

Legal Interpretation via Dictionaries and Corpora Can Judges Pass Lexicography 101?

Edward Finegan

University of Southern California

18th Euralex International Congress

Ljubljana

20 July 2018

Presentation outline

- Introduction
- Background
- Dictionary use in the U.S. Supreme Court
- Corpus linguistics in legal opinions
- Conclusion and recommendations

Lexicography in Global Contexts

- Research on Dictionary Use
- Lexicography and Language Technologies
- Lexicography and Corpus Linguistics
- Phraseology and Collocation
- Historical Lexicography and Etymology

The reason that I sing the praises of the dictionary, dictionaries and the craft of lexicography is that among language reference tools they, and they alone, get right one very important matter – the priority that they accord to meaning. Meaning is the only thing that is ultimately worth bothering about in language and so a sustained focus on meaning is most laudable, and an example to other branches of linguistics.

--John Sinclair 2004

[I]t is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But **it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary;** but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.

--Learned Hand, 1945

Types of Use

- general reference purposes:
 - understanding unfamiliar words
 - spellings or pronunciations
 - doing crosswords
- studying a particular subject
- learning a language
- translating text from one language to another
- writing essays or reports ...
- preparing for a written or oral exam

--Atkins & Rundell, 2008

Functions of Dictionary Use by SCOTUS

- as way stations
- as ornaments
- as barriers

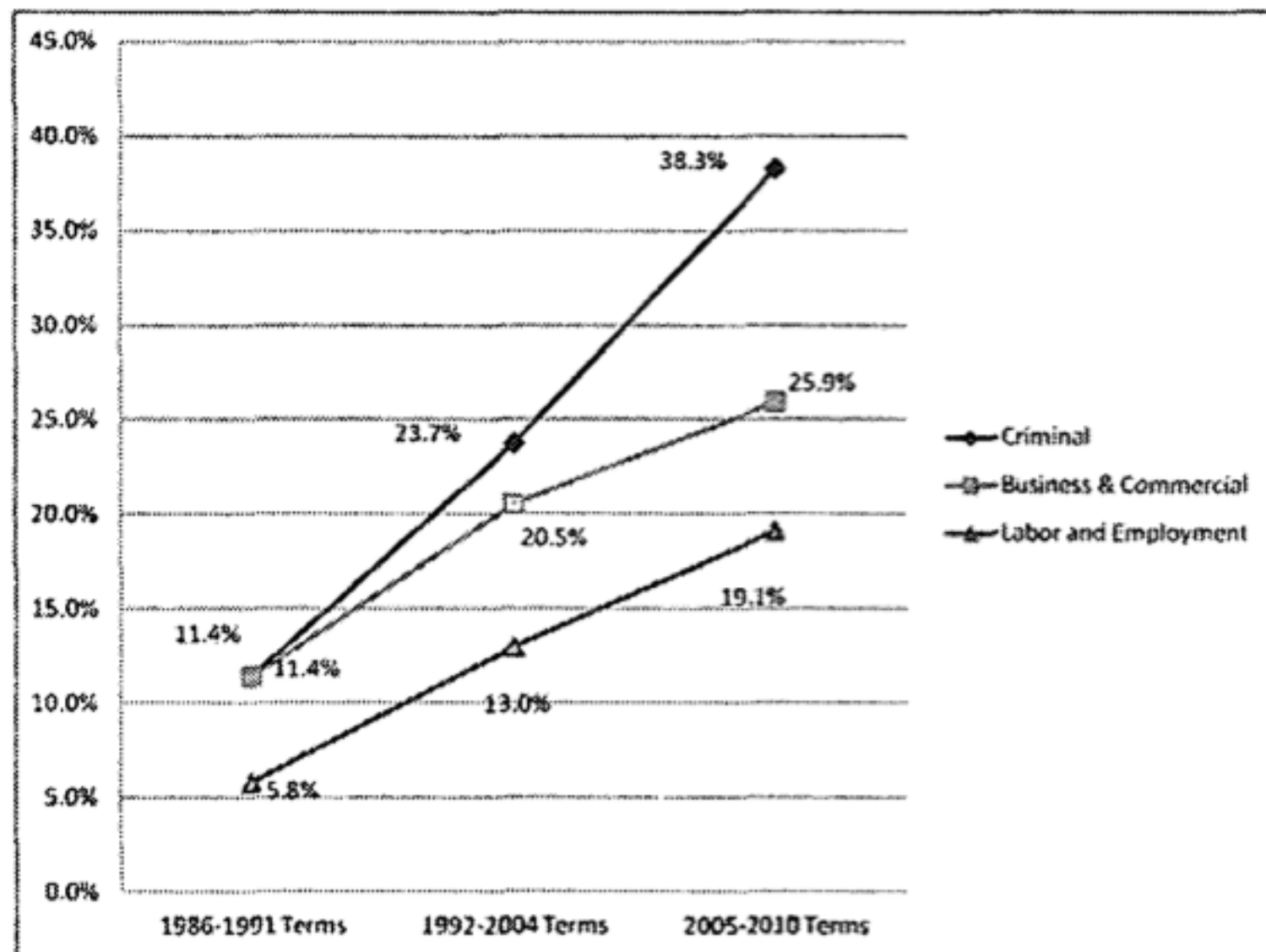
to “preclude inquiry into or reliance on other contextual resources, especially legislative history and [executive] agency guidance.”

