

SPORTS TERMS IN AMERICAN JUDICIAL APPELLATE OPINIONS

Sports metaphor-terms are used in law journal article titles and published state and federal court cases (in judicial opinions) to describe the process of litigation, the actions of attorneys, trial strategies and goals, or the courtroom environment. Mostly only few sports metaphor-terms, bouncing around legal arenas in legal instruments, can be easily understood without prior background knowledge of sports, and consequently the unexpected clash between the source and the target domains sets new hurdles in the comprehension process of the complex nature of legal English.

Key words: *metaphor-terms, terminological combinations, sports terms, judicial opinions, source domain, target domain*

Throughout American legal history appellate judges are engrossed in legal writing as part of their work. As professional writers they fulfill their principal task writing huge number of judicial appellate opinions. Entailing the substance of judicial action and expressing the gist of courts' decisions, judicial opinions are abundant not only with lexical, grammatical and stylistic specificities characteristic to legal English but also such figurative means as metaphor-terms. Our research shows that such specific metaphors as various sports metaphor-terms are used in law journal article titles¹ and published state and federal court cases (in judicial opinions) categorized according to the following litigation focuses: criminal, employment, commercial corporate and securities, antitrust, bankruptcy, tort, constitutional, regulatory, estate, tax, domestic relations, and property. Some of these metaphor-terms are part of the trial testimony, chosen by the judge for inclusion in the opinion, and some are the judges' own words /Thornburg, 1995: 225-232/.

Like other kinds of imagery, metaphors can have a useful role in decoding the complex nature of legal proceedings and in giving the audience a context in which to understand an important legal point. In legal instruments only few sports metaphors can be easily understood without prior background, i.e., without knowledge of sports, as the meanings of metaphors are fully or partially explained when the judge gives enough context for the audience to figure out the meaning of the metaphor. But in most cases sports terms are not explained at all and consequently they set new hurdles in the comprehension process of the complex nature of legal English. Therefore, caution about metaphor choices is advised. Perhaps, it is relevant to state that "in law, especially, we can take no step safely without an unrelaxing awareness of the metaphors employed by the judiciary. Non-literal language is often needed to explain the abstraction ... that cannot be conveyed as effectively and persuasively through literal language" /Bosmajian, 1992: 46-47/.

Sports metaphor-terms bouncing around legal arenas in judicial opinions (most frequently in criminal and business cases) present some potentially serious dangers serving as blank walls and causing serious consequences. So, sports metaphor-terms used (consciously or not) in judicial opinions or during court proceedings) create a linguistically unlevel playing field, i.e., create unfair conditions for the audience

ignorant of sports or the idiomatic usage of sports metaphors in general, and unfamiliar with the American sports culture in particular, b) bring to a tricky confusion, c) set new hurdles in the comprehension process of the complex nature of legal English, d) hinder the decoding process of the usage of such sports metaphors in non-sports contexts, thus bringing to an incorrect interpretation of the meaning, and excluding those participants not familiar with the source of information for the metaphor-term from the discussion altogether.

Now, let us examine the use of some vivid sports metaphor-terms in judicial opinions. Our research showed that the source domains of such sports metaphor-terms used in legal cases are baseball, boxing and football. Also, our findings showed that sports terms are used most frequently in criminal and business cases, while in domestic disputes, tax and estates, administrative law, and torts they showed infrequent usage. Moreover, mostly the meanings of only very few metaphor-terms are fully or partially explained with the help of further explanations containing enough details for no doubt about the meaning of the metaphor-term, i.e., judges rarely provide enough context for the reader to figure out the meaning of sports terms in non-sports contexts.

Let us study the usage of a number of frequently appearing sports metaphor-terms in legal contexts retrieved from the LexisNexis database, with the help of which we searched the Mega library and Mega combined files which contain all the published US state and federal court cases.² Also, in each case close attention was paid to the fact whether the judge placed the metaphor within quotation marks: such marking calls attention to the metaphor, thus signaling that the metaphor-term is either a term used by a trial participant (and quoted by the judge) or an unusual vocabulary choice for appellate opinions.

The first sports terminological combination to start with is *Monday-morning quarterback*. It is common knowledge that metaphor is a connection between a source domain and a target domain: the source domain is the category from which the metaphor draws its information and the target domain is the category into which the information is drawn. Hence, the source domain of the sports metaphor-term *Monday-morning quarterback* is football where it means *an unqualified critic who second-guesses the strategy of the weekend football game on the following Monday* /Palmatier, Ray, 1989: 111/. While in the target domain, in law, it stands as a *second-guesser*. This sports term is used most often in discussing the role of appellate courts in reviewing the actions of lower court judges and trial lawyers, and qualifying them as *Monday-morning quarterbacks*. Consequently, in the linguistic metaphor *lawyers are often Monday morning quarterbacks*, the source domain is the category "football" of which *Monday morning quarterback* is a part, and the target domain is the category "lawyers."

