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The Mass Media and the Problem of Understanding Legal Language Use: A Call for the Adoption of Plain Legal Language in Nigeria *(Pp. 14-26)*

Onyemachi, Thomas Uche - Division of General Studies, University of Jos, Jos, University of Jos Post Office Box 10657, Jos, Nigeria

E-mail: omachitu1@yahoo.com

Abstract

*The study of legal language use (**LLU**), especially in its historic perspectives and lexical methods, has become one of the most fundamentally popular and basically attractive areas of research that is generating a lot of special interest and drawing much greater attention to authors and readers alike in recent times. Apart from having its own lexicon, legal language preserves legal terminologies even though some are archaic or old fashioned in some ways as to command respect, perhaps, for its own peculiar tradition and prestige. This paper identifies the so-called legalese language as one of the greatest problems which media practitioners have to contend with. The paper is of the opinion that concerted efforts must be made to simplify or modernize the language of the Law, in order to avert the on-going confusion and misunderstanding associated with legal language use. The paper, therefore, advocates for the adoption of plain legal language use in Nigeria.*

Key Words: Archaic, Defamation, Defendant, Innuendo, Lexicon, Libel, Linguistics, Mass media, Plain Legal Language, Plaintiff, Remedies, Sedition, Slander, etc.

Introduction

Legal language is usually comprised of many legal terminologies and phrases that are characterized of English, Latin, Greek, and Hebrew words, or a combination of one or more of any other written or spoken foreign languages

and dialects. This has been made possible through legal drafting or writing, legal translation, legal interpretation, legal transcription, legal certification and legal authentication mechanisms. Presently, legal language services **(LLS)** are provided worldwide through translation and interpretation of the "Letter of the Law' into more than 150 languages and dialects (Afrirad, 1992: 175). The International Court of Justice (**ICJ**) at The Hague (Switzerland) commonly called the 'World Court' is one of such examples. The World Court renders such services for the translation and interpretation of cases that come up for consideration at The Hague. Much of these come in the form of Conventions and Treaties made for the settlement of international disputes among nations over territorial land, territorial or navigable waters, innocent passage in the high sea, exploitation of natural resources, and acts considered as threats to national and international peace and security.

Legal language is distinct from literary texts and, therefore, cannot be compared to the literary works as contained in Charles Dickens books or Casey Hardy's novels or even in some of the lexis and semantics that are often used by media practitioners. How to understand and apply the legal language in the way and manner legal practitioners would apply it, especially where Latin phrases (eg. *mens rea*, *ab initio*, *certiorari*, *ex parte*, etc.) and the French loanwords (*lien*, *plaintiff*, *tort*, etc.) are mixed or coined with the English words in addition to some other foreign phrases, to a large extent, have always created some elements of confusion. Indeed, it is even more serious when legal documents that contain the *legalese* language are often regarded or wrongly termed as 'legal jargons' by non-lawyers or those we may simply refer to as 'ordinary' people.

The paper analyzes the striking contrast between legal language use **(LLU)** and the normal linguistic expressions (**NLE**) in terms of complex syntactic structures. To this extent, therefore, the paper takes a cursory look at some of the legal maxims, terms and expressions that stand out clearly as main constraints to the understanding of legal language usage. In the course of our work, we have identified this trend as one of the major factors that usually result into libel or slander (defamation) suits. These arise out of various misleading news reports, news analysis, news commentaries, and oral interviews conducted by the mass media correspondents about people's private or public life; or about officials of government and their functions; or about officers in organizations or agencies and their activities.

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When the message is misunderstood, obviously the legal sense or idea will be misconstrued or misconceived. Such misconceptions have often times led to communication breakdown, thereby creating public distrust. When allegations not properly verified are published in the press against individuals in their private or public capacity, those affected by it often go to the courts to seek remedy. They may sue the management of the newspaper together with the correspondent who reported or carried out the article in dispute. An alleged statement made against an individual in public can cause a case to lie in court for slander, while a person affected by such publication can sue for libel.

Historical Background

The Norman Conquest established French, which included many Latin loan words as part of the language of law and politics. Later, Latin was used and English only replaced Latin as the language of English Common Law in the 17th Century. Legal language is developed in laws and in administrative acts or in private negotiations. It is often based in the dialectical relationship between being and having to be within legal prescription and concrete case. Thus, whilst retaining its fundamental characteristics, it also has diversity of styles (legislative and notarial) and finds relevance in other environments (politics, business, education, commerce, etc).