--Brudney & Baum 2013

... dictionaries are different from a normative vantage point, essentially because of how ... dictionaries are effectively celebrated as an independently constituted source of objective meaning (unlike the canons as judicial branch creations and legislative history as a congressional byproduct).

Brudney & Baum

Figure 1. Proportion of Majority Opinions Using Dictionary



abandonment

absinthe

abusive

accident

acquire

act

adjustment

administer

advocacy

affect

affiant

aggregate

aid and abet

alizarin (1866 and 1884)

alternative

amicus curiae

amortization plan

amortized

anarchist

anarchy

anonymous

any

appeal

application

appropriate

arbitrary

arbitrator

ardent spirits

arrestment

artifice

assignee

attainder

attorney

authorize

authorized

automobile

avoid

abandonment

absinthe

abusive

accident

acquire

act

adjustment

administer

advocacy

affect

affiant

aggregate

aid and abet

alizarin (1866 and 1884)

alternative

amicus curiae

amortization plan

amortized

anarchist

anarchy

anonymous

any

appeal

application

appropriate

arbitrary

arbitrator

ardent spirits

arrestment

artifice

assignee

attainder

attorney

authorize

authorized

automobile

avoid

General criticisms of judges' dictionary use

- one or two dictionaries only
- inconsistent choice of dictionaries
- choosing their own dictionaries rather than those cited in litigants' briefs
- inconsistent alignment of dictionary dates with either enactment or case filing

Consider first the word's **primary** meaning. The Oxford English Dictionary gives as its *first* definition “convey, originally by cart or wagon, hence in any vehicle, by ship, on horseback, etc.”; see also Webster's Third New International Dictionary (*first* definition: “move while supporting (*as in a vehicle* or in one's hands or arms)"); Random House Dictionary of the English Language Unabridged (*first* definition: “to take or support from one place to another; convey; transport”).
(citations omitted)

... to make certain that there is no special ordinary English restriction (unmentioned in dictionaries) upon the use of “carry” in respect to guns, we have surveyed modern press usage ... by searching computerized newspaper databases We looked for sentences in which the words “carry,” “vehicle,” and “weapon” (or variations thereof) all appear. We found thousands of such sentences, and random sampling suggests that many, perhaps more than one-third, are sentences used to convey the meaning at issue here, i.e., the carrying of guns in a car.

“To wear, bear or carry them **upon the person or in the clothing or in a pocket**, for the purpose of use, or for the purpose of being armed and ready for offensive or defensive action in case of a conflict with another person.”

--Black's Law Dictionary, 6th edn.

At issue here is not “carries” at large but “carries a firearm.” The Court’s computer search of newspapers is revealing in this light. Carrying guns in a car showed up as the meaning “perhaps more than one-third” of the time. One is left to wonder what meaning showed up some two-thirds of the time.

Ruth Bader Ginsburg




Surely a most familiar meaning is, as the Constitution's Second Amendment ("keep and *bear* Arms") and Black's Law Dictionary indicate: "wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person."

Ruth Bader Ginsburg

General criticisms of judges' dictionary use

- too few dictionaries
- inconsistent choice
- ignoring dictionaries cited in litigants' briefs
- inconsistent alignment of dictionary dates

Costello: Posner's Google Search Results

"harboring fugitives"	50,800
"harboring enemies"	4,730
"harboring refugees"	4,820
"harboring victims"	114
 "harboring flood victims"	0
 "harboring victims of disasters"	0
 "harboring victims of persecution"	0
"harboring guests"	184
"harboring friends"	256
"harboring Quakers"	3,870
"harboring Jews"	19,100

Costello: Posner's Google Search Results

"harboring fugitives"	50,800
"harboring enemies"	4,730
"harboring refugees"	4,820
"harboring victims"	114
"harboring flood victims"	0
"harboring victims of disasters"	0
"harboring victims of persecution"	0
"harboring guests"	184
"harboring friends"	256
"harboring Quakers"	3,870
"harboring Jews"	19,100



Justice Thomas Lee
Sells the Idea of CL
Everyone relies on an
internal corpus all the
time!