Other vivid examples are *cheap shot* and *end run*. Mostly the uses of *cheap shot* were in criminal cases. Most of these were references to litigation tactics and the conduct of one of the attorneys during the trial. As well, lawyers and attorneys were referred to (by the prosecutor) several times as *cheap shot artists* /See *Jackson v. Florida* (the prosecutor called the lawyer a *cheap shot artist*); *Illinois v. Johnson* (refusing to criticize a trial judge for calling both attorneys *cheap shot artists*/. In *Kramer v. Monogram Models, Inc.*, the judge states that "*plaintiffs ... are probably*

correct in characterizing that publication as a cheap shot." /Kramer v. Monogram Models, Inc./ Someone familiar with football or boxing, or with the idiomatic meaning of *cheap shot*, could understand the meaning of this quote. However, someone unfamiliar with the above could interpret *cheap shot* to mean *inexpensive publication*. The source domains of this sports metaphor-term are both football and boxing. In the first domain it means *a late hit, a block or tackle after the whistle has blown to end*, and in the second domain it appears as *an unfair blow, at an illegal place* (e.g., low) *or time* (e.g., after the bell), *which is not noticed by the referee and therefore costs no points to the perpetrator* /Palmatier, Ray, 1989: 25/. Meanwhile, in law it acquires the following meaning: *an unfair action or remark*.

In case of *end run*, the source domain is football where it has the following meaning: *to run the ball around the left or right end of the line of scrimmage, rather than straight ahead* /Palmatier, Ray, 1989: 45/, while in the target domain, in law, it means *to take an indirect approach*. In this case, a related point of confusion deals with *making an end run*. While this is a legitimate and positive tactic in football, its use in judicial opinions implies *something inappropriate or negative*. Thus a reader, even one familiar with the actual meaning of the term, might be confused or misled by its use in a different context. The majority of *end run* occurrences are followed with the word *around* (e.g. *the lawyer made an end run around the evidence*) /Whittington v Whittington/. Thus, most instances of this metaphor could be said to be partially explained by context, (i.e., *running around something implies avoidance*).

The meaning of such sports metaphor-terms as *bench warmer*, *blindsides*, *in the bullpen*, *end run*, *first-stringer*, *level the playing field*, *offsides*, *out in left field*, *punt*, *Sunday punch* and *triple threat*, would not be understood easily out of sports domains even if one understands the source domain as in this case sports knowledge should not be well enough to decipher the metaphoric meanings from the original meanings. Let us study the above listed sports metaphor-terms in details.

- *Bench warmer* /Palmatier, Ray, 1989: 12/ → Source domain: FOOTBALL: *a football player who is prepared to perform but seldom or never does, i.e., a reserve player, a third or fourth stringer, who warms the bench but not the turf*. Target domain: LAW: *a nonparticipating participant*.
- *Blindsides* /Palmatier, Ray, 1989: 14/ → Source domain: FOOTBALL: *to hit (block, tackle, sack) an opposing player from their blind side, i.e., when they are looking the other way*. Target domain: LAW: *to deal someone an unexpected blow*.
- *First-stringer* /Palmatier, Ray, 1989: 50/ → Source domain: FOOTBALL: *a member of the starting team, i.e., not a substitute*. Target domain: LAW: *a first-class performer*.
- *Level the playing field* / Palmatier, Ray, 1989: 101/ → Source domain: FOOTBALL: *to mark off or lay out the field of play so that neither team has to start out running uphill*. Target domain: LAW: *to create fairer conditions for a competition: to even the odds*.
- *Offsides* /Palmatier, Ray, 1989: 119/ → Source domain: FOOTBALL: *to be beyond the line of scrimmage when the ball is snapped*. Target domain: LAW: *to do or say something inappropriate or out of line*.
- *Out in left field* → Target domain: LAW: *to be disoriented or deranged*

(Palmatier, Ray, 1989: 126). Source domain: BASEBALL: *the part of the outfield where the sun and the wind play tricks with the ball, and the walls and fans contribute to the terror* /Carnival Leisure Indus. v. Aubin/.

- *Punt* → Source domain: FOOTBALL: *if there is any doubt about making a first down on the next play (usually the fourth down), kick the ball to the other team* /Palmatier, Ray, 1989: 141/. Target domain: LAW: *if in doubt, give the responsibility to someone else* /Young v. Lynaugh/.
- *Sunday punch* /Palmatier, Ray, 1989: 173/ → Source domain: BOXING: *to throw a knockout punch-and end someone's week*. Target domain: LAW: *to attack someone or something with your biggest 'weapons'*
- *Triple threat* /Palmatier, Ray, 1989: 188/ → Source domain: FOOTBALL: *an offensive player who can run, pass, and kick*. Target domain: LAW: *person who is accomplished in three different fields*.

