

## A LEXICOGRAPHER'S LAIR

## AND THE VERDICT IS... MANY LEGAL DOUBLETS ARE SUPERFLUOUS AND UNNECESSARY

Dennis McKenna

One of the greatest challenges interpreters face is keeping up with the breakneck speed at which many judges and lawyers speak. To make matters worse, much of what we're called upon to interpret is spoken in code, according to rules handed down from the distant past. If it's any consolation, jurists don't intend to confuse us with their jargon; it comes naturally to them. And there are fascinating reasons behind the arcane usage.

One of the most intriguing aspects of legal English is its reliance on doublets, also known as coupled synonyms or synonym strings. These series of duplicate, triplicate, or quadruplicate words, all meaning essentially the same thing, have long been a part of legal discourse. English is unusually verbose in this respect, with by far the most words of any known tongue. This is partly due to the way in which it grew, readily adopting words from other languages. Some linguists have even suggested that we have too many words. English speakers can say the same thing in multiple ways, in high, medium, or low register, and have words left over to boot. No other language has such an abundance of riches, but that may be to their benefit, as we shall soon see.

No doubt nearly all of us have been tripped up at one time or another by the profusion of doublets or triplets in courtroom discourse. Suddenly, we stop wagging our jaw as we search for the appropriate synonym in our target language.

Some common doublets are: aid and abet; have and hold; annoy or molest; keep and maintain; any and all; null and void; betting or wagering; last will and testament; cease and desist; object and purpose; each and every; perform and discharge; force and effect; terms and conditions; furnish and supply; true and correct; fraud and deceit; to waive and give up. And then there are triplets: possession, custody, and control; and even "quadruplets": in lieu, in place, instead, and in substitution of.

### The Origin of Doublets

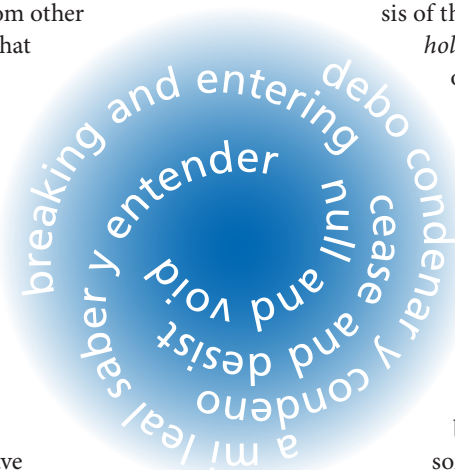
The reason most often cited for these pairings is the Norman Conquest, the 12th century invasion of England by the Norman French. For the next three centuries after their arrival, the kings who ruled England never even bothered to learn English. (They were evidently not partisans of the "melting pot" idea of cultural integration.) Naturally, this had an effect on the language. Bill Bryson in his book *The Mother Tongue* goes so far as to say, "In fact, nearly all the words relating to jurisprudence and government are of French origin..." (Bryson, 2001, p. 55). According to

this theory, post-conquest England was divided into two linguistic camps, Norman French and Middle English, a circumstance that resulted in the need to use two languages in legal expressions to ensure comprehension by both the native population and the descendants of the Normans. Thus, *breaking and entering* and *annul and set aside* are combinations of Old English and Old French. Norman Francis Blake in his book *The English Language in Medieval Literature* supports this view. He states that "native" words were paired with foreign ones, "so that less educated people could become familiar with the foreign terms which were being adopted wholesale into the language" (Blake, 1979, p. 99).

There is just one problem with this theory. If it were accurate, it would explain all the legal doublets listed above. A brief analysis of these pairs, however, reveals that *to have and to hold* and *each and every* are both of Old English origin, while others like *terms and conditions* are both Old French in origin. (*Have* is not related to the Latin *habere* even though they closely resemble each other in appearance and meaning.) There is also the minor detail that after the Norman Conquest, "Latin was predominant and gained ground steadily" (Maley, 1994, p. 12). This early reliance on Latin accounts for phrases like *corpus delicti* or *in forma pauperis*. Given that there is a strong tendency to pair synonyms, even when both words are derived from the same language, something else must be at work. There must be another explanation for why legal professionals choose to repeat themselves incessantly.

