

PARSE THE SENTENCE FIRST: CURBING THE URGE TO RESORT TO THE DICTIONARY WHEN INTERPRETING LEGAL TEXTS

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In the Middle Ages, leeches seemed like a good idea to medical practitioners. Acting on an instinct that “bad blood” was the source of many observed maladies, practitioners hypothesized that using leeches to rid the body of the bad blood could solve the noted problems. Empirically, some patients seemed to recover after the leech treatments, so the practice continued. Not until scientists and physicians began to understand the workings of the body more fully did the practice give way to what we know as modern medicine. Although leeches may still have their uses in medicine, their primacy has waned.

Recently, dictionaries have seemed like a good idea to judges. Acting on an instinct that determining the meaning of a sentence requires no more than defining the individual words that comprise it, judges habitually turn to dictionaries when faced with indeterminacy in interpreting statutory sentences. As with leeches in the Middle Ages, dictionaries sometimes address the interpretive puzzles judges are trying to solve, and the practice continues. However, just as medical science has progressed since the time of leech treatments, the science of linguistics has progressed since the time that scholars believed that dictionaries held the key to sentence meaning.

Dictionaries simply are not capable of explaining complex linguistic phenomena, but they are seductive. Because dictionaries tell us so much about the meanings and uses of individual words, it is tempting to extend their authority beyond what is warranted. The urge to define, however, is often irresistible. We have all read novice attempts at statutory interpretation, invariably encumbered by an instinctive reach for a dictionary. Lawyers continue to make “dictionary

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arguments” in their briefs to courts, and courts continue to respond to them in their opinions. The urge to define, it seems, never really goes away.

In Part I of this paper, I will contrast two approaches to sentence interpretation. The first, Dictionary Method, views the meaning of a sentence as a function of the definitions of the words that comprise it. Because dictionaries necessarily focus on individual words, Dictionary Method forces the user to treat sentence interpretation as a word-by-word task. The second, Linguistic Method, views the meaning of a sentence as a function of phrasal meaning. Linguistic Method invites the user to parse the statutory sentence and to explore the syntactic relationships among its constituents. Linguistic Method reveals speakers’ linguistic intuitions about sentence meaning that Dictionary Method misses.

In Part II of the paper, I will examine ways in which the U.S. Supreme Court currently employs Dictionary Method to analyze statutory language. Although the Justices, most notably Justice Antonin Scalia, seem to have excellent intuitions about the ordinary meanings of sentences, they simply lack the appropriate tools to illuminate them. Reflexively, they rely on the dictionary. In some cases, the Court uses a dictionary for its intended purpose: defining words that the reader might not know. I will refer to this standard use as “Definition.” In other cases, the Court turns to a dictionary (or several dictionaries) to verify that a common English word can have a meaning that the Court chooses to assign it. Generally, it would never occur to a fluent speaker of English to use a dictionary in these instances. I will refer to this non-standard use as “Verification.”

Although Verification is sometimes harmless, I will argue that this non-standard, overuse of dictionaries has downside risks both for the Court and for the legal profession. As an example of what can be missed by misdiagnosing a complex linguistic intuition as a word-level problem, I will examine a line of U.S. Supreme Court cases in which the Court used Verification to determine the meaning of a statutory phrase. Because the Court neglected to parse the statutory sentence as a first step in its linguistic analysis, it wholeheartedly gave in to the urge to define. Consequently, the Court missed significant syntactic cues that would have helped it to understand more fully the linguistic intuitions reflected in the statutory sentence. I conclude that, rather than relying reflexively on dictionaries, judges (and all lawyers) should be encouraged to rely on their linguistic intuitions and to employ Linguistic Method when faced with indeterminate text.

I.

COMPARING THE EFFECTIVENESS OF DICTIONARY METHOD
AND LINGUISTIC METHODA. *Recognizing the Limits of the Dictionary*

To most of us, the phrase “English grammar” connotes a series of rules that characterize “correct” spoken or written tokens of our shared native language. When we think of authoritative sources to turn to when we have questions about language, two types immediately come to mind: grammar books¹ and dictionaries.² These sources offer what seem to be objective answers to a specific set of language questions. The first type, standard grammar books and manuals of style, catalog prescriptive grammar advice. This advice is generally framed as a prohibition or a directive: do not end a sentence with a preposition;³

1. The market is flooded with all types of self-help grammar books. The classic source is *The Elements of Style*, also known as *Strunk and White*. WILLIAM STRUNK JR., E.B. WHITE & ROGER ANGELL, *THE ELEMENTS OF STYLE* (4th ed. 2000). *Strunk and White* was ranked 101 in total sales for all books by Amazon.com on February 23, 2003. A search for only the word “grammar” in the book section of Amazon.com yielded 12,070 hits. The most popular grammar book on Amazon.com targeted to lawyers is actually a legal writing text: BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH: A TEXT WITH EXERCISES* (2001), which ranked an impressive 6,623 in paperback on February 23, 2003, considering its limited audience. Legal writing books are often a mélange of “grammar tips” and advice about creating effective prose. These are entirely different topics that are often conflated in the literature; this muddying of message deserves all audiences. For lawyers who are interested in the fine points of English grammar, I would suggest looking at *Strunk and White* or one of the many similar grammar and punctuation authorities. See CONSTANCE HALE, *SIN AND SYNTAX: HOW TO CRAFT WICKEDLY EFFECTIVE PROSE* (1999); PATRICIA T. O’CONNOR, *WORDS FAIL ME* (1999); LEONARD J. ROSEN & LAURENCE BEHRENS, *THE ALLYN & BACON HANDBOOK* (5th ed. 2002). For lawyers who are interested in learning about improving their legal research strategies and designing effective legal documents, I would suggest looking at books that are focused on legal research and writing and not simply on points of grammar. See, e.g., JILL J. RAMSFIELD, *THE LAW AS ARCHITECTURE: BUILDING LEGAL DOCUMENTS* (2000); MARY BARNARD RAY & BARBARA J. COX, *BEYOND THE BASICS: A TEXT FOR ADVANCED LEGAL WRITING* (2001).

2. I will be using the word “dictionary” to refer to both general dictionaries and specialized legal dictionaries. See *infra* note 9.

3. Bryan A. Garner explains this rule, somewhat ironically, as “a remnant of Latin grammar, in which a preposition was the one word that a writer could not end a sentence with.” BRYAN A. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE* 686 (2d ed. 1995). Garner then relates the famous story of Winston Churchill’s response to those who criticized him for ending his sentences with prepositions: “That is the type of arrant pedantry up with which I shall not put.” *Id.* Garner gives no cite for the quote, and, although I have heard the story several times, I have never been at all sure of the source. True or not, it makes the point. English, unlike Latin, is a language that freely allows a noun phrase to be questioned out of a prepositional phrase. Although we were all taught (by teachers who had not benefited from Sir Winston’s wisdom) that the question “To whom did John give the book” is preferred to the sentence “Who did John give the book to,” none of us ever thought the former

do not split infinitives;⁴ always put a comma after the second of three conjuncts;⁵ and always use “which” as the head of a non-restrictive relative clause.⁶ When confronted with a “grammar problem,” most speakers of English have a sense that one of these formal writing conventions is involved. In fact, these sorts of prescriptive rules form the explicit knowledge base of most educated speakers of English.⁷ Unfortunately, there is nothing particularly natural about these rules, and they are, in fact, sometimes quite difficult to learn.⁸

The second type, which is by far the most popular authoritative source for resolving perceived language problems, is the dictionary.⁹ From childhood, speakers rely on the dictionary to solve linguistic mysteries. For example, if one is unsure about the spelling of a word, one looks it up in a dictionary.¹⁰ Dictionaries are also helpful for determining the “proper” pronunciation of words.¹¹ Part of being a speaker of academic English is being able to read the cryptic marks in

sounded as natural as the latter. Our intuitions about our language tell us that “stranding prepositions” at the ends of sentences is a perfectly fine thing to do. Our intuitions about formal writing conventions, however, tell us something else.

4. I have always assumed, without authority, that this rule comes from an inappropriate aping of Latin grammar as well. In Latin, and in all Romance languages, the infinitive is one word. It is, therefore, impossible to split it. Although English is a language that freely injects adverbials into infinitival phrases (to happily go to France; to definitely not do that again), the rule persists as a formal writing convention.

5. *See, e.g.,* MARY BARNARD RAY & JILL J. RAMSFIELD, *LEGAL WRITING: GETTING IT RIGHT AND GETTING IT WRITTEN* 79 (3d ed. 2000).

