

Linguistics 412
Language and the Law
Fall 2015

Time: Tuesdays and Thursdays, 12:30 – 1:50 pm

Place: GFS 105

Instructor: Prof. Sandra Ferrari Disner
GFS 301n
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Office hours: To be announced

Course description: Language is the attorney’s primary tool in activities such as arguing a case, drawing up a contract, or defending a trademark.

Attorneys typically pride themselves upon the precision and clarity with which they use language. Yet ambiguities abound in legal documents. (Someone accused of “knowingly selling a prohibited substance to a minor” may, for example, insist that the adverb ‘knowingly’ only refers to the illegality of the substance, not to the age of the purchaser.) The clever use of conversational implicatures can be misleading (e.g., the use of 'could' promises nothing). Studies have revealed that jurors do not always understand fully the instructions given to them by judges, and that most defendants do not know how to properly invoke their Miranda rights. And the Plain English Movement, which seeks to make legal documents understandable and accessible to all, has encountered resistance from attorneys who are concerned about – of all things – precision and clarity.

An interdisciplinary approach can shed considerable light on the complexities of legal language in real-life settings. The principles of linguistics, psychology, and sociology are able to provide insights into the differences between legal language and ordinary language in referring to the same concept. They can point out all the promises implied, but never actually specified, in a contract. They can determine whether jury instructions are within the grasp of the typical juror. They can even justify the use of a sentence such as, "It depends on what the meaning of the word 'is' is."

All of the concepts and methodology needed to analyze the legal language under discussion will be taught early on in class. *There are no prerequisites for this course.*

Grades will be based on homework assignments (supplemented by occasional in-class quiz questions), a midterm exam, attendance, and a final project.

Course objectives:

- Demonstrate the ability to critically analyze legal discourse, including threats, warnings, and promises.
- Relate characteristics of legal language to their historical origins and contemporary functions.
- Evaluate the proposed “Plain Language” reforms, and their likelihood of adoption.

- Distinguish various types of ambiguity: lexical, syntactic, referential.
- Demonstrate an understanding of language-based infractions, including false advertising and plagiarism, as well as the role of the forensic linguist in legal matters such as perjury, trademark infringement, bribery, and threats.

Textbooks:

Legal Language, by Peter M. Tiersma (Chicago 2000), and
Ling 412 Course Reader (published and sold by USC Bookstore)

Copies will be available on loan in Leavey Library.

These texts will be supplemented by articles posted on Blackboard or available electronically at <http://www.usc.edu/libraries>.

Grade components:

1. Attendance and participation (**10%** of final grade). In a seminar setting, timely attendance and active participation are important. Attendance will be taken during the first 10 minutes of class; no credit will be awarded for late arrival. Advance notification is required for any planned absences.
2. Homework assignments (and occasional in-class questions). (**30%** 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 project, minimum 10 pages, and an oral preview presented during the last week of class (**35%** 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 1: Invocation of Miranda rights.

Read article in **Course Reader** by Janet Ainsworth: "'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, 2008, pp. 1-21.

Also read article by Richard Rogers, "Assumptions and Misassumptions about Miranda" *Psychology, Public Policy, and Law* 16:3, 2010, pp. 300–318.

September 3: The linguistics of silence.

Read article in **Course Reader** by Janet Ainsworth: "The meaning of silence in the right to remain silent". From *Oxford Handbook of Language and Law*, pp. 287-298.

September 8: Consenting to a search.

Read excerpt posted on Blackboard from an article by Peter Tiersma and Lawrence Solan, "Cops and robbers". In *Law & Society Review* 38(4), 2004. Pages 229-239

September 10: The interpretation and meaning of legal terms.

Tiersma, chapters 6 and 7.

September 15: Questions on the witness stand.

Tiersma, chapter 10.

September 17: Conversational implicatures.

Read article in **Course Reader** by Deborah Davis and Richard Leo: "Interrogation through pragmatic implication: sticking to the letter of the law while violating its intent". From *Oxford Handbook of Language and Law* pp. 354-366.

September 22: Courtroom practices. Guest speaker: William Weiss, Esq., Chief Public Defender (ret.), Los Angeles County Courthouse, Van Nuys

September 24: First encounters with witnesses and suspects

Read article in **Course Reader** by Malcolm Coulthard: "Invented and concealed dialogue in written records produced by the police". From *Language in the Legal Process*, pp. 19-34.

September 29: Courtroom discourse

Read pages from Shipman trial transcript, posted on Blackboard.

Also http://www.dailymotion.com/video/xj10_vicky-pollard-courtroom_fun

October 1 and 6: The Rape Trial

Read article in **Course Reader** by Conley & O'Barr, "The Revictimization of Rape Victims". From *Just Words* pp. 15-38.

Also read article by Martha Burt, "Cultural myths and supports for rape" *Journal of Personality and Social Psychology*, 38.2, 1980, pp. 217-230

October 8 and 13: The Nature of Legal Language

Read Tiersma, chapters 4 ("Talking like a lawyer")

Also read article by Spiecker & Worthington, "The Influence of opening statement/closing argument organizational strategy on juror verdict and damage awards." *Law & Human Behavior* 27.4 (2003) 437-453.

October 15: Midterm exam

October 20 and 22: The intelligibility of jury instructions.

Guest speaker: Professor Ellen Leggett, USC Dept. of Psychology [on 10/21]
Read Lieberman and Sales, "What social science teaches us about the jury instruction process" *Psychology, Public Policy, and Law*, 3(4), Dec 1997, 589-644;
also, "Making Jury Instructions Understandable" [in Course Reader]
<http://www.youtube.com/watch?v=oM6nwGPKX2Q>

October 27: Impenetrability of legal language
Read Tiersma, chapter 12.

October 29: The value of precision
Guest speaker: Gerold W. Libby, Esq., Zuber, Lawler & DeDuca, LLP, Los Angeles

November 3: The Plain Language Movement
Read excerpt posted on Blackboard from an article by Lawrence Solan:
"When the language is clear", from "The Language of Judges" pp. 108-117.
Also read Tiersma, chapter 13.

November 5: The Canons of Construction

November 10: Ambiguity
Guest speaker, Saurov Syed, USC
<http://cafc.uscourts.gov/images/stories/opinions-orders/13-1438.Opinion.4-18-2014.1.PDF>

November 12 & 17: Introduction to forensic linguistics: speaker identification and authorship.
Discussion of possible topics for the written final projects, due in December.

November 19: Defamation
Guest speaker: Prof. Edward Finegan, Director, USC Center for Excellence in Teaching.

November 24: Course summary.

November 26: [Thanksgiving Day, no class]

December 1 & 3: Previews of final projects to be presented in class

Exam period, TBA: Written final projects to be submitted in hardcopy.