



Language and the Law

Would you say the following sentence to a witness?

On the morning of January 3rd, you did, didn't you, meet with your General Counsel and were you not told to cooperate with the impending investigation, after which you sent an email instructing employees to do the same, is that not so, sir?

This question, asked of a corporate executive, remained unanswered. And not because the witness was uncooperative or hostile, but because he was unable to follow the question because of the confusing language that the lawyer used. This question provides a perfect example of what NOT to say. Lawyers are generally comfortable with complex locutions. But, it may be harder to remember that just plain folks, the people who make up juries and who serve as witnesses, have trouble understanding questions comprised of several phrases, complicated negatives, and complex syntax (questions within questions, embedded suppositions).

In order to communicate, there must be an exchange. The listener has to understand what the speaker is saying, which means that the listener has to understand not just the information being transferred but the way the information is encoded in language. If the speaker speaks and the listener does not understand, communication has not occurred. If there is no communication and no understanding, no information or argument can be effective. People's language skills are varied, and influenced by ethnic background, regional geography, level of education, age, gender, and other social factors. Since juries are comprised of people of different language skills, it is important to learn to adapt your speaking style to the needs of your diverse audience.

Everyone adjusts their speech style to their audience – usually unconsciously. If you are talking to a judge or another lawyer, you probably use a style that differs from one you use if you are asked to explain your job to your child's third grade class or to the person who cuts your hair. A talented lawyer is able to translate complex ideas into simple language because the goal is to be understood. It is generally accepted that "ordinary" people, and especially those who are not native English speakers, have language skills at an elementary school level. One of the purposes of sociolinguistic analysis of legal speech is to provide attorneys with "translation guidelines" for the courtroom setting:

Here are some useful guidelines:

1. Use simple vocabulary. Although the courtroom is a formal venue, and may encourage specialized language, it is important to use plain English when communicating to a jury. Plain English implies no legal jargon or technical terminology, but simple and straightforward vocabulary. For example, "it is more likely that" is

clearer than “a preponderance of the evidence”; “support” is clearer than “corroborate.” Often, a lawyer has to actually translate legal language into ordinary English to be understood. What does “malice aforethought” mean?

2. Avoid irony, sarcasm, and metaphors. If they are subtle, they may be lost on jurors and witnesses, and will simply leave people confused. If they are too heavy-handed, they may backfire and reflect badly on your side rather than the other side.

3. Use simple grammatical constructions. Not only word choice but sentence structure should be kept simple. Subject-verb-object is best. Passive voice is less understandable for many people than active and can result in confusion of who did what to whom. Pronouns are not always clearly referenced and should be avoided. Complex negation, such as double negatives (“You failed to call the police, did you not?”) can also be difficult to understand. Long sentences are harder to process than short. Embedded clauses are often misunderstood. “Front” (put in the beginning of the sentence) the most important information.

4. Relate your points to jurors’ everyday lives. Examples, illustrations, and analogies from “normal” experience may help to clarify difficult concepts.

5. Tell your story chronologically. Chronological order is best for presenting the “story” of what happened. Avoid going forward and backward in time. What may be an effective literary device is not an effective communication tool in spoken language.

These guidelines are based on decades of linguistic research. They appear easy and obvious, but for speakers who normally use sophisticated speech styles, they are actually difficult to follow. It sometimes requires time and education to re-learn simple communication skills. However, for effective courtroom presentations, they are well worth learning.