6. This is a favorite one for grammar books and usage manuals. *See, e.g., id.* at 369.

7. It is interesting to note that many native speakers of English, including many lawyers, seem to understand that these prescriptive rules exist, but they just do not know how to apply them—for example, when to use “who” and “whom.” As I will discuss later in this Part, it is the unnaturalness of these rules that separates them from the tacit rules that govern a native speaker’s understanding of his language.

8. For example, it does not really matter whether our formal writing conventions stipulate “that” or “which” as the lexical item to head non-restrictive relative clauses. Nonetheless, all properly indoctrinated members of the speech community know which is correct. What do your intuitions tell you about the ambiguity of the word “which” in that last sentence? How do you know that?

9. Although no dictionary was listed on the Amazon.com “Top 100” when checked on February 23, 2003, MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY (10th ed. 1998), which is the most popular dictionary of the English language on Amazon.com, ranked 213 in sales. BLACK’S LAW DICTIONARY (7th ed. 1999) ranked 4,678.

10. Alternatively, one just types randomly and lets the word processing program correct any mistakes. Homophones make this a somewhat dangerous practice.

11. Some specialized dictionary Web sites and CD-ROM programs can pronounce words as well.

a dictionary pronunciation guide. At some point in one's education, one learns what a schwa is and how to pronounce it.¹²

In addition to being an authoritative guide to spelling and pronunciation, the dictionary acts as a catalogue for accepted meanings of words. In contemporary dictionaries, "accepted meanings" generally include all common usages, even if such usages are not equally "correct."¹³ For example, consider the word "jejune." Although it is not an uncommon word, its meaning is, at best, unstable in current usage. Strictly, "jejune" means "without interest or significance."¹⁴ It derives from the Latin adjective "*jejunus*," which means "empty," "poor," or "mean."¹⁵ In academic English, the word is sometimes used to refer to ideas that are regarded as less than fully thought out. For example, consider Sentence 1:

1. The director's concept behind the production of the play is, at best, ham-handed and, at worst, jejune.

Although the strict sense of the word has a great deal of utility, otherwise careful speakers have expanded the definition of the word to include the meaning "naive" or "innocent." My guess is that, at some point, literate speakers of academic English may have misparsed the second syllable of the word as "*jeune*," the French word for "young."¹⁶ Over time, this usage has crept into the language, and "je-june" is now used frequently to mean "juvenile" and "childish." Needless to say, this is tragic to purists; nonetheless, because of the continual¹⁷ misuse of the word, this definition of "jejune" has become part of modern English usage. Modern dictionaries have become admirably non-judgmental: they simply catalog all current usages.¹⁸

12. A schwa (ə) is, of course, that undistinguished vowel sound in the final syllable of so many words in English: polar, water, motion, ketchup (similarly, catchup and catsup).

13. See *infra* note 18.

14. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1026 (2d ed. 1987).

15. *Id.*

16. I am not alone in holding this theory. A writer for *The Independent* (London) made the same observation. Further, he laments that he has even seen the word spelled "jejeune." See Phillip Hensher, *Against Stupidity, The Gods Themselves Contend in Vain*, THE INDEPENDENT (London), Mar. 19, 2001, at 5.

17. Here is one for the reader: do you prefer the use of "continual" or "continuous" in this context? Go to the dictionary.

18. See Ellen P. Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 ARIZ. ST. L.J. 275 (1998). The author discusses the way lexicographers construct dictionary definitions and contrasts the traditional prescriptive method used by Samuel Johnson and Noah Webster, which, according to Mr. Johnson, required him to "fix the English language" and to "preserve the purity" of the "English idiom." *Id.* at 284, quoting Samuel Johnson, *The Plan of a Dictionary of the English Language*, in PROSE AND POETRY 119, 123–27 (Mona Wilson, ed. 1951). Aprill explains

Those who know better must simply hold their tongues in polite company when transgressions occur.

B. Linguistic Intuitions, Not Dictionaries, Are the Key to Sentence Meaning

Dictionaries are less helpful when the inquiry properly extends beyond the word level. During the last fifty years, linguists and psychologists have learned a great deal about human language and sentence meaning.¹⁹ Current linguistic theory hypothesizes that all mature speakers in a language community share a common grammar, i.e., the internalized set of rules that guides language production and interpretation.²⁰ In thinking about sentence interpretation, linguists have pointed out that sentences are not mere word strings: that is, interpreting a sentence is much more than defining the words that com-

that this prescriptive approach is different in aim from the modern descriptive approach, used, for example, in compiling the *Webster's Third New International Dictionary*. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Philip Babcock Gove et al. eds., 1993). The publishers of *Webster's Third* call it the "largest and most comprehensive American dictionary available" and trace its roots back 150 years to Noah Webster's first comprehensive dictionary, *An American Dictionary of the English Language*, first published in 1828. Aprill explains that today's *Webster's Third* is decidedly descriptive. Its back cover proclaims that *Webster's Third* "contains over 15 million examples of words used in context." Aprill, *supra*.

19. The recent history of linguistic theory is dizzying in its pace and its scope. For a very accessible and thoughtful assessment of the current issues in linguistic theory and cognitive science, see RAY JACKENDOFF, *FOUNDATIONS OF LANGUAGE: BRAIN, MEANING, GRAMMAR, EVOLUTION* (2002); STEVEN PINKER, *THE LANGUAGE INSTINCT: HOW THE MIND CREATES LANGUAGE* (2000) [hereinafter *THE LANGUAGE INSTINCT*]; STEVEN PINKER, *WORDS AND RULES: THE INGREDIENTS OF LANGUAGE* (2000). Although Pinker writes entertainingly and mellifluously about complex issues in linguistics and cognitive psychology, his interpretations of Chomskian linguistics are not unassailable. See, e.g., John R. Searle, "Sneaked" or "Snuck"?, *THE N.Y. REV. OF BOOKS*, Mar. 14, 2002, at 37 (reviewing Pinker's *WORDS AND RULES*). To understand the roots of contemporary linguistic theory, see NOAM CHOMSKY, *ASPECTS OF THE THEORY OF SYNTAX* (1969). For Chomsky's current views on linguistic theory, see NOAM CHOMSKY, *NEW HORIZONS IN THE STUDY OF LANGUAGE AND MIND* (2000). But see John R. Searle, *End of the Revolution*, *THE N.Y. REV. OF BOOKS*, Feb. 28, 2002, at 33 (reviewing Chomsky's *NEW HORIZONS IN THE STUDY OF LANGUAGE AND MIND*). For an overview of current thinking in Chomskian syntactic theory, see NORBERT HORNSTEIN, *MOVE!: A MINIMALIST THEORY OF CONSTRUAL* (2000). One of the most comprehensive investigations of linguistic theory as it relates to the law is Lawrence Solan's landmark book, *The Language of Judges*. LAWRENCE M. SOLAN, *THE LANGUAGE OF JUDGES* (1993). See also Clark D. Cunningham et al., *Plain Meaning and the Hard Cases*, 103 *YALE L.J.* 1561 (1994) (reviewing Solan's *Language of Judges*) [hereinafter *Hard Cases*].

20. For a particularly clear discussion of language as a "mental organ," see DAVID LIGHTFOOT, *THE LANGUAGE LOTTERY: TOWARD A BIOLOGY OF GRAMMARS* (1982). See also Stephen R. Anderson & David W. Lightfoot, *The Human Language Faculty as an Organ*, 62 *ANN. REV. OF PHYSIOLOGY* 697 (1999).

prise it. The key to sentence meaning is to understand how the grammar generates and interprets the syntactic and semantic relationships among the phrasal categories that the sentence contains.²¹

For example, consider Sentences 2(a) and 2(b):

- 2.(a) John thinks he won.
 (b) He thinks John won.

As speakers of English, we all know that, in Sentence 2(a), the pronoun “he” may refer to John or some other man. We also know that, in Sentence 2(b), the pronoun “he” cannot refer to John but can only refer to another man. Looking at these two sentences, it is not at all clear why that should be true. Perhaps a pronoun can only refer to a noun if it follows it: because the pronoun comes first in Sentence 2(b), it cannot refer to John. In order to test this hypothesis, linguists would create other sentences that also involve the same phenomenon, namely “pronominal coreference.” Consider Sentence 3:

3. After he ate lunch, John left.

Everyone would agree that the pronoun “he” in Sentence 3 may refer to John, whereas the pronoun in Sentence 2(b) cannot. Why is that so? Further, what knowledge do all speakers of English share that allows us all to make identical judgments about these sentences? By comparing these sentences, and analyzing their similarities and differences, linguists can test their hypotheses about what those rules might be. This process is referred to as Linguistic Method.²²

Surely, all speakers of English must be applying a single rule that yields the identical judgments about these sentences. Because speakers do not consciously employ this coreference rule, it is unlikely that anyone taught it to us. Also, because speakers hear such different language data as they acquire their language, it is unlikely that all speakers would independently make up exactly the same rule. This evidence strongly suggests that this coreference rule is not learned. Rather, the intricacies of proper pronominal coreference must be

21. See JANET DEAN FODOR, *SEMANTICS: THEORIES OF MEANING IN GENERATIVE GRAMMAR* (1977).

22. The phrase “Linguistic Method” has been used to refer to many different types of intellectual inquiry. I am using this phrase in the strict sense of linguistic inquiry. Linguists use native speakers’ intuitions about syntactic well-formedness to test their theories about the structure of the mentalistic grammars that speakers of the same language use to communicate with each other. See Noam Chomsky & Howard Lasnik, *The Theory of Principles and Parameters*, in *THE MINIMALIST PROGRAM* 13 (Samuel Jay Keyser ed., 1995).

