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Plain Yiddish for Lawyers

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The movement to require the use of "plain English" is picking up steam. Even federal judges are competing, redrafting their jury instructions and boasting that their version has fewer words than some other judge's.

But it's time for a counterrevolution. Sometimes the best word to convey a concept or an idea is not a plain English word—it's plain Yiddish. Lawyers and judges with a rudimentary knowledge of the virtues of plain Yiddish will find that it puts plain English to shame when one is groping for that special word to convey what is really in the pit of your stomach.

Take, for example, the dilemma faced by Judge H. Sol Clark of the Georgia Court of Appeals. Called upon to decide an appeal by a man convicted of breaking into the sheriff's office in a county courthouse and stealing eight pistols and five shotguns, Judge Clark could not find a plain English word to describe appropriately the brazen gall that crime requires. But he found what he needed in the classic Yiddish expression, "chutzpah."

He cited the definition offered by Leo Rosten in The Joys of Yiddish, "The classic definition of 'chutzpah' is that quality enshrined in a man, who having killed his mother and father, throws himself upon the mercy of the court because he is an orphan." Williams v. Georgia, 190 S.E.2d 785 (1972).

Judge Clark's precedential use of this Yiddish phrase has been followed, and one now can collect a string of cases competing for the most monumental display of audacity by simply running "chutzpah" through Lexis or Westlaw. (The word has not yet been assigned a key number.) My nomination for the winner of this competition is Maryland v. Strickland, 400 A.2d 451 (1979), by Chief Judge Gilbert of the Maryland Court of

By Gerald F. Uelmen

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ON THE LIGHT SIDE
Pleadings and opinions

A single Yiddish word can capture all the subtle nuances you wish to convey about the opposing party in legal pleadings. Rather than saying, "The defendant then and there, without due circumspection and caution, entered the intersection while the light was red," you can simply say, "The draikopf ran a red light."

You also can communicate contempt for the tactics of opposing counsel. Rather than an indignant "Counsel for the defendant is deliberately impeding frivolous objections to delay these proceedings," you can simply chortle, "The nebbish is putting up this case."

One exuberant lawyer told a court of appeals justice that a recent difficulty he was experiencing was "kreplach" and received a smack in the shnozzle in return.

Juries have been known to apply Yiddish labels to each other on occasion. The most famous example is Justice Robert Thompson's classic footnote 2 in *California v. Arno*, 153 Cal.Rptr. 624 (1979), presented with a kvetching dissent. Justice Thompson spelled out his response in unusual form. The first letter of each sentence forms the word "schmuck":

> "1. Some answer is required to dissent's charge.
> 2. Certainly we do not endorse 'victimless crime.'
> 3. How that question is involved escapes us.
> 4. Moreover, the constitutional issue is significant.
> 5. Ultimately it must be addressed in light of precedent.
> 6. Certainly the course of precedent is clear.
> 7. Knowing that our result is compelled.
> (See Funk & Wagnall's The New Cassell's German Dict., p. 408, in conjunction with fn. 6 of dis. opn. of Douglas J., in Ginsberg v. New York (1967) 390 U.S. 629, 655-656.)"

The German definition of "schmuck" is a jewel. The Yiddish definition is somewhat less flattering although equally treasured by some, referring to a male reproductive organ. As the *Ginsberg* footnote cited by the court declares, however, which definition one prefers may depend on your own neuroses. The dissent protested that press accounts of the footnote used the Yiddish definition, which was found in Webster's dictionary:

> "One certainly cannot fault the *Los Angeles Times* for using an English dictionary [Webster's] since California published opinions for over 125 years have been written in English and our jurisdiction obviously does not extend 7,000 miles to the Rhine in Germany."

Thus, the dissenting footnote can be cited by counsel to support the use of any Yiddish terms that have found their way into English dictionaries.

This exchange also illustrates one of the great advantages of Yiddish words for lawyers. Frequently the same word can be used to insult in one context and express admiration in another. You can deftly avoid an accusation of contempt by citing the alternative definition. "Shaygitz," for example, is an ethnic slur for young non-Jewish males, meaning "disingusting because uncircumcised." But it can also mean a handsome lad of any religion who is irresistibly charming to women. "Shiksa" is the female version of "shaygitz." A similarly adaptable word is "pisher," meaning either an insignificant nobody or a cute little squirt, depending on whether it is applied to an adult or a child. "Chachem" can denote a savant of great wisdom, or a foolish jerk, depending on the intonation. Thus, you might greet a judge's overruling of your objection, "Such a chachem."

