
Insurance Contracts and Semantic Inquiry: The Case of the Limited Pollution Exclusion

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Commercial insurance contracts are complex written agreements regulating a variety of activities: who counts as an insured, coverage determinations, insurer-insured cooperation, premium handling, the claims process, and much more. In order to be administered, insurance policies must first be understood. To be understood, they must be interpreted. All texts—indeed, all language—must be interpreted, of course, and interpretive controversies are inevitable. What is true of poetry and constitutions is even more true of commercial contracts in which the parties have a material incentive to disagree. One important form of interpretive dispute arises when an insurance contract is not given a univocal interpretation by both parties at the onset.¹

Some insurance contracts are obviously ambiguous. Others are clearly not ambiguous, and no court would say so. The meaning of still other insurance policies is open to prima facie dispute. The mere fact that an insurance policy employs abstract language, long sentences, difficult concepts, complex definitions, or undefined terms does not imply the existence of ambiguity. Insurance is not a simple matter. Nor does the presence of concepts that cannot be grasped completely at first glance imply ambiguity. The same is true about the presence of subtle differences. In general, the mere fact that the interpretation of an insurance policy requires close attention does not imply the existence of ambiguity. Nevertheless, the fact that understanding a commercial insurance agreement is a process that demands effort is not immediately and obviously apparent from oft-cited, “black letter” rules for interpreting contracts, facile statements of which roll trippingly off the trained advocate’s tongue. Complex insurance policies must be studied. Therefore, before a court can decide whether such an insurance contract is ambiguous, it must carefully contemplate the language used in the policy.

In this article, we explore alternative methods for thinking about the

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language of insurance documents, and hence, for determining whether an insurance contract is ambiguous. We also apply our theory to the limited pollution exclusion. In a subsequent article, we will analyze some leading cases.

BACKGROUND: PRINCIPLES OF CONSTRUCTION

The interpretation of insurance policies is structured by a variety of legal principles. Perhaps the most frequently mentioned of these principles is the maxim "contra proferentem," which could more accurately be called the "Contra-Insurer-Ambiguity Norm" (CIAN):

Ambiguities in insurance policies are to be construed against the insurer and in favor of maximizing coverage.

CIAN, which is the law almost everywhere, should be called a "norm" rather than a "rule" because of its amorphous and uncertain nature, scope, and force. Rules tend to be mechanical, with bright-line applications. In this regard, rules contrast with principles, norms, maxims, rules-of-thumb, and mere considerations.

We recently argued that CIAN is a prescription of last resort.² Our argument encompassed two independent, but complementary, themes.

Extrinsic Evidence Takes Precedence over CIAN

First, we suggested that extrinsic evidence takes precedence over CIAN. This priority suggests that CIAN is also subordinate to other important principles of interpretation, as the use of extrinsic evidence is permitted only when other norms of interpretation fail.³ Our position dovetails nicely with important strands of current jurisprudence. In *Carey Canada, Inc. v. Columbia Casualty Co.*,⁴ for example, the Court of Appeals for the District of Columbia Circuit explicitly held that contra proferentem is a norm of last resort. Also, in *Harnischfeger Corporation v. Harbor Insurance Company*,⁵ the Seventh Circuit recognized that the application of CIAN was significantly restricted. In commenting on the doctrine that ambiguities are resolved in favor of the insured, Judge Easterbrook wrote:

It is no surprise...that neither Wisconsin nor any other state carries the principle to its limits. There must be genuine (meaning, substantial) uncertainty, not resolvable by other means, and the insured's proposed reading must be reasonable.⁶

For our purposes, the key portion of this citation is the language "not resolvable by other means." Impliedly, CIAN is not applicable if the ambiguity is resolvable by other means. Presumably, these means include other rules of construction and extrinsic evidence.

CIAN Abdicates Interpretation

Second, we suggested that CIAN is not a genuinely *interpretive* principle at all, as it does not attempt to define the real meaning of a written instrument or seek the intent of the parties. Instead, it is an abdication of interpretation. Rather than a genuine attempt to discern the intent of contracting parties, CIAN allocates the risk of failing to make intentions clear. As a result, applying *contra proferentem* is like giving up. In our view, the guiding principle of construing insurance contracts should not be abandoned except as a last resort. All genuine interpretive gambits should be employed before one surrenders to CIAN. As a consequence, CIAN has a radically subordinate status.

The Hierarchy of Interpretive Principles

Courts that rely on CIAN to construe contracts do not always make clear the position of that norm in the hierarchy of interpretive principles. The reason for this fact is that courts do not always show their work. Judges are, after all, august public officials, not school children. Correct judicial reasoning does consider more fundamental canons of construction first (although perhaps silently), determines that they do not apply or are not dispositive, and then applies CIAN expressly.

Kenneth Abraham, a widely respected professor of and commentator on insurance law,⁷ approaches *contra proferentem* somewhat differently than we do. He suggests that the general canons of construction applicable to all contracts and the special canons applicable to insurance contracts are in perpetual tension. According to Abraham, to the extent that the special insurance-related canons of construction

reflect a public policy that favors the broad spreading of loss through insurance, then [those special canons] should take precedence over the general canons. In contrast, to the extent that [the special insurance-related canons] are simply devices for regulating the process by which insurance language is formulated, the general canons should take precedence.⁸

Abraham's argument fails. According to him, because there are elements of both social policies

in the special principles of insurance policy interpretation[,] the degree to which one or the other purpose is felt to be important in a particular setting is likely to be a greater influence on the approach adopted than an abstract rule governing the issue.

But the real question is how *should* the principles be employed, not how they

are in fact employed. Rational judicial decision making, when there are two canons of construction, each justified by different social policies, presupposes a more fundamental principle for determining when to apply which canon. In the absence of such a principle, judicial choice becomes a matter of social vision, politics, whimsy, or taste. This view is nothing but legal cynicism.

In our view, the correct position is in the announced goal for construing written instruments. The fundamental purpose of construction is to understand. This fact implies that principles of construction more closely linked to the establishment of meaning should be employed before and should trump principles of construction that derive from social policies pertaining to the transfer of risk and wealth. Hence, to the extent that *contra proferentem* is justified by the social policy of broadly distributing risk, it must be subordinate to canons of construction that are genuinely interpretive—i.e., that are designed to find meaning.

CIAN Is the Norm of Last Resort

So, CIAN is a norm of last resort. But, how should a court reason once it has decided, *prima facie*, that CIAN may apply? Once a court has determined that CIAN might apply, how does it determine whether CIAN does in fact apply? How does it determine whether the conditions precedent exist for the application of CIAN? How does it determine whether it should apply CIAN? In effect, these variations on a single question inquire indirectly about the power and scope of CIAN by asking directly about what methodologies a court should use to investigate whether an ambiguity exists in an insurance contract. We are not concerned about how a court should proceed after it has decided that contract language is ambiguous. We are attempting to describe the structure of a rational search for legal ambiguity.

The terrain we explore is the territory between initial hypothesis and ultimate conclusion. An inkling of ambiguity does not entail its existence. A finding of ambiguity may come only after a process of rational inquiry. That inquiry must focus on semantics and must use appropriate tools.

LEGAL AMBIGUITY: VARIETIES AND VAGARIES

The scope of CIAN is far broader than literal ambiguities, of course. In this sense, the term “ambiguity” as used in CIAN’s formulation is itself ambiguous. According to the general jurisprudence of insurance and virtually all jurisdictions, CIAN applies not only to literal ambiguities, but also to unclarities, vaguenesses, obscurities, and textual doubts of all sorts.⁹ There is an important distinction between *linguistic ambiguity* and *legal ambiguity*.

This distinction reflects important differences. For example, the existence of a legal ambiguity is usually determined from the viewpoint of the

layperson.¹⁰ There is no reason why that should be true for purely linguistic ambiguity. The existence of literal ambiguity is relative to relevant language users, who may or may not be laypersons, and what they know.

The Fine Points of Legal Ambiguity

There are many types of legal ambiguities. Literally, an ambiguous word is a word with more than one distinct meaning,¹¹ with more than one distinct sense, or which "can be construed in two, or at least two, quite different ways."¹² In contrast, a term is vague when its boundaries are not clear.¹³ A term is nebulous when its meaning is so completely hazy that it is difficult to pick out even paradigms of the term. When a term is nebulous, conceptually complex, and difficult to grasp, it is obscure. On the other hand, a term is abstract when its conceptual content seems clear, but it is difficult to determine to what the term refers. If this difficulty is sufficiently intractable, an ambiguity might arise. A term is multidimensional when there are several related but separable themes weaving their way through the meaning of the term, even though the term does not quite have different senses. The law refers to all these features when acute as "ambiguity." "Legal ambiguity," then, is broader than "linguistic," "literal," or "real" ambiguity.

Sometimes CIAN appears to refer to entire instruments as ambiguous, while at other times it appears to refer only to ambiguous terms. An instrument is said to be ambiguous whenever it is susceptible to inconsistent but reasonable interpretations. An insurance policy that contains a contradiction may not contain doubtful language, although its language generates the most severe kinds of doubt. Thus, an instrument may be legally ambiguous when it contains inconsistent language, although it contains no linguistic ambiguity, vagueness, or obscurity. This situation occurs, for example, when a policy has two different endorsements attached to it that are inconsistent with each other. Consider an insurance policy the first endorsement of which adds an additional insured, subject to substantial restrictions that are contained in a collateral contract between the policyholder and its customer. Another endorsement adds the same organization as an additional insured, but without any of the restrictions in the first endorsement. Although each endorsement is unambiguous and every individual segment of language therein is unambiguous, the endorsements are inconsistent. As a result, the instrument taken as a whole is legally ambiguous with respect to that additional insured.