Definitions

To be able to understand the meaning of the various legal and linguistic expressions highlighted in this paper a definition of some key words may be desirable. For instance, when we talk about the mass media we mean the newspapers, magazines, journals, bulletins, and news agencies. Others are the **television** (including cable television stations, e.g. the CNN, the NTA, and the AIT); the **radio** (including cable radio broadcasting stations, e.g. the BBC, VOA, and VON); documentary films, electronic information media, and other mass state and independent periodicals, which are published under a permanent name. The latest electronic information media is the information and communication technology (**ICT**), which sends and receives information by searching or browsing online the worldwide website (**www**) Network through the **Internet** across the globe. Another example is the Telecommunications Cable Connectivity (**TCC**), such as the ITT, NITEL and the GSM (mobile phone) Network.

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The word ***mass media*** also refers to the management and personnel that constitute the bulk of media operators, such as journalists and publishers, newsreaders or newscasters, who are simply called media practitioners.

The major ingredients in determining libelous scripts are falsehood, malice, imputation of fraud, accusation of immorality, inaccuracy, publishing of government report not officially released (Official Secrets Act and the **Newspaper Amendment Act of 1963** on ***Sedition*** (e.g. ***Chike Obi v DPP***), the invasion of privacy of individuals, which was considered to have been violated by the promulgation of the **Banking** (**Freezing of Accounts Act, Cap 29**, and the **Nigerian Postal Service Department Act, Cap 322**, **Laws of the Federation 1990**), and ***Chapter Four*** of the **1999 Constitution of the Federal Republic of Nigeria** among others.

For instance, the libel case of ***Bower v Sunday Pictorial Newspaper Ltd. (1962)***, the plaintiff (**Bower**) was convicted for murder, but the Daily Times Newspaper of July 1962 published an allegation that the plaintiff had mental breakdown. The court refused to accept the defence of the newspaper to the effect that since the man was a convict, he had no reputation to protect. Other cases include the ***New York Times Company v Sullivan*** ***(1964)***, a U.S. Supreme Court case, which provided the most significant expansion of the protection of the press from libel actions. In this case, an elected official in Montgomery complained of libel by civil rights activists, where the court ruled that to protect the free flow of speech and opinions, public officials could only collect damages for libel if falsehoods were made with "reckless disregard" for the truth. This ruling has since been extended to any celebrity before the public. Also, in the Nigerian case of ***Tony Momoh v The Senate (1984)****,* then judge of the Court of Appeal, Justice Nnaemeka Agu, ruled that *"the right to freedom of expression under Section 36 of the Constitution is one which belongs to all who have to hold opinion, receive and impart ideas, or disseminate information, and contemplates no separate treatment to the media."*

Theories and Structures of Language and Linguistics

The general theory of language and linguistic structures are based on those phenomena that concern the discovery of conditions that influence and persuade people in behaving in certain ways or adopting certain opinions or attitudes. There are three of such conditions, namely:

(i) the class of admissible phonetic representations;

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(ii) the class of admissible semantic representations; and

(iii) the system of rules that generate paired phonetic and semantic representations. These conditions are exercised through language structures (phrases and clauses), pragmatics and speech theory, lexis and semantics (forms and meanings), other forms of address and features of speech, which may be used to exercise or establish them.

According to Chomsky (1957, 126), the central notion in linguistics is that of competence, which he refers to as ***"the ability of the idealized speaker-hearer or writer-reader to associate sounds and meanings strictly in accordance with the rules of the language."*** This brings into a clear focus the influential power of language, which operates in such social phenomena as advertising, media, politics, and culture, while commanding or persuasive power of language is found in law, education, business and management processes. For instance, politicians may impose laws, taxes, and bureaucratic systems, but they would seek to influence people to endorse their policies through a vote in an election or referendum. Obviously, people do have a choice of accepting or rejecting their policies when we vote for a change of government.