Jury instructions

Yiddish can be put to good use in clarifying the complexities of the instructions judges give to juries. Just a few examples from Devitt & Blackmar's *Federal Jury Practice and Instructions* (3rd ed. 1977) will illustrate the point:

**English:** The sanity of the defendant at the time of the commission of the alleged offense is an element of the crime charged and must be established by the government beyond reasonable doubt, just as it must establish every other element of the offense charged. A defendant is insane within the meaning of these instructions if, at the time of the alleged criminal conduct, as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

**Yiddish:** If you find that the shnook was meshugga when he did it, you should acquit him.
English: The plaintiff in this case claims damages for personal injuries, alleged to have been suffered as a proximate result of negligence on the part of the defendant. Negligence is the doing of some act which a reasonably prudent person would not do or the failure to do something which a reasonably prudent person would do, when prompted by considerations which ordinarily regulate the conduct of human affairs. It is, in other words, the failure to use ordinary care under the circumstances in the management of one's person or property, or of agencies under one's control.

Yiddish: If you find that the defendant is a schlemiel, you should make him pay. If you find he is just a schlimazel, give him a break.

There's a difference

The difference between the schlemiel and the schlimazel was summed up in Dictionary Shmictionary!, by Paul Hoffman and Matt Freedman, as follows, "The schlemiel brings on his own misfortune, unlike the schlimazel, who gets it handed to him. For example, when a schlimazel drops a piece of buttered toast, it always lands buttered side down. But when a schlemiel drops a piece of toast, he has buttered both sides."

The "schmuck" is probably more closely related to the "schlimazel" than the "schlemiel." It's easy to get them confused, for they frequently travel in pairs. Even Justice Douglas of the U.S Supreme Court apparently got them mixed up, if this account by Edward Bennett Williams in 34 F.R.D. 184 is correct.

"Mr. Justice Douglas publicly observed on one occasion that the most important distinction impressed upon him in his days as a Columbia law student was the difference between a schnook and a schlemiel. He said a schnook is a fellow who gets dressed up in his dinner jacket and goes to a very elegant dinner party and proceeds to spill the soup, and spill the gravy from the entree, and then slobber the chocolate sauce when the dessert is served. The schlemiel is the fellow he spills it on. It has been my experience that in every case involving 20 or more defense lawyers on the criminal side of the court we are apt to draw one or more schnooks, and it makes all the rest of us into schlemiels."

More accurately, it is the schlemiel who makes all the rest of us into schlimazels. The schnook is frequently the judge.

Trial objections

Yiddish can supplant the stock of evidentiary objections available to every trial lawyer. Instead of objecting to a question because it calls for a narrative answer, counsel should simply say, "I object, he's asking for a gonsa megillah." When opposing counsel is badgering a witness or asking argumentative questions, you can interpose, "Stop shupping." I tried that once, and the delighted judge yelled, "Shushtained." When an expert witness gets carried away with his qualifications, you can offer to "stipulate that this trombenick is a maven."

Yiddish objections are especially effective in unnerving opponents during their final summation to the jury. Loudly moving to "strike the schlock" is guaranteed to bring an explosive response. If he gets too close to the jury box, object that "the shlump is shmoozing." When he starts telling cute stories, you can politely interject, "Although I hate to interrupt counsel's shtick, this kashe is not in evidence." The most effective derailer, however, is the klots-kashe, a question from left field. Jumping up and asking "What does truth have to do with justice?" is an effective klots-kashe. If your opponent interrupts your closing argument, you might respond, with great disgust, "More mish-mosh from the kibbitzer."

One final word of caution to my fellow goyim, however. While the use of plain English can vastly expand our communicative powers, we must proceed with caution (scrutinize the glossary with care). A single goof can make us look like a shmegege. We had a recent example in an interview of Justice Sandra Day O'Connor in the Ladies Home Journal. She was quoted as saying, "I'm the yenta of Paradise Valley. I have introduced a number of couples, including my own sister and brother-in-law."

While Yente was the name of the matchmaker in Fiddler on the Roof, a "yenta" is a blabbermouth. Justice O'Connor may be a shadchen, but a yenta she's not.

Gerald F. Uelmen is a professor of law at Loyola Law School in Los Angeles. The author wishes to acknowledge the input of four tsitsers, who deny responsibility for any mistakes but claim full glory for what's right: Gideon Kanner, Gerald M. Singer and Gert and Abbie Wilson.

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Social Security Benefits

The United States passed the Social Security Act to help its citizens through retirement, disability, and the death of the family breadwinner.

Are you eligible?

If you have paid Social Security taxes, you and your dependants may be eligible for benefits under various programs.
If you are a dependant of someone who has paid Social Security taxes, you may be eligible.

When to apply for benefits

- you are age 62 or older, and plan to retire
- you are 65, whether or not you plan to retire
- you, or a member of your family, is unable to work due to severe physical or mental disability that is likely to last at least a year or result in death
- you are a dependant of someone who dies

The amount of Social Security benefits depends on age, health problems, and work credits which relate to the history and length of employment.

