

LANGUAGE AND THE LAW

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Introduction

The law is a profession of words.

- David Mellinkoff ¹

By means of written language national constitutions come into existence, laws and statutes are enacted, and contractual agreements between private individuals take effect. Spoken language is just as indispensable to the legal process. One need look no further than the courtroom, whether it be the interrogation of plaintiffs and defendants, the testimony of witnesses, the pleadings by attorneys, or the instructions from a judge to a jury. The legal implications of language continue to extend far beyond the courtroom – to interactions between police and suspects, to conversations between lawyers and their clients, to law enforcement's use of surreptitious recordings, and to such unlawful speech acts as offering a bribe, or issuing a threat, or making a defamatory statement. A little reflection suffices to reveal just how essential language is to the legal enterprise. Yet academic research on the intersection of language and the law is a relatively recent phenomenon, with much of the work dating from the 1980s. ²

Personal Background

My own introduction to the topic began in the early years of that decade. I was leafing through some textbooks belonging to my wife, a law student back then. I could see that within those pages lay a gold mine of issues, not just concerning the law, but dealing also with the use of language. Perhaps it should not be so surprising that I would be fascinated by legal language. After all, I am a professional linguist. I was curious to know more about this area of study and interested in doing some research, but I was unsure where to turn. As yet there was no professional organization or journal devoted exclusively to the language and law interface, and the term 'forensic linguistics', which would become one of the names for what was to blossom into a vibrant discipline, had not yet been invented. (There is now a professional organization, the International Association of Forensic

Linguists (IAFL), and a publication, International Journal of Speech, Language, and the Law, formerly called Journal of Forensic Linguistics.)

If I were serious about delving further into the subject of law and language, I felt I needed to know much more about the ‘law’ side of the coin, and so I considered dedicating part of a forthcoming sabbatical year to legal studies. A colleague urged me to apply to the Harvard Law School for one of its Liberal Arts Fellowships. The one-year grants were intended to enable faculty from other institutions to acquire a basic law background for undertaking legal research and for creating interdisciplinary courses after returning to their home campuses. In order to accomplish these goals, the recipients, of whom I was one of four, were encouraged to pursue the first-year program, to attend other classes and seminars, and to begin a personal research project. One of the lectures in a civil procedures course dealt with the concept of ‘the corporation as a person’ and I decided to take on that topic as my project. It eventually burgeoned into a full-scale article that was published in a law review. In Chapter 2, the reader will find some of these ideas.

Investigation into law and language is quite extensive, emanating not only from the field of linguistics, but also from other social sciences. Three principal strands of research have evolved.³ For some researchers, the primary concern centers on language, and the law provides relevant data for linguistic analysis and the testing of theories about language. For others, the law becomes the main ingredient, and language serves as a vehicle for understanding the legal process and the workings of that system. For still other researchers, the major interest resides in the disciplines of psychology, sociology, or anthropology, and language as it operates within the legal system functions as a means for investigating psychological processes, societal interactions, or cultural traits.⁴ Because my own academic training has been in linguistics, my approach to law and language tends to fall into the first category. Here are some topics directly concerned

with the language of the law that have been of personal interest. I do not treat all of them in the following chapters as some have been extensively dealt with elsewhere.

Legal English

The mention of legal language tends to conjure up in the mind of the layperson ‘legalese’ – that often incomprehensible verbiage found in legal documents as well as an arcane jargon used among attorneys. To elucidate how this ‘special dialect’ came about and how it differs from ‘ordinary English’, researchers have turned to the language of the law as a linguistic phenomenon in its own right, tracing its evolution and noting the peculiarities of its vocabulary and sentence structure. In fact, one of the first scholarly publications about law and language that I consulted was David Mellinkoff’s monumental work, The Language of the Law, published in 1963, nearly two decades before linguists would turn to legal language.⁵ Mellinkoff was not a linguist; he was a law professor at the UCLA School of Law, where he taught until his death in 1999. In his book he covers the historical development of legal English, beginning with its Anglo-Saxon roots and continuing on through the Middle English period right up to the present day, while acknowledging along the way the contributions from Latin and French. He considers too some of the grammatical features of this style of language as well as the social and cultural significances. Although clearly indispensable as a source for serious research into the language of the law, this nearly 500-page tome probably contains more information than the casual reader may need to know.

