

Linguistics and the Law

The science of analyzing words and symbols can add weight to your case

Lawyers are quite expert at analyzing language, and forensic linguists can assist them by bringing their unique tool kit to the task. As lawyers become aware of the methodologies with which expert linguists approach language issues, the science of linguistics is likely to become increasingly important in arguing cases.

Recently a Holocaust survivor, a Latvian, passed away in New York. The nurse's aide who took care of him produced a holographic will that left his entire estate to her. She said he dictated it to her and then signed it. Who actually wrote the will? The family's attorney asked if I could scientifically prove that one or the other had authored it.

The aide was from Jamaica, and the deceased had been a speaker of Latvian and Yiddish. If I had ever seen a case where linguistic fingerprints would be all over the evidence, this was it. The grammatical structure of the background languages would show through in the English of the will. The family suspected, of course, that the aide had written the will herself, and then told the old man to sign a piece of paper. If that's what happened, I replied, her fatal mistake would be in claiming that the man had dictated the words to her. She should have claimed that she put in her own words what he told her to write.

In a recent New Jersey case, the issue was whether the defendant, an African, understood the terms of his plea bargain. He spoke very limited English. I questioned him in Swahili, a widely known lingua franca of East Africa and parts of Congo; even with a common language, it was difficult to explain many of the unfamiliar American legal issues. When his previous attorney had submitted his plea, and when he confessed to the police, there were no interpreters present at all. How did his confession, in English, get

written?

'ORDINARY MEANING'

Usually the detective work a linguist does is to prove what should be right out in plain sight: the meaning of a word or phrase. The general rule of law is that terms are to be given their ordinary meaning. In a disputed claim, the ordinary and accustomed meaning of a term is presumed to be the correct one. But how do we determine the "ordinary meaning" of a word?

A man entered into a contract that paid disability benefits if the insured suffered "the complete loss of the sight of both eyes." The man's sight deteriorated to where he could not read a stop sign from a few feet. Yet his insurance company denied his disability claim because his sight was sufficient to "tell the difference between night and day." That, they claimed, was the test for "the complete loss of the sight of both eyes."

The judge in the case indicated that a jury would decide the meaning of "the complete loss of the sight of both eyes." At the request of the insured's attorney, I administered questionnaires asking 124 native speakers of English to interpret the disputed phrase in the context of disability insurance. My analysis indicated the plaintiff was more correct in his interpretation, and the insurance company dropped its argument on this point. [The company then claimed that his application had been filed late.]

One can determine the meaning of words and terminology only by investigating current usage. Even dictionaries, contrary to what most people assume, undertake only to reflect how language is actually being used. In any event, dictionaries do not list

phrases like “the complete loss of the sight of both eyes,” nor can one fine-tune the necessary context. There are many other reasons to be wary of dictionaries—indeed, too many to explain here.

ANALYZING SYMBOLS

Things other than words carry meaning. A Virginia case before the Supreme Court this term concerned the constitutionality of a state law outlawing cross burning. One side claimed cross burning means, “We don’t talk, we act,” while the other side called it a “melange of messages, . . . a jumble of political anger.” Attorneys—and the Supreme Court justices—typically claim meanings that are based on personal opinion. Scientific analysis of the meaning can elucidate the issues.

Linguists construct and test competing meaning hypotheses. We analyze contexts for co-occurrence; administer questionnaires directly eliciting meaning; pair videos with the symbol and debrief; and analyze variation based on context, gender, region, ethnicity, age, etc. Preliminary analysis suggests a far wider range of meaning for cross burning than what was envisioned in the Supreme Court discussions.

WORDS ON TAPE

Just because someone calls a collection of words an “admission” or “an offer of a bribe” does not make it so. We often hear that tapes “speak for themselves.” They don’t. Linguists spend many, many hours struggling to transcribe natural conversation research tapes. It is often not clear at all what words are, in fact, on a tape.