“wired in” or, as Howard Lasnik puts it, “innately present in the structure of the brain.”²³

Linguists hypothesize that humans are born with a certain “genetic endowment” that predisposes us to use language; this innate endowment is sometimes called “initial state.”²⁴ During the period of language acquisition, most typically between the ages of two and six, children use the data that they are hearing to set certain parameters that the initial state leaves open. Because the initial state is the same for all humans, and because the set of parameters by which languages can differ is thought to be small and finite,²⁵ all members of a language community ultimately settle on an identical mental representation of the “mature state,” which is often referred to as the “grammar” of a language.²⁶

What must all speakers of English “know” in order to make the clear and uniform judgments that we all share about Sentences 2 and 3? The crucial difference between Sentences 2(a) and 2(b) becomes clear when we explore their syntactic structures and the relationships among the syntactic categories in the sentences.²⁷ The syntactic structure of Sentence 2(a) is represented in 4 below. The “tree branches” in 4 represent phrasal categories. Each syntactic category contained in a sentence (S) has a “head” of the same type. For example, noun

23. Howard Lasnik, *Syntax*, 1 LANGUAGE: AN INVITATION TO COGNITIVE SCIENCE 12 (Daniel N. Osherson & Howard Lasnik eds., 1990).

24. See THE LANGUAGE INSTINCT, *supra* note 19.

25. See generally HORNSTEIN, *supra* note 19 (discussing how principles and parameters model accounts for facts of language acquisition).

26. The “initial state” is traditionally called “Universal Grammar,” and the “mature state” is traditionally described as the “grammar” of a particular language, for example, the grammar of English. Anderson and Lightfoot explain the difference between Universal Grammar and the particular grammar of a specific language this way:

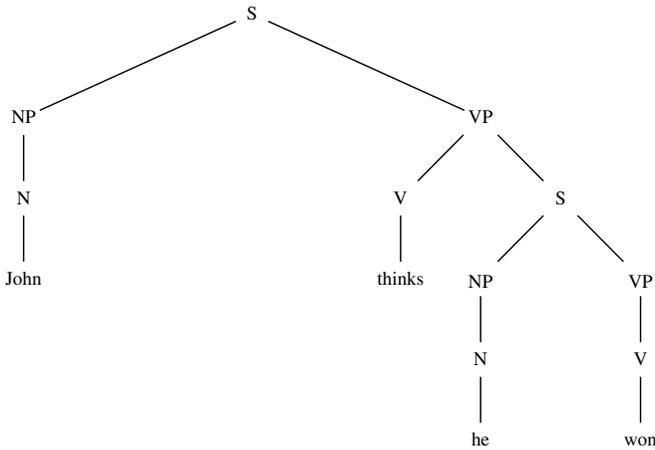
It is important to understand that Universal Grammar in this sense is not to be confused with the grammar of any particular language Rather, Universal Grammar can be seen as the set of principles by which the child can infer, on the basis of the limited data available in the environment, the full grammatical capacity that we think of as a mature speaker’s knowledge of a language.

Anderson & Lightfoot, *supra* note 20, at 703. It is crucial to understand the difference between the sorts of formal conventions (“grammatical rules”) discussed in notes 5–8 and the mentalistic concept of a universal grammar. The Anderson & Lightfoot article is an excellent reference for those interested in understanding current thinking about the nature of language. For a more in-depth analysis of how this characterization of the language capacity plays out in a theory of syntax, I suggest that the more ambitious reader see Chomsky & Lasnik, *supra* note 22.

27. The following example and accompanying discussion is taken from Lasnik, *supra* note 23, at 9–12.

phrases (NP) are headed by nouns; prepositional phrases (PP) are headed by prepositions; and verb phrases (VP) are headed by verbs.

TREE 4.



Linguists use the term “domination” to describe the relationships among the syntactic categories in a syntactic tree. For example, S dominates both NP and VP. Based on these arrangements of categories, linguists define a structural relation called category command (or c-command), which Lasnik states as the principle in 5:

5. “In a given structure a category X c-commands another category Y if every category that dominates X also dominates Y.”²⁸

Looking at our structure in 4, the NP “John” can be said to “c-command” the NP “he” because “the ‘highest’ S is the only category that dominates the former NP, and it also dominates the latter.”²⁹ Notice, however, that the opposite is not true. The NP “he” does not c-command the NP “John” because there are two phrasal categories (the lower S and the VP) that “dominate the former but not the latter.”³⁰

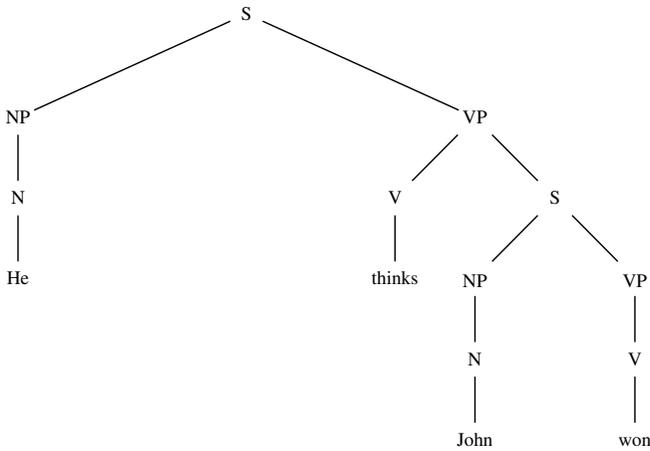
The syntactic structure of Sentence 2(b) is represented in 6 below. Here, the pronominal NP “he” c-commands the full NP “John.” Nonetheless, we cannot understand these two NP’s as referring to the same person: that is, they cannot be coreferential (or “coindexed”).

28. *Id.* at 11.

29. *Id.*

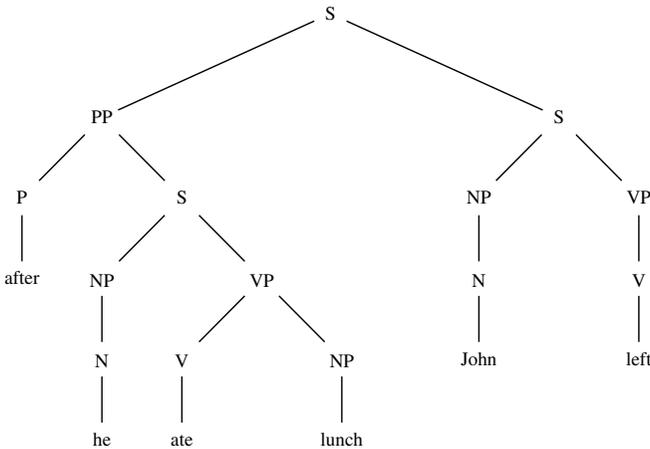
30. *Id.*

TREE 6.



Now consider the syntactic structure of Sentence 3, which is represented in 7 below.

TREE 7.



In 7, the pronoun "he" does not c-command the full NP "John" because the pronominal NP is dominated by two categories (an S and a PP) that do not dominate the full NP. To account for this, Lasnik proposes the coreference principle in 9, which is premised on the definition of "binding" in 8:

8. "One NP *binds* another NP if the former c-commands the latter and the two are coindexed."³¹
9. "A pronoun may not bind a full NP."³²

31. *Id.*

32. *Id.*

Together, the definition in 8 and the principle in 9 account fully for the intuitions that speakers of English share about the sentences in 2 and 3. In Sentence 2(a), coreference will not be prevented because the full NP “John” both c-commands the pronominal NP “he” and, on the coindexed reading, binds it. In Sentence 2(b), coreference will be prevented because, although the pronominal NP structurally c-commands the full NP, the principle in 9 prevents the pronominal NP from binding the full NP. The possibility of coreference in Sentence 3 is also explained. Coreference in 3 is not prevented because the pronominal NP “he” does not bind the full NP “John.”

