

**DCCD 2020****Dialogue of Cultures - Culture of Dialogue: from Conflicting to Understanding****LANGUAGE TOOLS FOR A HARMONIOUS DIALOGUE IN  
THE ENGLISH LEGAL DISCOURSE**

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***Abstract***

The article is devoted to the study of language tools of hedging in the legal discourse, which allows for a better understanding of the language use in a particular social institution. The purpose of the article is to explore the language of a courtroom procedure so as to identify certain linguistic means aimed at preventing speech conflict and maintaining harmonious communication. The authors analyze and describe the basic means of hedging that professional and non-professional interlocutors use in the courtroom discourse to minimize the force of statements which convey uncertainty, indicate communicative support or interest, – and ultimately to facilitate communicative goals of the speakers. Special attention is given to such language tools of hedging, as modal verbs, modal adverbs, discourse markers, all of which play a crucial role in preserving the “face” of speakers as well as harmony in conversation and social interaction. The authors have established that the typical language tools of a harmonious dialogue in the courtroom discourse are modal verbs and discourse markers indicating the strategies of indetermination and subjectivisation. In the legal discourse, language tools of hedging reduce the degree of imposition, disagreement and contradictions, – a feature indicative of the speakers’ interest in the positive outcome, of their competence in the field of rhetoric while engaged in the process of professional interaction.

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## 1. Introduction

A growing interest in exploring different types of institutional discourse in modern linguistics broadens the knowledge of how the language is used within individual social institutions, especially when certain social roles of the participants in the communication process are taken into account.

Legal discourse is defined by scientists as a kind of institutional type of communication, as a status-oriented interaction of its participants, which dynamically occurs in certain social, cultural and situational contexts, and depends on the system of role prescriptions and standards of conduct in institutional communication settings defined by law (Cheng & Danesi, 2019; Krapivkina, 2016; Palashevskaya, 2010).

Among the key functions of legal discourse, which characterize the actions of its participants, researchers single out the following: 1) regulatory function, aimed at establishing and preserving the norms and values that stipulate the interaction between the institute and the society, the agents and the clients, and between the agents within the institute; 2) performative function, manifested in communicative practices where the world of law and its symbolic structures are formed; 3) informative function, which deals both with the production of certain information flows in the institutional communication, and with generating, broadcasting and relaying meanings at the heart of an institution; 4) interpretative function, which consists of explaining the meanings of communicative actions of discourse participants and corresponding legal documents; 5) cumulative function, which is to develop the “institutional memory”; 6) presentational function – creating the image of the institution, its agents, and the authority of the law; 7) strategic function is manifested in the choice of regulatory communication strategies and tactics of interaction; 8) code function, which is the creation of a special language that contributes to achieving the goals and objectives of the institutional activity (Palashevskaya, 2010).

The judicial discourse, investigated in this article, is defined by scientists as a form of legal discourse, its speech and textual manifestation, verbal-symbolic expression of the process of communication within trial, considered in the socio-historical, national-cultural and situational contexts, based on the characteristics and intentions of its participants.

Since the ever increasing importance is placed upon the ways lawyers deliver speeches in a courtroom based on the principle of fair resolution of judicial conflicts, it is of particular interest to research the judicial discourse from the standpoint of linguistics with special regard to the language tools that provide a persuasive effect. The latter contribute to prevention of speech conflicts and achieving communicative goals of the speakers in the process of harmonious communication.

## 2. Problem Statement

The relationship between the participants of judicial discourse, the representatives of the State justice institution, and the public concerned, their roles and rules of conduct are conditioned by the norms of the institution of justice. This institutional type of discourse is also characterized by such systemically important features as a chronotopos (courtroom), a goal (a legal solution to a conflict, according to the current law), values manifested in the basic concepts of judicial discourse (law, justice, truth), strategies (clarification, regulation, control) (Ustinova, 2011).

