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THE ROLE OF FORENSIC LINGUISTS IN COURTROOM CROSS-EXAMINATIONS

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Abstract
Forensic linguists are trained experts who proffer solutions to knotty issues involving language and the law. This paper examines the legal process of courtroom cross-examination which is believed by literature to be hostile and uncooperative since it is usually face-threatening. The study notes that some indices like age, social status, educational qualifications etc. are criteria that determine politeness in the Nigerian courtroom cross-examinations and concludes that forensic linguists need to be actively involved in courtroom discourse to ensure that judgments are not only dispensed but that justice is also carried out.

1. Introduction

The importance of courtroom interaction to every society cannot be overemphasised because it represents the justice system of every society. Justice is crucial to every social setup because it represents the legal system used to achieve fair treatment of people, a medium to advocate the equality of all citizens before the law and the supremacy of the law above everyone. Language is also crucial to the judicial process of every society because laws, judgments, judicial proceedings are all conducted through language. Courtroom interaction is significant because it provides insights into the language used in the process of delivering justice. It is in this bid that this study seeks to examine a legal process called cross examination which should be an area of interest for forensic linguists since it is a legal process in which language is implicated because it has some underlying assumptions which make the legal activity to be hostile and uncooperative. The assumptions are:

> that the power relation between lawyers and witnesses is asymmetrical; that lawyers deploy verdictives and exercitives illocutionary acts in court cross-examinations; and that lawyers are usually impolite in the process of cross-examination.

2. Overview of Forensic Linguistics

Forensic linguistics is an evolving branch of applied linguistics which succinctly denotes an interface between language and the law. It is also aimed

at investigating the language use in legal institution, the language of crimes and forged texts through the use of linguistic and statistical models which accentuate Gibbons (2003) assertion that laws are coded in language and the concepts that are used to construct the law are accessible only through language. Farinde (2008) defines forensic linguistics as the study of language within the context of law because he opines that law is an overwhelmingly linguistic institution.

Forensic linguistics was first mentioned by Jan Svartvik in 1968 in the famous analysis of statements given to the police officers at Notting Hill Police Station in 1953 in which Timothy John Evans was accused of the murder of his wife and baby. Although Roger Shuy is accorded the Father of Forensic Linguistics, Shuy (2012) postulates that the origin of forensic linguistics can be traced to the Bible in Judges 12:6 in which after a confusing battle with the Ephramites, the Gileadites were able to identify their enemies by asking them each to pronounce the Hebrew word 'shibboleth' and if they pronounced the first syllable in the Ephraimic dialect 'shib' they were killed. Some 42,000 Ephraimites failed the first linguistic test, bolstering the advent of language and the law as an old field of inquiry.

Olsson (2004) opines that cases on disputed authorships of some world's most famous texts including the sacred texts and plays of Shakespeare sparked the advent of forensic linguistics. However, Gibbons (2014) opines that the emergence of forensic linguistics as an organised field happened in the late 1980's and early 1990's. He notes further that forensic linguistics is a global phenomenon with a lot of work being done in China. The field originated from the anglo sphere and Europe with the first book in the United States of America by Levi and Walker (1990). Although Earlier works by Philbrick (1951) and Mellinkoff (1963) were however limited to the discussion of legal language.

The scope of forensic linguistics has extended beyond the frontiers of disputed authorship (plagiarism detection) to include: Forensic Phonetics, Forensic Stylistics, Linguistic Proficiency, Forensic Discourse Analysis, Linguistic Origin Analysis, Courtroom Discourse, etc. In all these areas, forensic linguists' professional opinions are required, thus concretising the expertise of forensic linguistics in resolving or ameliorating knotty issues in the purview of the law where language is implicated.

3. Courtroom Discourse

A court is a place where legal trials take place and where crimes are judged. It is a sacred legal institution established to promote justice by giving parties involved fair hearing. Atkinson and Drew (1979) assert that courtroom interaction is a verbal exchange which in many respects differs from talk in ordinary conversation. Courtroom discourse is a branch of legal discourse which Farinde (2008) regarded as 'an institutional discourse where power is

pervasive'. He opines further that courtroom discourse is arguably the most direct powerful institution. Farinde (2008) postulates that even the furniture in the courtroom is asymmetry in relationship.This viewpoint is succinctly expressed by Luchjenbroers (1993) who accentuates this by observing that the judge is seated higher and his/her bench is generally constructed from massive wood. Barristers stand during testimonies and juries are seated in tiered rows to facilitate view of the court proceedings.