The Source of the Ambiguity

Ambiguity in language may derive from diverse sources: the words themselves, words and grammar, words and the world. A term with several meanings is *literally* ambiguous if it is impossible in context to determine which of its several meanings is intended.¹⁴ In the isolated sentence "Watch

out for banks," the word "bank" is literally ambiguous. There are a number of terms like this: "date," "boo," and "tart" come readily to mind. Some of the other types of legal ambiguity—vagueness, nebulosity, multidimensionality, and obscurity—are also forms of *semantic* ambiguity. Not all abstract terms are ambiguous, but when one is, it, too, is semantically ambiguous. A term is *syntactically* ambiguous if its meaning is rendered doubtful as the result of word order or sentence structure. The command "Help blind people" taken by itself is syntactically ambiguous. A term is rendered *pragmatically* ambiguous when its meaning is in doubt as the result of a conflict between what is said and the fundamental purposes of speaking at all. In the insurance context, policy language is pragmatically ambiguous when a possible construction would eliminate or vastly constrict coverage, whereas the obvious purpose of the policy is to grant broad coverage.¹⁵ Next, terms can become ambiguous as a result of the *structure* of the document in which they appear.¹⁶ Thus, in every inconsistent insurance policy, some term will be structurally ambiguous.¹⁷ Finally, a term may be said to be legally ambiguous if it is impossible to determine authoritatively to what it refers. This form of legal ambiguity should be called *referential opacity*. The meaning of such terms may be perfectly clear, but the criteria of their application may be confused, indeterminate, or nonexistent. Thus, if a man buys life insurance and names "my son Michael" as the beneficiary, the meaning of that phrase is perfectly clear, but it may be difficult to apply if the man has two separate families each containing a son named Michael, or if the man has two separate families, one containing a son named Michael and another containing a son called Michael. Of course, ambiguous referential criteria must be distinguished from referential criteria, which are simply hard to apply. The phrase "death from lupus" is quite clear in its meaning, but it is frequently difficult to determine if someone has died from lupus or from an unrelated cause. Criteria that are difficult to apply must also be distinguished from criteria that are impossible to apply. Thus, the phrase "largest prime number" may be meaningful, but it does not apply to anything.

Establishing Ambiguity

These somewhat academic reflections have two practical implications. First, if the court is trying to determine whether language in an insurance contract is legally ambiguous, it must use tools appropriate to the type of ambiguity alleged. One may not treat an allegedly vague and an allegedly nebulous term in the same way, or in the same way one treats an alleged literal ambiguity. Alleged syntactical ambiguities must be treated differently from any semantic ambiguity. Of course, context is important to exploring allegations of both semantic and syntactical ambiguity, but it is used differently depending on the type of ambiguity alleged. Any rational method for considering *prima facie* ambiguity, or hypothesized ambiguity,

must be sensitive to the diverse types and sources of ambiguity.

Second, one of the main themes of twentieth-century linguistics and philosophy of language has been that there is no such thing as an absolutely clear term. Ludwig Wittgenstein, one of the preeminent philosophers of the twentieth century, argued at length in his *Philosophical Investigations* that all meaning is bound to context, so that all language must be understood in terms of the diverse usages of words. "Don't look for the meaning, look for the use," Wittgenstein once said.¹⁸ "And don't suppose any term has a unitary meaning," Wittgenstein might have continued, "rather, look at the different 'language games' in which the word functions." Obviously, if all language is problematic under at least some circumstances—e.g., if every term involves unclarity at its margins—then there is no term that is completely unambiguous under all circumstances. Some courts have expressly recognized this proposition. For example, in *Harnischfeger*, Judge Easterbrook indicated that there were limitations on CIAN resulting from the philosophical pervasiveness of theoretical ambiguity:

Taken to its limits, this doctrine ["the principle that ambiguities must be resolved against insurers"] could obliterate exclusions in insurance policies. For language always leaves *some* ambiguities, whether verbal (intrinsic) or situational (extrinsic) [what we call pragmatic ambiguity]. Drafters cannot anticipate all possible interactions of fact and text, and if they could the attempt to cope with them in advance would leave behind a contract more like a federal procurement manual than like a traditional insurance policy. Insureds would not be made better off in the process. The resulting contract would be not only incomprehensible but also more expensive.

Thus, it would be absurd to suppose that CIAN applies to every term. No court has ever held so, and courts have repeatedly rejected this idea. The way courts use the concept of legal ambiguity presupposes the existence of terms which are not legally ambiguous.

TECHNIQUES FOR INVESTIGATING ALLEGED LEGAL AMBIGUITIES

CIAN says nothing about the conditions for its own application. It only says that legal ambiguities should be resolved in favor of coverage. It does not say *how* to think about whether there really is a legal ambiguity embedded in a policy. Yet CIAN does not mandate a rush to ambiguity. We have already indicated that different types of alleged legal ambiguities must be investigated and treated in different ways. Nevertheless, we believe that there are six general approaches to the problem: chaotic eclecticism, the existence of disagreement, the existence of judicial disagreement, the existence of alternative wordings, the use of dictionaries, and disciplined eclecticism. The last is the best approach.

Fundamental Axioms

Every approach to exploring the meaning of legal language presupposes certain fundamental axioms. Any approach is subject to criticism to the extent that it ignores these fundamentals.

Reasonable conduct of courts

The first of these axioms is legal Principle (A), which captures the reasonable conduct of courts:

- (A) A term is legally ambiguous in a given case when the court reflects sufficiently upon the relevant language or instrument in a careful, informed, and rational manner, and then comes to the definite and firm conclusion that the language is susceptible to two reasonable alternative interpretations.

Of course, in line with the open-ended conception of ambiguity employed in CIAN, this determination may result when the court determines that the term has two independent senses, that the term is vague, obscure, or inconsistent with some other element of the document, including other language or its overall purpose.

Two of the key themes in Principle (A) are that the court must come to a definite and firm conclusion and that the court must base its conclusion on careful, informed, and rational inquiry. The six approaches to exploring alleged ambiguity are methods for conducting the process which the court should use for coming to a definite and firm conclusion. An approach is acceptable only if it meets the requirement that the process be careful, informed, and rational.

Any judicial process for determining meaning must also meet additional requirements. We now set forth three such requirements as Principles (B) through (D). The axioms embodied in these sentences are not legal principles but principles of semantics.

Principle of Noncontradiction

In any case in which legal ambiguity results from vagueness, multidimensionality, or obscurity, any judicial finding of legal ambiguity must also conform to a criterion that we call the Principle of Noncontradiction:

- (B) One set of terms does not mean the same as another, and hence cannot constitute a reasonable interpretation of the other, when it is not contradictory (or incoherent) to assert that there are things in the external world which are instances of one and not instances of the other.

Thus, the term "bachelor" means the same thing as the phrase "unmarried

male adult," because it is contradictory (or incoherent) to claim that someone is a bachelor but not an unmarried male adult. As a result, "bachelor" is a reasonable construction or interpretation of "unmarried male adult." On the other hand, "tall" does not mean the same as "lanky," because it is not self-contradictory to assert that someone is tall but not lanky. As a result, "lanky" is not a reasonable interpretation or construction of "tall."

Principle of Identical Predication

A related principle, which we call the Principle of Identical Predication, may be stated as follows:

- (C) A proposed interpretation of contractual language cannot constitute an adequate rendering of that language, and hence cannot be a reasonable interpretation, when in literal discourse about the world outside the mind, the language to be interpreted may be accurately predicated of something which the language of the proposed interpretation may not.

The point of the Principle of Identical Predication may be seen through the same examples we used in conjunction with Principle (B). The term "tall" does not mean the same thing as the term "lanky" because the term "tall" may be applied to (or predicated of) things to which the term "lanky" simply does not apply. "Tall" applies to mountains, for example, whereas "lanky" does not. The term "bachelor" and the phrase "unmarried male adult" are quite different. Those terms apply to (and hence may be predicated of) exactly the same things.

The Principle of Synonymy

Furthermore, acceptable interpretations of contracts must involve *synonymy* except in the case of literal ambiguity.¹⁹ The Principle of Synonymy may be stated as follows:

- (D) One set of terms means the same as another only if the terms are completely substitutable for one another without any change or loss of meaning in literal discourse about the world beyond the mind.

To vary the example: the phrase "never-married, middle-aged female" may be substituted for the word "spinster" wherever and whenever discourse is attempting to describe the external world. The same is not true, however, for the term "spinster" and the phrase "unmarried female adult," and for many terms that, on the surface, appear the same in meaning, such as "arcane" and "esoteric."

It is important to keep in mind that synonymy is a characteristic of *meaning*. The mere fact that the usage of two terms is *highly correlated as a matter of empirical fact* does not imply that they have the same meaning.

This is an immensely important point, and we will discuss it at greater length presently. It is also important to distinguish between literal meaning and the connotations of a term. The word "spinster" provides an excellent example. This word means "a never-married woman beyond the normal age of marriage." That is its literal meaning. However, it has a vaguely unpleasant connotation having to do with fussiness, a certain lack of robustness, and perhaps rigidity. The fact that there is a word like "bachelor" with no analog for women, and the fact that the word "spinster" has no analog for males, is a point that has not escaped feminist writers. Nevertheless, the connotations of the word "spinster" that may be patriarchally inspired are no part of the literal meaning of the term.

Possible Approaches

We turn now to the six general approaches to reviewing contract language for ambiguity. Each of these approaches, except for the last one, is subject to substantial criticism.

Chaotic Eclecticism

The first method for determining whether an alleged ambiguity is in fact an ambiguity might be called the Approach of Chaotic Eclecticism. This Approach involves four steps:

1. The alleged ambiguous language is identified.
2. Alternative readings of the language are identified. It is determined whether any of the alternative readings are reasonable, by whatever means are available. Any evidence at all may be applied in any order.
3. A definite and firm conclusion as to the presence of ambiguity is formulated.
4. If ambiguity is found, then CIAN is applied.

According to the Approach of Chaotic Eclecticism, no one bit of evidence is dispositive with respect to whether an alleged legal ambiguity really is a legal ambiguity. In addition, and perhaps more significantly, no category of data is systematically to be given more weight than any other kind of data. Decisions regarding ambiguity are made on the totality of whatever factors are thought to be relevant. The very name of this approach implies that there is no mechanical rule for its application.

The Approach of Chaotic Eclecticism has several virtues. First, its methodological structure is quite simple, and simplicity has a certain appeal. Second, it is also comprehensive, because anything and everything may be included as evidence, and there are no internal exclusionary rules that will discard proposed evidence prematurely. Third, some fashionable theories about the methodology of rational inquiry describe themselves as "anar-

chic," and repudiate a priori restrictions on method.²⁰

The trouble with the Approach of Chaotic Eclecticism is precisely that it lacks *any* internal structure. No source of data is subject to systematic, principled evaluation or critique. Everything is done intuitively and on an individual basis. There are no rules for the direction of the mind. Unfortunately, "ad hoc-ery" is a prescription for error. It is too easy to wander from the evaluation of language to *valuation simpliciter*. Chaotic Eclecticism is easily infected by policy commitments, orientation to some result, moral judgment, social taste, and political ideology. Moreover, Chaotic Eclecticism does not submit itself to norms contained in Principles (A) through (D). Without such a submission, the approach is doomed. This approach does not really conform to anarchic theories of method. Even those theories require that theory and evidence fit together in some relatively objective way. Chaotic Eclecticism plays much too fast and loose with evidence.