Some researchers indicate that the main characteristic of the courtroom interaction is the asymmetry of the statuses among the participants of communication. This determines the speech behaviour of both professional participants (judge, prosecutor, barrister) and non-professional participants (witness, defendant). Another important characteristic of judicial discourse should be noted here and it is based on its institutional affiliation, namely: professional participants, despite the existing restrictions imposed by legal procedures, are given more power in regulating discourse processes during trials, as opposed to non-professional participants who are not supposed to exploit the initiative in a speech event (Dubrovskaya, 2017; Palashevskaya et al., 2017).

It is important to outline the main characteristics of contemporary judicial discourse, such as the institutionality caused by status-role relationships, emotiveness (display of strong emotions and spontaneous feelings), agonality (contradictions in interests and opinions), logical finality, terminology and persuasiveness. It must be noted that in the process of professional courtroom communication there is a transfer of information between the parties, which determines the explicit function of judicial discourse. At the same time, professional participants of trials assess information, which means there is an axiological function of judicial discourse, with emotional, emotional-intellectual and intellectual-logical components (Zaitseva, 2016).

Viewing the linguistic specifics of judicial discourse, it is important to emphasize the characteristic use of embedded clauses, archaic phrases and words, legal terms, verbosity, nominalization, lexical repetitions, etc. It is necessary to take into account such features of legal formulations as precision, persuasiveness and clarity of expressions, accessibility in comprehension (Litvishko & Miletova, 2019; Mattila, 2006). In the studies of judicial discourse, researchers link the problem of reflecting natural language in legal texts with the formation of new concepts, typical of this type of communication (Popova, 2016), where the language facilitates the disclosure and awareness of all communicative processes in the legal sphere (Litvishko, 2019).

Taking into consideration the fact that language is viewed as a powerful social manipulation instrument which shapes and structures the society (Shiryayeva et al., 2018), linguistic utterances that are used in court for the benefit of the defense or accusation are the focus of attention. The study of linguistic tools aimed at successful communication in judicial discourse is particularly important.

### **3. Research Questions**

Research on the linguistic characteristics of judicial discourse, the stratagemic and tactical organization of speech in the process of social interaction is of specific interest, which is reflected in the strategies of hedging that help to prevent speech conflict, following the harmonious process of communication. Implementation of hedging, seen as an interpersonal rhetorical strategy, demonstrating the degree of the speaker's commitment to the force of the conveyed speech acts (Fraser, 2010), as a way of speech insurance or speech caution, with the aim of concealing verbal influence through the deliberate evasion of the use of direct means of persuasion (Dafouz, 2008) – is the primary condition for reducing the threat directed to positive interaction.

Hedging, as a collective term referring to a number of auxiliary lexical, stylistic and grammatical elements, is used for reducing the degree of the author's certainty, purposely expressing doubt or

vagueness towards a statement, preventing or minimizing speech conflict. These language tools are presented in linguistic literature as lexical and grammatical items indicating uncertainty, tentativeness, fuzziness, and employed to avoid possible disagreement or conflict (Hyland, 1998); as modality devices contributing to the realization of politeness strategies (Vassileva, 2001); as “smallwords” expressing the communicative intention of the speakers and signalling the state of success of communication (Hasselgreen, 2004).

Hedging represents the rules of communication, the linguistic means of which regulate the degree of speech influence on a recipient, contribute to the efficient process of speech perception, harmonious communication, mitigation of face-threatening speech acts that demand actions or interfere with privacy and affect the reputation of interlocutors (Brown & Levinson, 1987). Linguistic tools working as hedges minimize the force of statements. These means are used by speakers or writers intentionally, to show uncertainty, vagueness, demonstration of communicative support, interest, attention. Harmonious dialogue and hedging become the characteristic forms of social interpretation of verbal and non-verbal behaviour of interlocutors, playing a key role in the concept of politeness and thus in the strategies of social interaction by preserving the “face” of speakers (Boncea, 2014; Overstreet, 2005).