Further examination reveals that these repetitions appear to be attributable to something far more intrinsic to the language. The ninth century translation from Latin into Old English of a text known as *Boethius' Consolation of Philosophy* included many early examples of doublets. For the Latin equivalent of *said*, the translator offers *answered and said* and then goes on to spice up his translation with what linguistic historian Nicole Guenther Discenza calls "familiar word pairs." These include synonyms like *uneducated and untaught* and the frequent use of antithesis, such as *both inside and outside*. Where the original Latin did not utilize these devices, the translator, Anglo-Saxon ruler Alfred the Great, felt compelled to introduce them. According to Guenther Discenza, these doublets are also to be found elsewhere in Old English texts.

In the modern age of text messaging and e-mail, we often forget that before the advent of printed books, there was a lengthy oral tradition in which the sound of words was of paramount



importance. Each language naturally developed its own patterns, with all major European languages employing rhyming and alliteration to a greater or lesser extent. The English language, however, seems to have had a special predilection for synonyms and word pairs. Norman Francis Blake states that for writers of Old and Middle English, “doublets were a stylistic device used to create verbosity or various rhythmical effects, and their frequent use suggests that the meaning of a word was less important than its sound and ability to be paired” (Blake, 1979, p. 99). What Blake is really referring to is the musicality of the language, something that goes beyond logic or reason, and legal English embraced such sonorities wholeheartedly.

### The Translation of Doublets

Our challenge as translators and interpreters is to determine how these unique features of the English language can be conveyed in our target language. As stated earlier, English combines this predilection for doublets with what is by far the world’s largest vocabulary. In cases where the target language has no perfect fit for two or more synonyms of the same register, better to make do with one exact or near-exact equivalent, rather than to introduce inaccuracies or embellishments into the translation. This is especially important when the target language does not possess a multilingual background or similar predilection for repetition and rhythm.

In a 1996 conference session on English-Russian legal translation, where the terms *null and void*, *last will and testament*, *cease and desist*, *full force and effect*, *each and every*, *aid and abet* were analyzed, Thomas West categorically asserted: “English says it twice, Russian says it once” (West, 1996, p. 17). And there doesn’t seem to be anything particularly unique about the Russian language in this regard. Other authors have made the same observation about legal Spanish, such as in the study by Esther Vázquez y del Árbol (2006) on the translation of wills from English into Spanish:

<u>ENGLISH</u>	<u>SPANISH</u>
I give, devise and bequeath	Lego
It is my intent, hope and request <i>(that my instructions be honored and carried out)</i>	Dispongo
Last will and testament	Testamento (not Testamento y última voluntad)
I hereby do make, publish and declare <i>(the following/this to be my last will)</i>	Otorgo testamento
I nominate, constitute and appoint <i>(somebody as...)</i>	Designo/Nombro...
I hereby revoke and cancel <i>(all other or former wills)</i>	Revoco

Thus, as professional translators and interpreters, we should not be overly zealous in translating these redundancies: while acceptable in English, they will only be confusing or stylistically awkward in other languages.

This is not to say that other languages don’t have their own synonyms, or doublets in legal language. Spanish, for example, has *a mi leal saber y entender* (literally: to my faithful knowledge and understanding), and *debo condenar y condeno* (I must condemn and I condemn) (Gibbons, 2003, p. 44). For the first, we can retain the doublet by saying *to the best of my knowledge and belief*, which is equally idiomatic. But English has no natural equivalent for the Spanish courts’ *debo condenar y condeno*. This is where we are obliged to “normalize” the phrase with “I hereby sentence you to...” or, in the case of a fine, “I hereby order you to pay a fine of...” A court interpreter renders into idiomatically correct, legally equivalent language. No doubt, all of us have encountered situations in which someone objects because we did not use an obvious false cognate. This kind of dispute is easily resolved with a linguistic explanation, and the professional interpretation prevails over the faulty one proposed by the amateur. Using a single word to translate an English legal doublet is really no different from avoiding false cognates. In each case we are adapting the original text to the target language, as is our duty.

