



Article Title

The Business of Words; Whose domain?

Author

Thomas Davidson

Bio Data

The first submission is by presented by Mr. Thomas Davidson, a lawyer from Hong Kong. Mr. Davidson received his LL.B. from Oxford, and later obtained an Ma in Education from the South Australian University. He has been practicing for 27 years, has appeared before Supreme Courts in Australia, and in the High Court and Old Bailey in London. Currently he is practicing in the field of International Law and Consumer Protection.

Introduction

"Politicians frame words.
Lawyers play with words.
Judges interpret words.
Teachers teach words!"

Both the teaching of English and the practice of law have one thing in common. They both concentrate on 'words.' For the civil lawyer drafting a contract, he looks at each word, and carefully adds or deletes a word such that his contract is not vague or capable of two meanings. He uses words such as, 'may,' 'must,' 'can't,' 'shan't,' 'will,' etc, in deciding what degree of essentially he wants attached such that the other side knows exactly what it is the contract is saying. But this type of law is limited to the written word. Similarly, the law of intestacy (or wills,) is on the whole, written in precise unambiguous wording; though video wills are gaining popularity in some places.

But what of the law where the spoken word is critical. Consider criminal law, the law of defamation, (slander) the rules of corroboration, consider the rules of hearsay, to but mention some areas of law where what has been said is critical. Consider the more unpleasant law of rape, where not only what was said but how it was said may be vital. This area of law is the jealously guarded domain of lawyers. Yet on the whole lawyers know very little about the fundamental workings of their English language, its grammar, syntax, rules, except from their inherent knowledge.

Consider a murder trial where (in Australia, New Zealand and the UK) intention to kill must be proved beyond reasonable doubt to acquire a conviction. But intention in many occasions can come down to just what the spoken word said was. To fail in this burden of proof may see a lesser charge of manslaughter substituted namely a defeat for the prosecution and victory for defense.

In court the lawyers play with words, and the jury must consider the words, the meanings, the way it was said, when and where, the circumstances, in order to reach a decision. At law, in the absence of evidence to the contrary, the legal parties are presumed to have used the words in their ordinary meaning. (Heydon.J. 1996, 265) One may wonder at the boldness of this statement, especially one familiar with TEFL teaching!

Consider the story of Alice in Wonderland. (Dodgson, C.L. 1865) The lovable Humpty Dumpty says to Alice during one oral interlude, "When I say a word it means exactly what I want it to mean."

This particular sentence needs careful examination, not only in the field of law, where the meaning of words is grossly ignored, but also by teachers of English, for its story line meaning goes far beyond its original meaning and carries a more modern truth.

The first part of Humpty's sentence is vital. "When I say a word..." At first blush one considers no more than 'a word' emanating from the organs of speech. But it is far more than that. That 'one word' contains unlimited qualities, as any teacher of English as a second language (or another language) will testify to. What if Mr. Dumpty said, "I'm going to kill you." At law these words constitute a crime, irrespective of whether the act

was carried out or not. But much rides on the word "going." It may be said with a venomous tongue, a vague or uncertain slowness, a rising manic pitch, a falling non-threatening pitch, even stress on the wrong syllable, or combined with non oral movement such as a body language look that shows frustration, amusement, or even that the exact opposite is in fact what is meaning to be expressed.

Maybe Humpty, who we shall assume for this exercise is carrying no weapon, may be expressing, via spoken words and/or non oral communications, one of the following;

- 1- I am really going to kill you and you will die imminently.
- 2- I am thinking about killing you but not imminently.
- 3- I am upset at your behavior only.
- 4- You have done something quite silly or stupid requiring oral admonition.
- 5- Disbelief that Alice could have done something that affects HD.
- 6- You displease me.
- 7- You please me so much suitable words fail me with a nonverbal movement.
- 8- Mr. Humpty is afraid he has been overworking Miss Alice.
- 9- Mr. Humpty is going to inflict pain falling short of death.
- 10- Mr. Humpty is joking.

