

About the author

Ron Butters is Professor Emeritus, English and Cultural Anthropology, Duke University, USA.

Notes

1   British linguistics experts testify mainly in criminal cases, not in civil cases.

2   Pullum did not realize that, in this appellate case, the judge who favorably quoted the 'tragically under-informed' expert also cited other grounds for ruling against Lexis; moreover, in a concurring opinion, a different judge explicitly disagreed with the 'expert' testimony that the difference between a schwa and a barred-i was enough to inhibit phonological confusion between *Lexis* and *Lexus*.

3   The name of the trademark in question has been changed, and I have omitted the name of the testifying witness. In this case, the transcript of the trial is not available to the public; I have reconstructed the exchange in question from memory. (Disclosure: I served as a paid expert in this case.)

4   *Blue Bell Creameries v. Denali Co.* (2009). 2008 U.S. Dist. LEXIS 58083; 89 U.S.P.Q.2D (BNA) 1146.at7–9). In still another case (in which I also served as a paid expert but which must remain unnamed owing to confidentiality requirements; the cited passage is taken from the actual deposition record), a putative linguistics expert responded in cross-examination to a series of elementary questions about phonological terminology in a manner that indicated clearly that she did not know the answers:

'**Attorney:** Do you know what an alveolar consonant is?

Expert: Oh, God. I have certainly used it – well, read the term. Sitting here, I don't want to try to remember what is referred to that, unless one of our dictionary pages happens to include that part of the A alphabet. I'm familiar with the term and in a matter of seconds could orient myself using that term. I discuss pronunciation of consonants all the time. I don't normally use that one or that word.

Attorney: Without having to define the term, could you identify what some of the alveolar consonants are?

Expert: Again, it's not a term I use, so I am not going to be able to off the top of my head to identify such things.

Attorney: Do other linguists use that term?

Expert: Often.

Attorney: Is there any particular reason you don't use that term?

Expert: I can't remember. There are reasons. I couldn't tell you why. I think one of them is I try to use, in teaching and in my writing, terms that are more self-evident. For example, in consonants I talk about stops and continuants because in pronouncing stops you have to stop and in pronouncing continuants you can continue. Now, a term like that is not nearly as self-evident and I think mainly for that reason I just don't bring it up. It confuses people and it's something you have to memorize. I can look it up in two seconds and think about it, fine. But sitting here I'm not ready to talk about that.

Attorney: Are you familiar with the term 'palatal consonant'?

Expert: Yes.

Attorney: Can you define for me what a palatal consonant is?

Expert: I take that sitting here subject to correction, because I don't try to

memorize things. But a consonant pronounced further back in the mouth than a dental, teeth, or labial, lips. You see, those terms, 'dental' and 'labial', I like to use. 'Palatal' I use less often. I more often use 'guttural'. Now, refinements of that can be made and you can distinguish between a palatal and a guttural. But most of the time in talking to students in courses or even writing about it, it's an unnecessary refinement.'

5   Including such specific suggestions as 'always ask to see the arguments that the other side's lawyers have made already' and 'be prepared to turn down the case if it looks like you cannot actually support the lawyers position full force'.

6   There is some debate about the relevance of semiotics – Shuy (2002) and I have disagreed about it in court and in print (see Butters 2004).

7   In his essay in this volume, Nunberg argues that linguists (and indeed all scientists) have an ethical obligation – in every scholarly publication that draws upon data and conclusions that grow out of forensic linguistic testimony – to disclose the forensic involvement. Although such disclosure might seem to some to be immodest self-promotion, I agree with Nunberg's prescriptive rule. Indeed, disclosure has always been my practice in actual publication, although I did omit disclosure in an early oral presentation (which was reportedly tape-recorded and disseminated without my permission) and one online discussion-group posting (see Nunberg's fn6).

I strongly disagree, however, with Nunberg's further opinion that experts who accept cases for little or no pay are somehow less likely to become unwitting partisans than those who accept payment. Although it is true enough that scholars in the forensic environment must struggle to remain unbiased by the agenda of those who may be paying them, it seems to me equally true that forensic linguists must likewise struggle at least as hard to keep from becoming pro bono zealots for a social or political cause with which they are in philosophical or moral agreement. In at least one case, my offer to work pro bono in a criminal case was declined by a law firm that insisted on paying my normal fee from their own coffers; the firm felt strongly that hiring me for pay was far less potentially suspect than having me appear to be one who was primarily motivated by my personal political beliefs and social agenda. In the end, perhaps the biggest barrier to objectivity that we scholars face in the courtroom is the arrogant belief (reified by years of teaching mere students) that, no matter what, we are brighter and more competent than anybody else.

