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Introduction

Sometimes we can remember how we got the idea for one of our endeavors and sometimes we can't. In the case of this book, I remember very clearly. I was watching a TV talk show interview featuring a forensic pathologist as the guest. The talk show host remarked on the recent flurry of public interest in forensics as demonstrated by the popularity of TV shows such as *CSI, Forensic Files, Investigators*. The guest replied that indeed the field of forensics, although relatively young, was growing very rapidly as evidenced by the fact that new schools and departments of forensic science were opening in colleges and universities across the country.

He pointed out also that virtually every discipline now has a recognized subarea in forensics—forensics being the *application of expertise to matters of courtroom litigation*. We have forensic pathology, forensic entomology, forensic psychology, forensic anthropology, forensic dentistry, forensic linguistics, forensic engineering, and on and on.

You probably can see where this is going. It struck me that on the one hand there is no recognized subarea of forensic communication. Yet on the other hand, I knew that I, as well as a few others in our discipline, serve frequently as consultants or expert witnesses in legal cases. Moreover, I could easily think of a several colleagues whose scholarship certainly could be applied to litigation issues if they were to be so inclined. I happen to enjoy my own expert-witness and consultation work tremendously, and I speculated that there may be many other communication scholars—new students and seasoned veterans alike—who might likewise enjoy working with attorneys on legal cases if made aware of their potential to do so.

This book evolved as an effort to share the idea that certain kinds of research in communication may be applied in the courtroom and other legal contexts. It has three goals. The primary goal is to introduce communication scholars to the various ways that their own and/or others' communication scholarship

may be applied to courtroom litigation. A related goal is to provide a bit of direction to those who might be interested in assisting litigation as a consultant or expert witness. A third goal is to introduce attorneys to the availability of communication scholars as consultants and expert witnesses for some of the issues they argue from time to time.

Essentially, there are the two ways of applying communication scholarship to court cases. Sometimes one's expertise is applied such that he or she actually testifies in court as an "expert witness." Expert-witness testimony is intended to present and support an opinion regarding one or more specific issues in a court case. An expert witness might give an opinion as to whether a warning label communicated its intended message adequately, or whether the presumed author of a will was indeed the actual author, for example. The other application is to offer one's expertise as a consultant. As a consultant, one typically does not testify, but rather advises an attorney or the court on various strategies or procedures before and/or during the trial. A consultant might advise an attorney regarding the selection of a jury or advise the court regarding the relevance of pretrial publicity to a change of venue, for example.

The authors who have contributed to this volume include academicians, professional legal consultants, and an attorney. Most have already applied their expertise as a consultant or expert witness and the others are certainly able to. In all cases the expertise has been acquired by intensive study, of course, and the same will be necessary for readers who might wish to apply their own or others' research to litigation contexts. The chapters were written as examples of how serious study may be applied, not as a handbook by which an untrained reader may claim competence merely by reading them.

Some will probably balk at my use of the term *forensic communication.* Although *forensic* technically implies application of expertise to any courtroom issue, its use by the popular media promotes the connotation of application in criminal cases only. Some of the chapters that follow do indeed have more to do with criminal cases, but others have more to do with civil cases and a few may be applied to either.

Moreover, there will be a few readers old enough to remember when the communication discipline used the term *forensics* as a label for contest oratory—tournament debate, competitive oral interpretation of literature, and so forth. I trust that the book's subtitle, along with today's lay familiarity with forensic science in the courtroom, precludes that meaning here.

Likewise, the focus here is different than the most common (thus far) application of communication expertise to work by attorneys. Specifically, we are not concerned here with what often has been termed *communication and lawyering*, that is, the application of pedagogy or scholarship to the improvement of attorneys' communication skills in the courtroom. There are many sources already available to coach attorneys on basic or advanced communica-

tion skills. We are instead concerned here with using communication research to help solve *legal issues* that arise in court.

Because communication expertise usually is applied to courtroom cases either as an expert witness who is expected to testify, or as a consultant who typically does not, the book is organized into two main sections accordingly. It begins with nine chapters on attorney/court *consultation*, with these organized according to consulting regarding matters that arise primarily *before* trial and those arise mostly *during* the trial. Seven chapters on *expert-witness* roles follow. These are organized according to expertise and opinion regarding the *content* of examined material, and expertise regarding the *presentation* of information to juries.

CONSULTATION: BEFORE THE TRIAL

Chapters 1 and 2 discuss what is probably the most well-known application of communication research to legal consulting, namely, advising on the matter of *jury selection*. These two chapters take quite different approaches and together present a very comprehensive treatment of the science (and art) of jury selection. Chapter 3 discusses the effects of *pretrial publicity* on jurors' predispositions, and includes potential solutions to the associated problems. Chapter 4 first summarizes a large body of work on *deception*, including the motives for deception, the ostensible cues of deception, and the (in)accuracy of judgments about others' deception. Courtroom applications include suggestions for behaviors to make attorneys and witnesses more believable, ways by which attorneys can make jurors less likely to believe testimony, and others.

