
Volume 56
Issue 3 *Dickinson Law Review* - Volume 56,
1951-1952

3-1-1952

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Recommended Citation

Charles C. Arensburg, *Failure of Communication in the Law: A Semantic Study*, 56 DICK. L. REV. 306 (1952).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol56/iss3/3>

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FAILURE OF COMMUNICATION IN THE LAW: A SEMANTIC STUDY

By

CHARLES C. ARENSBURG*

"A rule of property long acquiesced in should not be overthrown except for compelling reasons of public policy or the imperative demands of justice."

In this sentence, often quoted by the courts¹ there is in the semantic sense an almost complete lack of communication from words to reader.² The words are "high level abstractions" which mean only what each different reader wants them to mean or believes them to mean. There are no "referents," that is, no factual tactile handles; there are no "operations" in the Korzybski sense which are universally comprehensible to everyone regardless of his or her emotional or subjective attitude at the time.³

How would you define this rule? What symbols will we substitute for "compelling reasons of public policy," what symbols for "the imperative demands of justice?"

Even if the rule were otherwise definable, what actual application is the court making of the rule when it quotes it to substantiate a factual situation? Is the court acquiescing in the rule of property or is it overthrowing it? The first half of the sentence would have you believe, if you give it emphasis, that the rule of property is being upheld, the exception later referred to not being present in the case.

The second half of the sentence would have you believe that here at last are "the compelling reasons of public policy" or "the imperative demands of justice" that justify the exception.

Taken as a whole, the sentence could support either proposition and is therefore meaningless with respect to the particular case.

Let us examine another widely quoted proposition in the law of equity:

"It must be thoroughly understood that, in cases of this character, the findings of the chancellor supported by the court en banc must be considered just as binding on appellate courts as the verdict of a jury. Of course, if there is no evidence to support them or if it appears from the record that there is a capricious disbelief of evidence then the findings are worthless." (*Pusey's Estate*, 321 Pa. 248 (1936) at page 261.)

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¹ E.g. *Smith v. Glen Alden Coal Co.*, 347 Pa. 290 (1943).

² "General Semantics" has been defined as a "modern highly empirical inquiry into the structural adequacy of present day languages for intelligent Communication."

³ Count Alfred Korzybski, "Science and Sanity;" and Introduction to Non-Aristotelian Systems and General Semantics," Second Edition, 1941.

The reason for the proposition advanced in the first half of the quoted paragraph is stated in *Glenn v. Trees*, 276 Pa. 165 (1923), in which the court sensibly points out that the tribunal of first instance either with or without a jury has direct contact with the witnesses and with the evidence and therefore is logically more able to rule on the matters presented at the trial.

Of course the findings of the lower court sitting as a jury must be supported by "competent" evidence. *Humphrey v. Republican C. C. Com.*, 320 Pa. 353 (1936).

In *Bank of Charleroi and Trust Co. v. Renchkowsky*, 343 Pa. 444 (1941), the court said that the findings of fact by the lower court, supported by evidence and approved by the court *en banc*, "must be accepted on appeal."

Again in *Weber v. Klein*, 293 Pa. 85 (1928), the court reluctantly perhaps states that it obeys the first half of its own rule: "Even if we were disposed to think otherwise, we are met with this barrier 'the findings of a court based on evidence and approved by the court below must be given the same weight as the verdict of a jury and will not be disturbed on appeal.'"

But can and does the court overcome its man-made barrier? Are not equity decrees upset or modified as frequently as not? Are not the verdicts of juries set aside and modified? Are not the judgments based thereon reversed? Are not all sorts of causes reversed at every sitting of the Supreme Court in every state?

Of course, at the outset we point out that juries are laymen while lower court judges are members of the profession trained in the intricacies of the law and perhaps for that reason the findings of fact of a chancellor by some bond of professional sympathy combined with ordinary inertia may actually have a more binding effect on appellate courts than even the verdict of a jury.

Now take a look at the cases in which the court unfetters itself from the rule. What are the words by which they justify such release?

