



Language is the most expensive and imperfect means yet discovered for communicating thought. ~William James

*Watch What You Write and Say: Language and the Law*

Attorneys spend a lot of time immersed in words, whether drafting a contract or crafting a persuasive closing argument for a trial. The choice of one word or the decision to use a semi-colon in a sentence can have far-reaching consequences. Words matter. This issue of the Attenza Law newsletter will look at language in the law and the impact that word choice can have on individuals and businesses.

On page 2 of the newsletter, we will look at problems that have arisen in courtrooms across the United States when defendants are non-English speakers. Even though we may think that interpreters provide an accurate account of what an individual says, that is not always the case, leading one to wonder if justice is being served. On the same page, we will also look at some problems that have arisen when documents such as contracts and deeds include typos and clerical errors. Little mistakes can lead to big lawsuits and costly bills.

On page 3, we will look at some cases that deal with contract interpretation and how parties have disputed what appeared to be unambiguous language in a contract. Even what you think is the most clearly written contract can be subject to dispute. This is even more likely when a contract is translated from one language to another and the meanings of words are subject to the translator's interpretation and choice.

All the articles stress the importance of precision in the language that we use in the law. For lawyers who use English as a second language in the law, this is even more critical as disputes can be avoided and clients served better when the attorney understands the meaning and nuances of the English legal terminology.

As always, feel free to [contact us](#) with any questions about your specific situation.

**Passion for Law. Passion for Business.**



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Si parla italiano  
Se habla español



## Mary K. Smith or L. Smith: Typos in Legal Documents

We are all guilty of typing too fast, reviewing in a hurry and sending out a document with typos. Normally, these mistakes are embarrassing and can diminish our credibility. But, in legal documents, typos can signify a lawsuit and high attorney's fees.

In one case, *Gaulding v. Baker*, the parties disputed the validity of a liquidated damages provision in a contract for the sale of cotton. In this provision, the names of the parties had been reversed. The scrivener (in 1911, so long before computers) mistakenly wrote the name of Gaulding where Baker's name should have been. That type of mistake is perhaps even more common now with the cut and paste function, which easily lends itself to that type of typo.

In the end, the court held that such a small typographical error did not invalidate the contract. The intent of the parties was clear from examining the entirety of the agreement.

In a similar case, the Georgia Supreme Court held that a bond on its face payable to Hull & Long was still valid, even though it should have been made payable to Hall & Long. Such a clerical mistake is insufficient to invalidate and void the intent of the parties, which the court is allowed to ascertain from testimony.

What is the lesson that we can learn? Proofread your documents. Give them to a second pair of eyes to look over. These two cases went to the Georgia Court of Appeals and the Supreme Court, no doubt costing the parties a significant amount of money. Being extra careful in proofreading can help avoid the need to go to court.

*More than 1 billion people around the world are learning English. Of those, approximately 750 million are studying English as a foreign language and 375 million as a second language.*

## Introducing The Global Legal Institute

Karen Lundquist, the owner of Attenza Law, is embarking on a new activity, one that combines her love for law, languages and teaching.

She has recently founded the [Global Legal Institute](#), an online school teaching the technical language of law to foreign legal professionals.

In an online format, foreign lawyers, judges and law students who use English for their job will be able to participate in interactive and innovative [online discussion forums](#) about legal issues that concern them. [Private language coaching sessions](#) are also available using a virtual classroom setting that allows interaction, but with the convenience of not leaving your office.

The Global Legal Institute will soon be offering [monthly memberships](#).



## Is Justice Being Served: Interpreters in the Courtroom

Anyone who has studied a second language knows that there aren't always precise equivalents for words or phrases in one language or another. Regional dialects, expressions and accents, as well as slang and jargon, complicate matters and make the translation from one language to another difficult. It becomes even more difficult when the translation must be done in real time in a courtroom.

Nowadays in Minnesota, as elsewhere in the United States, a growing number of people speak a language other than English as their mother tongue. Approximately 10% of the population of Minnesota speaks a language other than English at home, while approximately 7% are foreign born. What happens with these individuals when they are placed in a courtroom setting, such as a criminal trial, and must rely on an interpreter to relay their words to the judge and jury? Unfortunately, justice is often denied.

