

## **Semantics in Court**

### **Providing Opinions on Likely Meanings of Messages**

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My first expert witness case involved a man who was injured using a chin-up bar designed to fit within a door frame. The bar has rubber suction cups at each end, and its length is adjusted by twisting its two sections together or apart for a telescoping effect. On vacation in Europe, the man placed the bar within the door frame of his hotel room, twisted it out enough to get a tight fit, and began to do chin-ups. In order to do his chin-ups through a full range of motion while hanging above the floor, he had to bend his legs back at the knees. As he did his chin-ups, the bar slipped, his knees were first to hit the marble floor, and both kneecaps were shattered, one being dislodged about 3 inches into his thigh. He sued (*Cala v. Best Products*, 1985). The defense responded that the rubber ends were not suction cups, that metal brackets had been packaged with the bar, that proper use of the bar required the brackets to be screwed into the door frame to support the bar, and, moreover, that the instructions stated this. The man claimed that after having purchased the device, he opened one end of its rectangular box, dumped out the bar, threw away

the box with no brackets or instructions having come out of it, and used the bar unaware of the need for brackets.

One issue in the case, therefore, was that of who was at fault because the brackets were not used. The attorney for the plaintiff looked over the door-bar box (he had bought a new one to examine), and noticed the phrase, "Portable and Convenient for Pullups at Home or Office." He felt certain that the meaning of "Portable and Convenient" is contradicted if brackets have to be screwed out of one door frame and into another in order for the bar to be used in different locations (e.g., "at Home or Office"). Deciding that he had a good argument, and feeling that it would be even more persuasive if it were endorsed by a communication professor, he phoned his local university, got me by chance, and asked me to testify that if a product is described as "portable and convenient for use at home or office," then that means that it does not require the nuisance of frequently installing and removing brackets.

My answer disappointed him. Like any good semantics student, I explained that meanings are in people, not in words, that for every expert witness he found to agree with his meaning of "portable and convenient," the other side could find an expert witness to agree that screws and brackets are very portable, that using a screwdriver is not inconvenient, and that ". . . at home or office" might indeed imply multiple locations, as he insisted, but that the other side could argue just as effectively that it implies a stationary location (e.g., "home *or* office" versus "home *and* office"). In short, I said that I could not under oath endorse a single exclusive meaning for the target phrase.

Fortunately, that did not terminate our discussion. Eventually we agreed that it would be wise to frame the question as one of whether the need for brackets had been communicated well or poorly—by the box as a whole, and/or by the instructions (even though the client said he never saw them). I agreed to examine the box and instructions, easily came to the opinion that the need for brackets was communicated very poorly, was retained as an expert witness, supported my opinion with an experiment comparing the original box with variations I hypothesized would communicate the brackets message more clearly (see Motley, Chapter 15, this volume), and went through the various remaining steps of an expert-witness assignment for the first time (e.g., Motley, Chapter 16, this volume).

I have chosen the door-bar example to introduce this chapter on litigation concerning semantics partly because it is chronologically where my experience began, but also because it demonstrates a principle that seems to apply to virtually all of the 30 or so semantics-related, or meaning-interpretation, cases in which I have been involved: Usually it is not

productive to claim a specific meaning for a specific word or phrase in isolation. About the only time this is preferred is when asked for a lay "translation" of specific passages in legal or technical documents. Instead, it usually is more effective to identify one or more messages that one side claims to have been communicated (e.g., "This bar is to be used only with accompanying brackets for support"), and then ask whether that meaning was communicated relatively well or relatively poorly by the composite of verbal and nonverbal information to which a client was (or was supposed to have been) exposed. Usually, the opinion comes not from a direct translation of given phrases, but rather from interactions of messages, message placement, verbal and physical context, accompanying metamesages, and so forth (e.g., Foss & Hakes, 1978; Hayakawa, 1962, 1972; Nierenberg & Calero, 1981).

This chapter attempts especially to introduce semantics-based litigation consulting to readers who may wish to venture into this kind of work for themselves. But it hopes to also serve attorneys who may not be aware that some communication scholars will have expertise in this area.

For the most part, the chapter simply provides several examples of the kinds of meaning-related issues that can come up in court cases, along with descriptions of how they might be approached by an expert witness with a communication background. When possible, recurrent themes or principles are pointed out, but these are fairly rare, as virtually every case is different. The organization is according to the semantic issues involved.

### **WARNINGS AND DISCLAIMERS: WAS THE PLAINTIFF INFORMED?**

#### **Case 1: Door-Bar Gym**

Let us simply continue with the door-bar case. One of the legal issues was whether the defendant should be liable for the injury because the plaintiff did not use the bar with the supporting brackets provided, and because—at least according to the defense—the need for the brackets was communicated to consumers. Among the expert witnesses on various issues was the communication professor mentioned above, me, who was asked for an *opinion on the clarity with which the packaging and instructions communicated the need for supporting brackets*. Inspections of the box and the instructions were performed.

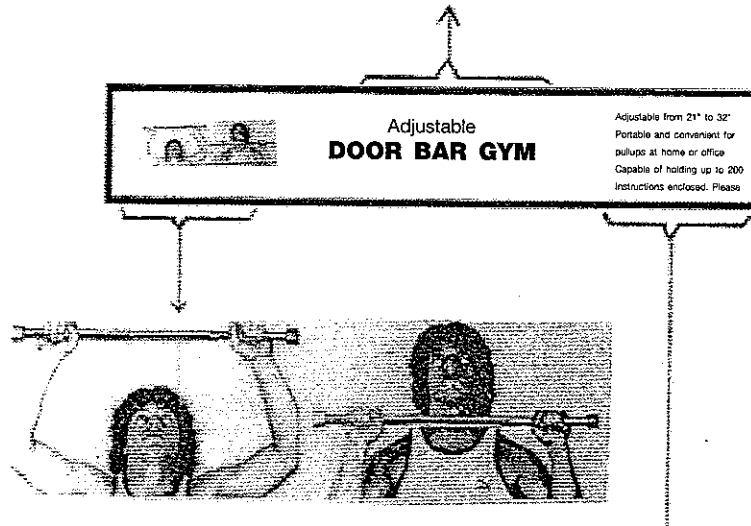
*The Box.* The box was rectangular (~ 22" × 2" × 2") with two opposite long sides containing the same information, the other two long sides blank, and the two ends blank. The information contained on the

box is presented in Fig. 11.1. The reader is invited to examine the box via Fig. 11.1 to formulate an independent opinion before reading the opinion rendered and its rationale. Is the message about needing brackets communicated well? Why or why not?

