



The delicate dance of decorum

Words are the weapon of the advocate. They are both the overtly powerful armament by which we create and obliterate final argument, and the cloaked dagger we occasionally unsheathe to blood-let a sensible (but bothersome) procedural suggestion of an opponent. Of course, many a wisened counsel will tell you that when appearing before certain members of the Bench, it is best to draw upon one's fine command of the English language...and say nothing.

In the florid fandango between Bench and Bar, language is frequently used by counsel to couch indelicacies (certain, 'inconvenient truths') to their Honours. For example, the following curial messages which counsel are liable to utter are, I respectfully submit, well understood by judicial ears:

What barrister says	What barrister means
'Your Honour, I am instructed that...'	'Your Honour, what I am about to say is so devoid of sense, logic or any underpinning in known law, that I feel compelled to flag with you that my only reason for raising it is the relentless pressure from my instructor and my future need to secure further work from them to feed my family.'
'my learned friend'	'my so-called learned friend.'
'Quite.'	'Your Honour appears to be agreeing with me, and I'm terrified of messing it up.'
'Your Honour, I hear what you say.'	'I respectfully disregard the erroneous characterisation your Honour has just given to my argument and will explain the issue further in a moment.'
'I will need to obtain further instructions on that issue.'	'I have tried to persuade my client of the sensible proposition your Honour puts; but let's see if vthey'll listen to me now they've heard you make the same point.'
'I will take that on notice your Honour.'	'I have no idea what your Honour has just said.'

Of course, the metaphor of dance is an earnest one, and as they say, it takes two to tango. Judges too are liable to rumba in code, issuing statements that are seemingly innocuous to all but their barristerial dance-partners. For example:

What judge says	What judge means
'I'm not suggesting you should, but do you have any submissions in reply?'	'Nothing you say will make any difference to my judgment.'
'...of course, these are merely my preliminary thoughts and you should not be dissuaded from putting forward your arguments to the contrary.'	'Nothing you say will make any difference to my judgment, but I want to appeal-proof my reasons by hearing all of your wayward submissions.'
'I think I have the point, it's as I understood the usual practice to be.'	'The runway is before you, alight and bearing welcoming semaphore. Hurry up and land this plane.'
'I would like to ask the witness some questions.'	'Let me land this plane.'
'I see your only authority for that proposition is the dissenting judgment of Kirby J in reliance upon international law.'	'I'm afraid man was never meant to fly.'

There is something to be said for the subterfuge by which truth is transmitted between the actors in court, and that is: one's dignity is better preserved before solicitor and/or client instructors. It permits after-court conversations like the following:

	What person says	What person means
Client	'How do you think that went?'	'How do you think that went?'
Barrister	'It was not without interest. Lunch?'	'Well that was an absolute bloodbath. I need carbs.'
Client	'Sounds good.'	'Yay – free food!'