There is famous case of how an interpreter unfamiliar with regional language can bring about disastrous results for a criminal defendant. In the case, a Cuban defendant was convicted on drug charges because he uttered the words, "¡Hombre, no tengo ni diez kilos!" He used the words in response to a request for a loan and given the dialect of the speaker and the context of the statement, the words can be translated as "[m]an, I don't even have ten cents." Instead, the interpreter mistakenly translated them as, "[m]an, I don't even have ten kilos." With that incorrect yet plausible translation, the man was convicted of the drug charges (fortunately, the conviction was ultimately overturned).

In another case, a Mexican immigrant was convicted of murder. The interpreter in his case spoke Spanish, but one can only wonder how he could correctly translate the words of the defendant, Ramiro Lopez Fidel, who didn't speak Spanish but rather an indigenous Indian language, Mixtec. The judge and the defense attorney never thought to confirm whether the defendant even spoke Spanish but merely assumed he did because he was Mexican.

These two cases show the importance of language in the justice system. Even for bilingual or multilingual attorneys, we can't be expected to know all possible languages of our clients. We have to rely on interpreters. We must verify their familiarity with the regional language of our clients and not make assumptions about the language that they speak. Not doing so could mean the difference between justice served and justice denied.



## Reasonable People May Differ: Words in Contract Interpretation

In contracts, words and punctuation matter. Parties often end up in court disputing the meaning and interpretation of a clause or a word, leaving the work of an attorney scrutinized under a magnifying lens. What cases about contract interpretation have reached the courts and what lessons can we learn from them?

The first case is *P.H. International Trading Company d/b/a Hana K. Fashions v. Christia Confezioni S.p.A., and FBLG, Inc.* The case involves the termination of a distribution agreement. The parties disputed whether the defendant timely communicated its intent not to renew. This issue centered on the English translation of an Italian letter between the parties. Even though the parties had agreed that the forum for any disputes would be New York, they chose to communicate in Italian. The plaintiff favored one translation, which it claimed did not sufficiently communicate the intent not to renew, while the defendant proposed a different translation that clearly stated that it did not want to renew the agreement. In the end, the court agreed with the defendant.

What is the lesson to be learned? Here, the parties erred by communicating in one language (Italian) even though they had agreed to adjudicate disputes in an American court. That opens the door to disputes and disagreements over the meaning of a translation, since translations, even good ones, can differ. Choose to communicate in the language of the court where you might hear a matter in order to avoid these problems.

The second case that can teach us a good lesson is *Gylet LEWIS, d/b/a Waccamaw Construction Company v. Anthony C. Carnaggio*. This case involves the meaning and interpretation of a comma in a contract. The parties argued over the following phrase: "It is specifically agreed ... that ...the owners shall not be required, under the terms of this agreement, to pay the contractor any amount in excess of the sum of \$ 34,500.00 which is the estimated cost of construction, plus the fee provided for herein."

The issue was whether the "amount in excess" of \$34,500 included just the cost of construction or the construction cost and the fees. In the end, the court agreed that *just* the cost of construction, not the fees as well, could not exceed \$34,500. But the interpretation could really go both ways, as the phrase is ambiguous.

What is the lesson here? Explain in clear language what you mean. Avoid long phrases in contracts, as they are more prone to ambiguity. If necessary, cut longer sentences into two or three shorter ones to allow the concept to be clearly explained.



### Introducing One of Our Trusted Partners

When our clients need a legal translation, we refer them to [LawLinguists](#), the only translation agency in the world that specializes in legal translations done only by licensed attorneys.

At LawLinguists, they know that words can change the meaning in a contract or a provision. Word choice can mean the difference between winning and losing a case.

All of the translators who collaborate with LawLinguists are licensed attorneys in their respective countries who have practiced at least three years. All are multilingual or bilingual and thus provide not only the language skills necessary to translate a technical legal document but also the knowledge of the law. LawLinguists also offers a wide number of languages.

If you need a legal documents translated, contact [LawLinguists](#). While an Italian-based company, they provide services for clients around the world.

**Disclaimer:** This newsletter could contain legal advice. However, that does not mean that you should rely on it without consulting an attorney, whether us or another one, about your specific situation. That the newsletter is legal advice doesn't mean that an attorney-client relationship exists without a agreement signed by you and Attenza Law.

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