How the sentence was pronounced, the speed, the rhythm, pitch, if any, are all important in determining the intentions of Mr. Dumpty. But consider the investigating police officer. He is confined to recording the words in print only. He does not attach a possible explanation from 1-10 to the sentence. He arrests our suspect and locks him up. The written word completely fails in its function to indicate the accused's intentions. The police officer is neither trained in linguistics nor the field of pronunciation to be able to competently reenact the scene.

Of course this assumes the police officer heard the words, which in most instances does not happen. Usually the words are recounted by witnesses, who tell the inquiring detective just what Dumpty said, at least what in their opinion and belief they thought was said. But maybe the words were accompanied by non-oral communication, (body

language) which were absolutely essential to Dumpty in his conveyance of the message. Maybe one of the following items of body language (non verbal communication) was used;

- 1) a wink
- 2) throwing the head back and closure of the eyes
- 3) a slow shaking of the head
- 4) a wagging of the finger
- 5) an angry screwed up face
- 6) shaking furiously of the arms
- 7) a long hard glare
- 8) a wry smile
- 9) placing the hand on the forehead
- 10) a wave (brush) of the hand

And so the matter goes to court where the prosecutor and defense counsel argue over what was said. But for anyone who has ever been into a courtroom, you do not hear the lawyers argue over the complexities of linguistics, for they are not qualified nor competent. They argue 'the ordinary' meanings, as they see the best interpretation for their client. The body language is 'played down' and rarely is connected effectively to the organs of speech by the counsel, for they generally do not appreciate the significance. The jury then has the delicate function of putting the words into context and deciding someone's fate without the benefit of having the linguistic significance of either the words used or nonverbal communications explained to them!

Consider the jury deliberating a case in the following passage.

A- That's the judge because of his great wig.

And that's the jury box...and those 12 creatures I suppose are the jurors?

The 12 jurors were all busy writing on their slates.

A- "What are they doing? The can't have put anything down yet before the trial's begun."

B- "They're putting down their names for fear they should forget them before the trial ends."

A- "Stupid things!" Alice began in a loud indignant voice.

Here we are at the trial of the unlucky knave who stole the Queen of Tarts in Alice in Wonderland. We also have one very doubtful Alice wondering over the ability of the jury. She concludes her speech in an 'indignant' voice. How does 'it' sound? What are the variations of saying "Stupid things," in an indignant voice? For each reader there may be numerous answers! One can plausibly imagine any one of half a dozen scenarios as Alice simultaneously speaks, and it is submitted, if in an indignant vice, then some form of descriptive nonverbal communication must have accompanied her words.

Thus what we have here is an acute problem with pronunciation, not only for the speaker, but also for the listener. All critical elements in the teaching of pronunciation. All critical elements in the law. And many persons have extreme difficulty in determining pitch qualities. The implications for the teacher and especially defense counsel are enormous.

Although the field of TEFL is in its infancy, there surely is the need for experts in the field of linguistics to preside or be called to give evidence at trials where 'words' and their sayings, meanings, intentions, need careful consideration. Lawyers do not pronounce on medical terms, for it is not in their competence. Doctors are called. Similarly, teachers of English, especially those of English as a foreign language, have a useful and often vital place in the legal system! For is it correct to say a lawyer, (who studies only law with maybe a second ordinary degree) can comment on the English language anymore than a lawyer can comment on medical conditions? In a flawed legal system the answer is yes. In a fair and just system the answer is no.

But pronounce the words 'fairness' or 'justice' in a sentence, and what 'images' do they conjure up? The listener hears and imagines an idea, (providing the listener heard correctly) but as Burke, the 18th century philosopher noted, words such as the aforementioned give rise to "...a strange confusion of ideas and affections..." This surely emphasizes the strange yet entangled relationship between pronunciation of a word or

words, and the listener's comprehension followed immediately by that listener's imagery attached to the pronounced words and clearly, as we shall discover, the way in which the words were said and accompanied by subtle nonverbal communications..

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