The opinion rendered, of course, was that the need for brackets was communicated very poorly. Here are some of the reasons for that opinion:

- Most obviously, perhaps, brackets are not mentioned at all on the box. There is nothing saying, "Brackets enclosed," "Use only with enclosed brackets," "Screwdriver needed for installation," or anything of the sort.
- The photograph of the man doing chin-ups contains no brackets.
- The end panels did not say "open this end," or "open at other end." If opened at the end containing the brackets and instructions, they would have had to come out with the bar, precluding the possibility of their getting stuck in the box and the consumer never knowing they existed.
- "Instructions enclosed. Please read carefully." This is a weak admonition in any case, but especially for devices that are ostensibly intuitive in their operation (e.g., unscrew the two sections until a snug fit is made with the suction cups, and do chin-ups). And "please" suggests ". . . but only if you want to" rather than ". . . do it for your own good." Compare the original with a revision such as, "Important safety and mounting instructions enclosed. Read before using bar to avoid injury."
- "Capable of holding up to 200 pounds when properly secured to door frame" is irrelevant if the user is 200 pounds or less and *believes* (even if incorrectly) he or she knows how to "properly secure" the bar. Much better would be, ". . . when secured to door frame with enclosed brackets," for example.
- "Portable and convenient for use at home or office" does not necessarily preclude the use of brackets, as the attorney had originally wanted to argue. But something like "Portable and convenient for use at home or office; brackets and screws included" or ". . . mounting hardware included" would be more accurate about portability and more clear about brackets.

Adjustable  
**DOOR BAR GYM**



- Adjustable from 21" to 32"
- Portable and convenient for pullups at home or office
- Capable of holding up to 200 pounds when properly secured to door frame
- Instructions enclosed. Please read carefully before using product.

Figure 11.1. Mock-up of door bar gym box.

Not all readers will necessarily agree with all of these points, but I think most will agree that it is very easy to support an opinion that the target message was communicated poorly. More specifically, it is easy to argue that it *would NOT be unusual or unexpected for a consumer, after having seen the box, to be unaware that supporting brackets were required.*

*The Instructions.* Even though the plaintiff said that he never saw the instructions, his attorney asked that expert witnesses evaluate them. The instructions are represented by Fig. 11.2. Again, the reader is invited to formulate an opinion on whether the need for brackets is communicated well, and why or why not, before reading on.

The expert opinion was that the instructions communicated poorly the need for brackets. That is, it would not be out of the ordinary for a consumer to be unaware of the need for brackets even if he or she had seen the instructions, and maybe even if he or she had read them, for the following reasons:

- The page of “instructions” is presented as a “Door Bar Gym Course” emphasizing the variety of exercises that can be done with the bar. It does not appear at first glance to be instructions for proper and/or safe use of the bar. In this context, there is no reason for the reader to expect safety instructions or mounting instructions, so it would be easy to miss them unless highlighted (which they weren’t). For example, if the consumer had purchased the bar only for pull-ups (which for some reason is not among the exercises shown with this “Course”), he or she might be expected to dispose of the “Door Bar Gym Course” sheet upon first glance because it would appear to be merely a list of irrelevant exercises. It would seem that a better heading and objective for this page would be something like, “Door Bar Gym Installation Instructions and Exercise Options.”
- The seven exercises shown are illustrated without brackets.
- The seven illustrations show two different bar positions. And a third position would be necessary for pull-ups where the head and chin come over the bar and under the top of the door. The implication of these various bar positions is similar to the “portable and convenient” point raised earlier. Three or so viable bar locations within the door frame suggests that using the bar involves the rather considerable nuisance of moving the bracket locations, or suggests that brackets are not necessary.
- The Warning section is formatted almost like an eighth exercise (or an appendix to exercise 7) and is easy to miss if the reader is not interested in learning a complete repertoire of exercises.

## DOOR BAR GYM COURSE

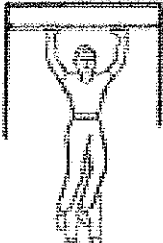

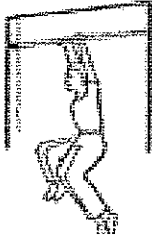

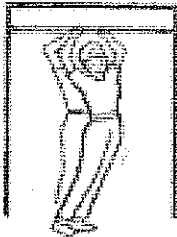
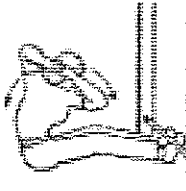

	<p><b>1. UPPER BODY STRETCH</b> Grasp the bar firmly, bend knees slowly and let your head hang forward. Lift feet slowly from floor and hold this position for a moment or two.</p>		<p><b>2. SPINE ARCH STRENGTH</b> Grasp the bar firmly, bend knees slowly let your heels together with weight resting on front of toes. Lean forward as far as possible, with head well back, arch your back.</p>
	<p><b>3. HIP AND KNEE STRETCH</b> Grasp bar with hands alternated as shown. Bend knees and let arms stretch full length. Slowly raise knees keeping knees and heels together.</p>		<p><b>4. WAIST AND HIP STRETCH</b> By bending knees allow arms to stretch full length, gradually raise feet from floor heels well together. Stretch legs as high as possible.</p>
	<p><b>5. FULL BODY STRETCH</b> In straight standing position facing forward, grasp bar with palms back with elbows bent forward. Keep feet firmly in place, flat on floor and with heels together, twist body at hips slowly.</p>		<p><b>6. SIT UPS</b> Lying flat on back, feet locked beneath bar and with palms held behind head, sit up as far as possible, touching elbow to opposite knee.</p>
	<p><b>7. POWER DEVELOPING</b> Sitting on a low bench or chair with feet under bar extend arms and slowly lower and raise body, bend back as far as possible.</p>	<p><b>WARNING:</b></p> <ul style="list-style-type: none"><li>• Check with your physician before starting this exercise program.</li><li>• Don't use the door bar gym if your weight is over 200 LBS.</li><li>• Please make sure to secure the door bar gym on a door frame with a metal bracket at each end tightly.</li></ul>	

Figure 11.2. Instructions for door bar gym course.

- The bracket section of the warning is placed as the third and final warning and is thus de-emphasized.
- The bracket section of the warning is preceded by one routine warning, "Check with your physician," and one redundant

warning (the 200-pound limit already mentioned on the box). This relatively unnecessary information can discourage reading the remainder of the section, functioning instead as a meta-message to suggest that an experienced reader is not the intended audience.

- The strange syntax of the brackets section distracts and thus weakens the warning: “Please make sure to secure the door bar gym on a door frame with a metal bracket at each end tightly.”
- There are no instructions or diagrams for mounting the brackets or using them to support the bar. Even if the proper installation is fairly obvious or intuitive upon inspecting the brackets, a diagram and mounting instructions certainly would be expected to communicate the importance of brackets better.
- The seven exercises are explained with no reference to brackets. By contrast, suppose each of the seven exercises began with “After securing the bar within the brackets, . . .” or some such.