A more accessible account of the history of legal English is Peter Tiersma’s recent book, Legal Language.⁶ Tiersma too is a professor of law, but he also holds an advanced degree in linguistics; hence, his text appeals to both linguists and law professionals. In addition to treating the historical developments, he thoroughly explains why legal language is so often difficult for nonlawyers to comprehend. It is full of

wordiness, redundancy, and specialized vocabulary and it often contains lengthy, complex, and unusual sentence structure.

Plain English

In an endeavor to counteract the negative effects of legalese, there has developed a trend toward 'plain English'. It began as a consumer movement to simplify the language of the law so that the public can understand documents that they may be required to sign, such as apartment rental leases, insurance policies, or promissory notes.

The plain English movement has had a salutary effect as well within the legal process. Jurors do not always understand fully the instructions given to them by judges. To get at the root of this problem, Robert and Veda Charrow, psycholinguists, conducted several experiments.⁷ They had a group of subjects, who were Maryland citizens eligible for jury duty, listen to a tape recording of jury instructions. The subjects were to paraphrase what they heard to the best of their abilities. Surprisingly, almost half of the information was missing from some of the paraphrases. What exactly was causing the incomprehensibility? The difficulty was due, not so much to vocabulary items, but mostly to particular types of grammatical constructions, such as the occurrence of multiple negatives and the excessive use of passive sentences and of nominalizations. The experimenters then simplified the instructions by eliminating these complex sentence types and presented the revised versions to a second group of comparable subjects. Although the rewritten instructions did result in some improvement in the comprehension scores, it was also clear that it was highly unlikely that there would ever be complete understanding. A subsequent group of researchers then conducted some experiments to determine what exactly ought to constitute an acceptable level of comprehension.⁸ They proposed two standards: the lesser one stipulated that for eight out of ten juries at least eight members of a twelve-person jury ought to understand any given point of law; the stricter criterion required for nine out of ten juries a minimum of nine jurors.

The research into jurors' potentially poor comprehension alerted the legal community, and in an effort to tackle the problem some states have been revising their instructions. Here is an example of an old California instruction and of the corresponding new one written in 'plain English'. Both attempt to explain the distinction between direct and circumstantial evidence:⁹

Old California instruction: BAJI 2.00.

Evidence consists of testimony, writings, material objects or other things presented to the senses and offered to prove whether a fact exists or does not exist.

Evidence is either direct or circumstantial. Direct evidence is evidence that directly proves a fact. It is evidence which by itself, if found to be true, establishes that fact.

Circumstantial evidence is evidence that, if found to be true, proves a fact from which an inference of the existence of another fact may be drawn. A factual inference is a deduction that may logically and reasonably be drawn from one or more facts established by the evidence.

It is not necessary that facts be proved by direct evidence. They may be proved also by circumstantial evidence or by a combination of direct and circumstantial evidence. Both direct and circumstantial evidence are acceptable as a means of proof. Neither is entitled to any greater weight than the other.

New Instruction: No. 202

Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled. It can be an exhibit admitted into evidence. It can be someone's opinion.

Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white trail that jet planes often leave. This indirect evidence is sometimes referred to as “circumstantial evidence.”

In either instance, the witness’s testimony is evidence that a jet plane flew across the sky. As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of evidence whatever weight you think it deserves.