Existence of Disagreement

Some litigants occasionally suggest that sincere disagreement between the insurer and the insured about the meaning of terms in the policy or about the existence of ambiguity bespeaks the existence of ambiguity.²¹ This approach is fundamentally misguided.²² There is no practical way to distinguish between a sincere disagreement about meaning and a fervent hope.²³ Moreover, this view fails to distinguish between interpretations invented by lawyers after contract formation and genuine beliefs at the time of contract formation. We regard this view as frivolous.

There is a more sophisticated version of the Existence of Disagreement Approach. It holds that the existence of *reasoned* disagreement, in which both sides are supported by some evidence, entails, implies, or at least strongly suggests the existence of an ambiguity. What makes this version of the Existence of Disagreement Approach less frivolous than its simple-minded cousin is the requirement that each side of the disagreement be reasoned and supported by some evidence. Nevertheless, this view is also fallacious. The real question is whether the ultimate claim of ambiguity is rationally supported by evidence. The mere fact that others, even quite a number of others, have presented an argument that a proposition is supported by evidence is irrelevant. The question is: Is the evidence any good?

According to a third variation on the Existence of Disagreement Approach, what is frivolous on the individual scale may be sound in the aggregate. Thus, some cases have suggested that the existence of widespread debate about the meaning of a term implies the existence of legal ambiguity. In *United States Fidelity & Guaranty Co. v. Thomas Solvent Co.*,²⁴ for example, the district judge said:

[W]hile I concede that in a litigious society such as ours the mere controversy

concerning the meaning of a contract term does not establish that it is ambiguous, this type of comprehensive debate comes close to proving the point.

According to the view expressed in *Thomas Solvent*, if there is widespread disagreement about the meaning of a term, then the term is probably ambiguous.

Several points need to be made about this observation. First, the existence of disagreement in litigation contexts does not prove that there is widespread disagreement about the meaning of a term. The proper place to find widespread disagreement would be in ordinary discourse outside the context of interest-driven advocacy. Furthermore, even rhetorical disagreement in political contexts does not prove the probable existence of genuine linguistic disagreement, as ideology and interest are major determinants of public discourse. The mere existence of comprehensive debate—whether widespread or not—does not establish the reality of a legal ambiguity. Widespread disagreement about the meaning of a word would not, in and of itself, establish ambiguity. In general, for ordinary English, if a term is ambiguous, most people know it. A term is literally ambiguous, for example, when it has more than one meaning, and, as a rule, all of those meanings are available to ordinary English speakers.

This is not always true. Some meanings are essentially contested. Thus, “free,” “democracy,” and similar words are legally ambiguous because they are essential to alternative social visions.²⁵ The ordinary words that usually appear in insurance policies do not typically involve essentially contested concepts.

Existence of Judicial Disagreement

Some courts have held that the existence of disagreement *among courts* about the meaning of contract language compels the conclusion that the contract terms are ambiguous.²⁶ We call this the Existence of Judicial Disagreement Approach. Obviously, this approach does not suffer from the dangers of deriving ambiguity from disagreements between interested parties. Nor does it derive ambiguity from advocacy-oriented public debate. The fact that disagreement exists among judges is supposed to guarantee an element of objectivity.

Nevertheless, this approach suffers from a fatal problem. It completely fails to allow for the possibility that courts might make mistakes. Courts surely do err, and the mistakes courts can make extend even to linguistic matters. Some courts might simply be wrong about the meaning of a term. The existence of judicial linguistic error does not entail that a term is legally ambiguous. A term is legally ambiguous only if a language user is *correct* when he claims that the term has different meanings, different senses, indeterminate meaning, or indeterminate application. Moreover, if a court uses the wrong method for determining whether there is ambiguity, the

chances of error increase very substantially.

Meaning can be a subtle matter. Resolving such matters requires a good deal of time and attention. The mere fact that a judge has made a particular decision does not guarantee that the requisite attention has been paid to the problem. Moreover, the quality of judicial decisions is frequently a function of the quality of the briefing and advocacy presented. This is often not something that can be determined from the face of a written opinion. Finally, it is not unheard of for judges to be themselves results-oriented.

One might further refine the Approach of Judicial Disagreement by saying that an ambiguity is entailed when different courts, after rendering principled and reasoned opinions, disagree about the meaning of a term. The theory is that it is more difficult to make linguistic mistakes after there has been considerable reflection on the matter. Obviously, this is so. However, mistakes are still realistically possible. Hence, although the principled and reasoned opinions of other courts may be interesting, edifying, or puzzling, they do not *establish* the existence of a legal ambiguity. Of course, in the Approach of Chaotic Eclecticism, the reasoned opinions of others constitute one category of data.

The *Thomas Solvent* case sets forth an even weaker version of the Judicial Disagreement Approach:

[T]he fact that each side has marshalled substantial, albeit conflicting, authority from other jurisdictions with respect to the "correct" interpretation of the exclusion provision and the correlative exemption terms suggests to me that the terms, as contract terms, may well be ambiguous.²⁷

What makes this version of this Approach *weak* is that the conflicting authority only *suggests* the existence of ambiguity. Of course, the suggestion that there may be ambiguity is insufficient to *establish* its existence. Thus, the doctrine just quoted from *Thomas Solvent* might be used to stimulate further inquiry into the existence of ambiguity, but it could not establish the proposition that CIAN should be applied.

Authoritative Disagreement

The Approach of Judicial Disagreement must be contrasted with another putative approach. We dub this alternative the "Stratagem of Authoritative Disagreement." We call it a "stratagem" as opposed to an "approach" because we do not believe that the authoritative disagreement in the end is a viable method for sorting out hypothesized ambiguity in legal contexts, at least when that ambiguity occurs in ordinary English.

Perhaps the best route to contrasting the Approach of Judicial Disagreement with the Stratagem of Authoritative Disagreement is to reflect upon the nature of precedent. Judicial decisions sometimes constitute precedent.²⁸

Under certain circumstances, precedent is binding, and under other circumstances it is merely persuasive. Precedent is also called "authority"; in this sense, judges ask advocates whether they have authority for their position. It is important to realize that the term "authority" is ambiguous. Bottom line, precedent constitutes authority because it is law pronounced by someone with political authority; that is, someone with authoritative power or sovereignty. In this sense of the term, people have authority so their pronouncements are authority. In another sense of the word "authority," someone is an authority when he or she has extraordinary knowledge about a given subject. It is in this sense that Laurence Tribe is an authority on American constitutional law.²⁹ The first sense of the term "authority" might be called political authority while the second sense might be called epistemic authority.

Judicial authority

Courts are not epistemic authorities on language. Are they political authorities on language? To be sure, in most jurisdictions courts review contract language "as a matter of law," and appellate courts review the decisions of *nisi prius* courts by a *de novo* standard.³⁰ Does this mean that judicial rulings on contract language are entitled to be regarded as precedent? Purely legal pronouncements of courts are precedent. In part, they are precedent because purely legal pronouncements are not only within the political authority of courts but also within their epistemic authority. Courts know about the law. They have extraordinary, specialized knowledge about the law. They have not only been ordained to decide such matters, they also have the expertise. Do courts have expertise about language? Do courts have more knowledge about ordinary language than ordinary language users? Or sophisticated speakers of the English language? The answers to these questions are surely negative. Hence, to say that judicial decisions about language are made "as a matter of law" is not to imply that linguistic decisions are legal findings, pronouncements about the law, rulings on the law, or purely legal rules. Rather, such findings are "as a matter of law" only in the sense that no jury is required.

In other respects, findings about language are more like matters of fact than they are like purely legal matters. To the extent that findings about language are like findings of fact, judicial decisions lack the kind of epistemic authority that their purely legal decisions have. Of course, judicial findings of purely individual fact have no precedential value whatsoever, although they may be binding on the parties in other litigation. Findings of general fact, in contrast, may have some precedential value, but they are accorded the deference found in *stare decisis*.

The situation of judges may be distinguished to some degree from the situation of authorities on language. Presumably, authorities on language

are specialists in linguistics, lexicography, semantics, and so forth. Such people have extraordinary knowledge and expertise about a language, at least when it is taken as a whole. What is unclear, however, is whether any such authority has specialized knowledge or extraordinary expertise with respect to the meaning of ordinary English words. Ultimately, the usages of the reasonable user of ordinary English will be the data base for testing any observations, hypotheses, or laws propounded by an authority on language.

These remarks do not apply to specialized vocabularies, such as those obviously found in mathematics, the natural sciences, and engineering, and *possibly* in social sciences, some sorts of business transactions, and so forth. For this reason, it would be unusual for courts to receive expert testimony on the meaning of ordinary words, even when they occur in sophisticated contexts. On the contrary, there is nothing strange about a court receiving expert testimony on the meaning of technical words.³¹

In the end, the Judicial Disagreement Approach suffers from insufficient recognition of the necessity of subjecting all linguistic explorations to the norms embodied in Principles (A) through (D). In short, the existence of disagreements among judges proves something only if both sides of the disagreement survive tests by the Principles of Noncontradiction, Identical Predication, and Synonymy. Once those principles are applied to both sides of a linguistic disagreement, however, the fact that judges have adhered to both sides, or even to one side to the exclusion of the other, is a matter of curiosity but of no special justificatory interest in an interpretive argument.

Alternative wordings

As mentioned earlier, some courts look to whether an alternative wording might have made matters clearer. If a court practicing this approach can think of a superior alternative wording, then it will hold the term actually used ambiguous and decide accordingly. This methodology is an inevitable part of the Approach of Chaotic Eclecticism, and it is beneficial so long as it is used gingerly. If the Alternative Wording Approach is used dispositively, however, it can be very misleading. The reason is that virtually any sequence of words can be clarified. Every statement can be improved upon. Every promise can be better made. These observations are simply a result of the fact that there is no such thing as maximal clarity in language, just as there is no such thing as maximally precise measurements in science. If this approach were taken seriously, there would be no such thing as plain meaning, and CIAN would be the first and only principle of construction.

The use of dictionaries

Courts frequently rely on dictionaries to review contract terms for ambiguity. There are two approaches to the use of dictionaries. In any approach, dictionaries must be used skeptically, and with a clear sense of

their nature and limitations.