Again, not all readers will agree with each point, nor that this list is exhaustive. And some may find it to be a bit too critical, bordering on “overkill.” In practice, of course, the consultant should mention everything that might be worth mentioning, and let the attorney decide what will ultimately be used and discarded.

In any case, the lists provide a series of examples to support the opinion that the target message was communicated poorly. Notice that if asked, “poorly communicated compared to what,” or “poorly by what standard” one can frame the issue in various ways. At the least, perhaps, one can simply ask whether the target message (“brackets are needed,” in this case) is communicated well enough to satisfy the defendant’s claim that it was provided (or, in some cases, to satisfy the legal requirement that it be provided, e.g., Peters & Peters, 1999). By that standard, the original door-bar instructions might or might not pass the test, and even the box might pass because it admonished the consumer to “Please read carefully” the instructions that did indeed mention brackets. At the other end of the continuum, however, we can ask whether a hypothetical box designer or instructions designer, if *making a serious attempt* to communicate the importance of using the brackets, would be likely to do so more effectively, less effectively, or about the same.



That is, imagine that you, the reader (or you, the jury member if we were in court) were asked to design the box (or the instructions) hypothetically, and that directions from your superior included the following: "Remember—people can get hurt using this product if they try to use it without the brackets, so try to make sure that everyone who sees your box (or instructions) knows that they have to use the brackets so that nobody gets hurt." Now, do you think you would have handled the brackets message(s) differently than the original did? Mock jurors answer virtually unanimously that they would have done a much better job, even without seeing the list of criticisms of the original. And after seeing the list, confidence that they would have done a better job increases significantly. In effect, the impression formed when one compares one's own hypothetical design to the original is that very, very little effort went into communicating the original target message.

Apparent lack of effort is persuasive, of course. *And this seems to occur in case after case where the relative effectiveness of a communication message is challenged.* Sometimes the intuitive impression is that the creator of the package or instructions was not made aware of the need for the target message; sometimes it seems that a reasonable effort was made, but badly; and sometimes the impression is that an intentional effort was made to disguise or conceal the target message. Any of these is damaging, of course. We see another instance of questionable communicative effort in the next case.

### Case 2: Haulster Police Vehicle

These days the vehicle driven by a parking patrol officer is likely to have four wheels, or a single front wheel situated within a safety frame that prevents the vehicle from tipping over. Not too long ago they were simpler three-wheeled vehicles, much like a large golf cart with a roof. The change was largely because of the following case.

A parking patrol officer in central California was doing her job, a car pulled in front of her, and she swerved to avoid it. The sharp turn caused the vehicle to begin tipping over, she lost her balance and began to fall out, the vehicle continued to tip all the way over on its side, falling on her and killing her. Her family sued the manufacturer of the vehicle (*Fleming v. Cushman*, 1988). The major issue in the case was not communication, but rather the design of the vehicle, and accordingly the primary expert witnesses were engineers on both sides. Communication became an issue, however, when the defense emphasized that a warning was posted on the dashboard—a warning that instructed operators of the vehicle to avoid hard turns. An explicit claim by the defense was that the accident would

not have happened if that warning had been heeded, and thus the victim was blamed for swerving hard in defiance of the instructions. An expert-witness opinion was solicited on whether the danger of sudden hard turns was communicated adequately. Before finding out which side solicited the opinion and what the opinion was, you be the judge (or expert witness, that is). The text of the warning is provided here. Is the danger of hard turns communicated well? If so, how so; if not, why not?

#### SAFETY WARNING

*While operating vehicle:* Remain seated, use both hands for steering. Keep arms and legs within vehicle body. Avoid sudden starts and stops. Sudden hard turns can cause upset. Regulate speed to meet road and weather conditions. Do not operate near an explosive environment. If a malfunction occurs, cease operation. Do not operate vehicle until condition is corrected.

The safety warning does indeed warn against sharp turns, saying, "Sudden hard turns can cause upset." But the expert opinion for the plaintiff was that overall, and for several reasons, the warning against hard turns was inadequate.

First, "sudden hard turns can *cause upset*" seems a strange way to make the warning. "Rollover" or "flip" seem preferable to "upset," except that this vehicle probably cannot realistically fall to the side more than 90 degrees, so "rollover" and "flip" are perhaps technically inaccurate (both implying at least 180 degrees, one could argue). Still, "rollover," "flip," "tip over," "fall over," "fall on its side," or the like, seem preferable to "upset." (By the way, in response to interrogatories, the relevant defendant was asked "whether the word 'upset' was intended to mean roll over," and answered, "Yes.") Notice also that "Sudden hard turns can cause upset" is the only nonimperative statement in the entire section, and that it contains the "weasel word," *can* (i.e., might or might not). In combination, this makes for a weak admonition (compared with "Do *not* attempt sharp turns; the vehicle tips over easily," for example).

Second, notice the placement of the hard-turn message within the list, and notice what precedes it. It is the fifth of nine or so warnings.<sup>1</sup> This is bad enough; it should be higher on the list. But to make matters worse, it is preceded by extremely obvious warnings of the type found on children's rides at zoos and kiddie amusement parks: "Remain seated. Use both hands for steering. Keep arms and legs within vehicle body." There is a meta-message (Nierenberg & Calero, 1981) or relational-dimension message (Watzlawick, Bevin, & Jackson, 1967) here to the effect that the operator is assumed to be ignorant. (Moreover, there is a contradiction

between keeping arms inside and doing a job that requires reaching out to put chalk marks on tires.) It is easy to imagine a reader seeing these first few unnecessary warnings—which, in effect, constitute violations of the “relevance” and/or “quantity” maxims (Grice, 1975)—and deciding to read no further, assuming the remainder to be equally frivolous.

Finally, recall that one of the defendant’s claims was that the warning label advised the operator to avoid hard turns and that *had the advice on the warning label been heeded, the accident would not have happened*. For the sake of argument, let’s imagine that the warning label had indeed communicated very effectively regarding the danger of hard turns. Now, notice what comes immediately before the hard-turn warning: “*Avoid sudden starts and stops*.” Using the defendant’s own logic (i.e., that the warnings should have been heeded), what was the woman supposed to have done when the car pulled in front of her? She had been instructed to not hit the brakes (“Avoid sudden stops”) and to not swerve away (“[Avoid] hard turns”). And colliding with the car was not an option because the vehicle had no seat belt. Thus, the “*Avoid sudden . . . stops*” warning contradicted the defendant’s claim that the warning-label instructions should have been followed.

