

## The Art of Indirection

By Elizabeth Fajans and Mary R. Falk

*Elizabeth Fajans and Mary R. Falk are both Associate Professors of Legal Writing at Brooklyn Law School in Brooklyn, New York. They have collaborated on several articles in the area of cognitive theory and language and the law. Professors Fajans and Falk co-authored Writing for Law Practice published by Foundation Press (2004) and the widely used reference text, Scholarly Writing for Law Students: Seminar Papers, Law Review Notes and Law Review Competition Papers (3d ed. 2005).*

One mantra of the legal writing profession is that persuasion is best achieved through clear and direct writing. Yet there are situations when clarity conflicts with civility and when implication is more effective than confrontation. Indirect expression can be face-saving<sup>1</sup>—that is why an attorney might write, “To date, we have not received the tuition payments you said you mailed last month,” rather than “We don’t believe for one minute that you mailed that check.” Instead of being so offensive as to cause antagonism and resistance, you can leave room for the addressee to remedy the situation. The skillful use of indirection and implication should thus be part of a legal writer’s repertoire.

How is it then that writers are able to communicate thoughts and attitudes they do not explicitly state? How can they convey more than their sentences literally denote? The answer lies in the fact that communication is a cooperative endeavor.<sup>2</sup>

<sup>1</sup> See Kathryn Riley, *Conversational Implicature and Unstated Meaning in Professional Communication*, 15 *Technical Writing Teacher* 94 (1988), discussing Penelope Brown and Stephen C. Levinson, *Universals in Language Usage: Politeness Phenomena*, in *Questions and Politeness: Strategies in Social Interaction* 56 (1987). According to Brown and Levinson, “[A]ny rational agent will seek to avoid ... face-threatening acts, or will employ certain strategies to minimize the threat.” In terms of discourse, the goal of saving face means that indirectness will often take precedence over efficiency. ...” Riley, quoting Brown and Levinson at 73.

<sup>2</sup> See H.P. Grice, *Logic and Conversation*, 3 *Syntax and Semantics* 41 (Peter Cole & Jerry L. Morgan, eds. 1975).

Because listeners and readers assume each sentence is purposeful, they assume there is a reason for an indirect statement and try to figure out why the communicator is being indirect and what is being implied. Suppose, for example, that we ask a trial lawyer how his case is going. The lawyer answers, “Well, the judge hasn’t held me in contempt yet.” We might infer from this indirect response that while the trial has proceeded thus far without conflict, the judge is not happy with the attorney’s representation. But why does the attorney answer indirectly? He does so to save face—to make light of the situation and thereby minimize his worry, disappointment, or lack of success. Yet the statement, while indirect, is not deceitful. The reference to contempt enables us to infer the true state of affairs. We are able to connect the reply to the original question: we get the implication.

In writing as well as in speech, indirection can be an effective way to preserve the dignity of the communicator or the addressee—especially in client and advocacy letters. In fact, indirection is often more effective than head-on demands and refusals, which are likely to give offense. There are three strategies of “indirection”: first, soften a demand or refusal by using implication; second, soften a demand by avoiding the imperative; and third, soften a refusal by explaining why a demand cannot be fulfilled.

First, demands and refusals can be softened if they are implied rather than explicit. For example, counsel involved in a divorce negotiation might write “acceptance of the child support and maintenance provisions are contingent upon our review of Mr. Smith’s current income and assets.” Since the figures cannot be reviewed unless they are supplied, the clear implication is a demand for the figures—but the expression is far less confrontational.

“In writing as well as in speech, indirection can be an effective way to preserve the dignity of the communicator or the addressee—especially in client and advocacy letters.”

“Some situations call for implication and indirection. They allow a writer to reconcile clarity and courtesy ...”

Second, demands can often be reframed to avoid the imperative and thereby lessen their negative impact. In syntactic terms, the demand to “turn over a list of your assets” is an imperative. But if we reframe it as a question or a declarative sentence, the perceived affront is muted, as seen in the examples below.<sup>3</sup>

- Can you supply a list of Mr. Smith’s assets for the past tax year? (“yes-no” question)
- When do you think a list of Mr. Smith’s assets will be available? (“wh\*\*” question)
- We would welcome the opportunity to review Mr. Smith’s assets. (declarative sentence)

Finally, in order to refuse a demand without losing the good will of the party making it, a writer can reply obliquely by questioning the validity or viability of the demand itself. There are five strategies for refusing a demand politely.<sup>4</sup>

1. Deny that the subject of the request exists. (“A list of assets has not yet been compiled.”)
2. Deny that the recipient of the demand has the power to comply. (“Mr. Smith has not yet forwarded to me the material you request.”)

3. Deny that the act requested is a necessary act (“The figures can be extrapolated from the data we provided at our last meeting.”)

4. Give reasons why the demand cannot be met. (“We are upgrading our software and cannot retrieve the information just now.”)

5. Give reasons why the party making the demand may not in fact want the demand met. (“Last year’s income is atypical and will not be a good predictor of future income.”)

Of course, these five indirect refusal strategies are not appropriate to every situation—we are not suggesting that lawyers invent reasons to avoid complying with valid demands. Nonetheless, using this template to assess the validity of a demand may well point the way to a tactful response.

Some situations call for implication and indirection. They allow a writer to reconcile clarity and courtesy—to calibrate the force of a plea, assertion, demand, request, or refusal to the audience. These techniques belong in every legal writer’s repertoire.

© 2005 Elizabeth Fajans and Mary R. Falk

<sup>3</sup> See Kathryn Riley, *Speech Act Theory and Degrees of Directness in Professional Writing*, in 15 *Technical Writing Teacher* 5–6 (1988).

<sup>4</sup> See Kim S. Campbell, *Explanations in Negative Messages: More Insights from Speech Act Theory*, 27 *J. Bus. Comm.* 357 (1990).