The dictionary as God

On the first approach, if an entry in a reliable dictionary contains two or more meanings or two or more current senses of a term, then ipso facto the term is ambiguous. This approach makes dictionaries binding on courts,³² even though on this approach courts should avoid archaic or derivative meanings. The methodology is still subject to criticism.³³ It amounts to requiring that courts take automatic judicial notice of the reliability of dictionary entries. The investigation of alleged legal ambiguity is a matter of law, of course, and not a matter of fact, whereas judicial notice is appropriate for matters of fact.³⁴ As we have just suggested, however, this dichotomy is too simplistic. Even if something like judicial notice is appropriate in linguistic contexts, dictionaries when taken as a whole are not the sort of thing of which judicial notice should be taken. No dictionary is perfect. Even some eminent dictionaries have been subjected to substantial—indeed, scorching—criticism.³⁵ Further, judicial notice requires the antecedent evaluation of the reliability of the dictionary, and no such evaluation can itself be based on that dictionary. Ultimately, no court should entrust its linguistic investigations and its sense of the community's ways with language to dictionaries. Dictionary entries are, after all, quite abbreviated. They also try to provide more than meanings; dictionaries also provide information about empirical matters strongly but still only contingently associated with a term. Finally, dictionaries are helpful, but they can also be wrong. Dictionaries may frequently be guides, but no dictionary is God. Indeed, when there are serious, deep, subtle, nuanced, or systematic disagreements about correct usage in specialized contexts, dictionaries can seldom function as arbiters.

The dictionary as guide

There is a second methodology for using dictionaries. Dictionaries are not decisive, according to this approach. What is dispositive in reading an insurance contract is the "ordinary and accepted meaning of a word."³⁶ The dictionary may or may not capture the ordinary and accepted meaning of a term. A dictionary may or may not accurately report or reflect a community's ways with language. As one intermediate California court recently noted:

The dictionary definition of a policy term bears relevance as to how a person of average intelligence and experience would understand the policy phrase crafted by the insurer.³⁷

It is important to notice how cautious this language is. The court says only that dictionary definitions "bear relevance" to determining ambiguity. Obviously, a court should be cautious about flouting established dictionary

meaning; it should think twice about overriding a dictionary entry. Nevertheless, both in theory and in practice, dictionaries are *guides* to ordinary usage, and that is all. They are not final arbiters, although they *may* be very good evidence.

One recent commentator, Michael Dolin, has endorsed the Dictionary as Guide Approach without using that terminology. He cogently argues that a dictionary, and its formats for presenting information, should be subject to stringent critique before a court relies on them.³⁸ Obviously, antecedent close scrutiny is inconsistent with the Dictionary as God Approach.

Comparison

The Dictionary as Guide Approach to the use of dictionaries is consistent with the Approach of Chaotic Eclecticism. So long as a court is not bound by what a dictionary says, it may look to other evidence in solving its ambiguity problems. It is difficult to imagine a court self-consciously adopting the Dictionary as God Approach. Courts will not knowingly forfeit this much discretion or be bound by entries and books, which can be wrong. Rather, the Dictionary as God Approach is a mode of argument courts blunder into unawares.³⁹

Learned Hand remarked more than once that dictionaries could be very misleading when trying to understand statutes.⁴⁰ We must never forget that. The same point can be made about trying to understand contracts generally and insurance policies in particular. Is not a contract the private but enforceable law between the parties? The use of dictionaries requires a healthy dose of skepticism.

One of the principal functions of the dictionary is to teach the ignorant. One goes to a dictionary to learn the meaning of a word one does not know. Sometimes this occurs in conversation. Jane knows the meaning of a word, while Jerry does not. They settle their dispute by going to the dictionary. Alternatively, Jane and Jerry may think they know the meaning of the word, but they are both wrong. What a dictionary cannot do is to settle a dispute between the semantically sophisticated and linguistically learned. If Jane and Jerry both firmly and reasonably believe that they know both the central and nuanced meaning of a word but disagree, then the dictionary will not assist them in resolving their dispute. They must turn elsewhere.

Disciplined Eclecticism

The final methodology for considering allegedly ambiguous policies is Disciplined Eclecticism. It is closely related to Chaotic Eclecticism in the sense that all sources of evidence are appropriate. It encompasses the Dictionary as Guide Approach because it countenances the use of dictionaries. It is unlike the Approach of Chaotic Eclecticism because it involves an internal structure. In the Approach of Disciplined Eclecticism, some data must be considered after others, and things must be done in a certain order.

Moreover, according to Disciplined Eclecticism, some sources of evidence have a privileged status. No source of evidence, of course, is entirely dispositive, but some types of evidence must be regarded as presumptively correct, or, at least, entitled to more weight than others.

"Reasonable User"

Disciplined Eclecticism takes its cue from the axiom of interpretation in accordance with which insurance policies, like other contracts, must be construed in accordance with the mode of usage that would be embraced by a user of the English language who is of ordinary intelligence, who possesses ordinary business (including insurance) experience, and who generally takes a practical and realistic view of the world.⁴¹ This hypothetical construct of a person is assumed to be able to understand and apply technical definitions, even if they are relatively complex, and he or she is assumed to be able to make ordinarily subtle discriminations. This hypothetical agent is the reasonable user of ordinary English, a sibling of the reasonable person from tort law and elsewhere. We name this genderless being "Reasonable User."

If the linguistic behavior and intuitions of Reasonable User are to govern, then reliable information about ordinary usage—i.e., what Reasonable User would and would not say—has a privileged status. The tested linguistic intuitions of Reasonable User are presumptively correct, or they are entitled to more weight than any other kind of evidence. Prima facie, the thought-upon linguistic intuitions of Reasonable User trump other data.

This kind of evidence may be derived best from thinking carefully about linguistic paradigms to be found in pattern sentences. Frequently, it can be derived from asking ourselves what Reasonable User would say when confronted with a hypothetical situation. This kind of inquiry frequently involves the use of "thought experiments."⁴² Often, conclusions about what Reasonable User would say are best derived from what we would say when confronted with hypothetical situations. These intuitions are best tested in conversation. Such dialogue must be undertaken in the objective spirit of finding the truth, rather than in the polemical spirit of advocacy. Judges are as fit for this task as anyone else.

Reasonable User versus dictionary

Direct and objective observations about ordinary usage override dictionary entries. In the first place, dictionary entries are frequently not subtle enough to capture ordinary usage. Any brief description of linguistic usage is bound to miss a lot. Also, dictionary entries are frequently mere abstract lists. Second, dictionaries can be wrong by omission, by coloration, and by simple mistake. In the third place, dictionaries are trying to report what Reasonable User and his or her cousins say. Their definitions may be

normative for others, but they are mere reports when it comes to Reasonable User. Hence, lexicographers must rely on and then abridge exactly the same data a judge must rely on, at least in part. Judges need not re-invent the wheel in every case, so they should certainly consult dictionaries. In the last analysis, however, they must look to and rely on the data itself.

In summary, Disciplined Eclecticism works this way:

1. An ambiguity is alleged.
2. Bushel-baskets full of linguistic data are collected.
3. All sources of data are considered.
4. Dictionaries are used as guides.
5. The linguistic behavior and refined intuitions of Reasonable User are delineated.
6. The document is tentatively construed in the light of all linguistic data with the refined intuitions of Reasonable User as trump
7. Proposed constructions are tested against the Principles of Non-contradiction, Identical Predication, and Synonymy.
8. If more than one interpretation survives the tests of these principles, then the document is legally ambiguous, and *contra proferentem* (CIAN) is applied.

Steps 5 and 6 distinguish the Approach of Disciplined Eclecticism. Step 5 requires a close investigation of the actual use of ordinary language, and Step 6 trumps Steps 3 and 4. Step 7 should be included in all approaches, but only Disciplined Eclecticism expressly requires that Principles (B) through (D) be applied.

One should not expect judicial reasoning as presented in opinions expressly and fully to reflect the steps of Disciplined Eclecticism. Judicial decisions embody justifications, not discoveries. They encompass conclusions, but only sketches of arguments. They should not be expected to spell out inferences in scholastic detail. In addition, truly influential decisions frequently possess some literary merit, and it would be difficult to elaborate an inquiry in accordance with the steps of Disciplined Eclecticism in a phrase-making opinion. Comprehensive reports of painstaking research do not yield literary flourish easily.

DISCIPLINED ECLECTICISM AND THE LIMITED POLLUTION EXCLUSION

An enormous amount has been written about the limited pollution exclusion, both by courts and by commentators.⁴³ Much of what has been written is partisan, polemic, and linguistically superficial. It is time to move the discussion to a new level, and Disciplined Eclecticism is the way to do it.

The Limited Pollution Exclusion

The limited pollution exclusion, widely used in CGL policies and the subject of much litigation today, is usually found in the following form:

[This policy] does not apply to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such dispersal, discharge, release or escape is sudden and accidental.

The structure of the exclusion is simplicity itself. It applies to bodily injury or property damage caused in certain ways. The causal antecedents that are excluded are certain types of *events*, namely discharges, dispersals, releases, or escapes. An exemption from the exclusion ranges over precisely the same events, so the causal consequences of otherwise excluded events are outside the scope of the exclusion if those causal antecedents are also sudden and accidental.

The language of the exemption is *conjunctive*. This means that for an event to be within the exception to the exclusion, it must be *both* sudden and accidental. This fact entails that the principle of construction we name the "Anti-Redundancy Norm" must be applied.⁴⁴ That norm of construction requires that every term in an insurance policy be given an independent meaning, unless absurdity results. When that norm is applied, it becomes inescapable that "sudden" must have a meaning that is both different from and independent of the meaning of "accidental."

Sudden and Accidental

The term "accidental" derives from the term "accident"; this much is obvious. The term "accident" means unintentional, *unforeseen*, and to some degree *unforeseeable*.⁴⁵ The term "sudden" must mean something else if the Anti-Redundancy Norm is to be satisfied. So what does "sudden" mean? Suddenness is predicated of events. Hence, the question is, "What is a sudden event?" or, better yet, "When is an event sudden?" This question has a number of dimensions:

- Can an event that takes a long time from beginning to end be sudden?
- Can an event that begins gradually be sudden?
- Can an event that begins abruptly be anything but sudden?
- Can an event that is expected be sudden?
- Can an event that begins abruptly but proceeds gradually be sudden?
- Can an event that begins gradually but thereafter proceeds rapidly be sudden?