Courtroom discourse/interaction has been researched from various linguistic perspectives. It has been analysed grammatically from the question types prevalent in courtroom interactions. Berk-Seligson (1999) focused on the categorisation of question types, ranging from Yes/No questions, prosodic questions, and truth questioning e.tc. Gibbons (2003) on the other hand researched into the speech attributes that make speakers seem less powerful which are: hedges, hesitations, uncertainty, and use of sir/madam, intensifiers, time taken, and mitigation. He revealed that weak witnesses possess some of these attributes (especially hedges and hesitations) and they also take longer time to narrate their evidence and they are always being prompted by the lawyers and the prosecutors. The courtroom discourse represents an asymmetrical institutional discourse in which the powerful interactants such as lawyers are more likely to dominate the discourse while powerless interactants usually the defendants and witnesses are less convincing and wield little or no power.

Farinde et al. (2015) note that lawyers maintain tight control of courtroom discourse through their use of declarative questions with falling intonation. They posit that the use of falling intonation with declarative questions suggests the power and control of lawyers over the witnesses. By using declarative questions with falling intonation, lawyers are able to put across their propositions convincingly to the witnesses. The use of falling intonation on declarative questions suggests coercion, control, cajoling and persuasiveness on the part of the lawyers in the Nigerian courtroom discourse (Farinde et al, 2015).

4. Forensic Linguistics and Legal Discourse

Although forensic linguistics has not gained wide acceptance as compared to finger print and DNA evidences which are part of the hub of forensic studies, forensic linguistics is still an evolving discipline with an auspicious future to extend its tentacles in the world legal system. However, it has been reckoned with in the legal system of some countries to provide linguistic evidences to either convict or acquit people of their crimes. This segment would briefly examine the various sub-fields of forensic linguistics and their contribution to the legal discourse. Forensic phoneticians conduct speaker identifications, resolve disputed content recordings, and transcribe spoken texts. They apply

insights from Linguistics, Phonetics and Acoustics to legal investigations and proceedings. Danielewicz-Betz (2012) notes that they are also involved in the setting up of so-called voice line-ups or parades in which not eye but ear witnesses are asked to take part in order to identify a suspect. Forensic stylisticians examine discrepancies in police reports. Danielewicz-Betz (2012) posits that when establishing the accuracy of police reports and alleged suspect statements, forensic stylisticians consider the relationship between the documents exhibited and the events they purport to describe. Questions like what is the time frame? When were the incident notes taken? Is there a chronology and accuracy in recalling the events? Videotaping, as recommended by Solan and Tiersma (2005) has been the law for many years in the UK and Australia, yet in the US it is required in only a few states which has helped mitigate the bane of disparities in police reports.

Forensic linguists have also investigated cross-cultural and cross-linguistic differences in testimonies. Eades (2008), for example, examines the social consequences of courtroom talk through detailed investigation of the cross-examination of three Australian Aboriginal boys in the case against six police officers charged with their abduction. In her study of the Australian courtroom discourse, she discovered that yes/no questions are not considered coercive in Australian Aboriginal interactions, but rather are understood as an invitation to explain or elaborate. Furthermore, the difference in cultural meaning attached to silence can also impact judgments in the courtroom whereas silences longer than a few seconds are hardly tolerated in Western English-speaking societies. Eades' courtroom data reports common Aboriginal silence up to 23seconds. Tag questions can also be a source of misunderstanding in testimonies to be interpreted. Whereas negative tag questions in English require a negative answer to deny an accusation (e.g., "You took the money, didn't you?" "No, I didn't."), tag questions in many other languages, including Spanish and some Asian languages, can be answered either negatively or affirmatively with relatively no alteration in meaning (Daniel lewicz-Betz, 2012).