Ultimately, “Avoid sudden starts and stops” was even more damaging to the defendant’s case. It seemed curious that operators of this vehicle would be warned to avoid sudden starts and stops. The communication consultant wondered what could possibly be the danger of starting suddenly (assuming a clear path, of course), or stopping suddenly, and why these warnings were included. Upon investigation, it turned out that the manufacturer of the parking meter vehicle produced two models of its “Radial Frame On-Road Haulster,” both sharing the same frame, engine, transmission, and thus treated as simply two models of the same vehicle. One was Haulster Model 898434, the “Police Vehicle,” as it was called. That is the one we have been discussing. But the other was Haulster Model 898435, the “Flatbed.” This is a three-wheel, no-cab, miniature flatbed truck used for hauling stacks of crates and boxes around factories and warehouses. Aha! In the context of that flatbed vehicle being stacked high with crates, admonitions about sudden stops, sudden starts, hard turns causing the load to become *upset*, and so forth, might seem like fairly good communication. (The otherwise irrelevant information about heavy loads in the “Before Starting Engine” section takes on a new frame as well.)

It became apparent that someone had written a decent warning for the Model 898435 Flatbed, and then he, she, or someone else simply slapped the same decal onto the dashboard of the Model 898434 parking meter patrol vehicle with no consideration of the fact that it would not be carrying cargo loads and that its having a tall cab made it susceptible

to tipping over. To put it another way, it was obvious that very little or no effort had gone into warning operators of Model 898343 about the dangers of hard turns (or anything else specific to that model), defense claims to the contrary notwithstanding. The case ended with a very large settlement in favor of the plaintiff.

### Case 3: Vacation Company Liability Clause

The defendants in the first two cases claimed that they had provided a warning to users of their product, that the warning was ignored, and that an accident was the result. An accident is behind the next case, as well, but this time the defendant denied liability not because of a warning, but because of a disclaimer.

A newlywed couple went on their honeymoon in Cancun, Mexico. Their local travel agency made transportation, lodging, and several other arrangements through a large vacation-planning company. The couple paid the vacation company an extra fee to receive personal transportation between the airport and hotel, both ways, via "private transport"—a car and driver similar to a taxi or limousine service. At the end of the honeymoon, on the way from the hotel to the airport for the return flight, the private transport car collided with a bus and both the driver and the groom were killed. The bride sued the vacation company (*Stevens v. Atkinson & Mullen*, 2007), Apple Vacations (no relation to Apple computers).

The vacation company defense included a claim that the private transport company was an independent contractor hired by Apple Vacations, that its drivers were not employees of, or otherwise under control of Apple Vacations, and that the plaintiff had agreed to a contract containing a "liability clause" that released Apple Vacations from liability over problems with their independent contractors. The plaintiff responded that she and her late husband had missed the liability clause, but that this did not matter because they had assumed the private transport company to be run by, or at least approved by, Apple Vacations. That is, even if they had read Apple's liability disclaimer regarding independent contractors, they would not have recognized the private transport company to be an independent contractor.

As for the liability clause, it is contained in a document called the Apple Vacations Fair Trade Contract. Several of the brochures, vouchers, itineraries, and other documents distributed to Apple Vacation clients mention the Fair Trade Contract and instruct clients to read it. The Fair Trade Contract is a document of approximately 2,000 words, most in extremely tiny print, on a single 8.5" × 11" page. It is organized into two major sections. The first of these is "Your Contract with Apple Vacations,"

and contains seven subsections—Bookings and Payments, Amendments and Cancellations, Air Carriers, Luggage, and so forth.

The second major section is “What We Provide in Return,” and contains eight subsections—Price Guarantee, Flight Information, Amendments and Cancellation, Refunds, Our Responsibility to You, Handicapped Facilities, Security, and Apple’s Total Vacation Insurance Plan. Within the subsection titled “Our Responsibility to You,” is the following “liability clause:”

#### WHAT WE PROVIDE IN RETURN

[Four Previous Subsections]

**Our Responsibility to You:** Apple Vacations has made arrangements with airlines, hotels and other independent suppliers to provide you with the services you purchase. We have taken all reasonable steps to ensure that proper arrangements have been made for your vacation. However, we do not accept and expressly disclaim any liability for the actions or omissions of these independent suppliers, over whom we have no direct control. If you have any dispute with such persons, however, we will give you as much reasonable help as we can in resolving this. [The remainder of the subsection does not concern independent suppliers. Rather, it disclaims liability for terrorism, severe weather phenomena, flight delays, and other matters unrelated to the case.]

The communication issue was not whether the liability clause was clear, but rather whether it would be relatively easy or relatively difficult for the average client to have missed it, as the plaintiff claimed to have done. According to an expert witness in communication retained by the plaintiff, there were a few relatively minor points to criticize with respect to the placement of this liability clause. First, it comes under a major heading, “What We Provide in Return,” along with presumably relevant subheadings such as Price Guarantee, Refunds, Security, Flight Information, and Handicapped Facilities. The communication witness suggested that a reader who is not particularly interested in “what Apple Vacations provides in return”—perhaps because all of his or her concerns already had been addressed by the travel agent or by Apple Vacation brochures and advertisements—might skip all or most of this section and thus miss the liability clause.<sup>2</sup> The second criticism was that not only is the liability statement listed under an inappropriate major heading, “What We Provide in Return,” but moreover is under an inappropriate subheading—“Our Responsibilities to You.” The argument was that because the subsequent

information is in fact about what Apple Vacations is *not* responsible for, the placement of the liability clause “What We Provide in Return: Our Responsibilities to You” was misleading. That is, the liability clause would be more appropriately placed *not* as a subsection under “What We Provide in Return” *nor* within a “Our Responsibilities to You” subsection, but rather under a separate and equal main heading—“Liability Limitations,” or some such, with a subheading “Liability Disclaimer,” or some such.

There was a more serious criticism of the Apple Vacation documents with respect to the liability disclaimer, however. Among the documents received by Apple Vacations clients is an 8.5" × 14" page of fine print with two distinct halves. The top half deals with passengers whose ultimate destination is not the same country as their original departure point, and with baggage liability limitations. The bottom half uses highlighting (special heading and fonts) to appear as the more important half (which, for most travelers, it indeed is). It begins as follows:

#### APPLE VACATIONS

##### APPLE VACATIONS FAIR TRADE CONTRACT

Please read this Apple Vacations Contract to give you a clear idea what you can expect. These vacations are operated by: Apple Vacations, 7 Campus Boulevard, Newtown Square, Delaware County, PA 19073, as principle and tour operator.

##### AMMENDMENTS AND CANCELLATIONS

[Etc. for three 6" columns]

This is an approximately 1,450-word document with the same format as the approximately 2,000 word Fair Trade Contract just discussed, and containing much identical information under identical subheadings. Indeed 9 of its 12 subsections are verbatim duplications. But it does not contain the liability clause! The plaintiff’s communication witness presented an opinion that under the heading, “Apple Vacations Fair Trade Contract,” the statement, “Please read *this* Apple Vacations Contract . . .” implies “*this* contract you are looking at,” and that it would be natural to assume that reading this present document would satisfy the admonitions in brochures and other Apple Vacations literature to read the Fair Trade Contract. That is, a client who read this document and then later came across the “true” Fair Trade Contract, might, because of the extensive

verbatim overlap between the two, dismiss the "true" Fair Trade Contract as having already been read and thus would miss the liability clause.

