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**Judge Anthony J. Mohr**
LOS ANGELES SUPERIOR COURT

**Judge Elizabeth Allen White**
LOS ANGELES SUPERIOR COURT

# With all due respect

## FROM SAILING TO THE COURTROOM, EVERY LINE OF WORK HAS ITS SERIES OF CODE WORDS AND PHRASES. KNOWING HOW AND WHEN TO USE THEM IS IMPORTANT

Every line of work contains its own particular patois, its series of code words and phrases. Knowing them is important. If you're sailing and say, "Pick up the rope on the left side," you've exposed yourself as a novice. True salts would say, "Pick up the line on the port side."

So it is with court appearances, and while judges try to keep it together when counsel mangle their words, you will make a better impression if you know how to say things. In fact, certain sentences and clauses, if strategically employed, will impress us. Here are some examples.

### Don't say this

*"With all due respect."* This prepositional phrase constitutes the third rail of courtroom rhetoric. It means the opposite. To say those words is to call the judge a moron, to imply that you have no respect for the judge whatsoever. We know that; you should know that. More important, there is no percentage in telling judges they're stupid. Do you really expect these words will convince a judge to rule in your favor? If you take away anything from this article, take away this: never say, "with all due respect."

*"If you had read my papers…"* This means, "Judge you haven't read my papers. The preposition 'if' doesn't soften the blow at all. What you are doing is accusing judges of not having done their job. The vast majority of bench officers take their work seriously. Think of it this way: Why would we want to take the bench without having read your briefs? We admit this has occurred a handful of times, and when it has, we felt embarrassed, our ignorance exposed. We'd rather know what the case is about, and quite frankly, it's more fun when we do, because then we can have an intellectual discussion with counsel. It's altogether possible that we misread something or skipped a footnote that contains your strongest case (in which case, why is it in a footnote?) You can suggest that happened in a diplomatic way. Example: "Your honor, may I call your attention to footnote 87 on page 14 in which we cite the case of *Putin v. Stalin*…")

*"I need to make my record."* You are making your record through the entire hearing. Every word that's said becomes part of the record. This phrase accomplishes nothing more than signaling the judge that you want to filibuster and perhaps make arguments that you should have made in your briefs. And if you didn't order a court reporter, you're not making a record at all, because nobody is preserving your words.

Telling opposing counsel, *"You never said/You never did/You're lying…"* Statements like this are inappropriate for two reasons. First, attorneys must talk to the court during arguments, not opposing counsel. Second, this sort of accusation is unprofessional. It lacks civility. Remember the Appendix to the Los Angeles Rules of Court, which incorporates the Los Angeles County Bar Association's Rules of Civility. Civility gets you a long way not only with the Court but in your relationship with opposing counsel.

*Don't ask for a mile.* The American Bar Association has on its web site a very important admonition from a judge pro

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tem in the Orleans Parish Civil District Court. It reads, in pertinent part, "Do not ask for more than what has been ruled by the court. Resist the urge to include simple words like 'with prejudice,' 'without prejudice,' or voluntarily award yourself attorneys' fees and court costs in a judgment. If you didn't specifically address the issue with the judge, don't assume that it is okay to ask for extra relief just because you think it's important. The court record serves numerous purposes, including protecting litigants from selfish or last-minute requests. Make a list of all relief sought from the court and make sure it is put on the record in open court. This will protect your client, the judge, and your reputation."

*Legalisms*: A number of words may sound appropriate on their face, but they don't help, and in some situations, they harm. Examples of such jargon include "but for," "whereas," "assuming arguendo," "aforementioned," and "heretofore." Phrases like "the subject note" and "party of the first part" are also suspect.

*"Merely," "Clearly," and "Totally."* – Stay away from these adverbs. They add next to nothing to your arguments. Avoid them in your speech and also in your briefs. Judges consider them empty fluff. Equally unpersuasive are words like "egregious," "malicious," "wicked," and "willful," and – well, you get the idea.

*Ask simple questions*: Don't say "What did the person do with respect to the operation and control of the motor vehicle?" It's better to ask the simple question, like "How was the person driving?"