Lasnik uses these examples to reveal that speakers of English have very strong linguistic intuitions about the structural relationships of categories in sentences. Further, because speakers share exactly the same intuitions about these sentences, it is likely that the grammar of English contains the definition in 8 and the principle in 9, or something very much like them. Moreover, because the grammar prevents certain coreferences from occurring, it is impossible for children to learn this rule. That is, it is not at all likely that children are explicitly taught this rule, either by other speakers or on the basis of observation. Lasnik explains that this is very strong evidence that the principles of coreference must be “wired in” to our brains as a part of what we may call the mature grammar of English.³³

“Speaking English” means having these very subtle judgments about what sentences mean or can mean. Linguistic science is dedicated to discovering what sorts of judgments speakers have as a way of determining what sorts of rules might underlie them. These simple examples of pronominal coreference demonstrate how using Linguistic Method can reveal these intuitions. Linguists use Linguistic Method not only to determine what a sentence means but also to uncover speakers’ linguistic intuitions about grammatical structures.

Like linguists, lawyers and judges are also interested in determining what sentences mean. Unfortunately, the methods that lawyers and judges use to determine meaning have not kept up with the times. When faced with statutory language that appears to have more than one possible meaning, judges rarely, if ever, consciously consider

33. *Id.* at 12.

This strongly suggests that [Principle 9] is not, in fact, learned. But if children know it without learning, then it is reasonable to conjecture that it is “wired in” (that is, innately present in the structure of the brain) and even to ask whether it has any obvious counterpart in any other cognitive domain. If, as seems likely, it does not, then we have evidence for a “language faculty” as a discrete module of the human mind.

their own linguistic intuitions. Because judges need to cite legal authority for their legal conclusions, they seem to feel the need to cite “linguistic authority” for their linguistic conclusions. More often than not, the linguistic authority of choice is a dictionary. But the examples that I have discussed above show that a dictionary cannot account for linguistic intuitions because all of the individual words in these examples are so common as to need no “defining.” A dictionary, no matter how comprehensive or unabridged, will offer no help in explaining these intuitions. In the following section, I will demonstrate how Linguistic Method can account more fully for linguistic intuitions that Dictionary Method simply misses.

C. Using Linguistic Method to Reveal Sentence Meaning

The examples of pronominal coreference discussed above demonstrate that Dictionary Method cannot account for the subtle and uniform judgments that speakers share about sentence meaning. Because all of the words in the examples are quite common, it would never occur to anyone that a dictionary would hold the key to understanding them. The next set of examples concerns speakers’ judgments about syntactic ambiguity. I will first attempt to account for the ambiguity using Dictionary Method, which seems to shed some light on the complex intuitions involved. I will then show how, just as in the previous examples, Linguistic Method reveals more subtle linguistic intuitions about these sentences.

First consider Sentence Ten:

10. The chicken is ready to eat.³⁴

Sentence 10 is structurally ambiguous; that is, the identical sequence of words has two distinct syntactic structures that produce two distinct meanings. On one reading, the chicken is being cooked, and it is done; on the other reading, the chicken is hungry, and it needs to be fed. Although both readings are equally understandable to us, context will generally dictate which reading we seize on. If the subject of conversation has centered on how hungry the dinner guests have become, someone uttering Sentence 10 would be understood to have the

34. Chomsky originally used ambiguous sentences such as this—“they are flying planes,” for example—to demonstrate the need for both Surface Structure and Deep Structure analyses. He pointed out that a purely phrase structure grammar could not account for the two meanings of the sentence because both readings have identical Surface Structure manifestations. He first proposed in his book *Syntactic Structures*, that the two readings should be accounted for by positing “transformations” that would produce the identical Surface Structures from distinct Deep Structures. See NOAM CHOMSKY, *SYNTACTIC STRUCTURES* 87 (1957).

first reading. The second reading conjures up an image of a chicken who has just elegantly placed a napkin on his lap.

At first glance, it might appear that Dictionary Method could explain the ambiguity in Sentence 10 fairly completely. *The Random House Dictionary of the American Language (Unabridged)* has the following two definitions of “ready”:

1. completely prepared or in fit condition for immediate action or use;
2. duly equipped, completed, adjusted, or arranged as for an occasion or purpose.³⁵

Definition One encompasses the first reading of Sentence Ten, and Definition Two encompasses the second. If Sentence 10 were a statute, a judge could use Dictionary Method and confidently decide the “ordinary” meaning of Sentence 10 by using a dictionary to find the two distinct definitions of “ready” and choosing the one more appropriate to the context.

But our linguistic intuitions tell us that there is more going on in this sentence. Notice first that the adjective “ready” takes two different predicates. In the first reading, the sentence has the syntactic structure in 11(a), and it is analogous to the sentence in 11(b).

- 11.(a) The chicken is ready [for someone] to eat [the chicken.]
- (b) The chicken is ready to be eaten.

In the second reading, the sentence has the syntactic structure in 12(a), and it is analogous to the sentence in 12(b).

- 12.(a) The chicken is ready [for the chicken] to eat [something].
- (b) The chicken is ready [for the chicken] to dine.

Understanding these sentences involves more than knowing two different “dictionary definitions” of the word “ready.” Rather, we come to realize that the two “meanings” of “ready” are a function of the types of predicates that “ready” can take as complements. In 11(a), the chicken is assumed to be the direct object of the lower clause infinitive verb “to eat,” and the verb’s subject is left unspecified. In 12(a), the chicken is assumed to be the subject of the lower clause infinitive verb “to eat,” and there is no direct object.

Linguistic Method reveals that other English adjectives take only one of these forms. Compare the sentences in 11 and 12 above with the Sentences 13(a) and 13(b).

- 13.(a) The chicken is pleasant to eat.
- (b) The chicken is eager to eat.

35. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1606 (2d ed. 1987).

The adjective “pleasant” in Sentence 13(a) takes only the predicate shown in 11(a). The adjective “eager” in Sentence 13(b) takes only the predicate shown in 12(a). The reason that our original Sentence 10 is ambiguous is that the adjective “ready” may take either predicate. This is a syntactic observation, not a mere difference in dictionary definitions. Linguistic Method reveals that the interaction between the complement structures of these sentences accounts for their differences in meaning. Now consider the sentences in 14(a) and 14(b).

14.(a) The chicken is ready to eat.

(b) The chicken is ready to eat his dinner.

Sentence 14(a) is, of course, the same as our original Sentence 10. Sentence 14(b), however, reveals an interesting syntactic fact that all native speakers of English know about the verb “eat.” The verb “eat” can either take a direct object or not; that is, “eat” may be either a transitive verb or an intransitive verb. Thus, the ambiguity of Sentence 10 results not only from the structural properties of the adjective “ready” but also from the structural properties of the verb “eat.” By way of comparison, consider Sentence 15.

15. The chicken is ready to sleep.

This sentence is unambiguous. Even though we know that the adjective “ready” can appear in two possible structures, Sentence 15 is not difficult to understand. As part of our knowledge of English, we know that only one of those structures is possible when the adjective “ready” is followed by a verb (“sleep”) that is always intransitive. Here again, it is apparent that we will gain little insight into the meaning of these sentences by simply consulting a dictionary definition of the word “ready.” Rather, it is essential to consider the combination of the words in each sentence and their structural relationship to one another in an effort to grasp our intuitions about the sentence’s meaning. These insights are what Linguistic Method offers.

The judgments that speakers have about the sentences in 10 through 15 are consistent and uniform. English speakers know that some verbs can take a variety of predicates and some can only take one. As sentences contain various combinations of these nouns, verbs, and their predicates, our linguistic intuitions about them, which can be unmasked through Linguistic Method, are quite rich. In fact, sentences that reflect quite complex syntactic phenomena can seem quite easy to parse. These judgments directly reflect our linguistic intuitions, which are based on our internalized grammar of English, that is, the “wired in” set of principles and parameters that comprise

our shared knowledge of our language. Because these judgments are identical among speakers, using them to determine sentence meaning is potentially much more powerful than using the less reliable, and more easily abused, dictionary definitions.

II.