To put it another way, the defendant argued that "APPLE VACATIONS FAIR TRADE CONTRACT: Please read *this* Apple Vacations Contract" really meant something like this: "APPLE VACATIONS FAIR TRADE CONTRACT: Please read *the* contract referenced in the preceding heading. The document you are reading now is not it." It is easy to argue that if that was the meaning, it was not communicated well. Much better, according to the plaintiff's expert witness, would have been something like, "APPLE VACATIONS CONTRACTS: It is important that you read the Apple Vacations Fair Trade Contract, which you will find on page [page number] of [document name or description]. It contains very important information that is not presented here."

Recall that the plaintiff claimed that reading the contract would have made no difference because she and her late husband did not know the private transport company to have been one of the independent contractors addressed in the liability clause. Rather, they had assumed Apple Vacations ran the company. Thus, a second communication issue was whether this would have been a reasonable assumption by a typical Apple Vacations client. The available data were a bit nebulous, but were sufficient to allow both sides their arguments.

The defense argued that the couple should have known the private transport to be an independent contractor for any of several reasons. The auto, a white Dodge Stratus, had no Apple Vacations logo on it, while all of the many Apple Vacations buses and vans in the airport area where they met the car did have the Apple Vacations logo, so the couple should have known this was not an Apple-operated vehicle. Also, the car's driver had a different kind of shirt than the airport greeters and Apple Vacations bus drivers, and this identified him as a non-Apple employee. Finally, there is lettering above the wheel well on both sides of the car that identifies it as being operated by a different company than Apple Vacations.

The communication consultant for the plaintiff formulated an opinion based on more than 900 pages of documents including photos of Apple airport greeters, Cancun airport bus and taxi areas, Apple vans and buses, the wrecked Dodge Stratus, and so forth; depositions by plaintiff and defendant spokespersons; brochures, itineraries, and other documents provided by Apple Vacations to its clients; accident scene police reports; and more. The opinion was that an ordinary client might very well assume the private transport to have been operated by, or at least endorsed by, Apple Vacations. Reasons included responses to the defense arguments as well as additional observations:

1. Granted, the buses and vans did indeed have the hard-to-miss Apple Vacations logo painted on them, and the Dodge Stratus did not. But there were no vehicles smaller than a van (i.e., no Dodge Stratus-sized vehicles) that did have the Apple logo, so the absence of one on this Dodge Stratus does not necessarily communicate independence from Apple. That is, if one were to notice the missing logo, the conclusion might be that Apple does not paint the logo onto its smaller vehicles.
2. By the time Apple Vacations clients at the Cancun airport enter their private hotel transportation, they have encountered at least two different shirt designs worn by ostensible employees of Apple Vacations. If one notices that the Dodge Stratus driver is wearing yet another shirt design it might communicate independence from Apple, or it might be interpreted as representing a different role or rank within the Apple Vacations organization.
3. There is indeed lettering on the Dodge Stratus identifying it as belonging to a different company. It is four short lines of print (the company name and three lines of registration codes) easily legible at distances under about 6 feet. But it is in Spanish, so someone who does not read Spanish might ignore it, and without unusually close inspection it appears to be consistent with the lettering on the sides of the Apple Vacations vans and buses. Moreover, even if one does read Spanish, the company name, Transportacion Turistica y Mas (Tourist Transportation and More) could be taken as an identifier for the way Apple Vacations uses these vehicles instead of taken as the name of a different company.
4. The brochures that offer private transportation between the airport and hotel happen to present the option of private transportation—along with optional spa treatments, jungle excursions, and so forth—within a list labeled “Apple Extras.” In fact, one itinerary uses the term “Apple Extras” within its heading (Add Apple Extras to your Vacation) and then twice again within the first two sentences. It is not unreasonable to assume these “Apple Extras” to be truly Apple extras, that is, owned by, run by, and/or endorsed by Apple Vacations.



5. Even if the liability clause had been read, it may not have communicated what is meant by "independent contractors." Recall the introduction to the disclaimer: "Apple Vacations has made arrangements with airlines, hotels and other independent suppliers. . . ." The only examples provided are airlines and hotels. But all clients would certainly know that the airline they are using is independent of Apple Vacations, and with rare exceptions, likewise for their hotel. One implication is that the "independent suppliers" referenced in the disclaimer will be obviously independent, as in the airline and hotel examples, but this is not the case. Much better would have been something like, "Apple Vacations has made arrangements with independent spa services, taxi companies, limousine and transportation companies, excursion and adventure services and other independent suppliers and contractors."

Of the two communication issues in this lawsuit, the support for an opinion on whether a client would assume the private transport to be independent is probably less well supported than the opinion that the liability clause was easy to miss. But the attorneys for both sides apparently agreed that if taken together, a jury could be persuaded that the plaintiff was being truthful in her claims about the liability clause and about her assumptions regarding the private transport's affiliation, and that although these were mistakes, they were reasonable mistakes caused or allowed in part by the defendant's verbal and nonverbal messages in literature sent to its clients. The day before the trial was to begin, they reached a settlement.

#### **Advertising: Is the Product or Service Accurately Represented?**

We see so many instances of false or misleading advertising these days that it may be difficult to imagine the veracity of an advertisement as an issue that makes it all the way to court. Court cases concerning advertisements are not uncommon, however. One familiar form is that in which someone becomes ill or injured using a product and then blames the corresponding advertisements. Some of these are intuitively frivolous, such as the man who blamed his obesity on the advertisements of the donut shop where he consumed more than two-dozen donuts per week. (The models in the advertisements were slim, so he saw no connection between donuts and weight gain; or so he claimed.) Others seem more legitimate, as in a person becoming ill after taking a drug whose advertising fails to mention

negative interactions with other drugs the person is taking. These cases are similar to some of the warnings and disclaimers cases discussed here, in that the defense claims that the consumer was provided with information that allowed the problem to have been avoided, whereas the consumer-plaintiff argues that insufficient information was provided.

A second common form of litigation over advertising is that in which a customer claims that a product does not live up to the promises made by its advertising. Often, these evolve into class-action suits. This time, the communication roles are somewhat reversed. The plaintiff complains, in effect, that the defendant provided too much information—because it led to strong but incorrect assumptions about the product's features.