In the studies investigating the language tools that function as hedges at the lexical, grammatical and stylistic levels, scientists highlight the following basic strategies:

- strategy of indetermination that adds vagueness, minimizing qualitative and quantitative explicitness of the proposition of utterances; it is represented by modal verbs expressing possibility (*may, might, can*), epistemic lexical verbs (*believe, think, assume, suggest, seem, appear*), modal adverbs (*apparently, likely, probably, possibly*), adverbs-approximators (*approximately, generally*);

- strategy of limitation/camouflage hedging, carried out with the help of metalinguistic operators (*generally speaking, actually, in fact*), shifting the focus of attention of a recipient and minimizing the negative reaction to the proposition of the statement, limiting the degree of the force of the statement;

- strategy of subjectivisation that is implemented through the use of combinations of personal pronouns with verbs of cognition (*I suppose, I think, I assume*) and such expressions as *in my experience, in our view, to our knowledge*, conveying the author’s point of view, the subjective nature of the expressed proposition;

- strategy of depersonalisation achieved by impersonal passive structures (*In this research data have been analysed to find out...*), impersonal active speech combinations (*the results suggest*), use of the pronoun “we”, impersonal subject “*The authors*” (Martin, 2003.)

It is important to highlight that the abovementioned metalinguistic operators, the combinations of personal pronouns with verbs of cognition, modal adverbs and adverbs-approximators are considered by researchers of the English-language discourse to be discourse markers (lexical expressions, introductory phrases, discursive formulas, interpersonal metadiscourse markers, vague category markers) (Bagiyan et al., 2019; Dafouz, 2008; Fung & Carter, 2007; Hyland, 2004; Malyuga & McCarthy, 2018), which are used by addressers for structuring the discursive space, positioning participants of communication in a discursive event. They instruct the recipients about efficient ways of interpreting utterances, serve to express the speakers’ attitude and the stance towards propositional meaning, mitigate the force of

statements by marking indirectness, distancing, vagueness, and thus are linked with harmonious speech interaction.

We emphasize that analyzing the implementation of the category of hedging in judicial discourse through depersonalisation, reference, direct use of modal words and metalinguistic operators provides an opportunity for effective dialogue, acknowledgement of impositions in terms of agreement (Alonso et al., 2012). Hedging helps to mitigate the force of statements that pose a threat to the speaker's or listener's "face" (imposition, disagreement, criticism), it is aimed at preventing and eliminating conflicts, at maintaining harmony in communicative interaction.

#### **4. Purpose of the Study**

The purpose of this work is to study and analyze the language specifics of legal discourse in the courtroom procedure aimed at preventing speech conflict and maintaining harmonious process of communication. This contributes to the study of the language use in a specific social institution, the communicative orientation of the language of law.

#### **5. Research Methods**

In the study of language tools used for the implementation of hedging in the legal discourse, we have applied the following scientific methods: the continuous sampling method to collect and analyze the language material; the descriptive method to summarize and interpret the material under study; communicative-pragmatic method aimed at identifying the communicative intentions of speakers; context analysis method and quantitative analysis to organize the research material.

Data for analysis are drawn from the transcripts of the Steven Avery trial (Manitowoc County, Wisconsin, United States, 2007). 550 pages of English-language transcripts of court sessions were analyzed as a source of language material in order to identify and study the language tools contributing to an effective process of harmonious dialogue. 1,347 language units were found, of which 692 instances were of discourse markers, 537 instances – of modal verbs, 118 instances – of modal adverbs.

#### **6. Findings**

In the course of the analysis and systematization of the implementation of hedging in the language material, we have identified the use of such language tools that contribute to harmonious dialogue, prevention of speech conflict in trials, as:

- modal verbs (*may, might, can, could, should*) – 39.8% of the use of hedging language tools in the studied trial procedures;

- modal adverbs (*apparently, likely, perhaps, practically, probably, possibly, obviously*) – 8.7%;

- discourse markers represented by verbs of cognition (*I believe, I think, I mean, I suppose, I assume*) – 16.2%; approximators (*just, sort of, kind of, quite, approximately*) – 35.3%.