Nor should attorneys believe themselves to be immune from the plain English movement. They too must rethink how they write. Richard Wydick, a professor of law and author of a popular manual on legal writing, maintains that the best legal English is plain English, and he condemns that abstruse style so typical of many legal practitioners. He notes:

We lawyers do not write plain English. We use eight words to say what could be said in two. We use arcane phrases to express commonplace ideas. Seeking to be precise, we become redundant. Seeking to be cautious, we become verbose. Our sentences twist on, phrase within clause within clause, glazing the eyes and numbing the minds of our readers. The result is a writing style that has, according to one critic, four outstanding characteristics. It is “(1) wordy, (2) unclear, (3) pompous, and (4) dull.”¹⁰

The critic was none other than Mellinkoff, who was an early advocate for simplicity and clarity in legal expression and was highly critical of any lawyer's 'defense of "legalese"'.¹¹

We have noted that specialized vocabulary and unusual sentence structure both contribute to the peculiarities of legal writing. These two elements, lexicon and grammar, are the fundamental building blocks of every human language. To know a language – to speak it, write it, or understand it – requires control of both components. Imagine you were learning a foreign language and had memorized all of the common words with their various meanings but had studied no grammar. To create a sentence you wouldn't know in which order to place the words or what endings to attach to them. Conversely, if you were intimately acquainted with the grammar of a language (as many linguists are) but had no vocabulary items to plug into the slots where nouns, verbs, and other parts of speech are supposed to occur, you would also be incompetent as a speaker, writer, or hearer of that language. It is around this twofold nature of language that the four chapters of this book are structured. The first two deal primarily, although not exclusively, with word meaning; the last two with sentence meaning.

Ambiguity and Misunderstanding

A word may have more than one meaning or dictionary definition, and if there is no context to suggest which of the possible senses is intended then the word will be ambiguous. In Chapter 1, we look at three court cases that the law describes as containing ambiguity. One of them deals with a contract for the sale of chickens. The buyer contends that a 'chicken' is a young bird suitable for broiling or frying, but definitely not a stewing fowl. The seller maintains that a 'chicken' is any suitable member of the species regardless of age. Which definition will the court embrace? Another case deals with two different ships coincidentally having the same name, a fact apparently unknown to the protagonists of this dispute, also a buyer and a seller. The former expected the goods he

had purchased to be placed aboard a ship called the ‘Peerless’ leaving in October; the seller put the merchandise on a different ‘Peerless’ departing in December. The buyer refused to accept the later shipment. Which ‘Peerless’ should the court read into the contract? The third case once again is about chickens. The Interstate Commerce Commission, responsible for regulating the transportation of manufactured products among the states, asserts that ‘frozen eviscerated chickens’ fall into this category. The Department of Agriculture insists that the birds, although processed, nonetheless are still bona fide agricultural commodities of the type that do not fall under the shipping jurisdiction of the ICC. Will the Court decide that frozen eviscerated chickens are manufactured products or agricultural commodities?

Within linguistics the term ‘ambiguity’ has a more restricted meaning than the one generally occurring in law and in popular usage, where it is not uncommon for the term to refer to a construction that is unclear, uncertain, or vague. Although the three court cases do exemplify ‘ambiguous words’ in this general sense, the narrower linguistic signification will reveal how the cases are really quite different from one another as each represents a different type of misunderstanding.

There is also syntactic ambiguity. In English, this kind is most often due either to the order of the words in a sentence or to grammatical properties, such as the relationship between a pronoun and possible words to which the pronoun may refer. In Chapter 1, we examine a court case where syntactic ambiguity has become a life-or-death issue. The Supreme Court of the United States must decide the constitutionality of a jury instruction that contains an adjective followed by several nouns. Does the adjective modify only the noun immediately after it or all of the nouns in the series? Even though the distinction may seem rather trivial, this instruction originally was given to a jury deliberating in a capital case. Now a man’s life is to hinge on the Court’s resolution of the ambiguity!