DICTIONARY METHOD IN THE SUPREME COURT

A. *How the Court Uses Dictionaries*

Since 1994, the U.S. Supreme Court has used some form of Dictionary Method in its opinions at least 146 times.³⁶ These cases reveal that the Justices use Dictionary Method for two different purposes; I will refer to these as Definition and Verification. Definition is just that: the Court uses a dictionary for its intended purpose—to define an

36. Between January 1, 1994, and July 1, 2002, the Justices of the U.S. Supreme Court used the dictionary as follows:

Justice	Majority	Dissent	Concurrence	Verification	Definition	Total
Rehnquist	5	4	0	8	1	9
Stevens	10	3	1	14	0	14
O'Connor	14	1	3	18	0	18
Scalia	18	8	4	26	4	30
Souter	12	4	0	9	7	16
Kennedy	8	2	1	10	1	11
Thomas	8	13	4	19	6	25
Ginsburg	8	3	1	11	1	12
Breyer	9	2	0	9	2	11

Data was compiled by running a search on WestLaw for each Justice for each of the seven full calendar years and the first six months of 2002, searching for the terms “dictionary” and “Bouvier.” BOUVIER’S LAW DICTIONARY (1897) (“Bouvier” is a specialized legal dictionary and is often not called a dictionary, so searches using only the term “dictionary” missed some historical uses where “Bouvier” was cited). Each majority opinion, dissent, or concurring opinion that incorporated the use of a dictionary was considered “one use” by the justice who wrote it. The data was further separated by the way in which the justice used the dictionary into two categories: verificational usage and definitional usage. For a description of the Court’s dictionary use in the 1988–92 terms, see Note, *Looking It Up: Dictionaries and Statutory Interpretation*, 107 HARV. L. REV. 1437 (1994) [hereinafter *Looking It Up*]. This Note is typical of critiques in the literature of the inadequacies of using a dictionary in statutory interpretation. After pointing out the variability of meanings among the several dictionaries that the Justices use, the author concludes that “the Supreme Court should exercise greater care in its use of dictionaries.” *Id.* at 1437. See also Samuel A. Thumma & Jeffrey J. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court’s Use of Dictionaries*, 47 BUFF. L. REV. 227 (1999). The authors chronicle dictionary use and also give examples that point out the inadequacies of dictionary use. The title refers to a famous quote from Judge Learned Hand: “[I]t is one of the surest indexes [sic] 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.” *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945).

individual word. Sometimes the Court cites definitions from older dictionaries to support its conclusions that a word had a certain meaning at some point in history that it either does or does not have currently.³⁷ Definition is also used when the Court simply does not know (or believes that the reader may not know) the accurate definition of a word that it is using; these are typically technical terms³⁸ or foreign terms.³⁹ Needless to say, Dictionary Method is completely appropriate when “definition” is the Court’s sole objective.

Since it is rare that the Court will need to trace the history of a word’s usage, to translate a foreign phrase, or to “look up” a new word, Definition analyses in fact comprise a very small percentage of the Dictionary Method analyses that the Court advances. The vast majority of Dictionary Method analyses fall into the second category: Verification.⁴⁰ Verification analyses are fairly transparent; the Court uses a dictionary (or two or three dictionaries) to verify that a word can have the meaning that the Court is assigning to it. The words are generally common words, and the dictionary definitions typically support a “common sense” assertion.⁴¹

37. To support their conclusions about the meaning of a statutory provision at the time it was passed, courts often cite dictionaries that were published contemporaneously with the statute’s passage. *See, e.g.*, *Rosenberger v. Rector of the Univ. of Virginia*, 515 U.S. 819, 869 n.1 (1995) (citing NOAH WEBSTER, AN AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (New York, S. Converse 1828) to support assumption that, in early Nineteenth Century, word “seminary” could include secular schools). These definitions, however, are likely to have come from decidedly prescriptive dictionaries. Prescriptive dictionaries are less likely to reflect “ordinary” usage than contemporary dictionaries, which tend to be more descriptive of current usage. For a discussion of prescriptive and descriptive dictionaries and how lexicographers create them, see *Aprill, supra* note 18.

38. *See, e.g.*, *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 218 (1999) (Rehnquist, C.J., dissenting) (citing BLACK’S LAW DICTIONARY 1544 (6th ed. 1990) to define “usufructuary rights”); *United States v. Winstar Corp.*, 518 U.S. 839, 852 (1996) (citing RALPH W. ESTES, DICTIONARY OF ACCOUNTING 29 (1981) to define “contra-asset”).

39. When interpreting international treaties, the Court will sometimes cite a foreign dictionary to support its understanding of a foreign phrase. *See, e.g.*, *El Al Israel Airlines v. Tseng*, 525 U.S. 155, 167–68 n.11 (1999) (citing THE NEW CASSELL’S FRENCH DICTIONARY 132, 592 (Denis Girard ed., 1973) and THE OXFORD-HACHETTE FRENCH DICTIONARY 645 (Marie-Hélène Corréard & Valerie Grundy eds., 1994) to verify Court’s understanding of phrase “*les cas prévus à l’article 17*” from Article 24 of Warsaw Convention).

40. *See supra* note 36. Of the Dictionary Method arguments used during the last ten years, approximately 85% of them fit the Verification category.

41. Generally, these “verification” usages are not essential to the Court’s legal analysis. In the common pattern, the Court will advance a legal analysis that assumes a certain word to be capable of a certain definition. The dictionary definition simply verifies that the assumed definition is recorded in a dictionary. These “verifications” merely add “authority” for the writer’s intuitions about what a common word means.

Verification arguments follow a common pattern. First, the writer will pronounce a legal conclusion about a statutory provision. Second, the writer will identify a “language problem” with the text and will focus on a potentially problematic word in the statutory language. Finally, the writer will cite one or more dictionary definitions to support the conclusion that the problematic word has the meaning originally asserted. Unlike Definition arguments, Verification arguments confirm rather than advance the Court’s legal analysis.

For example, in *Things Remembered, Inc. v. Petrarca*,⁴² Justice Ruth Bader Ginsburg used Verification to support her interpretation of the word “equitable” in 28 U.S.C. § 1452(b).⁴³ The statute provides that a district court in a bankruptcy case may remand or remove a claim “on any equitable ground.”⁴⁴ The Court affirmed a Sixth Circuit ruling that a district court decision remanding a claim to state court is not subject to appellate review.⁴⁵ The Court decided the case under 28 U.S.C. § 1447(d), the general federal question removal statute. Al-

See, e.g., *INS v. Aguirre-Aguirre*, 526 U.S. 415, 430 (1999) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 139 (Philip Babcock Gove et al. eds., 1961) to support assumption that “atrocious” act is more aggravated than “serious” one); *Humana, Inc. v. Forsyth*, 525 U.S. 299, 309–10 (1999) (citing BLACK’S LAW DICTIONARY 752 (6th ed. 1990) to equate “impair” with “weaken”); *Lopez v. Monterey County*, 525 U.S. 266, 278 (1999) (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 27 (Philip Babcock Gove et al. eds., 1961), RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 26 (2d ed. 1987), and BLACK’S LAW DICTIONARY 44 (6th ed. 1990) to demonstrate that verb “administer” includes both discretionary and non-discretionary actions).

42. 516 U.S. 124 (1995).

43. *Id.* at 131–36 (Ginsburg, J., concurring).

44. 28 U.S.C. § 1452 (2000), which governs removal of claims in bankruptcy cases, provides in relevant part:

(a) A party may remove any claim or cause of action in a civil action . . . to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals . . . or by the Supreme Court

45. *Things Remembered*, 516 U.S. at 126–27. Petitioner removed an Ohio state court case to the Bankruptcy Court of the Northern District of Ohio. The Petitioner based removal both on 28 U.S.C. § 1452(a), the specific bankruptcy removal provision, and on 28 U.S.C. § 1441, the general federal removal provision; the bankruptcy court granted removal of the case. The district court found that the removal had been untimely and remanded the case to the state court. On appeal, the Sixth Circuit ruled that the removal provisions barred appellate review of the district court’s removal decision and dismissed the appeal for lack of jurisdiction. A unanimous U.S. Supreme Court affirmed the Sixth Circuit.

though she agrees that § 1447(d) is dispositive of the issue, Justice Ginsburg uses her concurrence to point out that § 1452(b), which specifically applies to bankruptcy cases, offers independent grounds for the Court's holding.

As part of her discussion, Justice Ginsburg uses Verification, following the typical pattern that I have outlined above. She first makes a legal conclusion about the statutory language:

The lawmakers chose the capacious words "any equitable ground" with no hint whatever that they meant by their word choice to recall premerger distinctions between law and equity, and thereby to render reviewable bankruptcy case remand orders based on "law." In legal systems that never separated pleadings and procedure along law/equity lines, and not infrequently in our own long-merged system, "equitable" signals that which is reasonable, fair, or appropriate.⁴⁶

Once she rules out giving "equitable" a term-of-art meaning derived from British Chancery practice, Justice Ginsburg simply interprets the word according to what she believes to be the common meaning. She then verifies her interpretation of the word "equitable" with definitions from two dictionaries:

Dictionary definitions of "equitable" notably include among appropriate meanings: "just and impartial," American Heritage Dictionary 622 (3d ed. 1992); also "dealing fairly and equally with all concerned," Webster's Ninth New Collegiate Dictionary 421 (1983).⁴⁷

The definitions that Justice Ginsburg cites are not controversial. In fact, her "common sense" assertion about what "equitable" means would seem to need no authority at all.⁴⁸ Used this way, Dictionary

46. *Id.* at 132–33.