Onyemachi (2004: 12), while analyzing the limitations of these conditions and observed that human languages are systems of a highly specified kind, therefore, certain universal principles must interrelate with specific rules to determine the form or meaning of entirely new linguistic expressions. He pointed out that the phonological aspects, which consist of a sequence of rules that apply in a cyclic manner, are made up of components of grammar that have these properties. He concludes that the empirically known limits of time, access, and variability, of course, would be *"an impenetrable mystery."*

Pragmatics in the Media

To apply the theories of pragmatics to language use in the media, some special features in radio or television broadcast or interview would require the listener or viewer to understand how far the speakers are aware of the wider audience. For instance, it is not easy for the speakers to ascertain how the audience evaluate or perceive their spontaneous or preachy response, comportment, appearance and voice tone as they impact on the attitude of the audience. We are familiar with the convention of a newsreader's sitting down at or behind a desk, but not all newsreaders do this. Some newsreaders greet the audience ***"Good evening or hello, here is the (name of the organization,***

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e.g. AIT) news read by (name of the newsreader)” **or** ***“This is the Six O’clock News from the BBC World Service!”***

Grammar in the Media
It is relatively easy to study *grammar,* by looking at very specific features of language data such as verb tenses and pronoun choices. These features can become conventional in certain forms or genres that harden into a kind of style. For instance, ***“Over three thousand people died in the terrorist-hijacked passenger plane crash into the World Trade Centre this morning.”*** Here, the clause structure is subject + verb (past imperfect tense) + adverbial. This is an effective model or structure because the grammatical subject also signals the subject of the story (the victims of the crash), then it identifies the place of the crash and gives information about the likelihood of those responsible for the crash and the time it happened.

Structures in the Media Texts
There are structures for persuasive texts in the media just as there are in legal language usage. Persuasive texts appear during election or political broadcasts, newspaper editorials and other campaigns aimed at influencing the public to buy certain opinions. Sometimes the text will seek to persuade through ridicule, using one kind of model or style of some sort or other kind of text, but subverting it. These stylist tendencies have often resulted in libel and slander (defamation) suits against the media. It may not be far-fetched to find the structures or contents of such texts. For instance, news editorials may be a few hundred words in length usually with a captivating headline, a simple introduction, an elaboration of argument with instances in the form of cartoons and other caricatures or vulgar names that depict or portray an ***innuendo***, which is hidden underneath, leading to a simple, but indecisive conclusion. Thus, the lexicon and style of the language used may vary according to the target readership of the newspaper or the perception of the listening audience of the broadcast.

Structures of Legal Language
Legal language is usually expressed in lengthy sentences. Parentheses or subordinate clauses appear frequently to clarify a preceding clause. Thus, legal documents are notorious for hyper-complex syntax with several degrees of subordination of clauses, which often allow, without clarifying punctuations, a considerable number of lengthy adverbial phrases. These documents contain citations of legal terms found in legal literature,

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legislation, and other legal texts of the last thousand years invariably constitute an enormous contribution to the knowledge of legal language.

The Lexicon of Law

David Crystal (1992: 76) distinguishes between the language of the legislature (Parliament), which institutes a legal text (sets down the law in a written form) and the language of the judiciary (legal terms used by the law courts and judges) that interprets and applies it. This has its own distinctive language forms, and is much more constrained by rules than other kinds of persuasion. As such, failure to obey the rules can overturn the decisions of a court.

Onyemachi (2004: 17), while commenting on rules in legal language submitted that the purpose of the adoption of rules as part of legal language "*is to serve as a veritable vehicle of communication that can provide the right understanding required to ease the administration of justice."* He gave one main reason for the formulation of some of these rules and principles as *"to ease legal interpretation and to curtail ambiguity, absurdity, or omnibus clauses, in order to deal with matters which may render interpretation nullity."*

Fiona Kerr (1994: 67), who supports this view in her contribution on distinctive language forms, readily provides an example of what she calls *"the difference between lawyer-speak and normal language expression"* thus:

> The general public use 'murdered' interchangeably with 'killed,' no-one ever says 'he man slaughtered him.' Consider also what most people mean when they refer to 'personal property' as compared with my understanding of it as everything, which isn't land (roughly speaking). When Mrs. Bloggins does her own will and leaves her personal property to the nice lady who looked after her cat whilst she was in hospital, she may intend to leave her collection of tin ornaments and a few skirts, but is she intending to also bequeath her savings to the said nice lady or did she intend to leave them to her son, along with the house? Only a judge can decide and by the time he has, there won't be any savings left for the winning litigant to spend – and the loser could be in debt.