Metaphor and Legal Fictions

One of the ways that words acquire new meanings is through metaphor. Consider, for example, the following expressions: a broken vase, a broken leg, a broken heart, a broken promise. The most basic, literal meaning of ‘broken’ would characterize a physical object, such as a vase, and it is easy enough to see the extension of this word to body parts containing bones. Although a human heart is also a concrete object, a heart that is broken has not been shattered physically into several pieces. And a promise would not be any kind of physical entity at all. The application of ‘broken’ to hearts and promises was doubtless metaphorical in origin, although today we no longer think of it as such. Because we view these expressions as natural ways for describing these situations, ‘broken’, for all intents and purposes, is a word with several different meanings, as any dictionary will reveal. We return to this important point in Chapter 2.

The law too has expressions that began as metaphors – for example, a meeting of the minds, a ripening of obligations, a binding agreement, a broken contract. However, the law has found the need for an even more intriguing kind of metaphor – the ‘legal fiction’. Acknowledged not to be literally true, nonetheless fictions are treated as though they were. Lon Fuller, who was a law professor at Stanford University and whose book, Legal Fictions, is now a classic, introduced this topic to the English-speaking legal community.¹²

I examine in depth two of the more notorious fictions. One of them is the ‘attractive nuisance’ doctrine. A child wanders onto a stranger’s property and is injured due to the presence of an unsafe condition on the premises. The dangerous object or condition is an attractive nuisance that has ‘invited’ the child onto the property, and consequently, the child is treated not as a trespasser but as an invitee. The other fiction is the well-known one of ‘the corporation as a person’, the topic that had become my first research project. Because corporations legally can engage in many of the same kinds of

activities as people, such as owning property or entering into agreements, the law will often deal with corporations as though they were indeed persons.

Although fictions are not true, they are not lies either for there is no malicious intent to deceive. Fuller observes:

Anyone who has thought about the legal fiction must be aware that it presents an illustration of the all-pervading power of the word. That a statement which is disbelieved by both its author and his audience can have any significance at all is evidence enough that we are here in contact with the mysterious influence exercised by names and symbols. In that sense the fiction is a linguistic phenomenon.¹³

This linguistic phenomenon has its basis in metaphor. Now one tends to think of metaphor as belonging mostly to literary and rhetorical language. However, research in cognitive linguistics over the past twenty-five years has shown this perspective to be untenable. Rather metaphor structures ordinary thinking and speaking. George Lakoff, a linguist, and Mark Johnson, a philosopher, with the publication of their book, Metaphors We Live By, ushered in a completely new way of studying the interrelation of thought and speech.¹⁴ They note:

The concepts that govern our thoughts are not just matters of the intellect. They also govern our everyday functioning, down to the most mundane details. Our concepts structure what we perceive, how we get around in the world, and how we relate to other people...If we are right in suggesting that our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much a matter of metaphor.¹⁵

I shall use this cognitive approach to metaphor in my analysis of legal fictions. Although at first they may appear to be clever inventions for the sole convenience of the law, the

fictions actually have their origins in conceptualizations that have long been a part of normal language and thought.

Speech Acts

In Chapters 3 and 4 we go beyond the meaning of individual words and turn to the interpretations of complete utterances. Both chapters adopt speech act theory as their linguistic foundation for legal analysis. The theory is concerned with how speakers intend to use language and how hearers comprehend what is said to them and how they respond. This approach owes its success to the pioneering work of two language philosophers, John Austin of Oxford University and John Searle of the University of California at Berkeley. Austin's How to Do Things with Words and Searle's Speech Acts have influenced all subsequent research in this field.¹⁶

The term 'speech act', due to Searle, is particularly appropriate for describing how speakers put language to use. When talking one regularly does much more than just mouth words. One also engages in or performs some kind of act. In fact, Austin routinely employed the term 'performative' for this activity. Here are some examples: A minister who, under the proper circumstances, says, 'I now pronounce you husband and wife', by means of these words helps to bring about the marital state; when an umpire yells 'you're out', a player thereby becomes 'out' at that very moment; if I inquire, 'what time is it?', I am engaging in an act of asking a question; if I say to you, 'leave the room!' I have issued a command; and if I sincerely tell you, 'I promise to take you to Paris next weekend', by uttering this sentence I have placed myself under a commitment to you. According to Searle, speech act theory aims to find answers to the following sorts of questions:

How do words relate to the world? How is it possible that when a speaker stands before a hearer and emits an acoustic blast such remarkable things occur as: the speaker means something; the sounds he emits mean

something; the hearer understands what is meant; the speaker makes a statement, asks a question, or gives an order? ¹⁷

Certain speech acts have legal import, such as promising to repay a loan or accepting an offer for a piece of property. Some take legal effect only under special conditions: during a marriage ceremony, two persons each declaring 'I do'; just before testifying in court, a witness vowing 'to tell the truth, the whole truth, and nothing but the truth'; or at the inauguration proceedings, the President swearing 'to uphold the Constitution of the United States of America'. Still other kinds of speech acts are unlawful and severe penalties may be attached to their performance: asserting knowingly a false statement when under oath; threatening to harm physically an ex-spouse; or offering a bribe to a public official.

For the latter class of speech acts, Roger Shuy has coined the term 'language crimes', which is also the title of his fascinating book where he discusses bribery, extortion, threatening speech, and even solicitation to murder. ¹⁸ Shuy, a sociolinguist, has served as an expert witness and a consultant on a multitude of criminal cases where the prosecution presented taped evidence, much of which was surreptitiously recorded by government agents. Using the tools of discourse analysis and of speech acts, he examines chunks of text or conversation and demonstrates how dialogues are intricately structured – that is, which participant initiates a topic of conversation, which topics are dropped or recycled, and which speech acts have actually occurred or only seemingly so. Shuy's book is a stunning account of the application of linguistic methodology for the investigation of crucial issues within the criminal law.

Lawrence Solan, a law professor with an advanced degree in linguistics, in his book, The Language of Judges, looks at the speech act of 'admitting' in relation to the 'self-incriminating' clause of the Fifth Amendment to the U.S. Constitution. It states that 'no person...shall be compelled in any criminal case to be a witness against himself'. ¹⁹

Solan defines an ‘admission’ as an intentionally communicative act that goes against the speaker’s interest and, as a consequence, may well be self-damaging and self-incriminating.

Peter Tiersma has written several legal articles making extensive use of speech act theory. He has looked at the language of defamation and at the question of what constitutes perjury.²⁰ He finds that the speech act of ‘accusing’ is a fundamental aspect of a defamatory statement. Moreover, the accusation must concern an act that is considered reprehensible or blameworthy in the eyes of the community. Turning to perjury, Tiersma notes that it raises the interesting possibility of whether an assertion that is ‘literally true’, but is not ‘the whole truth’, counts as perjury. He provides the following example: Your boss asks, ‘why weren’t you at work?’, and you respond, ‘I was sick yesterday’. In actuality, you became ill only toward evening. Have you lied? Solan and Tiersma, in their book, Speaking of Crime, present an insightful analysis of the perjury allegation in the Clinton impeachment trial, where the president, when questioned about his relationship with Monica Lewinsky and the frequency of their encounters, adroitly engaged in the tactics of a ‘literal truth’ defense.²¹

Speech acts have found their way into other areas of the law. Dennis Kurzon analyzes legislatures’ promulgations of statutes as the speech act of ‘enacting’.²² For example, many laws, both in Britain and in the United States, begin with the formula: ‘Be it enacted, That...’.

Hearsay

The rule against hearsay concerns those statements that may be admitted as evidence by a testifying witness in court. The law has carefully worked out a classification of the kinds of utterances that would not be hearsay and hence are admissible. Appended to this is a long list of exceptions, statements that technically would be hearsay but nonetheless will be admitted into evidence. In Chapter 3, I apply speech act theory to an analysis of

hearsay data, and I show how the various speech act components neatly accommodate all of the traditional legal categories. As for the exceptions, the main interest will center on statements having to do with ‘state of mind’. Legal scholars have argued whether such utterances indeed are exceptions or whether in reality they should be considered nonhearsay. Speech act analysis offers an interesting perspective on this longstanding debate within the law of evidence.