Forensic stylisticians and forensic discourse analysts also investigate cases of disputed authorship technically referred to as 'authorship attribution' which involves the science of inferring characteristics of the author from the characteristics of documents produced by that author. The key task is to establish who said or wrote something which is to be used as evidence. Attribution is facilitated by measuring word length average, average number of syllables per word, article/determiner frequency, and type-token ratio (a measure of lexical variety). Forensic linguists have also helped unearth the truism of some forensic texts like emergency calls, ransom demands and other threats, such as hate mail, aimed at victimising others.

5. Cross-examination

Cross examination is a legal process that occurs only in the trial courts. It is used in an adversorial legal system, which involves an oral presentation of evidence, where words are used as weapons by the two parties. There is, therefore, a metaphor of the trial as a war of words, where opposing parties try to defeat each other by using language as their weapons (Maley & Fahey, 1991: 3), and 'in which only one side will win' (Danet, 1980: 190). In law, cross-examination is the interrogation of a witness called by one's opponent. It is preceded by direct examination. Ng (2010:63) notes that in cross-examination, it is the goal of the examining counsel to discredit the hostile witness and hence the opposing side's version of events. Ng (2010) posits further that the usual strategy in cross-examination is to identify inconsistencies or contradictions in the witness's testimony so as to create a reasonable doubt in the mind of the jury or the judge. Wellman (1919) notes that cross-examination is considered an essential component of a trial because of the impact it has on the opinions of the judge and jury. He opines further that it is sometimes referred to as an art form, because of the need for an attorney to know precisely how to elicit the testimony from the opposing witness that will help, not hinder, their client's case. Typically as observed by Wellman (1919) a cross-examiner must not only be effective at getting the witness to reveal the truth, but in most cases to reveal confusion as to the facts such as time, dates, people, places, wording etc.

Cross-examining lawyers will also attempt to undermine the credibility of a witness if he/she will not be perceived to be a bully (such as discrediting a very elderly person or young child). The cross-examiner often needs to discredit a potentially biased or damaging witness in the eyes of the jury without appearing to be doing so in an unfair way. They typically begin by repeating similar basic questions in different ways to get different responses, which will then be used against the witness as misstatements of fact later. But if it is too obvious that the attorney's questions are too clearly repetitive and are making the witness nervous, the other attorney may accuse the cross examiner of badgering the witness (Wellman, 1919). Farinde (2008) opines that the aim of cross-examining lawyer is to discredit the witnesses' testimonies, which he describes as a tense confrontation between an aggressive lawyer and the witness. Manet (1980: 247-249) sees the aim of a cross-examining lawyer as to derive testimonies that would be favourable to him from the witness. These viewpoints of cross-examination is further collaborated by Walker (1987) and Luchjenbroers (1997), who opine that cross-examination is described as being hostile and uncooperative.

A study by Penman (1987) gives an exposition into the process of cross-examination. He argues that politeness is a norm that does not apply to courtroom discourse, at least not in any straightforward fashion. This viewpoint

is collaborated by Walker and Luchjenbroers (1997) who postulate that examination has always been described in the literature as cooperative, while cross-examination is described as hostile and uncooperative. Harris (2003) study, which applies politeness theory of pragmatics to courtroom situation in the United Kingdom, came to the conclusion that courtroom discourse is an institutional discourse characterised by an explicitly face-threatening behaviour, which is in accordance with institutional norms; although powerful interactants in courtroom settings employ fewer redressive forms in the exercise of their power.

Ehrlich (2001) identifies the interactional strategies deployed by cross-examiners which include: selective questioning presupposition and selective reformulation among others. The thrust of all these submissions accentuate the fact that the process of cross-examination involves the verbal dexterity of a lawyer to distort opposing witnesses' evidences for his or her own client gain. Hale's (1999) research is from the pragmatic perspective which focuses on the problems the interpreters face in the translation of the discourse markers lawyers use during cross-examination. Farinde (2008) also investigates the speech acts deployed by lawyers in the examination and cross-examination of witnesses.