Thus, there are at least three significant themes to inquire about when thinking about the word "sudden": the event's mode of commencement, the speed at which the event takes place after it has begun, and the event's total

duration. It will not surprise the attentive reader of insurance cases or legal commentary that these themes are not clearly separated in either the cases or the literature.

No one—not policyholders, not insurers, and not jurists—contends that the word “sudden” is literally ambiguous. No one contends that it resembles the word “bank” by having unrelated meanings. No one contends that the word “sudden” may be truly and falsely predicated of the same things at the same time. Rather, the contention of policyholders is that the term “sudden” is multidimensional. This means that there are several related themes weaving their way through the meaning of the term, that each of these themes is a conceptual component of the meaning of the term, and that the themes are separable.⁴⁶ We reject this view on linguistic grounds.

Sudden as abrupt

Suddenness does not refer to the length of time it takes for an event to occur. A long war might be quite sudden, while a short war is not sudden at all. Thus, World War II began suddenly from the United States’ point of view, although it was a long war. The Persian Gulf War did not begin suddenly from the United States’ point of view, although it was a short war. If suddenness does not characterize the duration of events, to what does it refer? It usually characterizes how events begin. Thus, it makes perfect sense to say

- (1) The long war began suddenly,

just as it makes perfect sense to say

- (2) The short war did not begin suddenly; it was a gradual affair.

On the other hand, it makes no sense to say

- (3) The war began very gradually, but at the same time, it was quite sudden.

These paradigms suggest that when we describe an event as sudden, we are referring to the abruptness of its beginning.

Sudden as unforeseen

Abruptness is highly correlated, as a purely factual matter, with not being foreseen. The reason lies in the quickness of the beginning. Nevertheless, there is nothing contradictory (or incoherent) about saying that an event occurred suddenly, but at the same time was foreseen. Thus, it makes sense to say

- (4) The war began suddenly, but we all knew it was coming.

Indeed, one can be even more precise:

- (5) The attack started suddenly and massively at 12:00 sharp—precisely the moment announced beforehand by General Kickass.

Suddenness and being unforeseen may be factually correlated, but they are always conceptually independent.

The two terms “sudden” and “unforeseen” are not synonymous, so one is not a reasonable translation of the other. These considerations completely refute the observation contained in some cases that:

[T]here can be very little dispute that “sudden” means happening without previous notice or on very brief notice; unforeseen; unexpected; unprepared for. ...⁴⁷

We reject precisely the contentions contained in this observation. They are simply not consistent with ordinary usage. They are not consistent with the usages of Reasonable User. It makes perfect sense to say

- (6) Joe’s heart attack happened suddenly. It is a good thing we were prepared for it. If we hadn’t been, we would have never gotten to the hospital.

The fact that this sentence makes sense completely refutes the proposition that “sudden” is explicated by the terms “unprepared,” “unexpected,” “unforeseen,” or even “happening upon very brief notice.” Of course, events that are sudden are often also unexpected, as a matter of fact. Nevertheless, their unexpectedness is not part of the meaning of the term “sudden.” When construing language, whether legal or any other, the distinction between semantic matters and factual matters is all-important. The mere fact that one thing is highly correlated with another does not imply that the two are semantically linked.

Of course, aspects of events other than their beginnings can be sudden. For example, an event might end suddenly, whether or not it began suddenly. What is important to observe, however, is that the sudden ending of an event does not make the event sudden, whereas a sudden beginning does. Consider, for example, the following sentence:

- (7) The long war, into which we had drifted gradually and which had proceeded at a snail’s pace, ended quite suddenly.

Suddenness in an ending, as stated, does not make the whole event sudden. Moreover, an event can end suddenly, while the ending itself can be foreseen

and quite expected. Consider the following:

- (8) The enemy surrendered suddenly. They simply drove up, symbolically laid down their swords and waited to be arrested. Of course, we all knew it was coming, but we were quite surprised by General Dastard's suddenness.

Sudden as instantaneous

Similarly, some events are instantaneous, or nearly so. Conventional events, like the scoring of points in sports, are like this. So are some natural events, such as flashes of lightning. It is not unusual to describe lightning as sudden:

- (9) A bolt of lightning came out of the heavens suddenly.

It is slightly odd, but still true to say, that all instantaneous events that are sudden are also sudden in their beginnings. The oddness results from the fact that the beginning and the end are so close in time. Sudden and instantaneous events might be either expected or not. This point can readily be shown by the following two sentences:

- (10) We all expected lightning, as the weatherman had warned all day of severe thunderstorms. Nevertheless, we were dazzled by the suddenness of each bolt.
- (11) We had no idea the storm was coming. Suddenly, bolts of lightning were everywhere. They were quite unexpected.

Sentences (10) and (11) demonstrate that suddenness in instantaneous natural events is only contingently connected to the events being foreseen. Neither sentence (10) nor sentence (11) violates Principle (B).

Can a gradual event be sudden? If an event is completely and totally gradual, it simply cannot be sudden, even if it was totally unforeseen. This point may be demonstrated with the following paradigm:

- (12) The glacier formed ever so slowly and began moving, if anything, even more slowly. Nobody knew about the glacier's formation and nobody realized when it started to move.

The events described in sentence (12) as a matter of necessity cannot be described as sudden. Of course, the discovery of a gradual event that has already occurred, or which is occurring, can be sudden. But that suddenness is a property of the observer's realization of the event, not of the event itself.

Gradual events may not be completely gradual. For example, they might start gradually and then proceed rapidly. A transition from gradual leakage

to rapid leakage illustrates this point. The sudden transition from an event's gradual development to its rapid development does not make the whole underlying event sudden. It does not even make sudden those parts of the event that occur after the sudden transition. To reverse the situation, an event could begin suddenly and then proceed gradually. Consider a filled container pierced by a bullet, but containing a sealant that reduces the size of the hole as the liquid comes out, so that the gush that began suddenly retreats to a trickle.

The bottom line is that there is a distinction between conceptual connect-edness, necessary truth, and definitional linkages on the one hand, and empirical correlations on the other. There is a fundamental and systematic distinction between stating facts and expressing definitions. Consider the following sentence:

(13) Professional basketball players are tall.

Presumably, this sentence is true. Is it a definition, or does it state a fact? Fairly obviously, it states a fact about basketball players and not an element of the meaning of the phrase "professional basketball player." Contrast (13) with the following:

(14) Spinsters are women who have never been married.

Sentence (14) rests on a definition and states a proposition that is necessarily true as a result of the meaning of language. In this way, sentences (13) and (14) stand in stark contrast. The same point can be made for "sudden" and "suddenness." They may be highly correlated with unexpectedness, but "sudden" does not *mean* "unexpected," period.

The Principles of Noncontradiction, Identical Predication, and Synonymy Applied

In accordance with Step 5 of the Approach of Disciplined Eclecticism, we submit, at the risk of some redundancy, that several thought experiments demonstrate that the word "sudden" does not include the term "unexpected" as part of its meaning. We entitle these thought experiments: the Argument from No Self-Contradiction, the Argument from Causation, and the Argument from Nonredundancy. Each of these exercises completely refutes the proposition that the term "sudden" is ambiguous.

Argument from no self-contradiction

Our first thought experiment rests on the Principle of Noncontradiction, Principle (B). To some degree, this argument is a somewhat formal rendition of what has already been suggested. In any case, if unexpectedness were included within the meaning of "sudden," then it would be self-contradic-

expected. Such claims are *not* self-contradictory, however, as may be discerned from the following examples:

- (15) We were deluged by a sudden shower. We expected rain at any moment, because of the threatening clouds, but the shower that soaked us was preceded by no sprinkling at all.⁴⁸
- (16) The enemy attacked us at dawn. Quite suddenly they stormed over the horizon. It was a good thing that our intelligence data told us to expect them. As a result, we sustained light casualties, and shot down their entire air fleet.⁴⁹
- (17) Thick woodlands concealed the sudden turn in the road. It's a good thing we had traveled the road many times, or we would not have expected it.⁵⁰

These four examples all really rest on the same formula, and so can be generated *ad infinitum*. The fact that these sentences, and the pattern that stands behind them, are not self-contradictory entails that the meaning of the term "sudden" does not include unexpectedness. As stated, events that happen suddenly—i.e., begin with little or no warning—are often unexpected. The whole point to a sudden attack, for example, is to take the enemy by surprise. But that is not a linguistic fact about suddenness. On the contrary, surprise is something that may or may not be achieved.

The same point may be put in a slightly different way. The terms "sudden" and "unexpected" mean the same thing or overlap in meaning only if sentences of the following form are true:

- (18) X is sudden if and only if X is unexpected.

Sentence (18) states that whenever and wherever an event is sudden, it is also unexpected, and vice versa.⁵¹ This is simply not true. But it must be so, if unexpectedness is a feature of the very meaning of the word "sudden," rather than merely something that is highly correlated with it. This fact proves that meaning and empirical correlation are two separable ideas.

The lack of a conceptual connection between suddenness and unexpectedness is a two-way street. Events may be unexpected without their being sudden. Thus, any happening whose advent is slow could not be said to have occurred quickly. Nevertheless, such events might be quite unexpected:

- (19) The cracks in the driveway started imperceptibly and spread slowly, according to the contractor, without our seeing them. By the time we began to notice their presence, it was already too late.

Obviously, this is an example of an event that is unexpected but that does not happen suddenly.

Argument from causation

The terms “sudden” and “unexpected” cannot mean the same thing, nor is the meaning of “unexpected” part of the meaning of “sudden,” if the suddenness of an event is the cause of its being unexpected. Causation is never a matter of meaning, but is always a factual, empirical, correlational, contingent matter. Meaning, in contrast, is linguistic, nonempirical, conceptual, and necessary. Causation is studied by the natural sciences, whereas meaning is studied by linguistics, lexicography, semantics, semiotics, and some branches of philosophy. The word “bachelor” is synonymous with the words “unmarried male adult” not merely because most bachelors *happen* to be unmarried male adults. Nor does the bachelorhood of a man cause him to be an unmarried adult. Their synonymy results from their a priori, nonempirical, semantic connection. Linguistic interconnectedness is entirely different from empirical connectedness. Connections of meaning are universal, necessary, and therefore nonprobabilistic.