Contract Law

A valid legal agreement or contract has three essential requirements: an offer, an acceptance, and consideration. Suppose, for example, that I make the following offer: ‘I will sell you my car for \$1500.’ You may accept my offer, reject it, make a counteroffer, or even do nothing. Let us assume that you accept it. Then there will be a binding contract if there is a valuable ‘consideration’ in return for the automobile. There indeed is – namely, the \$1500 that you will hand over to me. Thus, consideration involves a quid pro quo: my car in exchange for your \$1500.

Classical Anglo-American contract law considers the notion of ‘promise’ as essential to a valid agreement, although this view is by no means universal. Legal scholars have battled back and forth with this issue and, in Chapter 4, we shall look at some of the pros and cons. Nonetheless, the role of promise will be crucial for a speech act analysis of offer and of consideration.

We noted that some speech acts, if they are to take effect, must be performed by particular individuals and under the appropriate circumstances – for example, only a properly empanelled jury can declare a defendant ‘Guilty!’. Hence, in order for a speech act to be well formed, it must satisfy certain criteria known as ‘felicity conditions’. Searle has proposed a set of felicity conditions for characterizing well-formed ordinary promises.²³ These criteria, with some minor tweaking, will suffice to accommodate the

special requirements of legal offers. Moreover, the satisfaction of these conditions simultaneously will ensure valid consideration.

About this Book

My own research agenda has been to look at areas of interest in linguistics and to find similar topics of concern in the law. Each of the four chapters of this book presents a major area where language and law intersect in this way. The linguistic topics include: ambiguity, metaphor, speech acts, and promise. The corresponding legal themes cover: misunderstanding, legal fictions, hearsay, and contract formation.

Each chapter in turn contains four sections. The first section is concerned with the law. It introduces the legal topic for the chapter, notes relevant court cases, and furnishes necessary background information. The second section concentrates on language. It provides the linguistic notions and explains the theoretical concepts that will be required for analyzing the legal material. The third section presents the analysis. It offers an insightful account and at times a novel treatment of the legal data. The fourth section deals with the language and law interface. It considers the relevance of linguistic analysis to the legal material presented in the chapter. In the Appendix, I have included excerpts of some of the court cases that I discuss. To facilitate the identification of these twelve cases, I cite them in the regular way (e.g. California v. Brown) within the main text. Other cases are not cited in this way, but proper reference to them can be found in the endnotes accompanying the discussion of those cases in the text.

Much of the material to be covered here began as lectures from a course on law and language that I have been teaching annually, for nearly twenty years, at the University of California at San Diego.²⁴ The class attracts a sizeable number of students contemplating law school, a handful of linguistics majors, and a healthy group of the curious. Because of this diverse mix, there are no course prerequisites: I do not require

any prior training in formal language analysis for the potential law students or any previous course work in legal studies for the linguists.

Throughout this book, I have taken a similar approach for the presentation of subject matter. I realize that some readers will have had prior exposure to legal studies, others will have had previous training in linguistics, and still others may have had little experience in either discipline. Therefore, I have not presupposed any particular background on the part of the readers. To accommodate the different interests and varying levels of preparation I have tried throughout to explain clearly all necessary linguistic and legal concepts and, where possible, to do so in a nontechnical manner. I have incorporated all of this material into the main body of each chapter. The endnotes contain reference information exclusively. I have endeavored to make this book accessible to a wide audience – to legal scholars and language professionals interested in the intersection of law and linguistics; to students and academics encountering this interdisciplinary area for the first time; and to those general readers curious to know more about the intriguing connection between language and the law.

Endnotes to Introduction

¹ David Mellinkoff, The Language of the Law. Boston: Little, Brown & Co. 1963:vi.