CONSULTATION: DURING THE TRIAL

Chapter 5 discusses *jury decision making*, specifically, the variables that do and do not affect the process and outcomes of jurors' deliberations and decisions. Chapter 6 focuses on *hindsight bias* as a specific variable in jury decision making. Hindsight bias is the psychological tendency to form a biased opinion of what *others* should have assumed *before* an event—the bias coming from what *we* have learned about that event's outcome *after the fact*. If not tamed, the bias can lead to unfair jury decisions. Chapter 7 discusses the paradox whereby on the one hand defendants' rights must be protected in our legal system, whereas on the other hand there is an important need for the *victim's voice and rights* to be heard and respected, as well. Chapter 8 discusses *unwanted pursuit*, or *stalking*, as a case of

communication (in both directions), and describes how it is dealt with by the legal system. Its discussion of legal consulting applications includes, among other things, helping prosecuting attorneys to paint a representative picture of the stalking phenomenon for juries. Chapter 9 discusses both technology and cognitive psychology affecting choices that attorneys and consultants should consider when preparing *graphics and visual aids* of various kinds for presentation in the courtroom.

EXPERT-WITNESS TESTIMONY: CONTENT

Chapter 10 describes research and experience behind the author's expert testimony on the *effects of pornography on communities*, including the determination of community standards regarding obscenity, the effect of strip clubs and adult bookstores on communities, and more. Chapter 11 describes expert-witness work on cases where one of the issues is *the likely interpretation of messages*—warning labels, advertising claims, safety instructions, contracts, and so forth—by their target audience. Chapter 12 provides an introduction to the field of *forensic linguistics* generally, and focuses especially on linguistic analyses used in identifying the true author of contested wills, threatening letters, crime-scene notes, and the like. Chapter 13 introduces *computer forensics* and discusses the legal issues and forensic approaches to cybercrimes such as fraud, cyberstalking, pornography, and others.

EXPERT-WITNESS TESTIMONY: PRESENTATION

Chapter 14 discusses research that challenges the veracity of both *confessions and eyewitness testimony*. Because jurors tend to assume that confessions and eyewitness reports are highly credible, research and expert-witness testimony to the contrary can be valuable in court. Chapter 15 introduces the viability of *testing expert-witness opinions empirically*. Sometimes expert opinions represent hypotheses that can be tested via typical quantitative research methods, and it can be very persuasive in court when they are empirically supported. Chapter 16 assumes that many readers have not yet had experience as a legal consultant or expert witness, and that some might like to give it a try. The chapter is a sort of *primer for the novice expert witness or consultant*. It also serves as a reminder to attorneys of the areas in which new consultants and experts may need advice.

These chapters represent issues facing communication-oriented legal consultants today. Tomorrow may be different, of course. As is always the case, the volume does not purport to be the "final word" on the matter—partly because findings from scholarship constantly evolve, and perhaps especially because the society within which the courts operate is constantly evolving. It is certainly possible, for example, that a single high-profile stalking case in the near or distant future could affect the kinds of jury sensitivities addressed in Chapter 8 on stalking, or that "hindsight bias" could become sufficiently familiar within our everyday language and consciousness as to affect the sensitivities addressed in Chapter 6 on jurors' hindsight bias naïveté. Similarly, new ways in which entertainment and news media represent the courtroom experience—almost always fictionalized before but now presented via "reality" versions, as well—might impact the issues discussed in Chapter 5 on jury decision making and Chapter 7 on consideration of victims. Moreover, despite decades of research showing that we, including jurors of course, cannot detect others' deception, the several new TV shows implying otherwise might contaminate jurors beyond the ways discussed in Chapter 4 on deception. And the various approaches to electronic social networking certainly might add to the kind of work described in Chapter 13 on computer forensics, or might exacerbate the problems discussed in Chapter 8 on stalking. Similarly, today's increase in available sources of news—news alert software on our computers, news applications on smart phones and iPads, radio and highway-sign Amber alerts, and so forth—might complicate the problems discussed in Chapter 3 on pretrial publicity. In short, in addition to progress via new research, the dynamic changes in the society's media, technology, and communication will almost certainly affect the nature of the crimes and cases that go to court, as well as the expectations and biases of jurors who deliberate and the opinions of the consultants and expert witnesses who advise.

Certainly there are legal applications of communication research that could not be represented in this volume for one reason or another. I am aware of some of these and imagine that there are others of which I am not yet aware. In any case, there should be enough variety among these chapters both to satisfy the reader who simply is curious about applying communication research to the courtroom, to alert attorneys to some of the ways that communication scholars may be able to assist on cases, and to provide encouragement to those who might be inclined to apply their own expertise to the pursuit of truth in the courtroom.