

ARLT 100
Language, Law, and Literature
Fall 2014

Time: Mondays and Wednesdays, 12:30 to 1:50 p.m.

Place: VKC 155

Instructor: Prof. Sandra Ferrari Disner
GFS 301n
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Office hours: TBA

Course description:

Language is the attorney's essential tool in activities such as arguing a case, drawing up a contract, or defending a trademark. It is used by police to request permission to conduct a search, by detainees to invoke their right to legal counsel, and by victims to describe their ordeal.

The precise, clear, and artful use of language has for centuries affected the outcome of legal disputes -- even long before the plot of *The Merchant of Venice* famously turned on Portia's linguistic skills.

This course will examine some of the landmark issues in American jurisprudence through the prism of language. Whether discussing the Miranda rights of detainees, or the treatment of rape victims on the witness stand, or the responsibilities of jurors, or the deniability of an instigation to murder, we will first review the case law, then illuminate it with linguistic principles, and finally explore the use of legal language in some notable works of literature, film, and ballad.

Linguistics can shed a great deal of light on the language of the law. It can reveal where laws and legal documents are ambiguous, and where they may be susceptible to lawyerly manipulation. It can point out all the promises implied, but never actually specified, in a legal document. It can highlight the power relationships in courtroom interactions between lawyer and witness, or those between police and suspect. It can justify the use of the sentence, "It depends on what the meaning of the word 'is' is."

All of the linguistic tools and concepts needed for this course will be introduced early in the semester. *There are no prerequisites for this course.*

Grades will be based on four written assignments (supplemented by occasional questions posed in class), a midterm exam, and a final exam.

Course objectives:

After reading case law and related works of literature, film, and ballad, the student should be able to:

- Demonstrate the ability to critically analyze legal discourse, including courtroom questioning, police interrogation, invocation of rights, overt and covert threats, warnings, and promises.
- Recognize structures that merely imply, rather than state, certain facts.
- Recognize ambiguity in the structure and vocabulary of legal discourse.
- Recognize the linguistic and societal influences upon jurors which may countervail the direct evidence presented in court.
- Discern power imbalances in courtroom interactions.
- Appreciate the subtle power of legal language in some of the great works of world literature.

Readings:

Case law:

Anderson v State Farm Mutual Automobile Insurance Co. 270 Cal. App. 2d 346

Berghuis v. Thompkins 130 S. Ct. 2250

Davis v. United States 512 U.S. 452

Miranda v. Arizona 384 U.S. 458

People of the State v. Defendant [1979 rape trial, with names and details redacted]

Regina v. Bentley 1 Cr. App. R. 307 (U.K.)

Schneckloth v. Bustamonte 412 U.S. 218

California Criminal Jury Instructions for Judges and Attorneys, section on Homicide

Commentary on case law:

Ainsworth, Janet, 1993. "In a Different Register: The pragmatics of powerlessness in police interrogation." *Yale Law Journal* 103:259-322.

Ainsworth, Janet, 2008. "'You have the right to remain silent...' but only if you ask for it just so." *International Journal of Speech, Language and the Law* 15:1-21.

Ainsworth, Janet 2012. "The meaning of silence in the right to remain silent". *Oxford Handbook of Language and Law*. Oxford: Oxford University Press. pp. 287-298.

Davis, Deborah and Leo, Richard (2012). "Interrogation through pragmatic implication: sticking to the letter of the law while violating its intent". *Oxford Handbook of Language and Law*. Oxford: Oxford University Press. pp. 354-68.

Elwork, Amiram, Sales, Bruce & Alfini, James (1982) *Making Jury Instructions Understandable*. Charlottesville: Michie.

Solan, Lawrence, 1999. "Can the Legal System Use Experts on Meaning?" *Tennessee Law Review* 66: 1167-99.

Tiersma, Peter, 1995. "Dictionaries and Death: Do capital jurors understand mitigation?" *Utah Law Review* 1995: 1-49.

Tiersma, Peter & Solan, Lawrence, 2004. "Cops and robbers" *Law & Society Review* 38(2): 229-66.

Ward, Colleen, 1995. *Attitudes Towards Rape*. London: Sage.

[Most of these works are available online, or are on reserve at Leavey Library. Those that are not have been reprinted in a course reader, available at the USC Bookstore.]

Works of world literature, film, and ballad, including:

Anatomy of a Murder by Robert Traver (pen name for Michigan Supreme Court Justice John D. Voelker), and excerpts from the 1959 film directed by Otto Preminger.

Bartleby, the Scrivener, by Herman Melville

Let Him Dangle, lyrics by Elvis Costello

The Merchant of Venice, by William Shakespeare

Murder in the Cathedral, by T.S. Eliot

Richard II, by William Shakespeare

Sanctuary, by William Faulkner

Tristan and Isolde, by Gottfried von Strassburg

Twelve Angry Men (1957 film directed by Sidney Lumet, screenplay by Reginald Rose).

The Bible

Grade components:

1. Class participation (14% of final grade), including occasional written questions to be completed in class, designed to probe your knowledge of the week's reading(s). Each student's lowest-graded question will be discarded.
2. Four written assignments (36% of grade) Points will be deducted for late submission without a valid and documented reason, such as illness.
3. Midterm quiz (25% of grade)
4. Final exam (25% of grade)

Academic integrity:

Students are expected to uphold the USC Student Conduct Code (<http://web-app.usc.edu/scampus/university-student-conduct-code/>). Violations of the code (see <http://web-app.usc.edu/scampus/1100-behavior-violating-university-standards-and-appropriate-sanctions/>) harm every student in the class. Any student who is found cheating on an exam or homework, or who facilitates cheating by another student, will receive no credit for that work. Further action will also be taken if necessary.