6. Nigerian Court System

The Nigerian legal system is based on the law system of England and Wales, with the only disparity that in Nigeria, it is the Judge that decides whether the accused is guilty or not and also determines the punishment. However, in England and Wales, the Crown Court Judge only presides over cases, while the Juries decide whether the accused is guilty or not. In the Nigerian courtroom proceedings, evidences are first presented to the court during examination-in-chief which is challenged during subsequent cross-examination, the examining lawyer may then choose to 'redirect' the witness (re-examination). After the prosecution has presented its case, then the defense may call its own witness to present an alternative interpretation of the fact, if they so wish. The Nigerian courts are graded hierarchically in order of the seriousness of the cases they have the jurisdiction to try. They are as follows: Supreme Court, Court of Appeal, Federal Court of Appeal, High Court of Appeal, Sharia Court of Appeal, Customary Court of Appeal, Magistrate Court, District Court and Area Court.

7. Data Collection and Analysis

Equality before the law should be the hallmark of every legal process and this should translate that everyone who appears before the court of law should be addressed in the same manner and in the same way. Cross-examination has the propensity of tainting and improving the public image of those that are being

cross-examined, as they are in the face of public glare whose public reputation go beyond the arena of the court. Forensic linguists are the only certified language experts in the domain of the law trained to identify instances of these face-threatening acts and proffer ways for its remedy. Age, social status etc. should not be indices for dispensing justice as everyone is entitled to freedom from verbal assaults even in the domain of courtroom cross-examination.

The study presents two cross-examination processes. The first case is inundated with instances of face threat to the witness (who belongs to the lower social status). In the second case (a personality of higher status who is also a lawyer), there was a change from the face threat, which raises the question whether criteria like age, status, profession are yardsticks for politeness in court cross-examination. The texts below show some extracts in the Nigerian cross-examination process:

CASE A
Text 1
'Now, Mrs. X, listen to my question, now answer the question I will ask you. You said when they came they threw the computers out, how do they throw it out?'

The discourse marker 'now' occurring at the initial position of this sentence construction prefaces disagreement as argued by Hale (1997). Using this antagonistic item at the initial sentence construction suggests the hostility of the cross-examining lawyer to invalidate the testimony of the witness. The construction 'listen to my question' is a directive construction. It is geared at deriving a response from the witness. By reiterating this disagreement discourse marker 'now' twice in the imperative sentence construction, 'now answer the question I will ask you', suggest the demonstration of an asymmetrical power relations among the two participants. In other words, the lawyer is fully aware of his higher power. The interrogative construction, 'how do they throw it out,' subtly conveys the disagreement and covert hostility of the cross-examining lawyer to the testimony of the witness.

Text 2
'Yourself and your boss are trying to reap where you did not sow'

This is a conspicuous and overt demonstration of hostility by the cross-examining lawyer who flagrantly demonstrates his affective and judgmental evaluative disposition towards the witness and her boss. He explicitly states that the witness and her boss are dishonest and fraudulent beings, who engage in underhand practices. Expressions of this nature are smears to the positive and

negative faces of the witness. The witness will want to react in the bid to safeguard her threatened and endangered face before the listening public.

Text 3
'Witness, yourself and the claimant connive with the computer repairer'

The lexeme 'connive' encapsulates the judgmental stance of the cross-examining lawyer, which is also an affront to the face of the witness because he describes the witness and the claimant as an opportunist who secretly and dishonestly plans against someone at their own advantage.

Text 4
'Do you want me to believe that the claimant doesn't tell you anything about the office?'

This interrogative construction with an underlying rhetorical undertone subtly accuses the witness of the grievous crime of perjury and covertly tells the court to discard the testimony of the witness.

CASE B
The cross-examining proceeding below is a direct contrast with the regular process of court cross-examination in which the cross-examining lawyer wields little power when compared to the person who is being cross-examined. The lawyer deploys polite expressions such as 'with all respect sir,' which is a polite syntactic construction that recognises the higher status of the witness. 'Chief' is a social deictic item which is used to accord respect to a man of high position. Using these polite constructions suggest that the lawyer is aware and conscious of involving in a face-saving act with the witness. The witness/defendant who is also a lawyer changed the tide of the cross-examination. In texts 7 and 8, the witness wields more power than the cross-examining lawyer as seen in the questioning back the lawyer and also topically and quantitatively controlling the discourse. The cross-examining lawyer subtly gives a boost to the negative face of the witness. He also covertly involves in a face-saving act of his own positive face by uttering the sentence construction 'Chief, we are not quarrelling,' which is a ploy to reconcile their differences. When the lawyer sees that this is not yielding positive dividend, he resorts to a higher authority as seen in text 9, 'My lord, I think, I need your lordship's protection, chief is evading all the questions, I have actually asked him'. When the judge did not intervene the cross-examining lawyer has to call it quit.