In contemplation of the above, the average media practitioner may not understand the import of the legal expressions used in explaining the decision

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of the judge or court. Moreover, what the judge or court avers as being the interpretation in the above instance of a case may only be expressed literally by the media practitioner, but unknown to him that Mrs. Bloggins is only contemplating a ***Will***, therefore, what is involved is a mere ***Legacy***!

From the cases and instances cited and enumerated in the course of this discourse, one cannot but express optimism about the need for and the importance of a change of legal language by discarding the obscure legal terms, which are now archaic, and to replace them with a simple English or at least English that is as simple to understand as possible in such a complex field. The computerization of linguistic analysis and dictionaries of terminology in other foreign languages, including French, German, Spanish, and Italian legal language, are undertaking similar revolutionary activities.

The Plain English Group Campaigns

Many eminent lawyers and scholars within the legal profession realm have been involved in the process of drawing up the rules that can simplify and streamline procedures in an attempt to make litigation quicker, cheaper and simpler. In addition to this, more significant efforts are being made to change legal language by the Plain English Campaign Group, a movement that has been fighting to achieve this objective for more than two decades. Prominent among the campaigners is Lord Wolff, who was the Master of the Rolls (MR). For instance, he presented an 800-page document titled that: *Access To Justice,* which was published by the Lord Chancellor's Department in the United Kingdom, where he stated: *The system of civil justice and the rules which govern it must be broadly comprehensible not only to an inner circle of initiates but to non-professional advisers and, so far as possible, to ordinary people of average ability who are unlikely to have more than a single encounter with the system."*

Chrissie Maher, the founder of ***The Plain Campaign Group***, was quoted as saying that *"this campaign may be our greatest victory yet."* Meanwhile, some English-speaking Commonwealth countries have joined in this clamorous campaign for a change to plain legal language. Current field research report shows that English-speaking African countries are yet to join this crusade.

Cheryl M. Stephens (1991: 67)**,** in his book: ***Plain Language for Business Lawyers***, identifies the countries that have so far adopted the Plain Legal Language as part of their Law Reform to include the British Colombia through the Report of the Justice Reform Committee in 1988; the New

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Zealand, which adopted it after the 9th Commonwealth Law Conference in 1990, while Canada adopted the Plain Legal Language after the Marketing Department of the Citibank in New York made a request for a plain language *Promissory Note* for consumer transactions in 1991. Others are Britain and Australia, which adopted the plain language only at the beginning of the 21st Century, that is, in the year 2000. In Australia, for instance, Takeovers Code, one of the most complex pieces of legislation, has been rewritten in plain English.

Among the terms that have been changed into Plain Language include the following:

Old Fashioned Legal Language	Meaning	Plain Language Use
Mareva Injunction	To prevent the sale of assets during litigation.	*Freezing Injunction*
In Camera	In a (judge's) private room.	*In Private*
A Minor or an *Infant*	A young person under the age of 18 years.	*A Child*
A Plaintiff	One who brings an action into the court.	*A Claimant*
inter partes	Between the parties.	*with notice*
ex parte	On behalf of someone.	*without notice*
Pleading	Formal written statements in a civil action.	*statement of the case*
A guardian ad litem	A guardian appointed by the court to represent the interest of a child	*A litigation friend*
subjudice	Under judicial consideration; not yet decided.	*pending litigation*
to issue a writ	An order issued by the court in the name of the Sovereign ordering some action.	*to present a claim form*

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discovery	Disclosure by a party of the relevant documents in action.	*Disclosure*
Anton Piller order	High Court order to the Defendant to permit the Plaintiff to enter into the Defendant's premises to inspect.	*Search order*

Plain Legal Language, however, is neither a vocabulary exercise nor a simple act of replacing bad words (legalisms, foreign phrases, negative words, triplets, or long words) with good words (short words, common words, or positive words). Rather, it is the style adopted in legal drafting or writing. Research has shown that unfamiliar patterns of capitalization, punctuation, paragraph structure, and indentation combine to create the barriers to the understanding of legal documents.

Benefits of Plain Legal Language

The benefits of Plain Legal Language are many, but the most striking ones include savings in time and costs. Besides, it helps to remove the barriers created by lack of understanding of the legal document. Also, it helps to reduce the incessant cases of libel and slander that have opened the floodgate of the courts to the various segments of the Nigerian society to indulge in serious rampant litigations at the very least opportunity. In addition, *legislative counsel* is aiming to use plain legal language in drafting statutes and regulations for easy comprehension by the reading public. Another important benefit is that which requires the legislative staff to use non-complex policy and procedure manuals and interpretive bulletins to administer government programs. It provides the public with information brochures that enable them to fill out forms, for instance, land or real property documents, so as to understand what is required of them.