In my experience, both types of litigation usually are fairly straightforward for the expert witness in communication. In the warning-adequacy cases, an opinion is sought on whether the probability of certain dangers or side effects was presented well enough for a typical alert consumer to have noticed. In the missing features cases, the matter of whether the product or service indeed delivered the features in question usually is made by an expert witness in engineering, psychology, or some other area. Likewise, experts in areas other than communication are enlisted for assessment of how disappointed or distraught the typical consumer would be to find the feature missing. For the communication expert, however, the typical task is to formulate an opinion on whether the advertising would lead the ordinary consumer to expect the feature to be present. In either type of case, the communication expert examines the advertising in question, of course. If the position of the potential hiring attorney is unknown, an unbiased opinion can be formulated (see Motley, Chapter 16, this volume). If not, an objective opinion can be attempted and can be empirically tested if desired (see Motley, Chapter 15, this volume).

### **Warnings Example: Ephedrine in Diet Pills**

In a case similar to some of the warnings cases discussed here, a woman suffered a serious stroke and heart attack after taking Metaboburn—an over-the-counter “dietary supplement” and “metabolism booster”—in an effort to lose weight. Her family claimed that the heart attack and stroke occurred because the pills contained a dangerous amount of ephedrine, and sued (*Santa v. Jahn d/b/a Metaboburn*, 2006).

A physician testified for the plaintiff about the known properties of ephedrine: Ephedrine originally was used for treating asthma, but this practice had been abandoned several years earlier because of known risks. Among other things, ephedrine stimulates the nervous system and increases blood pressure, heart rate, and cardiac contractility—dangerously so if taken in sufficient amounts or if combined with caffeine (which was

ingested frequently by the stricken woman). Its association with severe adverse reactions—including life-threatening cardiac arrhythmia, cerebral hemorrhage, and stroke—had been known for at least 10 years prior to the present case. It can cause life-threatening or debilitating effects even with short-term use of doses in the range of 20 to 60 mg per day. (The Metaboburn bottle recommends up to eight capsules per day, equaling 96 mg per day.)

As for the communication issue of whether warnings were adequate, it was easy for the communication witness to formulate an opinion. One brochure for the product lists several ingredients and their *positive* effects—improved immune system, stamina, vitality, and so forth—but makes no mention whatsoever of ephedrine, associated risks, increased risk with caffeine, seizure, heart attack, stroke, or anything related to these matters. Similarly, a “Dietary Weight Loss Supplement Sheet” not only lists a number of exotic ingredients with no mention of ephedrine or risks, but also describes the pills as “medically tested to be . . . safe,” adding, “the standards have been set by scientists for the safe . . . ratios and quantities that should be used.” (Set by scientists, yes, but not followed by Metaboburn, apparently.)

The label on the bottle at least mentions “ephedra,” a less familiar (and thus communicatively inferior) name for ephedrine, and lists the per-capsule dosage—12 mg. But there is absolutely no acknowledgment or warning of *any* associated risks, much less of exacerbating risks via caffeine. Nor was there any mention of FDA-recommended dosage limits (24 mg per day, 7-day maximum). Instead, the label’s “Suggested Use” advises up to two capsules every 4 hours (i.e., 10 capsules equaling 120 mg, or five times the FDA recommendation for someone who arises at 6 a.m. and goes to bed at 10 p.m. and fails to interpret the earlier “up to eight capsules per day”—96 mg—as a maximum).

The communication witness quibbled with a few related matters on the bottle, as well, such as an apparent effort to portray the product as safe (e.g., “Natural . . .,” “Herbal formula . . .,” “Super Effective . . .”), and a very badly worded warning implying that only persons with certain conditions—pregnancy, diabetes, and so on (none being relevant to the plaintiff)—need be the least concerned. But the blatant absence of warnings about known risks of ephedrine, and the apparent disregard for safe dosage levels made this opinion something of a “slam dunk” as semantics issues in litigation go.

### **Advertised Features Example: Implications of an SDIO Slot**

Usually, when an opinion is solicited as to whether certain features of a product have been delivered as promised by its advertising, the consultant

or expert witness in communication simply examines the relevant advertising and makes an educated guess as to what the advertising messages would lead the typical consumer to expect. Most often this is a simple matter. But less so in the next example, partly because the communication witness for the plaintiff was completely unfamiliar with the product and implications of some of its high-tech claims, and partly because the defense had hired an expert witness in marketing who claimed to have shown that actual consumers of the product were happy with it.

In 2006 a class-action suit was brought against the manufacturer and distributor of the "Treo 600," an early predecessor to contemporary PDAs such as the Blackberry, Palm, and iPhone (*Casaburi & Werksman v. Palmone*, 2006). The plaintiffs claimed that advertisements for the Treo 600 implicitly promised a feature that did not in fact exist. Specifically, advertising highlighted the Treo's SDIO (Secure Digital Input-Output) expansion slot that would accept accessory cards (to be purchased separately) giving the Treo additional capabilities, possibly including wireless capability via Bluetooth and/or WiFi. In fact, although the expansion slot did exist, expansion cards for Bluetooth and WiFi did not, and were not forthcoming, as both sides acknowledged. The defense conceded that Bluetooth/WiFi were mentioned explicitly in certain promotional material but insisted that this material was a minor part of its advertising effort, and that it reached a relatively small number of potential or eventual customers. The plaintiffs claimed, however, that Bluetooth/WiFi were promised, albeit implicitly, in *all* advertising for the Treo 600. That is to say, all advertising highlighted the SDIO expansion slot, and, according to the plaintiffs, an SDIO slot implies Bluetooth and/or WiFi capability to potential buyers.

Thus, one issue was whether advertising that mentioned the Treo 600's expansion slot, but without explicit reference to Bluetooth or WiFi, nevertheless implied Bluetooth/WiFi as a natural connotation of the SDIO slot. The plaintiffs retained an expert witness in communication for whom "SDIO" had virtually no connotative meaning, so an opinion based merely on the usual examination of advertising materials would have been biased by the plaintiffs' and attorney's account. An opinion was formulated, however, essentially by building a denotative meaning (i.e., a hypothetical standard meaning) based on others' connotations for "SDIO expansion slot."

As one indicator of these connotations, discussions of SDIO within independent technical material tend to mention "Bluetooth," "WiFi," "wireless capability," and/or "wireless networking" within their explanations (with no exceptions among a dozen or so cases). For example, from Miller (2003), "What is SDIO? . . . With SDIO you can use WiFi,

Bluetooth, GPS.” From Unknown (n.d.) regarding a rival PDA, “. . . will work with SDIO expansion cards. This means you’ll be able to easily add Bluetooth, WiFi.”