## Do say this

*"Good morning, Your Honor."* There's no need to elaborate. This is a civilized way to start any hearing.

*"May I be heard?"* There are ways to impress us. One of the best can be used midway through an argument. If you sense that the judge is getting ready to rule but you need to make an important point, ask, "May I be heard about" and then describe the subject. Rare is the judge who will say no to such a polite request.

*"Would you please take the matter under submission?"* If at the end you don't think you're winning, and if the issue is complicated, and you think the judge has missed something important in your papers, there is nothing wrong in asking the judge to consider the matter further before ruling. If you ask, focus the request. E.g., ask the judge to take another look at pages x through z of your brief and particularly the one or two cases you think are dispositive.

*"I know that* Stalin v. Putin *held against me, but let me distinguish its facts."* This is a decent prelude to your argument, something that will make the judge sit back and listen to what you have to say.

Use plain English. Everyone should read *United States v. Marshall* (9th Cir. 1973) 488 F.2d 1169, 1171 n.1. The Ninth Circuit roundly criticized the phraseology so many law enforcement agents use in court. Make sure your witnesses don't testify like these people did:

"The agents involved speak an almost impenetrable jargon. They do not get into their cars; they enter official government vehicles. They do not get out of or leave their cars, they exit them. They do not go somewhere; they proceed. They do not go to a particular place; they proceed to its vicinity. They do not watch or look; they surveille. They never see anything; they observe it. No one tells them anything; they are advised. A person does not tell them his name; he identifies himself. A person does not say something; he indicates. They do not listen to a telephone conversation; they monitor it. People telephoning to each other do not say 'hello'; they exchange greetings. An agent does not hand money to an informer to make a buy; he advances previously recorded official government funds. To an agent, a list of serial numbers does not list serial numbers, it depicts Federal Reserve Notes. An agent does not say what an exhibit is; he says that it purports to be. The agents preface answers to simple and direct questions with 'to my knowledge.' They cannot describe a conversation by saying 'he said' and 'I said'; they speak in conclusions. Sometimes it takes the combined efforts of counsel and the judge to get them to state who said what. Under cross-examination, they seem unable to give a direct answer to a question; they either spout conclusions or do not understand. This often gives the prosecutor, under the guise of an objection, an opportunity to suggest an answer, which is then obligingly given."

*"Thank you, Your Honor."* You may not be thankful at all, but this is a polite way of ending a hearing. You may have lost; you may even have been sanctioned; but it's still professional to say these words before you leave (not stomp out of) the courtroom.

*Governor Pete Wilson appointed Anthony J. Mohr to the Los Angeles Municipal Court in 1994 and elevated him to the Superior Court on December 23, 1997. He now sits at the Stanley Mosk Courthouse. In the fall of 2009, he sat as a judge pro tem in Division 8 of the Court of Appeal, Second Appellate District. He currently is the Chair of the California Judges Association's Committee on Judicial Ethics and is an Adjunct Professor of Law at Southwestern Law School.*

*Elizabeth Allen White is a Judge of the Los Angeles Superior Court. She was appointed to the then-Los Angeles Municipal Court in 1997 and elevated in 2000 upon unification. Judge White graduated from UCLA and obtained her Juris Doctorate from Loyola Law School in 1981. Judge White currently presides in a civil court at the Stanley Mask Courthouse. She taught Civil Discovery at Judges College and has been a frequent lecturer for judicial education. Judge White has served as an Instructor for UCLA's Attorney Assistant Training Program, Adjunct Faculty at USC's Gould School of Law and Adjunct Faculty at Loyola Law School where she taught Civil Discovery. She is the author of The Rutter Group's Paralegal Manual - Civil Procedure Before Trial and co-author of the Paralegal Manual – Civil Trials and Evidence and the Paralegal Manual – Personal Injury. Judge White also represents the California and Nevada area as District 14 Representative to the National Association of Women Judges, an organization dedicated to promoting diversity on the bench, fostering collegiality and providing quality education for judges.*