“The most basic corpus linguistics analysis involves our split-second effort to access the body of language in our heads in our ongoing attempt to decode words or phrases we may be uncertain of.”

Lee (Rasabout)

Justice Lee
Sells the Idea of CL

There's a better way than
relying on intuition!

“... we can access large bodies of
real-world language to see how
particular words or phrases are
actually used in written or spoken
English.”

Lee (Rasabout)

Justice Lee
Sells the Idea of CL
No objections when
judges rely on intuition!

“To resolve ambiguities in statutes, judges access their memory of the use of uncertain terms in the context in which they have heard them used. In so doing they are engaged in corpus linguistics analysis. And no one bats an eye”

Lee (Rasabout)

Justice Lee
Sells the Idea of CL

Imperfect intuitions can
be checked with corpus
data.

“If judges are entitled to consult the
corpus of language in our heads ...,
we must also be permitted to
supplement and check our memory
against publicly available sources of
language.”

Lee (Rasabout)

Justice Lee
Sells the Idea of CL
Judges already rely on
corpora!

“Judges have also looked to databases available in Westlaw or Lexis, or more broadly through an internet search engine, to help us recall how particular words or phrases are commonly used in written or spoken English.”

Lee (Rasabout)

Turn to Google News

In this case, dictionaries don't settle the issue. This court has already relied on Google News in earlier opinions.

“Because both sides are able to marshal dictionary definitions in support of their view of discharge, we must reach beyond the dictionary to resolve this case. And, as in *Canton*, a Google News search confirms the conclusion that the majority adopts but cannot justify on the basis of the dictionary, or etymology, or mere intuition.”

Lee (Rasabout)

Using Google News

Google News confirms
“single shot sense” of
discharge

DISCHARGE A FIREARM

43 hits

15 discarded as inconclusive

28 did not support Rasabout sense

27/28 “single shot sense”

Lee (Rasabout)

Justice Lee
Turns to COCA

Other corpora resources
even better than Google
News and COCA confirms
what Google already
indicated: discharge
means “single shot”

DISCHARGE A FIREARM

81 hits

1 irrelevant

12 linked *discharge* to single bullet

16 “accidental” > single shot

15 probably single shot

36 insufficient info

1 consistent with multiple shots

Lee (Rasabout)

Justice Lee Concludes
Voila!

strong confirmation of
the basis of our holding:
to discharge a firearm is
to fire a single shot.

“This provides strong confirmation of
the basis of our holding in this case.
And it does so on the basis of a
transparent database that is publicly
available, created by linguists, and
subject to replication by anyone
seeking to confirm (or reject) my
analysis.”

Lee (Rasabout)

“*State v. Rasabout* could be a bellwether case. Despite the majority’s admonishment that the concurrence relied ‘on scientific research that is not subject to scientific review,’ as an accessible non-technocratic check on traditional methods, corpus linguistics may well belong in judges’ statutory interpretation toolkit.”

Harvard Law Review 2016

Intuition → Dictionaries → Corpora

Are judges failing Lexicography 101?

Yes,
in many ways.

But their undertaking
serious efforts to
supplement inherent
dictionary inadequacies
with corpus reliance could
improve statutory
interpretation

IF DONE EXPERTLY!

TENTATIVE RECOMMENDATIONS

- Make dictionary microstructure (incl. the basis for sense and other ordering) as apparent as possible.
- Capture semantic prosody more explicitly than by inference from citation evidence.
- Date quotation evidence in general dictionaries.

TENTATIVE RECOMMENDATIONS

- Attend to court decisions involving interpretation of ordinary language and make your voice heard (articles, magazines, letters to the editor, conference presentations).
- Ensure students learn about word senses, the importance of phrases, MWUs, and context. (*noscitur a sociis*)
- Give students tools to explore defining, including from corpora.

TENTATIVE RECOMMENDATIONS

- Sensitize students to the fact that not all dictionaries are equal (the same).
- Sensitize students to the identity of the dictionary or dictionaries they rely on.

Thank you for your attention.