Text fragments below utilize hedging language tools in the speeches of professional participants in the judicial discourse. In the following example (1), modal verbs *may, might, can, could* are used in the

speech of an attorney. These hedges contribute to the indirect transmission of the information, allowing the speaker to avoid the imposition of statements and introducing the strategy of vagueness.

(1) THE COURT: .... So **I think** to the extent that anything mentioned by the defense in its opening was not from the past, the State will have adequate opportunity to address that in closing argument. Is there anything else to take up before we bring the jury back?

ATTORNEY KRATZ: There is, Judge, although there were no stipulations to note yesterday in our first testimony, there will be witnesses that are scheduled to begin today **that may be the subject of agreements** between the parties. I thought, unless the Court wants to get going, I thought **this might be an opportunity** to provide the Court with those agreements. ... And I wish to take a few minutes to put those on the record, **if I can**, at this time. If Mr. - Mr. Strang has recommended that **perhaps** at this time, since **our first witness may not be the subject** of any of these stipulations, but later witnesses today **might, perhaps** we **can give you** our written list of stipulations. Some of them **just won't be objections** by the defense and **may not need to be** in writing. And if that satisfies the Court, then **perhaps** after our next break or sometime before the close of the day **we can put the rest of those** on the record.

THE COURT: **I think** that would be helpful.

ATTORNEY STRANG: **If we could take just a moment** to photocopy, this is an email that I sent to Mr. Kratz going paragraph by paragraph through proposed stipulations. **If we could have just a moment to let** Mr. Kratz photocopy that and we'll keep a copy here at our table so that, **you know**, I don't, **you know**, inadvertently forget -

THE COURT: All right (Steven Avery Trial Transcript Day 2, 2007, pp. 14-17).

The attorney appeals to the judge with a polite request to give him an opportunity to listen to the witnesses in the case, which probably, according to the lawyer, will help to reach agreements between the parties of the trial (*that **may be** the subject of agreements between the parties; this **may be** an opportunity to provide the Court with those agreements*), and also asks for permission to provide a list of witnesses in the written form during the trial procedure (*then **perhaps** after our next break or sometime before the close of the day we **can** put the rest of those on the record*). Further, in an even more courteous form, the attorney asks the judge to give time to provide a copy of the documents (*if we **could take just a moment to photocopy***). In the judge's speech, in turn, there is the use of the discourse marker '*I think*', which indicates agreement, cooperation, and implements the strategy of subjectivisation.

Example (2) presents the use of modal adverbs *obviously, probably, perhaps*, implementing the strategy of indetermination in the dialogue between the special prosecutor (Attorney Kratz) and the attorney at law on behalf of the defendant (Attorney Buting),

(2) THE COURT: So, what you are saying is that your understanding is, from what I take it, exactly the opposite of Mr. Drumm's understanding. **I think** he said he thought there were photos taken, but was not aware of video, though, he wasn't personally involved in either one, he was flying the plane....

ATTORNEY KRATZ: I'm sure the camera he saw was a video camera and that has been turned over to the defense.

ATTORNEY BUTING: I would ask, if counsel is just discovering this cell phone incident today, and the way she described it, **obviously** there was some **sort of** police involvement, that **perhaps** overnight he **should** check with **probably** Manitowoc and see what's up with that.

ATTORNEY KRATZ: **Perhaps** Mr. Buting would like to do that; it's not in my possession, Judge.

THE COURT: How did this come to light? How did you know how to ask the questions about it, Mr. Buting? **I guess** I'm at a loss. I don't know how it got started (Steven Avery Trial Transcript Day 2, 2007, pp. 248-249).