In *Kern v. Greensweig*, 125 Pa. Superior Ct. 430 (1937), the chancellor's findings of fact were overruled by the court *en banc* and an appeal was taken. Remember that the action of the court *en banc* was without benefit of the direct contact with the witnesses referred to in *Glenn v. Trees* above. The court *en banc* had no chance to observe the witnesses, just as the appellate court had no chance. But the appellate court had no hesitation in reversing where it believed in the cause of the defendant. It adopted the following words to overcome the barrier of the rule. After first citing the classical proposition of *Glenn v. Trees*, the Superior Court said:

"The rule is now clear that where the chancellor's findings of fact are affirmed by the court *in banc*, the appellate court is concluded thereby if they are supported by proof sufficient to require the disputed facts to be submitted to a jury in a trial at law; but they are not conclusive if overruled by the court *en banc* as is plainly pointed out in *Belmont Lab.*

Inc. v. Heist et al., 300 Pa. 542, 151 A. 15. It is the duty of an appellate court, however, to examine carefully the reasons given by the court *en banc* for its action, to determine whether it was justified, keeping in mind the weight to which the original findings are entitled."

In *Hamilton v. Fay*, 283 Pa. 175 (1925), the classical statement is so weakened as to raise doubt from the point of view of communication as to what is the rule and what the exception: "Such findings," (of fact by the chancellor) said the Supreme Court, "must be supported by sufficient evidence and where we have said such findings will not be disturbed when supported by evidence, sufficient evidence was necessarily implied, for a finding not based thereon is an error in law which can and should be corrected." Not only that but "where the case turns upon reasoning or inferences to be drawn from the facts, the trial courts' conclusions are always open for review." The decree of the trial chancellor was thereupon reversed.

In *McConville v. Ingam*, 268 Pa. 507 (1920), the court reversed the decree of the trial chancellor saying that the legal result (reached by one trial chancellor) was attained "by an inference founded on erroneous conclusions regarding vital facts and by misapplying legal principles."

The Appellate Court reversed the trial chancellor in *Easton v. Koch*, 152 Pa. Superior Ct. 327 (1943), by saying "such findings are entitled to great weight but it is still the duty of the appellate court to determine whether the ultimate result reached was based on a proper understanding of the facts proven and a correct application of the legal principles."

The Appellate Court made short shrift of the general rule in reversing the trial chancellor in *Potter v. Brown*, 328 Pa. 554 (1938): "The chancellor's deductions or inferences made from the facts which he has found are erroneous and cannot stand."

What then has become of the rule or rather what then is the rule? It is obvious from reading the cases that the Appellate Courts have allowed themselves a free hand in upholding or reversing the trial chancellor. Nor does there seem to remain much cogency to the possibility previously referred to that appellate courts would less rather upset the findings of a fellow trial chancellor than the verdict of a jury. The simple principle seems to be that the courts will review the case and decide it according to individual cogitation and review of the authorities, applying always, however, an innate sense of "right" and "wrong" within their own lights. And after all perhaps that is all we should reasonably expect from the courts, the possibility of a thorough review conducted by intelligent men.

But is it not dangerous on the other hand for the court to pay lip service to one or the other half of the so-called "rule" which we have discussed?

Justice Holmes once said, "What is meant by laws are the prophecies of what the courts will do in fact."

What service then do the courts perform toward making available such prophecies to citizens or their lawyers when in one case they say on March 16, 1925, in affirming the lower court: "The findings of fact by a chancellor have the force and effect of a verdict of a jury, and will not be disturbed on appeal if there is evidence to support them," *Himrod v. McFayden*, 283 Pa. 103, and in another case on April 13, 1925, in reversing the lower court they say, "Furthermore where the case turns upon reasoning or inferences to be drawn from the facts trial courts' conclusions are always open for review." *Hamilton v. Fay*, 283 Pa. 175 (1925).

If such statements are not actually misleading, we submit they are at least useless under ordinary tenets of semantics since they fail to establish the communication which should be desired.

A word is nothing more than a map to a territory. It must not be confused with the territory itself. A dog is an animal. A man is an animal. But that does not mean that a man is a dog. A dog and a man occupy two positions as it were in the territory of animal, but we are not misled by that fact to confuse a man with a dog.

Words are simply a special class of symbols. There are of course other symbols of communications such as traffic signs or a wink of the eye, a nod of the head, or a numeral. The word "referent" is used by some to mean the object to which the word symbol refers. Now it is obvious that with different people the referent or object must be different also. Thus, unless both the speaker and the one spoken to have the same "referent" or object in their minds, there will not be complete communication when the word-symbol is used. Moreover, the relation between the referent or object and the word-symbol is always indirect because the thought or impression of someone's mind intervenes.