² For a review and an excellent bibliography of the law and language research in the social sciences up to 1990, see Judith N. Levi, 'The study of language in the judicial process' in Language in the Judicial Process, Judith N. Levi & Ann Graffam Walker (eds). New York: Plenum Press. 1990:3-35; see also Peter Tiersma's online bibliography that includes more recent works at: <http://www.languageandlaw.org/BIBLIO.HTM>.

³ Levi, pp. 3-4.

⁴ For the language-oriented approach, see Peter Tiersma, Legal Language. Chicago: University of Chicago Press. 1999; Lawrence M. Solan, The Language of Judges. Chicago: University of Chicago Press. 1993; and Lawrence M. Solan and Peter M. Tiersma, Speaking of Crime: The Language of Criminal Justice. Chicago: University of Chicago Press. 2005. For the law oriented approach, see John Gibbons, Forensic Linguistics: An Introduction to Language in the Justice System. Oxford: Blackwell Publishing. 2003. For the social sciences approach, see John M. Conley and William M. O'Barr, Just Words: Law, Language, and Power (2nd ed.). Chicago: University of Chicago Press. 2005.

⁵ David Mellinkoff, The Language of the Law. Boston: Little, Brown & Co. 1963.

⁶ Peter Tiersma, Legal Language. Chicago: University of Chicago Press. 1999.

⁷ Robert P. Charrow and Veda R. Charrow, 'Making Legal Language Understandable: A Psycholinguistic Study of Jury Instructions', 79 Columbia Law Review. 1979.

⁸ Amiram Elwork et al., Making Jury Instructions Understandable. Charlottesville, Virginia: Michie/Bobbs-Merrill. 1982:438.

⁹ Tiersma has been a member on a California task force for revising jury instructions; the examples of jury instructions cited in the text are from his web site:

<http://www.languageandlaw.org/JURYINST/COMPARE2.HTM>.

¹⁰ Richard C. Wydick, Plain English for Lawyers (4th ed.). Durham: North Carolina: Carolina Academic Press. 1998:3.

¹¹ See the web site: <http://www.law.ucla.edu/home/index.asp?page=835>; also David Mellinkoff, Legal Writing: Sense and Nonsense. New York: Scribner. 1982.

¹² Lon L. Fuller, Legal Fictions. Stanford California: Stanford University Press. 1967.

¹³ *Ibid.*, p. 11.

¹⁴ George Lakoff and Mark Johnson, Metaphors we Live By. Chicago: University of Chicago Press. 1980.

¹⁵ *Ibid.*, p. 3.

¹⁶ John Austin, How to do Things with Words (2nd ed.). Cambridge, Mass.: Harvard University Press. 1962; John Searle, Speech Acts: An Essay in the Philosophy of Language. Cambridge: Cambridge University Press. 1969.

¹⁷ Searle, p. 3.

¹⁸ Roger W. Shuy, Language Crimes: The Use and Abuse of Language Evidence in the Courtroom. Cambridge, Mass.: Blackwell Publishers. 1993; see also Shuy, The Language of Confession, Interrogation and Deception. Thousand Oaks, CA: Sage, 1998; and Shuy, Creating Language Crimes: How Law Enforcement Uses (and Misuses) Language. Oxford: Oxford University Press. 2005.

¹⁹ Solan 1993, pp. 155-63.

²⁰ Peter Tiersma, 'The language of defamation'. 66 Texas Law Review. 1987; 'The language of perjury: "Literal truth," ambiguity and the false statement requirement'. 63 Southern California Law Review. 1990.

²¹ Solan and Tiersma, pp. 221-33.

²² Dennis Kurzon, It is Hereby Performed: Explorations in Legal Speech Acts. Amsterdam: John Benjamins. 1986.

²³ John R. Searle and Daniel Vanderveken, Foundations of Illocutionary Logic. Cambridge: Cambridge University Press. 1985:57-61.

²⁴ My course web site can be found at: <http://ling.ucsd.edu/courses/lign105>.