Students with disabilities:

Students needing special accommodations (e.g., longer exam time) due to a physical or learning disability should contact the instructor as early in the semester as possible, and should also contact Disability Services and Programs (DSP). See their webpage at http://sait.usc.edu/academicsupport/centerprograms/dsp/home_index.html)

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Tentative Course Schedule:

August 25: Course introduction

August 27, September 3 and 8: Invocation of Miranda rights

Miranda v. Arizona 384 U.S. 458

Davis v. United States 512 U.S. 452

Ainsworth (2008): "'You have the right to remain silent...' but only if you ask for it *just so*".

Assignment 1 (due 9/15): Write a reaction paper to Ainsworth 2008, making sure to express your own views on what ought to count as a proper invocation of one's Miranda rights.

September 10 and 15: Conversational implicatures

Ainsworth (1993): "In a Different Register: The pragmatics of powerlessness in police interrogation."

Selected passages from the following works:

Murder in the Cathedral, by T.S. Eliot ("Will no one rid me of this turbulent priest?")

Richard II, by William Shakespeare ("Have I no friend will rid me of this living fear?")

Tristan and Isolde, by Gottfried von Strassburg ("I have never been in any other man's arms")

September 17: The linguistics of silence

Ainsworth (2012) "The meaning of silence in the right to remain silent"

Supreme Court decision *Berghuis v. Thompkins* 130 S. Ct. 2250

Bartleby, the Scrivener, by Herman Melville

Also, discussion of Assignment 1.

September 22 and 24: Ambiguity

Anderson v State Farm Mutual Automobile Insurance Co. 270 Cal. App. 2d 346

Solan (1999) "Can the Legal System Use Experts on Meaning?"

The Merchant of Venice, by William Shakespeare.

September 29 & October 1: Consenting to a search

Schneekloth v. Bustamonte 412 U.S. 218

Tiersma & Solan (2004) "Cops and Robbers", pp. 229-239 (on Blackboard)

Assignment 2 (due 10/8): Write a reaction paper to Tiersma & Solan 2004, making sure to express your own views on what ought to count as a proper request for a consensual search.

October 6: Legal language

Tiersma, Peter, 1995. "Dictionaries and Death: Do capital jurors understand mitigation?"

Utah Law Review: 1-49.

October 8: Questions on the witness stand I: How to phrase a question

Davis & Leo, 2012. "Interrogation through pragmatic implication: sticking to the letter of the law while violating its intent"

October 13: Discussion of Assignment 2, and review for midterm exam.

October 15: Midterm exam

October 20: Discussion of midterm exam, and introduction to courtroom practices.

October 22: Courtroom practices.

Guest speaker: William Weiss, Esq.,

Chief Public Defender (ret.), Los Angeles County Courthouse, Van Nuys.

October 27 and 29: Jury instructions

California Criminal Jury Instructions for Judges and Attorneys, section on Homicide

Excerpts from the film *Twelve Angry Men*

Guest speaker: Prof. Ellen Leggett, USC Department of Psychology.

November 3: The intelligibility of jury instructions

Elwork, Sales, and Alfini (1982). *Making Jury Instructions Understandable*.

(excerpts on Blackboard)

Assignment 3 (due 11/10): Review the writings on jury instructions by Tiersma (*Dictionaries and Death*) and by Elwork et al. (*Making Jury Instructions Understandable*), as well as the comments made in class by Prof. Leggett. Then peruse the *California Criminal Jury Instructions for Judges and Attorneys* and select at least one (and up to three) of these sample jury instructions for analysis.

Comment on its overall level of intelligibility. Then search for specific vocabulary items and grammatical structures that are potentially ambiguous or misleading (such as Tiersma's examples of "aggravating" and "mitigating" circumstances, two concepts that are critical in a jury's decision whether to impose the death penalty). Describe some different interpretations that jurors might accord to such words and sentences. Conclude by commenting on the prevalent judicial practice of reading jury instructions aloud, rather than providing written instructions (and dictionaries) to the jurors.

November 5: The police statement: The case of Derek Bentley

Readings on Blackboard by Malcolm Coulthard.

"Let Him Dangle" by Elvis Costello <https://www.youtube.com/watch?v=eVpctlj1KA0>

November 10: The language of police interrogations

November 12: Attitudes toward rape

Ward, 1995. *Attitudes towards rape* (excerpts on Blackboard)

Discussion of Assignment 3.

November 17 and 19: Questions on the witness stand II: The rape trial

Trial transcript of [People of the state] v. [Defendant] 1979 [names redacted]

Excerpts from *Sanctuary*, by William Faulkner

Film clips from *Anatomy of a Murder*, directed by O. Preminger, screenplay by R. Traver

Assignment 4 (due 11/26): Write a reaction paper to Ward 1995, focusing on at least one "rape myth" (that is, a commonly held but inaccurate assumption about rape, such as the significance of promptly reporting the offense, or of provocative behavior or clothing) which you, as a juror, might have found persuasive.

November 24: The work of the forensic linguist I: Defamation and the wording of contracts

Guest speaker: TBA [likely to be Prof. Edward Finegan, Director, USC Center for

Excellence in Teaching]

November 26: The work of the forensic linguist II: Speaker identification
Biblical story of Isaac's blessing of Jacob. (Genesis 27: 1-38)

December 1: Review for final exam
Also, discussion of Assignment 4.

December 3: Overall course summary

December TBA: Final exam