The law of evidence constantly presents a scene of linguistic struggle over such terms as "burden of proof," "reasonable doubt," "scintilla of evidence," "presumption," "burden of coming forward with evidence," and the like. We will not burden the reader with any recitation of the frequent but fruitless struggle over such phrases. One example may suffice to show the kind of difficulty the courts encounter.

In *DeLong Hosiery, Inc. v. Margulies*, 364 Pa. 45 (1950), plaintiff recovered a verdict in a civil suit. The trial judge on hearing the motion of the defendant for a new trial granted a new trial because, although he had charged the jury that the plaintiff had the "burden of proof" to prove his case, he had neglected to add the words "by a preponderance of evidence." This, he indicated, was likely to mislead the jury and therefore there should be a new trial. The appellate court quite sensibly refused to be so word-technical and pointed out that the phrase "burden of proof" was sufficient to put the jury on notice to "weigh" the evidence in their judgment to see if the plaintiff had avoided Wigmore's "risk of non-persuasion."

Of course, the court pointed out in a *criminal* case it would have been error for the judge to leave out the characterization of the burden as requiring proof "beyond a reasonable doubt." What it comes down to, and rightly so, is that a jury in dealing with property rights ought to be convinced that what they are doing is right; in dealing with the body and life of a prisoner, human experience, fears and desires have found expression in the rule that the jury has to be doubly careful then and go much slower in finding a man guilty. We doubt that actually a different *quantum* of evidence is needed in the one case than in the other. After all, many men have gone to the chair on purely circumstantial evidence. The real beneficial effect of the reasonable doubt rule is the red flag it gives to the jury to go slow, examine yourself, after all you are dealing with a human life here and not merely money.

A study of cases on taxation is not calculated to convince that words are being used to communicate at a tangible level. The referents are too often other abstractions which are purely suggestive. For example, a tax on personal property by a city was upheld in 1948⁴ and an income tax imposed by a city was invalidated in 1950.⁵ In the former case *upholding the tax*, we find the following supporting statements:

1. "Words in taxing statutes may be and are used in different senses." (undoubtedly true)
2. "The object of interpretation and construction is to ascertain and effectuate the intention of the legislature."
3. "For this purpose the occasion and necessity for the law and the object to be attained must be considered."
4. "The intention of the legislature was clearly expressed in the act."

In the latter case *striking down* the tax, the court relies on other principles:

1. "Municipal corporations can levy no taxes . . . unless the power be plainly and unmistakably conferred."
2. "The grant of such right is to be strictly construed and not extended by implication."
3. "Tax statutes should receive a strict construction."
4. "In cases of doubt the construction should be against the government."
5. "While it is the duty of every citizen to bear his just share in supporting the government, he cannot be compelled to do so except in a way provided by a statute."
6. (And finally, in referring to the former case cited above where the taxing power was upheld.): "The grounds of attack . . . were different from the objections presented in the present case."

The point that seems to us to derive from such high level abstractions is that the validity of a tax is never governed by such phrases or "precedents."

⁴ McClelland v. Pittsburgh, et al., 358 Pa. 448.

⁵ Murray v. Philadelphia, 364 Pa. 157.

Rightly or wrongly, and probably rightly, it is governed by the court's economic views together with the necessity of, and in some cases the urgency of, the tax for municipal purposes. The law, on the one hand content at times to indulge in non-communication, at the same time knows the truth full well:

"In ascertaining the scope of the taxing power conferred, the court must deal with the reality of the situation and may not be misled by ambiguous words used to describe taxes in other contexts. It is often said that taxation is a practical matter frequently arbitrary and illogical and that words used to describe taxes in one context are not always used in the same sense nor with the same meaning in another."⁶

In short, the government, state or local, needs funds or extra funds to operate. Judges for many reasons are impressed or not impressed by the need. The tax is therefore valid or invalid. Meaningless generalities do not serve so much as governing precedents as they do for window dressing.

The words of the Constitution of Pennsylvania and of other laws of Pennsylvania would restrict the borrowing power of both the state and its municipalities. Modern economic exigencies make it necessary that those words be circumvented. The "Authority" was therefore invented as an ingenious 20th century method to avoid the constitutional debt limits of both the state and local government. In like manner the corporation was the great 19th century method to allow a man to risk his capital and still not be individually ruined if the venture should fail. Both concepts were and are empirical devices. Both have filled and do fill a great need in contributing immensely to human expansion.