As another indicator, a casual and admittedly nonscientific survey of some of the expert witness’s high-tech-oriented acquaintances asked, “If you read an advertisement back in 2003 or so for a PDA and email device that has an SDIO expansion slot, what kinds of ways would you think that you could use that SDIO slot?” All ( $N = 11$ ) replied with some version of “wireless capacity,” with most mentioning Bluetooth specifically. These connotations fit the few denotations available via technical glossaries, all of which ( $n = 4$ ) mentioned wireless capacity. In short, an opinion evolved to the effect that common connotations of “SDIO” or “SDIO expansion” include the assumption of wireless capability.

Thus, on the one hand, the plaintiffs could argue that the Treo 600 advertising led customers to expect wireless capacity that in fact did not exist and was not forthcoming—the classic false advertising argument. But on the other hand, the defense had evidence that customers who purchased the Treo 600 were not disappointed by the absence of wireless capability. A defense expert witness in marketing performed a very extensive survey of Treo 600 owners, including questions such as these:

- Did you buy the Treo 600 partly because it had Bluetooth capability? (“No” favors defense, “Yes” favors plaintiff, Majority = “No”)
- Is the Treo 600 supposed to have WiFi and Bluetooth capability? (“No” favors defense, “Yes” favors plaintiff, Majority = “No”)
- Did you ever have any complaints about optional add-on features the Treo 600 was supposed to have? (“No” favors defense, “Yes” favors plaintiff, Majority = “No”)

Responses to these questions and a number of others like them favor the defense, obviously. The implication is that most actual Treo 600 owners did not particularly expect wireless capacity and/or were not bothered or disappointed by its absence. The communication witness for the plaintiffs countered, however, that the wording of these and several other survey questions were biased toward “No” responses favoring the defense. (Readers may wish to reread the example questions to test for agreement.)

Recall that the advertising did not say or imply that the Treo 600 was Bluetooth/WiFi capable, per se. Rather, it implied, allegedly, that it

could be made Bluetooth/WiFi capable via an expansion card for the SDIO slot. So, presumably, everybody knew the Treo 600 was not wireless-capable straight out of the box. The communication witness claimed, therefore, that even a dissatisfied customer might give an answer favoring the defense when asked the survey questions in the form they were presented. For example, "Did you buy the Treo 600 partly because it had Bluetooth capability" may very well be answered "No" by someone who bought it looking forward to adding Bluetooth (i.e., "No, I bought it knowing it didn't have Bluetooth capability) yet." Thus, notice the difference between the original (strikethrough) version of the survey questions and the version preferred by the plaintiffs' communication witness (*italicized*):

- Did you buy the Treo 600 partly because it had Bluetooth capability? *you would be able to add Bluetooth to it?*
- Is the Treo 600 supposed to have ~~WiFi and Bluetooth~~ capability? *an expansion slot for adding WiFi or Bluetooth?*
- Did you ever have any complaints about optional add-on features ~~the Treo 600 was supposed to have?~~ *that were supposed to be available or become available for the Treo 600 but were not?*

Whether the revised questions would have received significantly different answers is an empirical question, of course. Indeed, so is the overall matter of whether, by highlighting the SDIO slot, the advertising led prospective Treo 600 buyers to expect wireless capacity as an especially attractive feature (although the 2003 condition would be difficult to replicate). There was not enough time and money to test either question, but the communication witness's opinion and prediction on the hypotheses were, among other factors, persuasive in reaching a settlement satisfactory to the plaintiffs.

### **Legalese and Other Gobbledygook: What Does It Mean in Simple English?**

It is no surprise that legal language is sometimes confusing to the layperson. It may be surprising, however, to know that is sometimes confusing to the courts, as well. The norm is for attorneys to rely on their own interpretations of contracts, wills, and other legal documents. But occasionally an outside opinion is sought, and sometimes from someone in the communication discipline.

These may be as simple as interpreting a single sentence (e.g., "I hereby certify that the procedures indicated by date have been completed

and that the fees submitted are that actual fees I have charged and intend to collect for those procedures"; *Consumer Cause v. Western Dental*, 1997). Or they may involve the translation of sizable documents from legalese to simple language.

Although these can be tedious, they are such procedurally straightforward tasks that a single brief example should suffice. The example case concerns the translation of an indemnification clause from a contract when a company called Industries sold one of its companies, called Manufacturing, to a company called General (*El Paso CGP v. SPX*, 2005). Some years after the sale, General began receiving lawsuits over exposure to asbestos from one of the valves made by Manufacturing. General sought reimbursement from Industries, claiming that the valves were made prior to the sale, and that their contract pledges Industries to secure General against this kind of loss or damage. Industries claimed that various features of the case constituted an exception to the contract, and hired a communication consultant to translate the contract's indemnification clause.

In cases such as this, the hiring attorney will determine the degree of simplification sought. The attorney in this case asked for extreme simplification. Figure 11.3 shows the attempted translation. Note in particular the side-to-side, font-coded organization. I have found this to be a very helpful approach to visual presentation in similar cases.

### ISSUES OF SEXUAL CONSENT: BEYOND BASIC SEMANTICS

Unlike most other chapters in this volume, the expert-witness work described thus far in this chapter has not depended on a primary research area of its author. Rather, I have discussed work that could be available to most any of the many communication scholars who have studied, or who are interested in and sensitive to, subtleties of language and meaning. That is to say, these cases do not necessarily require research and publication in semantics, *per se*. In this final section, however, as in most other chapters in this volume, the interested reader is briefly introduced to a particular research specialty area that has applications to litigation issues. Again, the idea is to invite the reader both to consider joining the pursuit of relevant issues via research, and to consider applying findings to litigation issues.

As an example, although the cases discussed so far in this chapter have been civil cases, recent research on male–female communication patterns during physical intimacy has allowed expert-witness contributions to criminal cases. More specifically, certain research (Motley, 2008a; Motley & Reeder, 1995) has explored the common ways in which women, during any phase of physical intimacy, communicate that they wish to go

ORIGINAL

18. Indemnification of General by Industries

(a) Industries will indemnify and hold harmless General, Manufacturing, and each of the Subsidiaries (the "indemnified Parties"), from and against any losses arising out of any claimed or asserted liabilities of Manufacturing or any of the Subsidiaries of any nature, whether accrued, absolute, contingent or otherwise, based upon any event, occurrence or act, or failure to act, prior to the Time of Closing, including, without limitation, all federal state and foreign tax liabilities of Manufacturing and of each of the Subsidiaries due or to become due with respect to any period prior to the Time of Closing, other than

(i) liabilities reflected or adequately reserved against on the consolidated balance sheet of Manufacturing included in the Manufacturing Financial Statements;

(ii) obligations for performance subsequent to the Time of Closing, which obligations were incurred prior to the Time of Closing, under contracts and commitments either listed in Schedules C, D, E, F, H and I or not required to be listed therein, unless such obligations under contracts or commitments not required to be so listed **are the result of any circumstances existing prior to the Time of Closing which, if known at that time, would have required a reference in a balance sheet or related notes thereto dated as of the Time of Closing of any Business Unit of Manufacturing to enable certification by independent public accountants as to the financial condition of such Business Unit in accordance with generally accepted accounting principles;**