Linguists have techniques like analyzing syllable structure to rule out or suggest what was actually said. For example, “I’d really like that” and “I don’t really like that” [try saying each very fast] may be most easily distinguished by the number and pitch of syllables than by actual articulation of sounds.

When *The New Yorker* magazine wanted advice on the language in a prepublication version of a major nonfiction book, in sorting through the text about African “talking drums,” I discovered that an important claim the author made—about a Bantu quotation he reported from a source—couldn’t be true, based on syllable count and structure.

Once you have the words, you must work out the interpretation of those words, based on who was in

the conversation, what the context was, whether there was a cultural difference, dialect difference, slang difference, and so on. A famous example, provided by linguist Roger Shuy [in his book *Language Crimes*], is a conversation between an FBI informant and a Japanese engineer accused of industrial espionage. The prosecution contended that the following tape transcript showed [1] that the engineer knew that obtaining the plans was illegal and [2] by saying “uh-huh,” the engineer gave his consent:

Agent: You see, these plans are very hard to get.

Engineer: Uh-huh.

Agent: I’d need to get them at night.

Engineer: Uh-huh.

Agent: It’s not done easily.

Engineer: Uh-huh.

Agent: Understand?

Engineer: Uh-huh.

Even assuming that a non-American will catch the implication that “at night” means “illegally” [many interpretations are possible], just what does “uh-huh” mean? Notice that the engineer says “uh-huh” to virtually everything. It is well-known by linguists who study Japanese conversational structure that “uh-huh” is predominantly a “minimal response feedback marker” that means “I am listening, please go on,” not “I agree.” Furthermore, when people do not speak a language well, they tend to over-agree.

In another tape, we see how the engineer says “uh-huh” in situations that in English make no sense.

Agent: Hello, how are you?

Engineer: Uh-huh.

Agent [to colleague:] Joe, bring me some coffee.

Engineer: Uh-huh.

One cannot claim that “uh-huh” equals “consent.” Meaning is not conveyed in a vacuum. In real life, there is always a context that allows us to interpret just how the words were used [or misused].

Often some words on tape are in code; and the toughest code is the one you don’t know you’re misunderstanding, as I have learned through 20 years of fieldwork on slang and secret languages.

For example, in New York City, a “cent” used to mean a “dollar,” as in “I only got fifty cents on me tonight” or “I only won twenty cents shooting craps.”

Gamblers would refer to \$1,000 as “a dime,” \$500 as “a nickel,” \$100 as “a dollar.” When placing a \$25 bet with a bookie, one used to say, “I want five times on the Jets”; it was “10 times” for a \$50 bet, and so

on. While this slang and jargon concealed meaning from outsiders, these terms were probably more useful in establishing the insider status of the speaker.

Language with intent to conceal certainly abounds. The secret jargon of used-car sellers, for example, allows sales staff to discuss prices in front of a customer without the customer being aware of the amount or, often, even that a price has been communicated. For example, on seeing interest in a particular car, one of the staff may leave the showroom, look up what the car cost the dealer, and compute a price based on their desired markup. He or she can return and, even in front of the customer, tell the other sales person, "Oh, Jack, that was Line 48 you were asking about." Line 48 means the price is

\$2,400. Line 36 would mean \$1,800, Line 50, \$2,500, and so on.

What is the role of a language expert in litigation? You don't need an expert to know, for example, that a product warning insert is so unclear that its only goal must have been not to scare customers away, but an expert linguist can help you demonstrate that point in court. A forensic linguist has a tool kit unlike the one lawyers have. A linguist can chart out and explain all the features in sentence structure and information sequencing that support your claim, using generally accepted principles of scientific linguistic analysis. Since so much of what is analyzed in court is language, an expert can help back you up in many situations.

Robert A. Leonard is Professor of Linguistics and Director of the Linguistics Program at Hofstra University. A Fulbright Fellow for his doctoral work, he received his B.A. from Columbia College, where he was Phi Beta Kappa, and his M.A., M.Phil., and Ph.D. from Columbia Graduate School, where he was Faculty Fellow. He may be reached at Robert.A.Leonard@Hofstra.edu.

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