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LEGAL COMMUNICATION - PROBLEMS AND REMEDIES

Problems in legal communication commonly occur when legal professionals attempt to communicate with lay folk. Areas that have received considerable attention from scholars are contracts (particularly insurance policies), legislation, judges' instructions to juries, and standard police cautions or warnings. Miscommunication is life threatening in the situation described where jurors did not fully understand instructions concerning mitigating factors when deciding whether to impose a death penalty.

One source of this difficulty is that legal discourse may be addressing two audiences, both a lay audience and a legal audience. For instance, police cautions must not only communicate to the person being cautioned, they must also be admissible in court as having fully performed that function. This explains in part the inertia, and even resistance, when it comes to using plain language for legal purposes. Another source of resistance among police and lawyers is their understanding of the types of social message conveyed. Most

work in this area has assumed that only propositional information is communicated by, for example, police cautions. It is clear, however, that complex and technical language also carries a social message concerning the power and authority of the person using it. Resistance to a lessening of this power and authority is not surprising.

The early attempts to improve legal communication with non-lawyers focused on the lexicogrammatical area. The problems that were identified were those particular aspects of legal language discussed earlier, which emerge from decontextualized written language and a specialist field. Some, although not all, advice to persons producing written text for non-lawyers gave quite simple formulas such as "avoid nominalizations," "avoid passives," "avoid more than two embeddings," "ensure that the order of ideas is coherent and logical," "avoid technical language" Essentially, the plain language movement was attempting to shift the register from highly written and technical to more everyday, spoken-like, and nontechnical forms. There is ample evidence in the literature that this approach produced substantial improvements in communication. However, as Solomon [2, c. 279-307] points out, plain language practitioners could not fully follow their own nostrums. There are good reasons for using nominalizations to summarize the ideas previously discussed in a text. Passives are sometimes necessary in order to delete uncertain agents, to organize information flow in texts, or to make certain participants the theme or topic of a text. There is also a loss in avoiding technicality. Technical language constructs the world in a different way from everyday language: It can be useful to define a particular term and then use it. Problems are more likely to arise when technical terms are used without definition to an audience that is unaware of them.

The improvements in intelligibility produced by lexico-grammatical modifications were necessary, but not sufficient. In recent years, there has been a move away from formulaic transformation to examine more thoroughly the role of aspects of communication other than lexico-grammar. Penman [1, c. 1-18] suggests that comprehensibility can be substantially improved by formating - by the use of subheading, numbering, etc. She and others have demonstrated the usefulness of testing out multiple rewrites of a text in order to discover empirically which version really communicates best. Importantly, work by Steele and Thornburg [3,

c. 77-119] shows the problematic relation between the speaker / writer and the hearer / reader. They indicate that lawyers are often not aware that the text they produce is not intelligible to a lay audience, not because of language but because of a lack of shared knowledge. At its most extreme, this miscommunication can be manifested as resistance by jurors because they have their own understanding of justice, and they are not prepared to accept the version manifested in the legal system. This type of problem can be handled in part by educating jurors, but this approach is still in its infancy.

The nature of legal interpreting is the object of considerable research. One important issue is the court's view of interpreters and the consequent treatment and use of them. Lawyers appear to have problems with the use of interpreters, being uncomfortable with the loss of control over the discourse in the interpreting process and not understanding that an interpreter is not a robotic device or "conduit" that converts word for word from one language into another. A second issue involves the problems raised by legal interpreting itself, given the complex technical nature of legal language. A third issue is a conceptual mismatch between understandings of the law when witnesses or accused are from a different cultural background.

There is a wide consensus that lawyers and police require explicit training in the nature of interpreting, in what interpreters can and cannot do, and in how best to use interpreters. Again, such training varies greatly from place to place.

Reference list:

1. Penman R. Plain English: Wrong solution to an important problem. / R. Penman. - Australian Journal of Communication, 1992. - P. 1-18.

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3. Steele W. W. and Thornburg E. G. Jury instructions: A persistent failure to communicate. / W. W. Steele, E. G. Thornburg. - North Carolina Law Review, 1988. - P. 77-119.