Various Types of Benefits

Retirement Benefits

Retirement benefits are payable as early as age 62. The amount depends upon your earnings over time and your age. For example, if you apply at age 62, the payments will be lower than if you wait until age 65 to apply.

Payments may be reduced if you return to work and earn over a base amount.
In general, income from investments or insurance does not reduce payments.

Disability Benefits

Disability benefits are available to you and your family if you are disabled before age 65, if you are unmarried and disabled under the age of 22; or if you are a deceased worker's disabled spouse, age 50 or older.

To be approved for benefits you must present evidence of disability to the Social Security Administration. The evidence must show you are physically or mentally unable to work for a living, and that you expect this condition to last for at least a year, or to end in death.
(A lawyer can help you collect and present the required medical and work evidence.)

The Social Security Administration, through a state agency, uses your evidence to make a decision. This decision is subject to periodic review and diagnosis.

You may continue to work on a limited basis and still receive disability benefits. However, the amount of financial help may be significantly reduced.
Recent developments in the law allow you to try to return to work, and still receive benefits for a trial period. There are also special provisions if you are blind.

Survivor's Benefits

Survivor's benefits may be paid to your dependants, including a spouse over the age of 60, unmarried children under 18 (19 if in high school), parents over 62, unmarried children over 18 who are disabled before age 22, and dependant parents age 62 or older. In some cases, divorced spouses may receive benefits if they were married ten years or more.

If you are the dependant of a worker who dies, you may be eligible for survivor's benefits.

Medicare

Medicare is a health insurance program that includes hospital and medical care. It covers people age 65 and beyond, persons disabled for two or more years, and workers and their families suffering from kidney failure.
Hospital coverage is free, however, you must pay a small monthly fee (the premium) for medical coverage. (Medical coverage includes doctors, outpatient, and similar services.)

Are benefits taxable?

Up to one half of your benefits may be taxable if the sum total of your adjusted gross income, non-taxable interest, and one half of your Social Security benefit exceeds a particular base amount. To obtain a specific answer, consult a tax lawyer who is familiar with the Social Security system.
Social Security Benefits

Can creditors take your benefits?

No, Social Security benefits are not subject to creditor execution, levy, attachment, garnishment, bankruptcy, or other legal process, with the exception of certain spouse support/child support obligations that may lead to attachment of benefits.

Your obligations

You must report the following:

- a change of name and/or address
- if you leave the U.S. for more than 30 days
- if you work outside the U.S.
- if you are imprisoned

Dependants and survivors should report:

- a change in marital status
- a recipient's death
- the adoption of a child
- a child leaving parental care
- a recipient who is unable to manage funds

Anyone who misrepresents facts relating to a benefit claim may be subject to criminal charges and a fine.

Social Security law can be very complex, and it is advisable for you to contact the Social Security Administration office near you for more specific information on your rights and obligations.

What to do if benefits are denied

You have the right to appeal any decision made by the Social Security Administration.

If you don't like a decision, you have 60 days to ask for a second decision called a "Reconsideration."

If you are not satisfied with this second decision, you have the right to an Administrative Hearing, which you must request within 60 days after the reconsideration determination. This hearing is less formal than a hearing in court. However, you or your attorney should be prepared to present all supporting evidence and bring witnesses to the hearing.

If necessary, the final step within the Social Security Administration is a review by the Appeals Council, which you request within 60 days after the Administrative Law Judge decision.

After trying out all the possibilities within the administration, you may file a Complaint in Federal District Court. Such an action must be filed in the appropriate U.S. District within 60 days after the Appeals Council's final decision.

Be aware of specific time limits in the appeal process. If you are late with your requests, you may lose your right to appeal.

You may ask that your benefits be continued during the appeal process, but you may be asked to repay them if you lose.

The Attorney's Role

You have the right to an attorney, or other qualified person of your choice, at every level of the appeal process.

If you question a decision by the Social Security Administration, it is in your best interest to contact an attorney.

An attorney will help you gather medical and work evidence and present it to the SSA. An attorney will also make sure your appeals are on time.

If you use an attorney, he or she may charge you the maximum fee set by law. This fee is equal to 25% of the past due benefits that it is determined you have the right to receive.

When you need legal advice concerning Social Security benefits, contact our firm at the address below.

CLIENTALK is intended to be used as a general information source and does not constitute legal advice. Before any action is taken, an attorney should be consulted.

Contributing Editors: Phillip F. Fishman, Partner with Fishman and Maupins, Bloomington, MN and Harvey L. McCormick, Administrative Law Judge with the Office of Hearings and Appeals, Social Security Administration, Kansas City, MO.  
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