Now, it makes perfect sense to say the suddenness of an event’s happening causally accounts for why we did not expect it. Reversals of sentences (15) through (17) illustrate this point nicely:

- (20) We were drenched by the shower. We got so wet because we didn’t expect it, and we didn’t expect it because it came on so suddenly.
- (21) We were devastated by the enemy’s sudden attack. They came on so suddenly that we did not expect them at all.
- (22) The twist in the road loomed up all of a sudden. Wow! We almost went off the road. I guess we were careless in approaching the turn, but we hadn’t expected anything like it. It was all so sudden.

Sentences (20) through (22) illustrate the proposition that suddenness can cause unexpectedness and, hence, that unexpectedness is not part of the meaning of suddenness. These sentences involve the same fact patterns as sentences (15) through (17), and they all illustrate a merely factual—and hence nonsemantic—connection between “sudden” and “unexpected.”

Argument from nonredundancy

A third thought experiment yields the same conclusion. If two terms are synonymous, then there is a redundancy in predicating both terms of the same thing. Consider the following, familiar example:

- (23) All bachelors are unmarried male adults.

If the term “bachelor” and the phrase “unmarried male adult” are predicated of the same entity, there is a redundancy. Consider the following sentence:

(24) Tom is a bachelor, and he is an unmarried male adult.

This sentence merely repeats itself. The force of this point can be appreciated even more in another example:

(25) Tom is a bachelor, and he is also an unmarried male adult.

The appearance of the word "also" in this sentence is very odd, implying that new information is being given. In fact, the sentence is completely redundant.

The same point is true when one term is part of the meaning of another term, but not wholly synonymous with it. Thus, consider the following:

(26) Tom is a bachelor, and he is also a man.

Although the term "man" is not synonymous with the term "bachelor," it is part of its meaning. For this reason, stating that Tom is a man after stating that Tom is a bachelor creates a redundancy. In contrast, consider the following:

(27) The event was very sudden, but it was also unexpected.

There is no redundancy in this sentence. Even after one has reported that an event was sudden, it is still informative to say that the event was not expected. It follows that unexpectedness is not part of the meaning of suddenness.

Writings that are not insurance-related advocacy illustrate this point quite well. Consider for example, the following passage, which comes from a book about the Hartford circus fire of 1944 and the litigation aftermath:

Insurance companies located in Greater Hartford, like those located in other parts of the world, make their money by investing in calculated risk. At a deeper level, of course, they make their money from the human race's individual and collective *fear* of risk. And of all the fears that most of us can name, few are deeper or more terrifying than sudden, unanticipated death or mutilation—especially involving those whom we love.⁵²

In the last sentence of this paragraph, the authors discuss sudden *and* unanticipated death or mutilation. Very clearly, the word "unanticipated" adds meaning to the word "sudden." Of course, "unanticipated" and "unexpected" mean pretty much the same thing. Hence, if unanticipatedness adds something to suddenness, then so does unexpectedness, and the terms expressing those concepts cannot mean the same thing.

An interesting case

The phrase "sudden death" provides an interesting occasion for reflection. Obviously, this phrase is literally ambiguous. In one of its most common usages, it refers to the way in which some games are resolved when the score is tied at the end of regulation play. In this established, but originally metaphorical, use of the phrase "sudden death," the term "sudden" appears not to refer to abruptness in a beginning but to abruptness in an end. This appearance is misleading. The event that constitutes the sudden death is the event of scoring. That event is instantaneous, and it comes suddenly, even if the events that led up to it occurred gradually. The scoring event puts an end to the game, also suddenly. In any case, the event of sudden death is the scoring, and that instantaneous event happens suddenly. It may come at any time. The sudden death resolution of a competition may be unexpected, or it may be quite expected.

The other and originally literal use of the phrase "sudden death" involves the same obscurity. Is the suddenness of a death to be found in the abruptness of an ending? Yes and no. Consider the sentence:

(28) Jones died quite suddenly.

It appears as if suddenness in this sentence refers to abruptness in an ending. But there is another way to look at it. Strictly speaking, while death is not an event in the life of the person who dies, it is an event in the lives of other people. Jones' dying is an event in my life, although it is the end of his. More loosely, we think of death, even our own, as a conceptually separate event. Therefore, in ordinary discourse, death is not simply a way to refer to ending of a life. As such, it is something that could happen quite suddenly. Of course, it is also instantaneous, so it is slightly misleading to talk about an abruptness in a beginning. Still, we do just that for instantaneous events. Thus, death is an event that may or may not happen abruptly. If it happens abruptly, a life also ends abruptly.

Does a sudden death also entail an unexpected death? It is clear that when someone dies, remarks like (28) are frequently made in contexts in which the death was not expected. But there is no necessity about this. Let us suppose that Jones died at 10:00 a.m. on January 1. Jones's death on that day and at that approximate time could be quite expected, but it might be expected that Jones would fade away, rather than be clearly alive at one moment and clearly dead at the next. In this context, Jones's *death* would be expected and also quite sudden. The suddenness of the death would be unexpected, but not the death itself. This distinction, though subtle, is extremely important. This discussion reveals another reason why "sudden" does not mean the same thing as "unexpected." The sudden way an event happens can be expected,

but not its unexpectedness. Contrast the following two sentences:

- (29) The event occurred quite suddenly, although we expected it.
(30) The event occurred quite unexpectedly, although we expected it.

Sentence (30) is self-contradictory; sentence (29) is not. If "sudden" meant "unexpected," sentence (30) would make sense. Principle (B) strikes again.

Furthermore, the Argument from Causation works here. It may be the suddenness of Jones's death that explains why we were taken by surprise (i.e., that causes our surprise). Similarly, the Argument from Nonredundancy applies. There is nothing redundant about remarking

- (31) Jones's death was quite sudden. It took us all by complete surprise.

Thus, although the phrase "sudden death" when used literally is frequently used in situations in which the event was unexpected, there is no necessity about this fact. Thus, "sudden death" constitutes a nice test case for our theory. "Sudden" simply does not mean "unexpected."

ABRAHAM AGAIN

Kenneth Abraham recently provided a sophisticated discussion of the "sudden and accidental" component of the limited pollution exclusion.⁵³ His discussion is especially illuminating insofar as it demonstrates how this exclusion is connected with avoiding adverse selection and reducing the moral hazard. Nevertheless, Abraham's discussion is flawed by linguistic error.

He suggests that disputes about the meaning of the term "sudden" turn on whether the term has a temporal meaning. According to Abraham, even if "sudden" has a temporal meaning, it is not quite clear what that temporal meaning is. On Abraham's account, the two candidates appear to be "short in duration" and "beginning abruptly." He rejects "short in duration" as the temporal meaning of "sudden," because he implies that this suggested paraphrase fails the Principle of Noncontradiction, the Principle of Identical Predication, and the Principle of Synonymy. He also rejects "beginning abruptly" as the meaning of "sudden":

"Beginning abruptly" may at first glance seem to be a bit more plausible an interpretation than "short in duration." The "discharge, dispersal, release, or escape" of pollutants might, after all, "begin abruptly" without being short in duration, yet still be described as "sudden." Since all events begin at a particular moment, however, all events begin "abruptly" and are "sudden" in this sense.

For this reason it might seem to follow that "sudden" does not mean

“beginning abruptly,” because the term “sudden” must be interpreted to narrow in some way the range of discharges, etc., that are subject to the exception to the exclusion.

Because neither suggestion as to temporal meaning is acceptable, “sudden” must mean something nontemporal—“unexpected,” perhaps. The passage just quoted contains a shocking linguistic suggestion, however.

In effect, Abraham makes the bizarre proposal that all events begin abruptly, hence all events are sudden, if “sudden” means begins abruptly. This conclusion is simply wrong, of course. Many events begin slowly. The mere existence of a beginning does not imply that it is abrupt. Events, states, or processes need not begin abruptly. People drift into love; people gradually find themselves desiring to move to a different city; and so forth. The same is true for natural states. Water begins seeping through sand slowly, centimeter by centimeter. Such seepage is gradual, not necessarily beginning abruptly. Indeed, its very beginning may be gradual. Dry rot may both begin and spread through wood gradually. The mere fact that it began to spread at some time does not imply that it began abruptly or began to spread suddenly.

Abraham’s position is so counterintuitive that one wonders how he could possibly have embraced it. Perhaps he is in the grip of a bewitching metaphysical picture of the world. Perhaps he thinks that time is a complex entity with separable component parts (like points or moments), or perhaps he believes that time has an intrinsic metric, like a cosmic yardstick, consisting of discrete moments, etched into its being. If every event must begin at one moment rather than another one, and if every moment is separate from every other moment, then—and perhaps only then—could every event be said to have an abrupt beginning. The idea is that if an event begins at moment x , then, with respect to the preceding moment, $x-1$, the event begins suddenly and not gradually.

What we have here is a triumph of paradox-producing metaphysics over linguistic intuition.⁵⁴ The Approach of Disciplined Eclecticism helps avoid such errors. In finding meaning, the key is linguistic intuition, constrained by the rationality of dialogue, and tested against the Principles of Noncontradiction, Identical Predication, and Synonymy. Had Abraham approached the problem in this way, he would have realized that whatever the correct ontology of time might be, in no sense does the ordinary word “sudden,” when predicated of events, vindicate the inference that all events begin suddenly. In thinking about ordinary language, ordinary usage—not metaphysical speculation—trumps. Language may not be permitted this holiday.

CONCLUSION

In this article, we articulate and criticize the usual strategies for determin-

ing whether an alleged ambiguity is really an ambiguity in the context of insurance contracts. We also set forth what we believe is the correct approach, the Approach of Disciplined Eclecticism. Of course, this strategy need not be restricted to insurance contracts, or even to contracts.

We suggest that much of the hullabaloo over the limited pollution exclusion can be put to rest if our approach to disambiguation is followed.⁵⁵ We do not suggest that semantic inquiry is the only thing relevant to sorting out the true import of some contracts; considerations of economics and social policy *may* also be relevant.⁵⁶ Nevertheless, semantic analysis is crucial to arriving at the true meaning of a contract. If anything else were true, contract would lose its status as one of the highest expressions of a free people.⁵⁷ So long as the meaning of contractual language is an issue and so long as interpretative disputes arise, the Approach of Disciplined Eclecticism must be used.

In part, this article is a call for judicial independence and courage. We call on judges independently to exercise their own linguistic intuitions in reading insurance policies, as tutored by common parlance, Reasonable User, and dialogue. We are thus calling for judicial reflection on Disciplined Eclecticism. In particular, we call on judges to rely on their own disciplined sense of the English language in determining the *meaning* of "sudden," although at the same time we call on the judiciary to construe the language of the policy and to refrain from furthering any specific aim of public policy. Our call is directed to trial judges and appellate judges alike, as appellate review of judicial determinations of linguistic matters is usually classified as a matter of law and so is subject to *de novo* review.