(iii) for any liability covered by product liability insurance in force or which would have been in force had insurance coverage no less extensive than that set forth in Schedule J hereto been maintained in force;

TRANSLATION

18. Indemnification of General by Industries

(a) We will secure them against losses due to virtually anything prior to closing except --

(i) liabilities already acknowledged;

(ii) obligations incurred before closing but already acknowledged, **except for things not required to be acknowledged but that still should have been;**

(iii) anything covered by insurance (in the amounts on Schedule J);

**Figure 11.3. Legalese translation example.**



(iv) liabilities of Manufacturing or any of the Subsidiaries, not covered by product liability insurance as set forth in clause (iii) of this subsection (a), which arise out of any event, occurrence or act subsequent to the Time of Closing **and are claimed or asserted to have been caused by any product manufactured or sold by Manufacturing or any of the Subsidiaries prior to the Time of Closing, except to the extent the aggregate losses from all such liabilities which arise out of any event, occurrence, or act taking place within a period of five years subsequent to the Time of Closing and are occasioned by no fault of Manufacturing or any of the Subsidiaries subsequent to the Time of Closing, exceed \$100,000 in the aggregate;**

(iv) things not covered by insurance that come up after closing **but supposedly happened because of something we made or sold before closing, except to the extent that the corresponding losses exceed \$100,000 and weren't their fault;**

(v) certain other matters referred to in an agreement between Industries and Manufacturing, a copy of ...

(v) [Etc.]

Figure 11.3. Continued.

no further, and the degree to which most males understand those various messages to mean "stop." It turns out that there are very direct ways that women resist (e.g., "Please don't do that"), slightly indirect ways (e.g., "I'm not sure about this"), and very indirect ways (e.g., "I'm seeing someone else"). And it happens that although most males understand the direct resistance messages to mean "stop," they misinterpret the indirect messages to have other meanings (e.g., "I'm not sure about this so reassure me that you're committed to me," or "I'm seeing someone else so don't interpret what we're about to do as a commitment to you"; Motley, 2008a; Motley & Reeder 1995). Similarly, studies have examined intimacy situations in which the more eager partner is well aware of the other's resistance, yet tries to talk or otherwise "coerce" the other into yielding to reluctant escalation of the intimacy (Motley, 2008b) that is, yielding to unforced but unwanted intimacy similar to the altruistic intimacy discussed in earlier research (e.g., Meston & Buss, 2009; VanWey, 2004).

There is an obvious potential application of this and related research to alleged date rape cases. If it is established that the victim used direct resistance messages, and/or that the intimacy was forced, then this favors the prosecution. And if it is established that only indirect messages were used by the victim, with no physical or verbal force or abuse present, then this might warrant doubt that could favor the defense.

The two date rape cases on which I have served as an expert witness both happened to have been for the defense. The two cases were very similar, so a single example should suffice. In the example case (*Lester v. [Withheld]*, 2008),<sup>3</sup> a well-known NFL football player left a strip club with two of the dancers and a male friend who drove them to a hotel using the car of one of the dancers. During the drive, the football player was in the back seat with both dancers, who openly groped and fondled him. The friend left them at the hotel, and the football player took the women to his room, where he had sex with one woman while the other watched, and then had sex with the second woman while the first watched.

The women left the room a bit later, both quite intoxicated, and went to their car. On their way out of the parking lot a hotel security guard stopped them and asked if they were OK to drive. One of the women said that they had just been raped, giving the room number and the alleged perpetrator's name. The guard recognized the NFL star's name, phoned the authorities, and waited with the women for their arrival. Both sides agreed on everything described here thus far.

The NFL player claimed that the sexual activities were consensual, and that not only did neither woman say "no," but in both cases as he had sex with one, the other cheered them on. He and his attorney speculate that the rape allegation was an attempt to deflect the guard's attention away from the fact that both the driver of the car and her passenger were quite intoxicated.

The defense wanted an expert witness in communication to give an opinion on "whether anything was inconsistent with consensual sex." Documents included the two women's independent statements to police, the NFL player's statement, the examining physicians' medical forensic reports (examined also by an expert witness in medicine, of course), and the police report. The communication witness assumed that the task would be to analyze the resistance messages used or alleged by the women, and/or to see whether the player's statement alluded to things the women said that should have been recognized to be resistance or, according to the research, might not have been recognized as resistance even though probably intended as such.

As it turned out, the opinion was that there was nothing in the documents inconsistent with consensual sex. Neither woman's statement

claimed that she or the other woman had said "no" or "stop" directly or indirectly, nor that either fought or struggled during their sex acts. Nor did the guard or police officers report the women to have reported that they had said any version of "no" or "stop" directly, indirectly, verbally, or nonverbally. As would be expected, the statement of the accused did not describe any direct resistance. But nor did it include anything that might have been intended resistance yet not recognized as such. Moreover, the medical reports indicated that sexual intercourse had occurred but that all irritations were consistent with consensual sex with no signs of atypical force or roughness.

The defense attorney had told the communication witness privately that his client was married, famous, wealthy, and willing to pay "a reasonable but not excessive amount" to settle out of court and "make this go away" without publicity or embarrassment. And that is exactly what happened. Not even the local newspaper reported on it.

Again, the point of this example is not that it represents an area that would be easily pursued by the typical reader, as would be the case with the earlier examples in this chapter. Rather, the point is that the typical reader may want to consider whether have his or her own research specialties can be applied to courtroom issues, and/or whether the research specialties described in this or other chapters might be interesting to pursue.

## CONCLUSION

As we have seen, there are a number of ways in which issues of semantics and meaning come up in court cases. In all of the examples discussed here, the question has been whether a message or set of messages would be expected to be interpreted as one side claims or as the other side claims. Sometimes the answer is so obvious that one hardly needs a degree in communication to formulate an opinion that a jury would almost certainly agree with (although a credentialed communication witness will sometimes be used for credibility purposes). Other times the answer depends on subtleties that probably are better analyzed by someone with experience in, or at least sensitivity to, communication, language, and meaning. And finally there are times when the question probably is better informed by someone whose primary research area is closely related to the issues at hand. In any case, the application of communication research or skill to questions of the likely interpretation of target messages can be valuable to the courts. And it can be a worthwhile, enjoyable, and sometimes exciting endeavor for the communication scholar.

## NOTES

1. Notice the similarity of this problem with that of the placement of the warning information within the "instructions" of the Door-Bar Gym.
2. Notice the similarity to the critique of the dashboard warning for the parking patrol vehicle.
3. The name of the accused is being withheld in this chapter for obvious reasons. Under certain circumstances the true case name might be available from the author.

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