47. *Id.* at 133.

48. *But see id.* In this case, Justice Ginsburg augments her Verification argument by quoting a Seventh Circuit opinion that also interprets the word "equitable" in 28 U.S.C. § 1452(b):

The distinction between law and equity was abolished long ago in federal cases. Nothing in the history of the bankruptcy code suggests that Congress wanted to resuscitate it. Courts must separate "legal" from "equitable" grounds in 1789 on command of the seventh amendment. This task has little but the sanction of history to recommend it and is possible only because law versus equity was an intelligible line in the eighteenth century. In 1978, when Congress enacted the predecessor to § 1452, there was no law-equity distinction. "Equitable" in § 1452(b) makes more sense if it means "appropriate." *Hernandez v. Brakegate*, 942 F.2d 1223, 1226 (7th Cir. 1991).

It seems that this type of support is much more useful and authoritative than a dictionary definition. Again, the dictionary adds very little.

Method provides harmless “belt and suspenders” support for a statement about the meaning of a common English word. Reaching for a dictionary in such cases seems to fill a need to cite authority for any statement the Court—or a Justice—makes, whether legal or linguistic.

In cases such as *Things Remembered*, Dictionary Method does little good, and it may seem to do no harm. But this apparently harmless habit of citing definitions for the meanings of common English words unnecessarily introduces Dictionary Method into cases where it does not belong. The Court’s intuitions about what common words mean need no additional “authority,” and verification adds nothing to the force of the Court’s analysis. As I shall show, however, this hasty and inappropriate use of Dictionary Method for verification purposes can cause the Court to miss significant syntactic cues in statutory sentences.

B. Using Dictionary Method to Analyze “Uses or Carries A Firearm”

In three successive cases, *Smith v. United States*,⁴⁹ *Bailey v. United States*,⁵⁰ and *Muscarello v. United States*,⁵¹ the U.S. Supreme Court used Dictionary Method to interpret the statutory phrase “uses or carries a firearm” in the following statutory sentence: “. . . [A]ny person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm . . . shall . . . be sentenced”⁵²

In each case, proof that the defendant had “used or carried a firearm” justified imposition of a harsher prison term for the related crime. These three cases, read together, offer an especially telling example of how using Dictionary Method can prevent a full understanding of phrases and sentences. The majority opinion in each case uses Verification to define very common English words. In selecting what it regards as the appropriate definition, the Court seems to believe that it has sufficiently addressed the “language problem” that it has identified in the statutory sentence. The dissents in two of the cases reject the majority’s Verification arguments and offer an analysis based on the Justices’ intuitions about the meanings of the common words that the majority had simply defined. But while the intuitive approach in each of the two dissents is an improvement, it goes only part way in

49. 508 U.S. 223, 228–30 (1993).

50. 516 U.S. 137, 145 (1995).

51. 524 U.S. 125, 128–30 (1998).

52. 18 U.S.C. § 924(c)(1)(A) (2000).

the right direction. The approach in these dissents lacks maximum force because it, too, focuses on the meanings of individual words.

1. *Using Dictionary Method in Smith v. United States*

In *Smith v. United States*, the Court considered whether a defendant who trades a gun for drugs “uses or carries a firearm” within the meaning of 18 U.S.C. § 924(c)(1).⁵³ In framing the legal question, the Court initially points out that the statute requires the prosecution to show two things: “First, the prosecution must demonstrate that the defendant ‘use[d] or carrie[d] a firearm.’ Second, it must prove that the use or carrying was ‘during and in relation to’ a ‘crime of violence or drug trafficking crime.’”⁵⁴ Although the Court briefly focuses on the entire statutory phrase “uses or carries a firearm,” it immediately reverts to the lexical level—i.e., Verification—focusing on definitions of the common verb “use.”⁵⁵

Perhaps as a justification for its narrow focus, the Court notes that the indictment against the defendant charged him only with “using” a firearm. In narrowing the question to whether trading a gun for drugs constitutes “using” a firearm within the meaning of § 924(c)(1), the Court saw no need to decide what it considered to be the separate question of whether trading a gun for drugs might constitute “carrying” a firearm. “Instead we confine our discussion to what the parties view as the dispositive issue in the case: whether trading a firearm for drugs can constitute ‘use’ of the firearm within the meaning of § 924(c)(1).”⁵⁶

The Court begins its discussion with the familiar incantation that “[w]hen a word is not defined by statute, we normally construe it in

53. The defendant in the case, Angus Smith, had a MAC-10 handgun that had been equipped with a silencer. This gun was highly prized among criminals and was therefore very valuable. While relaxing in a Florida hotel room with his companion and Deborah Hoag, an undercover drug informer, Smith received a visitor (an undercover drug agent). The undercover agent admired Smith’s MAC-10 and asked Smith if he might be interested in selling it. Smith told the agent that he would be willing to part with his piece for two ounces of cocaine. The agent told Smith that he was a pawnbroker and not a drug dealer, but he would go try to find the cocaine to trade for the gun. He told Smith that he would return with the drugs in about an hour. Before the agent returned, however, Smith decided to leave his hotel room. As he drove away, other officers, who had been assigned to watch Smith, followed him and eventually, after a high-speed chase, arrested him. A grand jury indicted Smith on, among other counts, two drug trafficking crimes: conspiracy to possess cocaine with intent to distribute and attempt to possess cocaine with intent to distribute. See *Smith*, 508 U.S. at 225–26.

54. *Id.* at 228.

55. *Id.* at 228–29.

56. *Id.* at 228.

accord with its ordinary and natural meaning.”⁵⁷ Unlike the typical Verification argument, however, this discussion does not begin with a legal conclusion. Instead, the majority in *Smith* begins with the dictionary. Referring first to the definition of “use” in *Webster’s New International Dictionary of the English Language*, the Court cites the definition “‘to convert to one’s service’ or ‘to employ.’”⁵⁸ As further support for that meaning, the Court cites a similar definition from *Black’s Law Dictionary*: “‘to make use of; to convert to one’s service; to employ; to avail oneself of; to utilize; to carry out a purpose or action by means of.’”⁵⁹

On the basis of these definitions, the Court reaches its legal conclusion about the meaning of the phrase “uses a firearm,” concluding that the word “use” should be read broadly to encompass any derivation of service from a firearm.⁶⁰ The Court then substitutes a more expansive understanding of what was intended for the statutory text “uses a firearm.”⁶¹ Having essentially equated “use” with “actively employ,” the Court was then free to decide the case based on the meaning of the latter phrase, and it held that “active employment” of a gun extended to trading a gun for drugs: “By attempting to trade his MAC-10 for drugs, he ‘used’ or ‘employed’ it as an item of barter to obtain cocaine; he ‘derived service’ from it because it was going to bring him the very drugs he sought.”⁶² The majority buttressed its dictionary definitions with the Court’s own definition for the word “use” in a nineteenth century opinion: “Indeed, over 100 years ago, we gave the word ‘use’ the same gloss, indicating that it means ‘to employ’ or ‘to derive service from.’”⁶³

The Court’s Verification argument in *Smith* suffers from the same flaw as all such arguments: the Court views its interpretation task as one of defining individual words. Although it professes to be interested in the “ordinary meaning” of the word that it is defining, the majority ignores the syntactic context in which the word appears. The syntactic context of “use” in § 924(c)(1) is not simply “uses a firearm” but “*uses or carries a firearm.*”

The dissent took a different view. Writing on behalf of himself and Justices Stevens and Souter, Justice Scalia chastises the majority

57. *Id.*

58. *Id.* at 228–29 (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2806 (William Allan Neilson et al. eds., 2d ed. 1950)).

59. *Id.* at 229 (citing BLACK’S LAW DICTIONARY 1541 (6th ed. 1990)).

60. *Id.* at 229, 242–43.

61. *Id.* at 229.

