

***Fighting over Words: language and civil law cases***

**Roger Shuy (2008).**

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*Reviewed by Blake Howald*

Forensic linguistics is the application of linguistic theory and analysis to language evidence (e.g. Crystal 2001: 121). However, in this day and age of increased awareness of the techniques of different disciplines in forensic science, it is easy to be distracted by the criminal context – certainly sensationalized in the entertainment media – and ignore the *civil* context. The practice of civil law, which is concerned with areas of, for example, contract, property, trademark and tort law, just to name a few, is a large and complex field in the United States legal system. In *Fighting over Words: Language and Civil Law Cases*, Distinguished Research Professor of Linguistics, Emeritus, of Georgetown University, Roger W. Shuy, provides numerous examples from decades of linguistic consultation in civil cases and clearly illustrates that the theory and techniques employed by linguists in analyzing language evidence are fully applicable to the civil context and are every bit as interesting as any criminal case.

*Fighting over Words* focuses on the background legal issues, language evidence and the linguistic analysis performed in eighteen cases from seven civil law subjects: business contract disputes (chapters 1–4); deceptive trade practices (chapters 5–7); product liability (chapters 8–11); copyright infringement (chapter 12); discrimination (chapters 13–15); trademarks (chapters 16–17); and procure-

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ment fraud (chapter 18). A short appendix is also provided which highlights several areas of linguistic theory useful for the legal system and suggestions for linguists as to how they can be effective in communicating the relevance of linguistics to legal professionals (for a more robust presentation of the appendix, see Shuy [2006]). The book is clearly written, well organized and broader in scope than two of Shuy's previous works focusing on language in (potential) civil law situations (trademarks [Shuy 2002] and bureaucratic language [Shuy 1998]) and a recently published book on defamation (Shuy 2010). However, despite the expanded focus, *Fighting over Words* is concise, thorough and effective in its presentation of each topic – what we have come to expect from Shuy and his prolific contributions to the interdisciplinary linguistics and law community.

*Fighting over Words* is designed for a tripartite audience of linguists, linguistics students, and lawyers. The book meets its stated goals for each audience: (1) **lawyers** – by 'illustrat[ing] how different linguistic tools and analytical routines [are] used ... through [an] expert witness at trial ... expert reports and deposition testimony, and ... consultation with litigating parties' (p. 7); (2) **linguists** – so that they 'understand that they need to begin where the attorneys are, to try to learn something about the way lawyers think, and then to apply linguistic knowledge to the specific parts of their cases where it is relevant to law' (pp. 8–9); and (3) **students** – who 'will now have access to a rich source of language data, along with one linguist's analysis, to help them augment the sometimes abstract and hypothetical advice given in their classes with some real-life, hands-on data to analyze' (p. 238). A potential difficulty in writing for an interdisciplinary audience is that the presentation of the material has to be as balanced as possible – engagement in too much technicality or perspective in one field and not the other can have an alienating effect. However, *Fighting over Words* mitigates any potential interdisciplinary imbalance by making the example data central to the presentation.

The majority of each case presentation is focused on the key language evidence analyzed by Shuy, anchoring the linguist and student audiences in an expected empiricism. However, this focus also improves the presentation of legal analysis which benefits all members of the intended audience. Shuy applies his linguistic analyses to narrow legal issues, illustrating components of a legal strategy rather than a broad overarching view. For example, we are presented with questions such as: is the trademark generic so as to defeat a claim of trademark infringement? (p. 167); is the language age-discriminatory to support a showing of an Age Discrimination Act violation (p. 151); or was the language deceptive so as to contribute to a showing of deceptive trade practices (pp. 43–45). By focusing on smaller legal issues, the book provides concrete and specific examples which lawyers need in order to garner the full practical relevance of the contributions linguistics can make to a civil case. Consulting linguists also need this same

information to ensure productive relationships with lawyers; the specificity of the analysis being asked of the linguist is of prime importance.

The discussion of the legal aspects of each case is accurate, informative and brief; a complete presentation would be beyond the scope of the book. However, at times, Shuy editorializes about the legal system, which distracts from an otherwise objective and well-balanced perspective. For example, comments such as '[m]ost attorneys are very good with language, but the plethora of lawsuits in the corporate world suggest that they must not be quite good enough, or their clients would not have been sued in the first place' (p. 4) are problematic. This sentence suggests that if lawyers were more knowledgeable about language (and, presumably, linguistics), litigation could be avoided altogether. There are numerous reasons why people choose to engage in, or become subject to, a civil lawsuit which may or may not have anything to do with language. While it is certainly the case that *Shuy's experience* is such that language evidence, and the interpretation thereof, plays a central role in civil litigation, incomplete and over-generalized commentary on the legal system can be misleading; especially for those readers without legal knowledge and experience.

Despite this minor drawback, *Fighting over Words* is, certainly for students of linguistics, an invaluable resource of data and example analyses. Language evidence and the analysis employed can be difficult to obtain subsequent to litigation. Shuy makes use of a range of linguistic analyses based on a number of different linguistic theories and methodologies (e.g. Grice's maxims, topic analysis, sociophonetic analysis and several discourse analyses) and provides an excellent point of departure for further research (as Shuy indicates, reasonable linguistic minds could differ in analytical approach [p. 6]).

Forensic linguistics, like any forensic science, is subject to the standards which address the application of science in the legal system. Not surprisingly, empiricism is a focus in the standards used to evaluate science in the courtroom – for example, expert testimony standards (e.g. *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 [1993]) and in recent calls for re-evaluations of forensic science generally (e.g. National Academy of Sciences [2009] report of forensic science in the United States). While linguistic work is, arguably, always empirical, the forensic setting creates unique challenges to the linguist (e.g. often very small amounts of data of various qualities are available from a myriad of contextual environments). *Fighting over Words* makes clear that linguists who seek to work in the forensic setting cannot forget the essence, nor the utmost importance of, scientific inquiry. Linguists, linguistics students and lawyers will find the book full of interesting cases and clever linguistic approaches, to be a versatile contribution to forensic linguistics which not only contains a wealth of practical information but also an excellent overview of what role linguistics can play in civil cases.

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