As a result, we can surely state the frequent use of such boxing, baseball, and football metaphor-terms creates a linguistically *unlevel playing field* for those who are unfamiliar with sports or with sports metaphors' idiomatic meanings. And as to the issue of the purposes of the choice of sports terms in non-sports contexts, one should mention the use of particular language which reflects inequalities and social divisions existing in the American culture, or which actually creates those social divisions and inequalities, e.g. the reflection of the historical position of men and women in public life (for instance, the use of the generic male pronoun he or the generic "man" causes the speaker or audience to actually view women as less important than men). So, sports metaphor-terms in legal proceedings have gender-related consequences to the writer and the audience helping to maintain male hegemony. Finally, we can interpret the results and draw some conclusions about the use of sports metaphors in judicial writing. Thus, as a result of our findings on this issue it should be inferred that one of the primary purposes and direct outcomes of the use of much sports terminology in non-sports contexts is, no doubt, the exclusion of women, let alone non-native speaking attorneys, students and litigants. So, after discussing the usage of sports terms and explaining the relationship between gender and the use of such metaphor-terms in American judicial opinions we can state that sports metaphor-terms become not merely ways of revealing people's preoccupation with aggressiveness, with winning and with games, but also ways of perpetuating these preoccupations and glorifying them through their national culture. Moreover, this study showed that American judicial institutions may turn into sports arenas in which the rights of litigants are the objects of the gamesmanship of the attorneys. And, perhaps, it is relevant to conclude by quoting one of the American greatest appellate judges, Benjamin Cardozo: "Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it" /Berkey v. Third Ave. Ry. Co./.

NOTES

1. Such sports metaphor-terms as *end run* and *hardball* are used in law journal article titles, for example, Hamm S. N. Power v. Arlington Hospital: A Federal Court End Run Around State Malpractice Limitations // *Brigham Young University Journal*

of Public Law, v. 7 (335), 1993; Saylor R. N. Rambo Litigation: Why Hardball Tactics Don't Work. // *American Bar Association Journal*, v. 74 (78), Issue 3, 1988.

2. *LexisNexis Group* is a corporation providing computer-assisted legal research services. During the 1970s, LexisNexis pioneered the electronic accessibility of legal and journalistic documents. As of 2006, the company has the world's largest electronic database for legal and public-records related information. The link of the official website is <www.lexisnexis.com>.

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Լ. ՍԱՀԱԿՅԱՆ – Սպորտային տերմինների կիրառությունն ամերիկյան վերաքննիչ դատարանների կարծիքներում. – Դատավեճերի ընթացքը, փաստաբանների գործունեությունը, դատավարության մարտավարությունն ու նպատակները, կամ դատարանի դահլիճի միջավայրը նկարագրելու համար ԱՄՆ-ի նահանգային և դաշնային վերաքննիչ դատարանների կարծիքներում հաճախ կիրառվում են սպորտային տերմին-դարձույթներ, որոնցից յուրաքանչյուրի աղբյուր տիրույթը որևէ սպորտաձև է, օրինակ, ֆուտբոլը, բեյսբոլը կամ բռնցքամարտը, իսկ թիրախ տիրույթը՝ իրավաբանության ոլորտը: Սույն հոդվածում կոնկրետ օրինակների վրա լուսաբանվում է այդօրինակ տերմինների և տերմինաբանական կապակցությունների էությունը՝ ցույց տալով, թե իրենց բնագավառի համատեքստից դուրս եկած և մեկ այլ բնագավառի խիստ մասնագիտական համատեքստում հայտնված տերմիններն ինչպես կարող են թյուրըմբռնման պատճառ դառնալ, խեղաթյուրել միտքը և խաթարել ընկալման գործընթացը: Քննվում են նաև այս երևույթի պատճառահետևանքային կապերը՝ շեշտադրելով այն փաստը, որ մամուլատիպ տերմինների հիմքում, որպես կանոն, ընկած են լինում ազգային մտածողության ինքնատիպ կնիքը կրող երևույթներ՝ հատուկ ամերիկյան մշակույթին և սպորտային կյանքին:

Բանալի բառեր. տերմին-դարձույթ, տերմինաբանական կապակցություններ, սպորտային տերմիններ, դատական կարծիքներ, աղբյուր տիրույթ, թիրախ տիրույթ

Լ. СААКЯН – Спортивные термины в мнениях американских апелляционных судов. – Для описания судебных процессов, адвокатской деятельности, судебной тактики и задач в американских апелляционных мнениях часто используются спортивные термины-тропы. В статье на конкретных примерах из американских штатных и федеральных апелляционных мнений показано, как использование спортивных терминов вне контекста узкоспециализированной области может привести к недоразумениям, искаженному мышлению и препятствовать их адекватному восприятию. В статье также рассматриваются причинно-следственные связи данного явления, подчеркивается тот факт, что такие спортивные термины-тропы, как правило, имеют уникальные “отпечатки” американской культуры и спортивной жизни.

Ключевые слова: метафора-термин, терминологические сочетания, спортивные термины, судебные мнения, исходный домен, домен назначения