62. *Id.*

63. *Id.* (citing *Astor v. Merritt*, 111 U.S. 202, 213 (1884)).

for relying on broad dictionary definitions of the word “use”: “The Court does not appear to grasp the distinction between how a word *can* be used and how it *ordinarily is* used.”⁶⁴ Although Justice Scalia begins by quoting his own dictionary definitions of “use,” he ultimately avoids Dictionary Method. Indeed, Justice Scalia uses a dictionary to demonstrate why a dictionary is inadequate to capture the ordinary meaning of “a word as elastic as ‘use,’ whose meanings range all the way from ‘to partake of’ (as in ‘he uses tobacco’) to ‘to be wont or accustomed’ (as in ‘he used to smoke tobacco’).”⁶⁵ Instead, the dissent expresses its strong intuition that the verb “use” tends to change meanings depending on its complement. Rather than rely on definitions of the word “use,” the dissent concentrates on the phrase “use a firearm,” concluding that this phrase most naturally means not that the firearm was “used” in some way but that it was “used as a weapon.”⁶⁶ Throughout his analysis, Justice Scalia consistently refers to the phrase “uses a firearm” instead of to the single word “use.” He forcefully asserts that the phrase “uses a firearm” is understood by most speakers of English to mean that the subject used the firearm as a weapon.

Justice Scalia suggests an analogy to Sentence 16:

16. Do you use a cane?

He suggests that any native speaker of English who hears this sentence would naturally infer that the questioner is asking whether he uses a cane as a walking aid.⁶⁷ Justice Scalia concedes that, in other contexts, the questioner could mean something else: for example, it is possible that an interior designer might be asking if the cane were used “as a hall decoration.”⁶⁸ Nonetheless, the dissent insists that the majority’s use of the broad definition of “use” misses an English speaker’s clear intuition that the phrase “use a firearm” bears the gloss “as a weapon.” In fact, responding to the majority’s point that Congress did not include the words “as a weapon” in the statute,⁶⁹ Justice Scalia asserts that these words were unnecessary precisely because the

64. *Id.* at 242.

65. *Id.* at 241–42 (citing WEBSTER’S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 2806 (William Allan Neilson et al. eds., 2d ed. 1950)).

66. *Id.* at 242.

67. *Id.*

68. *Id.*

69. *Id.* at 229. The majority asserts this on somewhat empiricist grounds, pointing out that the “words ‘as a weapon’ appear nowhere in the statute. Rather, § 924(c)(1)’s language sweeps broadly, punishing any ‘us[e]’ of a firearm, so long as the use is ‘during and in relation to’ a drug trafficking offense.” *Id.*

phrase “uses a firearm,” in its most natural meaning, includes them.⁷⁰ Because his intuitions about the phrase “uses a firearm” were so strong, Justice Scalia felt no obligation to cite any authority for his interpretation.⁷¹ Perhaps realizing that a speaker’s strong intuitions about a phrase are better authority than out-of-context dictionary definitions, Justice Scalia makes an admirable attempt to throw off Dictionary Method.

Justice Scalia’s intuitions about the meaning of “uses a firearm” were undoubtedly influenced by the statutory context. The phrase “uses a firearm” naturally takes on its specialized meaning that includes “as a weapon” more readily in the context of a statute that enhances a criminal sentence when a gun is used. As was true for our “chicken” sentences, which were syntactically ambiguous, discourse context can promote one reading over the other. Justice Scalia seems to want to make the same point about the different form of ambiguity involved in *Smith*. Although the phrase “uses a firearm” can undoubtedly refer to myriad uses in general conversation, it is more likely that speakers would assign the “as a weapon” meaning to the phrase in this statutory context.⁷²

2. Applying the “Active Employment” Definition in *Bailey v. United States*

In *Bailey v. United States*,⁷³ the Court revisited its analysis of § 924(c)(1). The facts of *Bailey* and its companion case, *Robinson v. United States*, presented the Court with a twist on its earlier “active employment” definition of the verb “use.” In *Bailey*, the defendant had a gun in the locked trunk of his car when police arrested him for cocaine possession. In *Robinson*, the defendant had an unloaded and holstered gun in a locked trunk in her bedroom closet when the police arrested her for an array of drug trafficking crimes. Reviewing both cases *en banc*, the D.C. Circuit had applied what it called an “accessibility and proximity” test to determine whether the firearm had been “used” within the meaning of § 924. This test supplanted the court’s

70. *Id.* at 229–30.

71. It is interesting that the Court vacillates between using the word “gun” instead of “firearm” in its discussion of the statute. I think our linguistic intuitions are even stronger if “gun” is substituted because it is the more common term. “Firearm” is a term of art referring to several types of weaponry, and it is much broader than “gun.” It is possible that the Court’s seemingly inadvertent slip bears witness to our strong intuitions about the statutory phrase.

72. In the next section of this paper, I will demonstrate how other syntactic intuitions also may reinforce the “as a weapon” reading.

73. 516 U.S. 137 (1995).

former multi-factor weighing approach.⁷⁴ Using its new test, the D.C. Circuit decided that the defendant in each case had “used a firearm” for purposes of § 924(c)(1): “We hold that one uses a gun, i.e., avails oneself of a gun, and therefore violates [§ 924(c)(1)], whenever one puts or keeps the gun in a particular place from which one (or one’s agent) can gain access to it if and when needed to facilitate a drug crime.”⁷⁵

The Supreme Court reversed. It rejected the “accessibility and proximity” test and held that neither of these fact scenarios constituted the “active employment” of a firearm within the meaning of § 924(c)(1) as construed in *Smith*. According to the Supreme Court, the D.C. Circuit’s interpretation would include in “use” any “action of a defendant who puts a gun into a place to protect drugs or to embolden himself.”⁷⁶ The Court rejected this reading as inconsistent with its “active employment” standard for “use.”

The Court’s analytical approach in *Bailey* stands in marked contrast to its approach in *Smith*. Had the Court in *Bailey* started with a dictionary, as it did in *Smith*, it would surely have found that the verb “use” could also have a meaning consistent with the D.C. Circuit’s “accessibility and proximity” test.⁷⁷ But the Court in *Bailey* dispenses with the dictionary altogether, while still employing Dictionary Method. The Court assumes that the meaning of “use” is the definition adopted in *Smith*, i.e., “active employment.” The Court then contrasts this definition with the “emboldening” definition embraced by the D.C. Circuit. Again, without consulting a dictionary, the Court asserts that “emboldening” by means of an unseen gun is an “inert” and “nonactive” employment of the gun.⁷⁸ The Court goes on to equate this type of “use” as more like “storage,” asserting that “[s]torage of a firearm, without its more active employment, is not

74. *Id.* at 141. The U.S. Supreme Court paraphrased the D.C. Circuit’s multi-factor test in its opinion: “The District of Columbia Circuit had previously applied a nonexclusive set of factors including: accessibility of the gun, its proximity to drugs, whether or not it was loaded, what type of weapon was involved, and whether expert testimony supported the government’s theory of ‘use.’” *Id.*

75. *Id.* The Court thought that the new test was too broad and that the “accessibility and proximity” would criminalize almost all possessions of firearms during a drug transaction. *Id.* at 149. In fact, agreeing with the dissent below, the Court pronounced that the test would criminalize “simple possession with a floating intent to use.” *Id.* at 142.

76. *Id.* at 145.

77. In fact, the *Oxford English Dictionary*’s first definition of “use” includes “utilization or employment for or with some aim or purpose, application or conversion to some (esp. good or useful) end.” 19 THE OXFORD ENGLISH DICTIONARY, 350 (2d ed. 1989).

78. *Bailey*, 516 U.S. at 149.

reasonably distinguishable from possession.”⁷⁹ In short, the Court asserts that the D.C. Circuit’s “accessibility and proximity” test would cause “use” to be “virtually synonymous with ‘possession’ and make any role for ‘carry’ superfluous.”⁸⁰ The Court concludes that the government must show that the defendant “actively employed” the firearm during and in relation to the predicate crime in order to get a conviction under § 924(c)(1).⁸¹

The Court’s use of Dictionary Method in *Bailey* is more subtle (and perhaps more disingenuous) than in *Smith*. Having piggy-backed on *Smith*’s dictionary definition, of “use” as “actively employ,” the Court simply relies on its intuitions about what “active employment” means. Oddly, this is exactly what the majority in *Smith* was not willing to do when confronted with the statutory phrase “uses or carries a firearm.” Perhaps because the phrase “active employment” does not appear in the statutory sentence, the Court does not feel the need to cite authority to define it—the definitional task is, as it were, “once-removed.” The Court simply provides its own definition of “active employment,” supplying a list of things that constitute “active employment” and others that do not.⁸²

3. *Using Dictionary Method to Interpret “Carries a Firearm” in Muscarello v. United States*

In *Muscarello v. United States*,⁸³ the Court consolidated two cases that presented similar issues under § 924(c)(1). In the first case, on appeal from the Fifth Circuit, a defendant had a handgun locked in the glove compartment of his truck when he was arrested for a drug trafficking crime.⁸⁴ In the second case, on appeal from the First Circuit, the defendants had placed several guns in a bag and put the bag in the trunk of their car; they intended to steal drugs from the seller

79. *Id.*

80. *Id.* at 150.