The law has many rules and counter-rules which allow the court the widest latitude in choosing between them to make its point. We find such coach and four expressions on all sides. Often the rules themselves and their partners in crime, the counter-rules, are not the guides or the sign posts but instead are the after-thoughts of the decision. No doubt they have a semantic use, but it is more diplomatic than legal, more of a social effort as it were to lessen the impact of the decision on the loser and to bring peace to litigants.⁷

For example, the "uniform rule" on an appeal from a decree which refuses, grants or continues a preliminary injunction is as follows:

"The Appellate Court will look only to see if there were any apparently reasonable grounds for the action of the court below and will not further consider the merits of the case or pass upon the reasons for or

⁶ Murray v. Philadelphia, 364 Pa. 157, at Page 164.

⁷ It is not the purpose of this article to argue for a rationalization of language, either in law or otherwise, to a point where the tremendous emotional factors of communication in evoking useful moral and social sentiments would be eliminated. We realize that the purpose of words is not only communication. However in stating a legal rule which is meant to guide trained lawyers as a precedent, it seems to us that too little attention has been paid in the past to words as communication, and too much to words either as space fillers or as emotive factors.

against such action, *unless it is plain that no such grounds existed or that the rules of law relied on are palpably wrong or clearly inapplicable.*" (Italics ours).⁸

What the law gives, the law takes away. In other words, cannot the "rule" be paraphrased thus?

"Where a preliminary injunction is granted and an appeal is taken, the court will uphold the majority if they think the lower court's action was reasonable and upset it if they think the action was unreasonable."

Stated either way, the rule is devoid of objective referents. Its only virtue is that it still leaves the way open for intelligent decisions by a just court on the facts.

The courts are of course by no means in the field of law the sole purveyors of semantic imperfection. Lawyers are notorious in their briefs and arguments not only for prolixity and argument from false assumption, but time and again they fail to avoid the high level abstractions which at best can have only an emotional appeal.

The *Restatements* of the law are replete with the same coach-and-four expressions we find in many opinions, except that they are often couched in new "scientific" idiom.

Surely no one can complain that there is no communication in the following section of the *Restatement of Agency*:

"Agency is the relationship which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control and consent by the other so to act."

But under Section 79 of the same *Restatement* we find the following:

"Unless otherwise agreed, an agent is authorized to appoint another agent for the principal if:

- (a) the agent is appointed to a position which, in view of business customs, ordinarily includes authority to appoint other agents;
- (b) the proper conduct of the principal's business in the contemplated manner reasonably requires the employment of other agents;
- (c) the agent is employed to act at a place where or in a business in which it is customary to employ other agents for the performance of such acts; or
- (d) an unforeseen contingency arises making it impracticable to communicate with the principal and making such an appointment reasonably necessary for the protection of the interests of the principal entrusted to the agent."

⁸ Commonwealth v. Katx, 281 Pa. 287 (1924).

Are not the phrases, "in view of business customs," "ordinarily includes," "reasonably requires," "customary to employ," "reasonably necessary," so subjective, so open to various different referents in the mind of the person whose duty it is to apply the rule that the rule is no criterion for anything?

We grant that the law of future interests is complicated in itself, involving as it does the projection of the legally trained mind into the future possible relationships and life span of a family or a person. Notwithstanding that, what actual communication, what precedent for the guidance of courts or ordinary lawyers do the following sections, selected at random from the *Restatement of Property* (Future Interests) afford?

Section 277: "When a conveyance contains

- (a) a limitation of a life interest, and
- (b) two further limitations purporting to create future interests,
 - (i) of which only one can become a present interest if the life interest ends in accordance with its terms, and
 - (ii) the one of these two limitations which is first stated in the conveyance would purport to create a vested remainder, if the second-stated limitation were absent,

then the interest limited by the first-stated limitation is a remainder vested subject to complete defeasance by the occurrence of the event stipulated in the second-stated limitation; and this occurrence is a condition precedent of the future interest limited by the second-stated limitation."