If we have sustained our thesis, courts have a *duty* to read "sudden" as meaning "abrupt" and not as "unexpected." This conclusion entails that insurers have a *right* to such a construction. In a subsequent article, we will review a number of recent cases in the light of the Approach of Disciplined Eclecticism. We will there attempt to demonstrate that a consistent and thoughtful application of this approach will prevent certain fundamental errors and lead to correct and rightful results.

NOTES

1. By universal convention in American jurisdictions, the legal interpretation of contracts, including insurance policies, is restricted to finding the intentions of the parties to the agreement. See *Restatement (Second) of Contracts* §202(1) (1981). Keeton & Widess, *Insurance Law* §6.3 (a)(2) at 628-30 (1988). See also 2 E. Farnsworth, *Contracts* §7.7 ff (1990). Of course, this convention is to some degree fictional. Even a fiction, however, can provide principles for guiding the perplexed. L. Fuller, *Legal Fictions* 88 (1977).

2. Quirn & Caldwell, "Insurance, Ambiguity, and the Sophisticated Insured," 4 *Envtl. Claims J.* 89 (1991).

3. The idea that principles of contract interpretation are to be applied in a certain order is not new. See *Restatement (Second) of Contracts* §203 (1981). Extrinsic evidence may also be important in other areas of insurance law, such as exploring an insurer's duty to defend. Cooper & Huddleston, "Insurance Law," 44 *SW. L.J.* 329, 344-45 nn. 112-13 (1990).

4. 940 F.2d 1548 (D.C. Cir. 1991).
5. 927 F.2d 974 (7th Cir. 1991).
6. Before joining the Seventh Circuit, Frank Easterbrook was a distinguished law professor at the University of Chicago and one of the most profound expositors of the position often but inadequately labeled "Law and Economics."
7. See Abraham, *Distributing Risk: Insurance, Legal Theory and Public Policy* (1986). See also Abraham, "Environmental Liability and the Limits of Insurance," 88 *Colum. L. Rev.* 942 (1988).
8. Abraham, *Environmental Liability Insurance Law* 31 (1991).
9. *Friedman v. Virginia Metal Prod. Corp.*, 56 So. 2d 515 (Fla. 1952). The statement in the text is completely uncontroversial, and true in all jurisdictions we know of. It would be impossible to document this matter thoroughly without a treatise-length study. Therefore, we have opted to present citations on a more or less random basis for uncontroversial propositions.
10. *Allstate Ins. Co. v. Clemmons*, 742 F. Supp. 1073, 1075 (D. Nev. 1990). We are not clear that this should always be true. We have argued elsewhere that sophisticated purchasers should be treated differently from unsophisticated purchasers of insurance. See Quinn & Caldwell, *supra* note 2, at 91. If so, then the existence of an ambiguity in a contract of insurance purchased by a sophisticated insurer should not be judged from the point of view of a layperson. See also *McDermott Int'l, Inc. v. Lloyd's Underwriters of London*, 944 F.2d 1199, 1207 (5th Cir. 1991). This recent case holds that CIAN does not apply when the policy is prepared by the insured's broker, but it mentions the sophisticated insurance purchaser exception to CIAN with apparent approval.
11. Engel, *With Good Reason: An Introduction to Informal Fallacies* 57 (4th ed., 1990).
12. Flew, *Thinking Straight* 70 (1977).
13. Cederblom & Paulsen, *Critical Reasoning* 72 (2d ed., 1986). Flew, cited in the previous note, denounces the elision between vagueness and ambiguity, 70-71. Willard Van Ormond Quine, one of America's premier philosopher-linguists, distinguishes ambiguity and vagueness this way: "Vague terms are only dubiously applicable to marginal objects, but an ambiguous term such as 'light' may be at once clearly true of various objects (such as dark feathers) and clearly false of them." Quine, *Word & Object* §27 at 129 (1965). Quine recently published a concise summary of the main outlines of his view. See Quine, *Pursuit of Truth* (1990). For a legal discussion of these matters, which relies to some degree on Quine, see 2 E. Farnsworth, *Contracts* §7.8 ff (1990).
14. Beardsley, *Practical Logic* 39 (1950).
15. The dominant purpose of insurance policies is the provision of indemnity. *Owens-Illinois, Inc. v. Aetna Casualty & Sur. Co.*, 597 F. Supp. 1515, 1521 (D.C. 1984). See *Keene Corp. v. Insurance Co. of N. Am.*, 667 F.2d 1034, 1041 (D.C. Cir. 1981), reh'g denied, 456 U.S. 951 (1982) (*Keene* specifically discusses pragmatic ambiguity, although not in quite those terms).
16. *Harnischfeger Corp. v. Harbor Ins. Co.*, 927 F.2d 974, 975 (7th Cir. 1991) (no structural ambiguity). See *Boeing Co. v. Aetna Casualty & Sur. Co.*, 113 Wash. 2d 869, 784 P.2d 507, 520 (1990) (dissenting opinion).
17. Inconsistency is not the only source of structural ambiguity, of course. The order of provisions, titles and subtitles, and the order of endorsements, among others, might also contribute.

18. Wittgenstein, *Philosophical Investigations* §§30, 43, 138, 197 (1953). "For a large class of cases—though not for all—in which we employ the word 'meaning,' it can be defined thus: the meaning of a word is its use in the language." Id. at §§43 and 197. Wittgenstein also emphasized that words are tools. Id. at §360. Courts would do well to remember that different jobs call for different tools. What is adequate—indeed, perfect—in a given context can be made to look inadequate by applying the standards of a different context. See Pitcher, *The Philosophy of Wittgenstein* (1964) for a commentary on Wittgenstein's ideas on language. For a recent account of Wittgenstein's life and work, see Monk, *Ludwig Wittgenstein: The Duty of Genius* (1990). See also Hart, *The Concept of Law* 121-32, 234, and 249 (2d ed., 1987) for an application of these ideas to understanding legal language. See also Hart, "Positivism and Separation of Law and Morals", reprinted in Hart, *Essays in Jurisprudence and Philosophy* 63 (1983). This essay includes Hart's famous discussion of hypothetical rule forbidding taking vehicles into a public park. Its focus is on the word "vehicle" and how to understand it. Hart is talking about statutes and ordinances, but his ideas apply with equal force to contracts and insurance policies.

19. *United States Fidelity & Guar. Co. v. Star Fire Coals, Inc.*, 856 F.2d 31, 34 (6th Cir. 1988). This case discourses on the role of conceptual incoherence and synonymy in the interpretation of insurance policies.

20. Feyereabend, *Against Method* (1987).

21. *Northwest Airlines v. Globe Indem. Co.*, 303 Minn. 16, 225 N.W.2d 831 (1975). "[T]he very fact that their respective positions as to what this policy says are so contrary compels one to conclude that the agreement is indeed ambiguous." Id. at 837.

22. *Robbins Auto Parts, Inc. v. Granite State Ins. Co.*, 121 N.H. 760, 435 A.2d 507, 509 (1981). See *American Medical Int'l, Inc. v. Scheller*, 462 So. 2d 1, 7 (Fla. Dist. Ct. App. 1984). See also *Laconia Rod & Gun Club v. Hartford Accident & Indem. Co.*, 123 N.H. 179, 459 A.2d 249, 251 (N.H. 1983).

23. *Darner Motor Sales, Inc. v. Universal Underwriters Ins. Co.*, 140 Ariz. 383, 682 P.2d 388 (1984) (or even the ploy of an advocate).

24. 683 F. Supp. 1139 (W.D. Mich. 1988).

25. See Rodgers, *Contested Truths: Keywords in American Politics Since Independence* (1987).

26. *New Castle County v. Hartford Accid. & Indem. Co.*, 933 F.2d 1162 (3d Cir. 1991). See *Lampiter Dinner Theater, Inc. v. Liberty Mut. Ins. Co.*, 792 F.2d 1036, 1041 (11th Cir. 1986).

27. *United States Fidelity & Guar. Co. v. Thomas Solvent Co.*, 683 F. Supp. 1139, 1155-56 (W.D. Mich. 1988).

28. Eisenberg, *The Nature of the Common Law* 50-76 (1988).

29. Tribe, *American Constitutional Law* (2d ed., 1990). See Tribe, "The Curvature of Constitutional Space: What Lawyers Can Learn from Modern Physics," 103 *Harv. L. Rev.* 1 (1989). See also Tribe & Dorf, *On Reading the Constitution* (1991). Finally, see Flathman, *The Practice of Political Authority: The Authority and the Authoritative* 16 (1980) (the "in authority—an authority" distinction).

30. *Hocker v. New Hampshire Ins. Co.*, 922 F.2d 1476, 1480 (10th Cir. 1991).

31. Dolin, "Suddenly the Lexicographer," 4 *Envtl. Claims J.* 53, 57-58, nn. 29-31 (1991). As Dolin points out, of course, there is nothing problematic about presenting an expert on how to read a complex dictionary or on lexicographical strategies. Id. at 58. Dolin categorically rejects the use of experts on the meaning of ordinary language. However, this view does not

exclude the use of expert testimony on the interpretation of a complex dictionary entry or whether a dictionary implies that a word is ambiguous. If a dictionary is complicated enough to warrant the use of an expert on the system it embodies, then it is complex enough to need interpretation. Also, although expert testimony on ordinary language would be unusual, perhaps it would not be completely outlandish under some circumstances. For example, court papers and the legal media are filled with polemics claiming that "sudden" is ambiguous and purporting to delineate the drafting history of the pollution exclusion. See, for example, Salisbury, "Pollution Liability Insurance Coverage, the Standard-Form Pollution Exclusion, and the Insurance Industry: A Case Study in Collective Amnesia," 21 *Envtl. L.* 357 (1991). Perhaps some affidavits from linguists, lexicographers, or the like might be a good antidote—unusual but healthy.

32. *Houston v. National Gen. Ins. Co.*, 817 F.2d 83 (10th Cir. 1987). Thus, "[t]he court may look to dictionary definitions of the ambiguous term, and if there is a range of reasonable meanings[,] the court must apply the meaning which provides the most coverage for the insured." *Id.* at 85 (emphasis added & citation omitted). See *Chen v. Metropolitan Ins. & Annuity Co.*, 907 F.2d 566 (5th Cir. 1990); *Certain British Underwriters at Lloyds of London, England v. Jet Charter Service, Inc.*, 789 F.2d 1534 (11th Cir. 1986); *Poland v. Martin*, 761 F.2d 546 (9th Cir. 1985).