Text 5
L: Chief, I put it to you with all respect sir, that you brought this proceeding to spite the defendant due to the divorce between the two of you.
W: No, capital No, the divorce was consequent of unproved identity.

Text 6
L: Chief
W: What is chief

Text 7
L: Let me bring it down for you.
W: Listen, let me answer the question before the court, I am not…

Text 8
L: I will get there
W: You are not getting anywhere.
L: Chief, we are not quarrelling.
W: I am not quarrelling with you.

Text 9
L: My lord, I think, I need your lordship's protection, chief is evading all the questions, I have actually asked him.
W: I have never evaded

Text 10
L: My lord, I think that is all for the day.

8. The Nigerian Courtroom Cross Examination

The validity of testimonies and evidences brought before a court of law is important to ensure that each party gets justice and not just judgments. This explains why lawyers dexterously engage in verbal questioning of witnesses' testimonies to make their client have an upper hand in every court rulings. However, cross-examination processes are aimed at puncturing holes in witnesses' claims and making the presiding judge rule in the lawyer's favour. As a result of this, cross examination is always face-threatening in which the lawyer forcefully demonstrates his/her power since he/she knows that he/she wields unlimited power, while the witness has none (unless his lawyer intervenes). As a result of this, lawyers verbally exploit witnesses by being harsh, rude, and brash, deploying mockery, sarcastic tones, facially confronting witnesses and sometimes pointing accusing fingers to the witness. These actions sometimes have psychological implications on the witness who sometimes feel threatened, and intimidated. Sometimes, an emotional outburst

might occur since the Nigerian legal system operates an adversarial system, which involves a 'contest' between rival parties which is primarily concerned with 'wining' and not necessarily about the truth. The foregoing explains the need for forensic linguists' intervention in in this legal process by mitigating on the deployment of face threats cross-examination. Furthermore, witnesses are put in the corner by being expected to give polar responses to questions which might put them in murky waters. While polar questions could be helpful, it could be detrimental because the aim of a cross examining lawyer is to invalidate all the testimonies of the witnesses and not justify responses whenever the questions demand polar responses.

It is noted that bald-on-record is predominant in cross examination processes as verdictive and exercitive illocutionary force are deployed with the cross examining lawyer quantitatively, qualitatively and topically controlling the cross examination process. However, when legal luminaries are in the witness box, they dexterously avoid answering polar questions, since they know the implications which non-lawyers cannot, since they will be threatened with a charge of contempt. This shows impartiality and a challenge to the claim that everyone is equal before the law.

As a result of the foregoing, the following recommendations are proffered:

- Polar questions should be minimised and used in exceptionally needed situations;
- For every polar response, the witness should be allowed to clarify themselves and not have to wait till re-examination;
- Cross-examining lawyer should be cautious in maintaining the face of witnesses. They should be gentlemen as they claim in discrediting witnesses' testimonies;
- Forensic linguists should be involved in every cross-examination process to caution lawyers whenever they sense the face of the witness is being threatened;
- Every person that will be cross-examined should be entitled to a forensic linguist who should help disambiguate sentence constructions that is aimed to put them in murky waters, help clarify polysemous expressions among others and;
- For every cross-examination there should be a forensic linguist who should give an impartial evaluation about the process.

9. Conclusion

Language is a medium of constructive and destructive mechanism used by users to achieve their targeted goals. As a result of this, some lawyers in cross-

examination processes use language deliriously on witnesses failing to understand that every man has dignity which should not be infringed upon in the witness box. Lawyers should be mindful of this and not make the process verbally assaultive and threatening. This, therefore, behoves on law lecturers to teach and enforce face-saving cross-examination processes in every moot and mock competition, debates and trials since law students are the future lawyers who will be involved in courtroom cross-examinations.

Forensic linguists should be integrated in every court cross-examinations to play interpretative roles to witnesses when being cross-examined so as to unearth to them the pragmatic, semantic and discourse implications of every question and statement asked by the cross-examining lawyer so they do not fall into murky waters.

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