Or Section 275: "When a limitation, purporting to create a remainder or an executory interest, subjects the interest so limited to either a condition precedent or a defeasibility involving a specified volitional behavior of the intended taker of such interest or of some other designated person

- (a) the following factors tend to establish that such volitional behavior is a condition precedent of the interest:
 - (i) the specific behavior is capable of complete performance within a short space of time; or
 - (ii) the interest limited is designed to reward the intended taker after he has conformed to the expressed wishes of the conveyor, or
 - (iii) the interest limited is a provision by the conveyor for needs of the intended taker which originate in or are increased by some definitive act of specified behavior; and
- (b) the following factors tend to establish that the absence of such volitional behavior is a basis for the defeasance of the interest:
 - (i) the specified behavior is the support, complete or partial, of the conveyor, or of some other person; or
 - (ii) the specified behavior subjects the conveyee to periodic expenditure and the circumstances indicate that the conveyor intended that the current income from the property be used to meet the expenditure; or

- (iii) the specified behavior is conduct which, if construed to constitute a condition precedent, would unreasonably postpone enjoyment of the interest limited; or
- (iv) the restriction upon the interest limited is designed to penalize the intended taker of the interest limited, for a future disregard of the expressed wishes of the conveyor."

If comment to the above is needed, we have only one. "Help!"

Law-making bodies are just as guilty as the court and lawyers in failing to use simple language with objective referents. The most cursory examination of the Federal Income Tax Statutes reveals numerous instances of this. For example, the new Excess Profits Tax Act of 1950, Internal Revenue Code, Section 462 (c) (2), provides as follows:

"(2) In the case of a transaction described in section 461 (a) (1) (E) which occurred after the close of the base period of the component corporation in which the component corporation, immediately prior to the date of the transaction, was entitled to the use of the alternative average base period net income based on growth provided for in section 435 (e), the acquiring corporation, if it determines its excess profits net income with reference to the recomputation provided for in section 462 (b), and the component corporation shall be entitled to compute their average base period net incomes under section 435 (e). Where the transaction occurred during the base period of the acquiring corporation, and the component corporation, immediately prior to the date of the transaction, had commenced business prior to the beginning of its base period (determined without reference to section 461 (d) and met the requirements of section 435 (e) (1) (a) (i), the acquiring corporation, if it determines its excess profits net income with reference to the recomputation provided for in section 462 (b), and the component corporation, shall be entitled to compute their average base period net incomes under section 435 (e) provided, however, that they meet the tests of that section. For that purpose, the payroll and gross receipts of the component corporation for the period prior to the day of the transaction determined in accordance with rules provided in section 435 (e) (4) and (5), and the net sales of the component corporation for the period prior to the date of the transaction, shall be allocated as between the component corporation and the acquiring corporation in the same ratio as the excess profits net income of the component corporation allocated under subsection (i), and such allocated payroll, gross receipts, and net sales amounts shall be treated by the component corporation and by the acquiring corporation as the payroll, gross receipts, and net sales of the component corporation and the acquiring corporation for the period prior to the transaction. In the application of the test prescribed in section 435 (e) (1) (A) (i) (relating to total assets of the taxpayer) the component corporation and the acquiring corporation shall each be considered as having held the total assets of the component corporation as of the date applicable for purposes of section 435 (e) (i) (A) (i)."

To Learned Hand the words of such an Act as the Income Tax "dance before his eyes in a meaningless procession."

"Cross reference to cross reference, exception upon exception, couched in abstract terms that offer no handle to seize hold of—leave in my mind only a confused sense of some vitally important but successfully concealed purport which it is my duty to extract but which is within my power, if at all, only after the most inordinate expenditure of time."⁹

Learned Hand goes on again to praise the highest legal style as that which consists in not being misled into assuming the conclusion in the minor premise, that is not begging the question. No single fault, he says, has done more to confuse the law and to disseminate litigation:

"The truth is that we are all sinners; nobody's record is clean; and indeed it is only fair to say that much of the very texture of the law invites us to sin for it so often holds out to us as though they were objective standards terms like 'reasonable care,' 'due notice,' 'reasonable restraint,' which are no more than signals that the dispute is to be decided with moderation and without disregard of any of the interests at stake."

It is true, of course, as Randolph Paul has said, that more than a few sentences are required to take some forty billion dollars or nearly one-fifth of the national income out of the pockets of those who earn it.¹⁰ But is it necessary, for example, to couch a general rule as to contributions of an employer to an employees' trust under a deferred payment plan in the following terms?

"1. General Rule—If contributions are paid by an employer to all under a stock bonus, pension, profit-sharing or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under subsection (a), but shall be deductible, if deductible under subsection (a) without regard to this subsection, under this subsection but only to the following extent. . ."¹¹

Lawyers and judges should not be afraid to speak in common words and avoid as far as possible abstractions which can only confuse and hide the real reason for deciding the case. As Frazer pointed out, many primitive peoples had to avoid mention of snakes and leopards and other denizens of the forest because to name them was to invoke their presence and was therefore fraught with danger.¹²

The law is not a science in the sense that mathematics or chemistry is a science. It only confuses to compare it with such exact sciences. The law is a study of social anthropology for a purpose. It comprehends the whole of human ex-

⁹ "Learned Hand," Thomas Walter Swan, 57 *YALE LAW JOURNAL* 167 (1947).