33. *Braun v. Insurance Co. of N. Am.*, 488 F.2d 1066 (5th Cir. 1974). See Dolin, "Suddenly the Lexicographer: Dictionary Experts and the Pollution Exclusion," 4 *Envtl. Claims J.* 53 (1991).

34. *Fed. R. Evid.* 201.

35. Consider, for example, *Webster's Third International Dictionary*: "The *Journal of the American Bar Association* saw the publication as 'deplorable,' 'a flagrant example of lexicographic irresponsibility,' 'a serious blow to the cause of good English.'" Evans, "But What's A Dictionary For?," 209 *The Atlantic* 57 (May 1962). Gary Wills remarked that the Third International had "all the modern virtues. It is big, expensive, and ugly." He went on to contrast the Third International with the work of Samuel Johnson: "Words tend, in their passage through the lazy and hazy minds of men, towards inanition, and this inanition must be fought with the Socratic tools of definition." Johnson's job, he thought, demanded that he and his readers *think*. Thus, he defined, where the new dictionary only multiplies (and so blurs the distinctions between similar words). Wills, "Madness in Their Method," 12 *National Review* 98-99 (February 13, 1962). See also Follett, "Sabotage in Springfield," 209 *The Atlantic* 73 (January 1962). "[T]he anxiously awaited work that was to have crowned cisatlantic linguistic scholarship with a particular glory turns out to be a scandal and a disaster. Worse yet, it plumes itself on its faults and parades assiduously cultivated sins as virtues without precedent. [¶] Examination cannot proceed far without revealing that Webster III, behind its front of passionless objectivity, is in truth a fighting document. And the enemy it is out to destroy is every obstinate vestigate of linguistic punctilio, every surviving influence that makes for the upholding of standards, every criterion for distinguishing between better usages and worse. In other words, it has gone over bodily to the school that construes traditions as enslaving, the rudimentary principles of syntax crippling, and taste as irrelevant. This revolution leaves it in the anomalous position of loudly glorifying its own ancestry—which is indeed glorious—while tacitly sabotaging the principles and ideals that brought the preceding Merriam-Webster to its unchallengeable pre-eminence. ... The overall effect signifies a large-scale abrogation of one major responsibility of the lexicographer. ..." *Id.* at 74. Finally, see McDonald, "The String Untuned," 38 *New Yorker* 130 (March 10, 1962). In addition, there are two important uncontroversial points to notice about the Third International. First, its avowed definitional strategy is to place older usages first and newer usages later in an entry. A splendid example of the importance of the order of the words is the definition of "spinster," which is to be found in Webster's Third. That definition reads as follows:

1 a : a woman whose occupation is to spin b *obs* : a man whose trade is spinning
 2 a *archaic* : an unmarried woman of gentle family b : an unmarried woman—often
 used as a legal term 3 : a woman past the common age for marrying or one who
 seems unlikely to marry—called also *old maid*

Only entry #3 is the current definition in English; even it is misleading, as a spinster may not be a divorcee; and the matter of the equation with the phrase "old maid" brings up the difference between literal meaning and connotation. Second, the entry in the Third International for "sudden" demonstrates that *abrupt*, and not *unexpected*, is crucial to the definition.

36. *Guardian Life Ins. Co. v. Scott*, 405 S.W.2d 64 (Tex. 1966). *City of Milwaukee v. Allied Smelting Corp.*, 117 Wis. 2d 377, 344 N.W.2d 523, 526 (Wis. App. 1983).

37. *Bank of the West v. Superior Court [Industrial Indemnity Co.—Real Party Interest]*, 226 Cal. App. 3d 835, 277 Cal. Rptr. 219, 244 (Cal. Ct. App. 1991) (the term was "unfair competition").

38. Dolin, "Suddenly the Lexicographer: Dictionary Experts and the Pollution Exclusion," 4 *Env'tl. Claims J.* 53, 58 (1991).

39. *Claussen v. Aetna Casualty & Sur. Co.*, 259 Ga. 333, 380 S.E.2d 686 (1989). *Claussen* has progeny. See *Hecla Mining Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083 (Colo. 1991) and *Just v. Land Reclamation, Ltd.*, 157 Wis. 2d. 507, 456 N.W.2d 570 (1990). We will discuss these cases in a subsequent article.

40. Kornstein, *The Music of the Laws* (1982) ("Learned Hand once quipped that using a dictionary is the surest way to misread a statute." *Id.* at 109.). See *Cunard S.S. Co. v. Mellon*, 284 F. 890 (D.C.N.Y. 1922). (In this case, Hand remarked as follows: "It is, of course, true that one should not interpret a statute, and least of all a Constitution, with a text in one hand and a dictionary in the other, and so courts have often held similar cases to these." *Id.* at 894.) See also *Electrical Securities Corp. v. Commissioner of Internal Revenue*, 92 F.2d 593, 595 (2d Cir. 1937).

41. There is authority for this view. For example, in *Bank of the West*, the court made it very clear that the pivotal point in courts' investigation should be the English usage of "a person of average intelligence and experience." *Bank of the West v. Superior Court [Industrial Indemnity Co.—Real Party Interest]*, 226 Cal. App. 3d 835, 277 Cal. Rptr. 219, 223-25 (Cal. Ct. App. 1991).

42. For accounts of what are also called experiments-in-imagination, see Popper, *The Logic of Scientific Discovery* (1968), and see also Hempel, *Aspects of Scientific Explanation* 164-66 (1965).

43. Comment, "Pollution Exclusion Clauses: The Agony, the Ecstasy, and the Irony for Insurance Companies," 17 *N. Ky. L. Rev.* 443 (1990). This law review article summarizes previous cases and commentary. It suggests that the trend of judicial decisions favored insureds in 1986: "Out of 35 pollution exclusion cases from 1981 through 1986, 27 were decided in favor of the insured business." *Id.* at 455. However, according to Comment, the trend of decisions favored the insurers slightly thereafter until 1989: "Of the 51 pollution exclusion cases reported from 1987 through October 1989, 28 have been decided in favor of the insurance company." *Id.* at 460. See Jurczyk & Ream, "The Pollution Exclusion: Sudden and Accidental Decisions from the Courts," *For the Defense* 2 (Feb. 1991).

44. See Quinn & Caldwell, *supra* note 2, at 90. (The Anti-Redundancy Norm is prior to CIAN in the hierarchy of interpretive principles.) See *Hocker v. New Hampshire Ins. Co.*, 922 F.2d 1476, 1482 (10th Cir. 1991).

45. *Employers Casualty Co. v. Brown-McKee, Inc.*, 430 S.W.2d 21, 24 (Tex. Civ. App.—Tyler 1968, writ ref'd n.r.e.).

46. It is extremely important that the separability component of our notion of multidimensionality not get lost. If a term contains two themes which are *inseparable*, then the term is not multidimensional, in our sense. The Michigan Supreme Court has recently held precisely this about the word "sudden"; it held that the word "sudden" means both abrupt *and* unexpected. *Upjohn Co. v. New Hampshire Ins. Co.*, 438 Mich. 197, 476 N.W.2d 392 (1991). See *Protective Nat'l Ins. Co. of Omaha v. City of Woodhaven*, 438 Mich. 154, 476 N.W.2d 374 (1991). See also *Polkow v. Citizens Ins. Co. of Am.*, 438 Mich. 174, 476 N.W.2d 382 (1991). This court rejected the contention that "sudden" is ambiguous.
47. *State of New York v. Amro Realty Corp.*, 697 F. Supp. 99, 110 (N.D.N.Y. 1988).
48. The example of a sudden shower comes from Webster's Ninth Collegiate Dictionary, which is one of the dictionaries on which policyholders frequently rely. In addition to misunderstanding the nature of dictionary entries in general, which include not only semantic connections involving meaning, but also many common, ordinary, empirical associations, insureds misunderstand the nature of the Ninth Collegiate very badly. First, the entries in that dictionary are organized chronologically, with the older definitions first. Second, Webster's Ninth Collegiate is an abridgement of Webster's Third International.
49. This example is adapted from the *World Book Dictionary*, on which insureds often rely. This dictionary is a supplement to the *World Book Encyclopedia*, which is an encyclopedia for high school students.
50. This example is also taken from the *World Book Dictionary*.
51. Sentence (18) is a restatement of Principle (C). We state it differently here in hopes of recruiting more converts.
52. Cohn & Bollier, *The Great Hartford Circus Fire: Creative Settlement of Mass Disasters* xi (1991).
53. Abraham, *Environmental Liability Insurance Law* 145-63 (1991).
54. See Grünbaum, *Time's Arrow* (1980).
55. The word "disambiguation" is an ambiguous word for a wonderful concept. The concept encompasses the activity of determining whether an ambiguity is present in the text, and sorting out the text to show what its true meaning is. In this sense, "disambiguation" is textual clarification. Unfortunately, the components of the term suggest that it is always an existing ambiguity that is being elaborated. Sometimes, this is true; other times not.
56. This follows from more fundamental canons of construction. See *Lumbermens Mut. Ins. Co. v. Belleville Indus.*, 938 F.2d 1423 (1st Cir. 1991). This decision was bound by *Lumbermens Mut. Casualty Co. v. Belleville Indus.*, 407 Mass. 675, 555 N.E.2d 568 (1990). The First Circuit decision was written by Judge Frank M. Coffin, who is one of the most distinguished and learned circuit judges in the United States. Judge Coffin's book, *The Ways of a Judge: Reflections from the Federal Appellate Bench* (1980) can be read with enormous profit. See Coffin, "Grace Under Pressure: A Call for Judicial Self-Help," 50 *Ohio St. L.J.* 399 (1989).
57. The whole point to contract is that people, and their constructive cousins, can come to agreements freely and have them enforced by the sovereign. It follows almost immediately from this crucial consideration that meaning will have something to do with intent, when it is not apparent from the language itself. See Fried, *Contract as Promise: A Theory of Contractual Obligation* (1981). ("The moral force behind contract as promised is autonomy: the parties are bound to their contract because they have chosen to be [and they have—presumably—chosen the terms of the contract]." *Id.* at 57.) See also Quinn, "Book Review," 35 *SW. L.J.* 1125 (1982).