In this discourse segment, modal adverbs (*obviously, probably, perhaps*) are accompanied by the modal verb (*should*) and discourse marker (*sort of*), which maximizes the respectful manner on the interpersonal level of the dialogue. The attorney suggests possible police interference in the case (*obviously there was some sort of police involvement*), and offers the prosecutor to investigate the issue (*that perhaps overnight he should check with probably Manitowoc*). The prosecutor, in his turn, minimizes the force of his claim with the help of the modal adverb '*perhaps*' (*Perhaps Mr. Buting would like to do that*).

The following example deals with the use of discourse markers *I mean, that kind of thing, you know, just, sort of, like, oh* in the cross-examination by attorney (Attorney Strang) of the witness (Michael D. Halbach). It must be noted that according to the data obtained, the use of discourse markers is more typical of the speech interaction between professional and non-professional participants in judicial discourse, namely at the stage of cross-examination (63,8% cases of use from the total number of discourse markers identified in the language material). These findings demonstrate the commitment of the speakers to a successful transfer of the information, a more informal, effective communicative interaction aimed at achieving a positive result.

(3) ATTORNEY STRANG: So, **I mean**, do you think it was that Thursday night that you figured out that Avery Auto Salvage was one of the appointments; if you remember?

MICHAEL D. HALBACH: I don't remember exactly if it was that night, or if it was the next day, or – it was one of those two....

ATTORNEY STRANG: ... Was it Friday, already on the TV they were talking about the Avery Auto Salvage or flying over it, **that kind of thing?**

MICHAEL D. HALBACH: I don't recall, specifically, myself, **you know**, seeing the media involvements saying Steven Avery, but I know that they reported on the missing persons case involving my sister, that Thursday night.

ATTORNEY STRANG: **Oh**, right away Thursday night?

MICHAEL D. HALBACH: Correct.

ATTORNEY STRANG: And then Friday and I know by Saturday, there was a lot of media coverage?

MICHAEL D. HALBACH: Yes.

ATTORNEY STRANG: Not that you were watching but, **I mean**, you were out – that you were **just sort of aware of it?**

MICHAEL D. HALBACH: Yes.

ATTORNEY STRANG: Did you – Did you have access to her computer passwords or account information for, **like**, her cell phone, for example, or bills, **that kind of thing**?

MICHAEL D. HALBACH: Cell phone, yes; computer password, yes (Steven Avery Trial Transcript Day 1, 2007, pp. 182-183).

As the example shows, the use of discourse markers is observed in both the speech of the attorney and the witness. All discourse markers used in this segment of speech function at the interpersonal level, indicating the understatement of the speakers' attitude to the proposition of the statement, lessening the distance between the interlocutors, contributing to smooth and efficient interaction. Discourse markers *I mean, you know* imply shared knowledge between the speakers, indicating explanation, clarification, reformulation. Discourse markers *like, just, kind of, sort of* give an interactive mitigation effect of the face-threatening act of question. The discourse marker *oh* points to confirmation of the shared knowledge gained in the course of the dialogue.

The results of the study show that the use of discourse markers as language tools of the category of hedging in judicial discourse facilitates emotional impact, enhances interest, participation, interactivity, informality, engagement in dialogue.

## 7. Conclusion

The research of hedging is certainly of great interest to linguists, as the speakers use the language tools of vagueness, uncertainty, indirectness in statements intentionally, in order to show concern about the positive reaction of the interlocutor. The use of hedges in judicial discourse plays an important role in the process of social interaction, contributing to its effectiveness.

By using modal verbs, modal adverbs, discourse markers, speakers reduce the degree of imposition in disagreements and contradictions purposely, softening the utterances with uncertainty, imprecision, indirectness in order to avoid the interlocutor's rejection, all of which contributes to harmonious speech interaction, and therefore, to achieving communicative goals in accordance with social roles of the interlocutors.

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