Challenges and Prospects

The successful communication of the content of a statute depends on two variable factors in every case. The first is the comprehension skill of the individual receiver of the message. The second variable factor is the intrinsic complexity and other characteristics of the subject matter of the message. Communication depends on an overlap of the linguistic experience of the sender and receiver of the message. In effect, there must be a shared context

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of both linguistic experience and social experience if ambiguities and other comprehension problems are to be avoided or resolved.

The major challenge that inhibits easy understanding of the effect of a statute is that no law stands alone. A statute is a strand in a complex web. As such, every statute reaches out and interacts with other statutes and also the common law. A comprehensive understanding, therefore, will depend on Interpretation Legislation, Criminal Practice, the Law of Evidence, and other concepts and precepts, especially natural justice and the remedies, such as *certiorari* (an order used to review and quash decisions of tribunals) and *mandamus* (a writ ordering performance of a public duty).

The prospects of plain legal language use lie in simplifying legal language in readily understandable plain English by the average person. It is a language stripped of unnecessary complexity, but not stripped of its unique style. It is, perhaps, language at the lowest common denominator.

In Nigeria, we have identified in the course of our work, a number of recurrent defects, which contribute to the confusion of the original terminologies to include those of Latin phrases and maxims, long and unpunctuated sentences, and other legal terms that are archaic to modern spoken or written English, especially those often used by the mass media and the public in the normal language use or linguistic expressions.

Recommendations and Conclusion

Recommendations

We advocate for the adoption of the review of the legal terms and phrases currently in use in Nigeria to be changed or replaced with the Plain Legal Language. This will install structures that can provide an update of the Nigerian Legal System. It will also bring about the legal reformation of the rules, in order to simplify, incorporate, and streamline our legal procedures in an attempt to making litigation accessible, affordable, and thus accelerate the legal process. Judges must, therefore, deliver judgments that are unbiased, free, fair, and just in the administration of justice in Nigeria.

Legal technicalities and other legal impediments, such as unwarranted injunctions, frequent adjournments, *ex parte* motions, which deny the other party the right to be put on notice, and prolonged legal tussles that consume time and money should be avoided or curtailed.

Journalists and other editorial staff should have the right to study, investigate events, weigh issues, consider the circumstances surrounding them and

confirm the authenticity of the source of the information they have received before publishing. This will serve as a source of encouragement to our legislators in the National Assembly to accelerate the passing of the Freedom of Information Bill into Law.

Media practitioners should use audio and video-recording equipment in gathering information and in obtaining witnesses' testimonies. This will remove the incidence of people being 'quoted out of context,' thereby giving room for libel and slander suits.

Every editorial staff has the right to make public his opinion on a specific event, but not when it is pending in court or after a court of competent jurisdiction has given verdict or when a sentence passed has come into force. Such an act could attract contempt of court charge.

The Federal Government of Nigeria should monitor through the Nigerian Censorship Board the activities of the mass media practitioners with a view to ensuring full compliance with its Code of Conduct.

Government should withhold licenses of any media organization, be it private and public, that is found to be disseminating information that is likely to instigate violent and generate conflict in the civil society.

Conclusion

Many legal documents are written in such a way that not only the mass media practitioners, but also people to whom they are directed have extreme difficulty in comprehending them. In such a case, it is not really being unfamiliar with the subject matter or for lack of technical legal knowledge that causes the problem. Actually, it is the language structure of the document itself. This should be improved upon in the hope of making the document intelligibly understandable to the average Nigerian citizen, especially those concerned with the relevant activities.

The adoption of Plain Legal Language to replace the present legal language structure in use in Nigeria, therefore, will be a decision in the right direction since the level of illiteracy in Nigeria is high and the people are still unable to decipher and evaluate the information they receive from the mass media. This will be appropriate to change the language structure, so as to make it more understandable to readers, speakers, and listeners alike. This will go a long way in curtailing the increasing number of libel and slander cases usually instituted against the mass media by private individuals, organizations and government functionaries in recent times.

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