References

Ainsworth, Janet E. (2006) Linguistics as a knowledge domain in the law. *Drake Law Review* 54: 651–669.

Blue Bell Creameries v. Denali Co. (2009) 2008 U.S. Dist. LEXIS 58083; 89 U.S.P.Q.2D (BNA) 1146.

Butters, Ronald R. (2004) How not to strike it rich: semantics, pragmatics, and semiotics of a Massachusetts lottery ticket. *Applied Linguistics* 25(4): 466–490.

Butters, Ronald R. (2007) Changing linguistic issues in U.S. trademark litigation. In M. Teresa Turell, Jordi Cicres, and Maria Spassova (eds) *Proceedings of the Second European IAFFL Conference on Forensic Linguistics/Language and the Law.* Barcelona: Publicacions de l'IULA, No. 19: 29–42.

Butters, Ronald R. (2008a) A linguistic look at trademark dilution. *Santa Clara Computer & High Technology Law Journal* 24: 101–113.

Butters, Ronald R. (2008b) Trademarks and other proprietary terms. In John Gibbons and M. Teresa Turrell (eds) *Dimensions of Forensic Linguistics* 231–247. Amsterdam: Benjamins.

Butters, Ronald R. (2010) Trademarks: language that one owns. In A. Johnson and M. Coulthard (eds) *Routledge Handbook of Forensic Linguistics*. Oxford: Routledge.

CRFP Board. (2009) Closure of CRFP on 31 March 2009. http://www.crfp.org.uk/ Downloaded 29 March 2009.

Crown Prosecution Service. (2009) Disclosure: expert's evidence and unused material – guidance booklet for experts. http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/annex_k_disclosure_manual/#a03

Daubert v. Merrell-Dow Pharmaceuticals, Inc. 509 U.S. 579, 113 S.Ct. 2786 (1993).

Gibbons, John and Turell, M.T. (2008) (eds) *Dimensions of Forensic Linguistics.* Amsterdam: Benjamins.

Hollien, Harry. (1990) The phonetician as expert witness. In Robert W. Rieber and William A. Stewart (eds) *The Language Scientist as Expert in the Legal Setting: issues in forensic linguistics* 33–45. (Annals of the New York Academy of Sciences, vol. 606.) New York: The New York Academy of Sciences.

Howald, Blake Stephen. (2006) Comparative and non-comparative forensic linguistic analysis techniques: methodologies for negotiating the interface of linguistics and evidentiary jurisprudence in the American judiciary. *University of Detroit Mercy Law Review* 83: 285–327.

IAFL. (2006) Further aims. http://www.iafl.org/ Downloaded 28 March 2009.

IAFPA. (2004) Code of practice. http://www.iafpa.net/code.htm Downloaded 28 March 2009.

Johnson, Alison, and Coulthard, Malcolm. (eds) (2010) *Routledge Handbook of Forensic Linguistics.* Oxford: Routledge.

Mead Data Central, Inc., v. Toyota Motor Sales, USA, Inc., and Toyota Motor Corp., 875 F.2d 1026, 1030 (2d Cir., 1989)].

Pullum, Geoffrey K. (2004) Database company to Toyota: rename that automobile. Language Log April 8. http://itre.cis.upenn.edu/~myl/languagelog/archives/000728.html Downloaded 21 January 2008.

Shuy, Roger. (2002) *Linguistic Battles in Trademark Disputes.* New York: Palgrave.

Shuy, Roger. (2006) *Linguistics in the Courtroom: a practical guide.* New York, NY: Oxford University Press.

Solan, Lawrence M. (2010) The expert witness meets the adversarial system. In A. Johnson and M. Coulthard (eds) *Routledge Handbook of Forensic Linguistics.* Oxford: Routledge.

Solan, Lawrence M. and Tiersma, Peter M. (eds) (Forthcoming.) *The Oxford Handbook of Language and Law.* Oxford: Oxford University Press.

Tiersma, Peter M. (1993) Review article: linguistic issues in the law. *Language* 69(1): 113–137.

Tiersma, Peter M. and Solan, Lawrence M. (2002) The linguist on the witness stand: forensic linguists in American courts. *Language* 78: 221–239.

Wallace, William D. (1986) The admissibility of expert testimony on the discourse analysis of recorded conversations. *The University of Florida Law Review* 38: 69–115.