



vantage point

A Few Words

“Proceed to the route.” These are words I sometimes hear from my car’s GPS—as if I would be asking for directions if I knew how to get to the route in the first place.

Yes, this is a machine’s response that does not take human frustration into account. But even human communication can take similarly non-illuminating and obfuscating forms. Sometimes this is the result of what we say, sometimes the result of what we leave out. How we express the message is often the key to successful reception and response. This is important in business, but the first example I’ll use comes from a 2016 Pennsylvania ballot question framed by politics.

A referendum that failed in the spring was narrowly approved in November after excising a few words. Here is the newer version that passed the “Yes/No” vote:

Shall the Pennsylvania Constitution be amended to require that justices of the Supreme Court, judges and magisterial district judges be retired on the last day of the calendar year in which they attain the age of 75 years?

The version previously voted down included the fact that this change would delay mandatory retirement to age 75 from the current retirement age of 70. “Yes” to the November referendum resulted in extending the retirement age, while “No” would have kept it at the present limit. Was that evident before I provided the explanation?

Related to this is the language often provided to surveyors by clients. Particularly disturbing are many of the indemnification and “hold harmless” clauses I see. A fairly typical version goes something like this:

The surveyor/contractor shall indemnify and save harmless the

owner from any and all losses, liability, claims, demands, and costs (including legal costs) howsoever caused.

Agreeing to this clause results in assuming all liability and agreeing to take on responsibility for any problem encountered during the project, regardless of whether the surveyor had any role, direct or remote, in any loss suffered by the owner. Better language would limit the indemnification to claims relating only to the contract or agreement, arising out of the contractor’s (or its subcontractor’s) negligence.

Even after striking and replacing any offending language, read everything before signing a contract, even if a new draft appears to be the same as one previously reviewed; the change of a few words could make a difference. It isn’t unknown for an older version to be slipped in, whether by mistake or design.

Does everyone involved have the same understanding of what the words actually mean? The now classic case of *Bell v. Jones* (523 A.2d 982, D.C. App., 1986) revolves around a dispute between an architect and the individual he hired to survey a lot in Washington, DC. There was no written contract (shame on both of them for that), so there was no mutual understanding of what work was to be done and the purpose of the work. In part, the dispute arose from a misunderstanding of the verbal request for a “plat of survey,” a term having a different meaning to Bell, the architect, from what Jones as the surveyor understood it to mean. Bell was expecting a document representing accurate locations of property lines and corner angles from which he could design his architectural plans. A footnote in the case states:

Jones testified that a “plat of survey” is “for financing [or] title purposes,” while a more detailed survey of boundaries and property lines would be used for

construction documents or building permits. According to Jones, the latter would simply be called a “survey.” [523 A.2d 982, 985]

As a result, Bell received the equivalent of a mortgage inspection plan that did not reveal the discrepancy between the interior angles in the deed from what physically existed on the ground. It wasn’t until ground was broken that the resulting lack of appropriate side setback became evident (due to that angular difference). Bell soon learned that there are different kinds of surveys, and what he should be asking for in the future.

So—what you say and what you forget to say can make a difference as to reception and perception. The words you choose influence the outcome. In 1871, Lewis Carroll wrote about language, in terms that are still remembered today:

“When I use a word,” Humpty Dumpty said in rather a scornful tone, “it means just what I choose it to mean—neither more nor less.”

“The question is,” said Alice, “whether you can make words mean so many different things.”

“The question is,” said Humpty Dumpty, “which is to be master — — that’s all.” [Through the Looking Glass, Chapter 6] ■

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