There is one exception to this blanket recommendation to produce “normalized” translations. This would occur when the meaning of each component of the doublet or triplet is being litigated, or when two or more terms have been legally determined to be different (either by case law or by legislation). Then we are obliged to reproduce two (or more) separate terms in the translation to capture the specific nuances of each term. Something else to keep in mind: never just assume that your target language has no equivalent legal doublets. It’s your job to know your subject and to reproduce the various terms in translation if necessary.

### The Plain English Movement

But, you say, shouldn’t something be done to control all the excess verbiage flourishing in our legal culture? In fact, professors of legal writing classes in the U.S. have been recommending against the use of doublets for quite some time, as has the influential editor of *Black’s Law Dictionary*, Bryan A. Garner. David Mellinkoff, perhaps the author most often cited on this subject, goes so far as to state that all doublets should be eliminated, for clarity’s sake (Mellinkoff, 1982, p. 189-190). “The great mass of these coupled synonyms are simply redundancies, furnishing opportunity for arguing that something beyond synonymy was intended” (Mellinkoff, 1992, p. 129).

Surprisingly, lawyers and judges are not overly concerned by unnecessary redundancy. They appear attached to old formulas, possibly for two reasons. First, because it sounds good — exactly how this tradition started. A second possible explanation is that until recent times, civil litigation could be dismissed for defect of form in pleading (e.g., a missing legal term). Naturally, this led to set phrases being repeated ad nauseam, resulting in frozen language and obscurantism. It has also been suggested that the adversarial nature of our system of justice, as compared to the inquisitorial system favored in civil law countries, leads to ritualized language, since no one wishes to give the other side an opening based on a technicality. Under this theory, lawyers choose to repeat boilerplate phrases on the off-chance that there may be

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some difference between the various synonyms: it is perceived as safer strategy to include all possible meanings. And who can blame them? To date, there has been no clear incentive for legal practitioners to change to a more transparent speaking or writing style.

### Conclusion

Regrettably, then, for the time being, we will continue to face a barrage of synonym pairs in our work. Understanding the history and role of doublets in the development of legal language, and recognizing that these tropes are not necessarily a part of other legal traditions, will help us to deal with them. Some comfort can be found in knowing that both law school professors and legal reformers have decried the repetitive and formulaic prose that plagues our legal system. Armed with this knowledge, we should not go on autopilot when interpreting. Instead, we should seek opportunities to tailor renderings to the target language for accuracy and intelligibility. Thereby we can gain some much-needed time. So let's all take a breath, because with doublets, we can save some time: and we need all the help we can get to manage the breakneck speed. ▲

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## NAJIT IN THE WORLD: JUDICIAL NEWS

# SPANISH JUDGE PROHIBITS NOTE-TAKING

## Catalan Association Cites NAJIT in Appeal

Daniel Sherr

In a recent court case in Spain, an interpreter took notes during two court proceedings. In the second proceeding, the judge prohibited the interpreter from taking notes, observing that on the first occasion the notes had been removed from the courtroom and the judge did not know to whom the notes may have been divulged.



Josep Peñarroja Fa, President of the Catalan Association of Sworn Translators and Interpreters (Associació de Traductors i Intèrprets Jurats) filed a complaint with Spain's General Council of the Judiciary, citing *Fundamentals of Court Interpretation*, by NAJIT members Roseann D. González, Victoria F. Vázquez and Holly Mikkelson. Stating that note-taking is taught in "every translation and interpretation department in Spain that offers courses on consecutive interpreting," Peñarroja stressed that

note-taking allows for more fluid interpretation and reduces the need to interrupt the witness. He ended his letter by saying, "We believe sworn interpreters should have complete freedom to take notes in the course of their professional activity within the courthouse, as this is one of the techniques employed in this profession, and it would be our hope that the Council would so rule."

The Council referred Peñarroja's letter to its personnel department to determine if a disciplinary infraction had been committed by the judge. The director of that department determined that no such infraction had been committed, because although the judge did prohibit the interpreter from taking notes during witness testimony, such a prohibition in no way indicated disrespect for the interpreter. The ruling specifically avoids taking a position as to whether the judge's decision prohibiting the interpreter from taking notes was proper.

Peñarroja had not sought disciplinary sanctions against the judge, but rather a vindication of the validity of note-taking in consecutive interpretation.

We will post in the members' section of the NAJIT website a copy of the General Council's decision in Spanish together with a suggested translation into English. ▲