¹⁰ Stanley N. Kilcullen, *The Federal Income Tax* (preface).

¹¹ Internal Revenue Code, Section 23 (p) (1).

¹² J. G. Frazer—*THE GOLDEN BOUGH*, Chapter 22. In a large American city in 1950, a charitable organization hired an expert to make a study concerning the advisability of a merger for the good of the community of that agency and another large agency. His report and another study recommended merger. A bitter quarrel arose when it was attempted to be effected. The merger failed and the two organizations compromised their difficulties "for a year" with the following resolution: "RESOLVED, the study, the Study Committee Reports, first and second, the Memorandum and all compromise plans shall be filed and not referred to again in the year 1950."

perience, including the exact sciences. Why not recognize it as such, instead of insisting on referring to it as a "science?"

Of course there exist many other notorious purveyors of linguistic confusion, such as investment counselors, preachers, politicians and philosophers. A quotation from one of the greatest of the early 19th century philosophers should illustrate this:

"Being Determinate. In Becoming, the Being which is one with Nothing, and the Nothing which is one with Being, are only vanishing factors; they are and they are not. Thus by its inherent contradiction Becoming collapses; or is precipitated into the unity, in which the two elements are completely lost to view. This result is accordingly Being determinate, or definite."

And again:

"Being, if kept distinct from its determinateness or character, as it is in Being-by-self, would be only the vacant abstraction of mere Being. In Being determinate (there and then) the determinateness is one with Being; yet at the same time, when explicitly made a negation, it is a limit or barrier. Hence other-being is not indifferent to or outside of a being, but an element or function proper to it. Somewhat is by its quality, first finite,—secondly alterable; so that finitude and variability appertain to its being."¹³

Although it is outside of the scope of this article, physicians have pointed time and again to the connection between semantic difficulties and psychosomatic disorders. For example, attempts to change a lefthanded child into a righthanded child result not infrequently in speech disorder caused by the emotional disturbance of the child.¹⁴ Can it be that a clinical examination of some of the sources of the most blatant failure of communication in the law would reveal disordered thought patterns symptomatic of psychosomatic difficulties?

Would it not be helpful to lawyers and to the people at large, would it not be helpful to judges and to law makers, if both lawyers and judges practiced simple rules of communication? Why should not abstract words be reduced to their lower order referents? If definition, as Ogden and Richards pointed out, is the substitution for the symbol to be defined of a symbol that can be better understood, why should not lawyers and judges attempt to substitute that symbol?¹⁵ Is there anything to be gained by abuse of the abstract phrase of the general term containing as it does a host of images for the user which may be entirely different to the hearer? Can anything be said for the preservation of meaningless jargon as a refuge

¹³ THE LOGIC OF HEGEL, translated by William Wallace, Oxford, Clarendon Press, (1874) pages 144 et seq.

¹⁴ Franx Alexander and others: STUDIES IN PSYCHOSOMATIC MEDICINE, (1948); Edward Weiss and D. S. English, STUDIES IN PSYCHOSOMATIC MEDICINE, Second Edition, (1949), and Helen Dunbar, "Emotions and Body Changes," Psychosomatic Medicine, a magazine.

¹⁵ Ogden and Richards, MEANING OF MEANING, (1923).

for foggy thinking? Surely if there is any certainty in the law, if the decisions and the statutes themselves are to furnish man with some sign-post of conduct, that sign-post must be as intelligible as humanly possible.

Nor does the search for effective communication envisage a time when all judges will be completely "objective." Cardozo said in "The Nature of the Judicial Process," "We may try to see things as objectively as we please. Nonetheless we can never see them with any eyes except our own."

For example what could be vaguer or less an objective standard in the constitution than Article I, Section 8:

"Congress shall have power . . . to regulate commerce with foreign nations and among the several states."

Yet the citizens subject to this law may be encouraged to know that the courts have interpreted this vague phrase with fluidity, in most cases along sound political and economic lines, calling upon their combined wisdom and experience in solving the immediate problem. Can we wish any more than that?