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INTERPRETATION BY EXAMPLE

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The recent U.S. Supreme Court's opinion in *FCC v. AT&T*, 2011 DJDAR 3228, provides a good lesson on how a hyper-technical argument on the meaning of words can not only lead to a losing argument, but also can subject the attorney to ridicule. In *AT&T*, the corporate defendant tried to argue that the corporation has the right to "personal privacy." According to AT&T, the word "person" includes corporations and because the word "personal" and "person" have a common root, a corporation must have the right to "personal privacy." In his opinion, U.S. Chief Justice John G. Roberts Jr. reminds us with humor that attorneys often get carried away with their splicing and dicing of words to justify a position that would be mocked outside of the courtroom. Lawyers have a penchant for pontificating on the meaning and intent of laws and decisions, drawing upon all of the logical tools they have gained through education and experience to advocate their client's position. And yet, sometimes, we get so caught up in our own cleverness and logical machinations, that we lose sight of the most important interpretative tool - common sense and logic. The Court uses several clever comparisons and examples to poke a little fun at one attorney's creative use of logic.

Roberts has fun with the oft-misused argument that words with common roots necessarily have the same meaning. The Court notes "[t]he noun 'crab' refers variously to a crustacean and a type of apple, while the related adjective 'crabbed' can refer to handwriting that is 'difficult to read.'" And "'corny' can mean 'using familiar and stereotyped formulas believed to appeal to the unsophisticated...which has little to do with 'corn.'" The Court goes further to point out that "while 'crank' is 'a part of an axis bent at right angles,' 'cranky' can mean 'given to fretful fussiness.'" And while a noun and adjective may have some link - "'Cranky' describes a person with a 'wayward' or 'capricious' temper, which might bear some relation to the distorted or crooked angular shape from which a 'crank' takes its name" - they may have totally different meaning and use.

Context is key. Sometimes, even the *same* word does not mean the same thing in a different context. Some bats fly and some bats you swing. Some banks hold money and some banks hold back water. And the word "bow" has at least six definitions, some of which are related, such as bow and arrow and bow legged, and some of which are not, such as the bow of a ship and a bow tie.

The Court's word choice alone also adds humor. Crabbed, corny and cranky are all words that evoke humorous images, particularly when compared to their completely unrelated noun counterparts. Just because the noun and the adjective share some similar traits that does not mean that they are the same. Nobody would contend that a Ferrari and a horse-drawn buggy are the same, even if both have four wheels and move people. Such comparison lacks common sense.

Roberts even consults the dictionary in a humorous manner. The Court cites the *Oxford English Dictionary* as defining personal as "[o]f, pertaining to...the individual person or self...individual; private; one's own...[3] [o]f or pertaining to one's person, body, or figure...[5] [o]f, pertaining to, or characteristic of a person or self-conscious being, as opposed to a thing or

abstraction." *Webster's Third* gives a similarly non-corporate view of the term "personal." The dictionary would seem to be the common sense place to look for the definition of a word, unless of course the statute defines the word itself. In citing to these passages, the Court almost seems to say: "Next time, go check the dictionary first."

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In any event, the Court points out that though the words "person" and "personal" may have a common root, those words may have in fact "developed along [their] own etymological path...." If the attorneys had stepped back and used common sense and a dictionary, they would have seen that etymological divergence.

The Court reminds us that we should exercise some caution when parsing out language because the technician often loses sight of the true operation of the words. Indeed, as the Court notes, sometimes phrases themselves have independent meaning that are not amenable to parsing. The phrase "personal privacy" has a long understood meaning by itself. Defining "personal" apart from "privacy" makes no sense in this context. When we talk of personal privacy, we think of our medical histories and our sisters' diaries. We do not think of a corporation having "personal privacy" interests. As the Court said, business is business, and personal is personal.

Of course, the most effective way to draw on common sense is to look at everyday, common scenarios. The Court paints the picture of a chief executive officer of a corporation approaching the chief financial officer and saying "I have something personal to tell you." The Court rightly points out that the CFO would be perplexed if the CEO began talking about the company's books. The Court notes that "we often use the word 'personal' to mean precisely the *opposite* of business-related: We speak of personal expenses, personal life and work life, personal opinion and a company's view."

Similarly, if a coworker entered an office and exclaimed that he wanted to discuss some company business, one would never expect to hear the worker recount an embarrassing story from their childhood, or what they did that weekend. Roberts and the Court simply ask us to look at language as it is actually used in real-life situations. If context is the root of common sense, then there is no better way to find common sense than to look at the context in which words are used every day.

When *Citizens United v Federal Election Commission*, 130 S.Ct. 876 (2010) was handed down, attorneys across the country began to ask themselves how they can use "personhood" to benefit their clients. And rather than actually considering what the court in *Citizens United* was trying to convey in the proper context, it is likely that many attorneys thought, "how far can I take this?" In this regard, it appears that the Supreme Court wanted to send a message that the lawyers just went too far.

In contrast to Justice Antonin Scalia's sharp wit and ridicule, which are now hallmarks of Supreme Court practice, Roberts has generally employed a reserved, analytic style. But here, he uses a tongue-and-cheek approach to illustrate the ridiculous, providing an elegant strength to his argument. Rather than telling us the Court's position, Roberts shows us that sometimes we have to take a step back and ask if our positions truly make sense.