

## **Language and legal education**

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It is a truism that the general public thinks lawyers have an occult power over language. It is seen as lying, or as hypocrisy, but nevertheless a powerful tool, available for hire. Much as we might object to the first two descriptions, the fact is that lawyers do have a powerful tool, and, consequently, an ethical obligation to use it and use it effectively.

David Bellos, in his entertaining book on translation, says that legal translators think that the functions of legal language are to prescribe, describe and persuade. I would add that the job of the lawyer is, not only to prescribe, describe and persuade, both orally and in writing, but also, frequently, to translate. Lawyers “do things with rules” but, much more broadly, we do things with language. It is the object of study, the means of analysis and the key professional tool. And if we get it wrong, we can ruin people’s lives.

Discussion of students and young lawyers and their relationship with the English language has a tendency to focus on remedial issues of grammar and spelling. These are, of course vital, and vital in surprising and slightly archaic ways. I have, for instance, advised young lawyers that, however much they might think that objecting to split infinitives is out of date; they may be writing to clients whose “to boldly go” earned them a substantial punishment at school.

### *Register*

In working with language, it seems to me, we are working with a number of generational issues. Textspeak, for example, bears a considerable amount of similarity with the abbreviated language which used to be used in abstracts of

title, and is extraordinarily useful in concise note-taking. Where it is deplored is when it is used in the wrong place. A sense of the wrong and the right place for particular registers is something with which some students and young lawyers struggle. The distinction between formal and informal letter writing, which was for me made early at school, is blurred by the ubiquity of email. But the over-formal to obsequiously Dickensian is still sometimes seen, in letters sprinkled with “aforesaid” and “our Mr James”. The question is even more complicated by the fact that, of course, a fair number of young people use, not so much a different register in English, in different environments, but a different language altogether. Nevertheless, the fact there are young lawyers who can readily communicate in Urdu, Polish, Welsh or BSL is vital to effective servicing of clients and something to be celebrated. We cannot assume that students today have quite the same exposure to different registers of language as those of us brought up in the last century had, so as to distinguish between what you can say in the playground, what you can say in the classroom, and what you can say to the judge.

### *Prescribe and describe*

Lawyers prescribe when they draft legislation and contracts. They describe in taking witness statements and drafting statements of case. There is a need to be precise in a very particular way, which is sometimes, in fact, being vague in a very particular way. I can define the level of performance expected of the other party in a contract in very precise terms, with a detailed service level agreement and specific sanctions for default. Alternatively, I may decide to define the level as “reasonable endeavours” and leave it at that. There are choices to be made in pleading between, for example, “the Defendant failed to distribute the safety handbook” and “the safety handbook was not distributed” which are informed by strategy – how specifically, in that example, do we want to be in attributing fault – and by an understanding not only of how documents are written, but how they are read.

### *Persuade*

Choice of language is even more critical when we are seeking to persuade. But I would also argue that there is, in persuasion, also a role for listening. Many people will be familiar with the way in which Oscar Wilde was tripped up in cross examination. In a trial in which Wilde denied that he had had a relationship with a young man, he was asked if he had kissed him.

Oh, dear no. He was a peculiarly plain boy. He was, unfortunately, extremely ugly.

Counsel was persistent in his line of questioning after that:

Was that the reason why you did not kiss him? ...

Did you say that in support of your statement that you never kissed him? ...

Did you ever put that forward as a reason why you never kissed the boy? ...

*Why, sir, did you mention that this boy was extremely ugly?*

Few of us are advocates, but listening is still a key skill in the persuasive elements of our work. There is, for instance, in negotiation, quite a distinction between the views of the opponent who says “Well, if we accept your offer ...” and the much less positive “Well, if we accepted your offer ...”

### *Translate*

The issue here is not so much technical language. Young lawyers are taught their law in technical language and, therefore, can hardly be blamed for finding it easier to explain their law in the same way. There is a positive act of translation, as if into another language, in explaining the effect of a lease, or the allegations in an indictment, to a client. As the number of self-represented litigants increases, the translation function is extended beyond one’s own clients to the opposition.

The translation function extends, however, beyond turning the language of one document into another. We deal, especially in litigation, with questions of probability. I may say that I think it is “probable” we will win this application, but what I mean by this, and what my client understands by this may be very different. Some American researchers in linguistics asked people to attribute words to ranges of percentages. “Probable”? 50-80%. If I tell my client “We have a good chance of winning”, will she react in the same way as if I had told her “We have a small chance of losing”?, simply because one phrase uses the word “win” and the other emphasises the word “lose”?

### *Implications*

The implications, I suggest, for education, go a long way beyond grammar and spelling, important as they are. They also go a long way beyond school and university, well into the workplace, where the subtleties of communication in particular ways and for particular purposes can be properly explored. There is a need to foster breadth of vocabulary; attention to what is said, how it is said and what is not said, as well, critically, to the translation function of the lawyer.

University courses in law and literature, as a starting point, I suggest, have not only an intellectual but also potentially a practical role. There is more work to be done, by all of us, and by the young lawyers themselves. And more fun to be had in exploring the bizarre, frustrating but infinitely nuanced and flexible English language. We do, after all, apparently have this magical, occult power over language. We might as well enjoy it.

### *References*

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