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When Should Lawyers Use Big Words

by Adam Alter

Editor's Note: When I saw the first part of the title of Adam Alter's new book, I had no idea what it meant. But as I read the second part, I thought it could be interesting for Jury Expert readers. "Drunk Tank Pink" refers to the impact of the color pink on violence and aggression: "Even if a person tries to be angry or aggressive in the presence of pink, he can't. The heart muscles can't race fast enough. It's a tranquilizing color that saps your energy. Even the color-blind are tranquilized by pink rooms." "Interesting. If you visit that link, you'll see that "drunk tank pink" is strongly reminiscent of a powerful pink liquid you may have taken to address overindulgence in food or drink. But the book doesn't stop there. It answers many questions you may have never known you had. Like, what makes us give financially more to hurricane relief when the name of the hurricane begins with the same letter as our own first name? How would illuminating railway lines with blue lights cut down on violence and crime? Why would the art hanging on your walls make you more honest? Why do athletes wearing red win more often than those wearing blue? This book is a fast and enjoyable read and actually has relevance for litigation advocacy as you'll see in this introduction to the book from the author himself.
—Rita Handrich, Editor

When I moved from Australia to the United States to embark on a Ph.D. in social psychology, I was only a few courses shy of becoming a lawyer. I was loath to abandon my legal studies completely, so one of my advisors, Professor Danny Oppenheimer, and I decided to investigate a question that had puzzled me for years: when, if ever, should lawyers use big words?

It's a deceptively simple question, and I imagined the answer was either "yes" or "no", perhaps with caveats depending on the type of case or the make-up of the jury or some other variable I would soon discover. In fact, the answer is far more complex and, I think, more interesting.

First though, it's important to explain what I mean by "big words." Legal discourse is so different from standard English (or any other language) that it has its own name: legalese. Legalese is an arcane [portmanteau](#) that borrows words from Latin and the far reaches of several other contemporary (and even borderline extinct) languages. People esteem lawyers for their intellects and the lawyer's unique command of legalese and its vocabulary can perpetuate that image. But there's no

inherent reason why lawyers absolutely must use bigger words when smaller ones will do. Judicial bodies in Australia, the United States, and countless other countries have recognized this alternative universe^[1] by promoting Plain English as an alternative to Legal English, though big words live on in legal discourse, and probably always will.

As it turns out, the evidence is murky at best. Some researchers have shown that communicators seem more intelligent when they use simpler language,^[2] but others have shown the reverse: that people are more impressed by complex language when they expect the communicator to be conveying equally complex information (as lawyers often do).^[3] That makes a lot of sense when you think about it. Humans are mentally quite lazy, and they generally exert as little attention as possible to form a minimally acceptable conclusion.^[4] If a lawyer or any other communicator forces them to expend extra mental effort without justification, they're likely to feel negative about the communicator. If, on the other hand, the information is innately complex, that extra effort is justified and oversimplification might even suggest that the communicator is missing some of the nuances.

More subtle, however, is the question of whether you should ever inject artificial bursts of complexity into a statement. Is there ever a good time to strategically choose a longer word when a short one will do? The answer, as we found in some later work,^[5] is "yes". Longer words slow people down and force them to think just slightly harder than they had to think beforehand. They may not enjoy the experience (though that diminished enjoyment lasts briefly) but their mental systems kick into gear, processing what comes next with a greater degree of care and effort. Psychologists call the shallower mode of processing System 1 processing, and the deeper mode System 2.^[6]

System 2 processing is exhausting, and we can't possibly process everything deeply, so we apportion our mental resources by responding to cues in the environment. As I discuss in my new book, *Drunk Tank Pink*^[7], a complex word is one such cue and it suggests to us that we need to pay closer attention. (By that theory, for example, when I used the word *portmanteau* earlier—the most complex word in this article—you probably paid especially close attention to the phrase "that borrows from Latin," which followed *portmanteau*.)

The answer to the question I posed earlier is that you should use long words when they're appropriate. Don't avoid them altogether just because they'll make you look stodgy—but never use a long word when a shorter word will do (this is the same advice that grammarians have been giving for years^[8]). More surprising, perhaps, is the importance of peppering simpler words with complex words at critical junctures: before a key argument, or before a message that you want the jury (or other listeners) to process more carefully. In that case, the benefit of encouraging people to pay closer attention outweighs the cost of forcing them to think harder in the first place. ¹⁰

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References

- ^[1]For a sample of U.S. Plain English laws, see: <http://www.languageandlaw.org/TEXTS/STATS/PLAINENG.HTM>.
- ^[2] See Oppenheimer, D. M. (2006). Consequences of erudite vernacular utilized irrespective of necessity: Problems with using long words needlessly. *Applied Cognitive Psychology*, 20, 139–156.
- ^[3] Galak, J., & Nelson, L. D. (2010). The virtues of opaque prose: How lay beliefs about fluency influence perceptions of quality. *Journal of Experimental Social Psychology*, 47, 250-253.
- ^[4]Psychologists refer to this as cognitive miserliness: e.g., Fiske, S. T., & Taylor, S. E. (1991). *Social cognition* (2nd ed.). New York: McGraw-Hill.
- ^[5] Alter, A. L., Oppenheimer, D. M., Epley, N., & Eyre, R. N. (2007). Overcoming intuition: Metacognitive difficulty activates analytic reasoning. *Journal of Experimental Psychology: General*, 136, 569-576.
- ^[6] The best popular treatment of the issue is Nobel Laureate Daniel Kahneman's book: Kahneman, D. (2011). *Thinking, fast and slow*. New York: Farrar, Strauss, and Giroux.
- ^[7] Alter, A. L. (2013). *Drunk tank pink: And other unexpected forces that shape how we think, feel, and behave*. New York: Penguin Press.
- ^[8] See, e.g., Strunk, W., & White, E. B. (1999). *The elements of style* (4th ed.). New York: Longman.