81. *Id.*

82. The active-employment understanding of “use” certainly includes brandishing, displaying, bartering, striking with, and, most obviously, firing or attempting to fire a firearm. We note that this reading compels the conclusion that even an offender’s reference to a firearm in his possession could satisfy § 924(c)(1). Thus, a reference to a firearm calculated to bring about a change in the circumstances of the predicate offense is a “use,” just as the silent but obvious and forceful presence of a gun on a table can be a “use.”

Id. at 148.

83. 524 U.S. 125 (1998).

84. *United States v. Muscarello*, 106 F.3d 636 (5th Cir. 1997).

whom they had agreed to meet.⁸⁵ The defendants in both cases had been found guilty of violating § 924(c)(1) because they had “carried” firearms during and in relation to a drug trafficking crime.

The Court framed the legal question as “whether the phrase ‘carries a firearm’ is limited to the carrying of firearms on the person.”⁸⁶ The majority begins by considering the statute’s language. Although the Court initially acknowledges that the subject of its interpretation is the phrase “carries a firearm,” it immediately reduces its interpretive task to Verification, i.e., defining the common verb “carry.” As is typical in Verification arguments, the Court begins with its legal conclusion:

Although the word “carry” has many different meanings, only two are relevant here. When one uses the word in the first, or primary, meaning, one can, as a matter of ordinary English, “carry firearms” in a wagon, car, truck, or other vehicle that one accompanies. When one uses the word in a different, rather special, way, to mean, for example, “bearing” or (in slang) “packing” (as in “packing a gun”), the matter is less clear. But, for reasons we shall set out below, we believe Congress intended to use the word in its primary sense and not in this latter, special way.⁸⁷

The Court seems unaware of the irony of this characterization of its task. The only reason that the “special” meaning of “carry” would occur to someone is that the verb has a noun phrase complement like “firearm.” By focusing on only the verb and its definitions, the Court simply bypasses the question of what the phrase “carries a firearm” might mean. Because the Court wants to use the only linguistic tool it is aware of, the dictionary, it frames its inquiry as one of single-word definition.

The Court then cites three dictionary definitions to support its view that “carry” should be interpreted broadly to include the actions of the defendants:

The Oxford English Dictionary gives as its *first* definition “convey, originally by cart or wagon, hence in any vehicle, by ship, on horseback, etc.” 2 Oxford English Dictionary 919 (2d ed. 1989); see also Webster’s Third New International Dictionary 343 (1986) (*first* definition: “move while supporting (*as in a vehicle* or in one’s hands or arms)”); Random House Dictionary of the English Language Unabridged 319 (2d ed. 1987) (*first* definition: “to take or support from one place to another; convey; transport”).⁸⁸

85. *Cleveland v. United States*, 106 F.3d 1056 (1st Cir. 1997).

86. *Muscarello*, 524 U.S. at 126.

87. *Id.* at 128.

88. *Id.* (alterations in original).

The Court then supplements its Verification argument with a historical one. It traces the word “carry” from the Latin word “carrum,” which the Court asserts meant “car” or “cart.” It cites two sources for this information: the *Barnhart Dictionary of Etymology* and the *Oxford English Dictionary*.⁸⁹ For additional support, the Court mentions that “[t]he greatest writers have used the word with this meaning.” It then lists a few: the Bible,⁹⁰ Daniel Defoe,⁹¹ and Herman Melville.⁹² (What would the Justices do without their law clerks?) Although the Court acknowledges that none of these quotations has anything to do with carrying firearms, it explains that “there is nothing linguistically special about the fact that weapons, rather than drugs, are being carried.”⁹³

The Court then takes the unusual step of searching newspaper texts for examples of the “ordinary” meaning of “carry” when it appears in the context of the words “vehicle” and “weapon.”⁹⁴ From *The New York Times*, for example, the Court quotes a description of an “ex-con” who “arrives home driving a stolen car and carrying a

89. *Id.* (“See *Barnhart Dictionary of Etymology* 146 (1988) (tracing the word from Latin ‘car[r]um,’ which means ‘car’ or ‘cart’); 2 *Oxford English Dictionary* 919 (tracing the word from the Old French ‘carier’ and the late Latin ‘carricare,’ which meant to ‘convey in a car’)” (citations omitted)).

90. *Id.* at 129. (“See *e.g.*, The King James Bible, 2 Kings 9:28 (‘[H]is servants carried him in a chariot to Jerusalem’); *id.*, Isaiah 30:6 (‘[T]hey will carry their riches upon the shoulders of young asses.’)”) (alteration in original).

91. *Id.* (“Robinson Crusoe says ‘[w]ith my boat, I carry’d away every Thing.’ D. Defoe, *Robinson Crusoe*. 174. (J. Crowley ed. 1972).”).

92. *Id.* (“And the owners of Queequeg’s ship, Melville writes, ‘had lent him [a wheelbarrow], in which to carry his heavy chest to his boarding-house.” H. Melville, *Moby Dick* 43 (U. Chicago 1952).”).

93. *Id.*

94. *Id.* One commentator, in a recent case note discussing *Muscarello*, has praised the Court for exploring newspaper texts in its “[e]mpirical analysis of common usage.” *The Supreme Court, 1997 Term—Leading Cases*, 112 HARV. L. REV. 122, 365 (1998) [hereinafter *Leading Cases*]. The author believes that the searching of texts is an improvement over the Court’s “excessive reliance on dictionaries in statutory interpretation.” *Id.* at 365. I am not convinced of that at all. If the Court were to embrace this method of surveying newspapers, it would be merely substituting one word-focused methodology for another. In fact, this practice of surveying newspaper texts to determine the meaning of a single lexical item was pioneered by the authors of *Hard Cases*, *supra* note 19. The authors used this method to determine the common understanding of the word “enterprise” as that word is used in the R.I.C.O. statute. 18 U.S.C. § 1959 (2000). See *Hard Cases*, *supra* note 19, at 1583. I have found no case besides *Muscarello* where the Court has used this method. A native speaker’s intuitions about what a common word can mean are far more reliable than any out-of-context “verification.” Instead of encouraging the Court to leap to yet another word-level source, I would prefer to encourage the Court to explore the syntactic context of the words rather than merely defining them.

load of handguns.”⁹⁵ From *The Boston Globe*, the Court quotes a description of a professional baseball player who was arrested for “carrying a semi-loaded automatic weapon in the car.”⁹⁶

The Court uses each of these quotations and definitions as authority for its conclusion that the word “carry” can include the transportation of items in a vehicle. Although the dissent does not disagree that the word “carry” can certainly bear that meaning, the dissent’s intuitions about the phrase “carries a firearm” lead it to a different conclusion. In her dissent, and on behalf of Chief Justice Rehnquist and Justices Scalia and Souter, Justice Ginsburg argues for an interpretation of the phrase “carries a firearm” that is somewhat more restrictive than the one adopted by the majority, but somewhat broader than the one urged by the petitioners, who contended that “carry” means to bear a firearm on one’s person. According to Justice Ginsburg, “carrying a firearm” means to bear a firearm “in such a manner as to be ready for use as a weapon.”⁹⁷ The dissent acknowledges that the majority is correct that the word “carries” is “a word of many meanings.”⁹⁸ But, based on the Court’s opinion in *Bailey* and the rule of lenity, the dissent suggests that the meaning of the phrase should be “confine[d]. . . to the undoubted meaning of that expression in the relevant context.”⁹⁹ Because guns locked in a glove compartment or a trunk of a car are not “ready for use as a weapon,” Justice Ginsburg concludes that the defendants were not “carrying firearms” during the commission of their crimes.¹⁰⁰ As in *Smith*, the dissent again takes a more intuitive approach to the language.

95. *Muscarello*, 524 U.S. at 129.

96. *Id.* at 130. The Court is somewhat apologetic about how excessively it has searched for definitions for the verb “carry.” It blames the parties and their briefs:

The parties vigorously contest the ordinary English meaning of the phrase, “carries a firearm.” Because they essentially agree that Congress intended the phrase to convey its ordinary, and not some special legal, meaning, and because they argue the linguistic point at length, we too have looked into the matter in more than usual depth.

Id. at 127–28.

97. *Id.* at 140.

98. *Id.*

99. *Id.*

100. As part of her argument, Justice Ginsburg cites one legal dictionary, several newspapers, several versions of the Bible, a number of quips from Bartlett’s, and a series of movie scripts to show that the verb “carry” can be used in many different ways from the way the Court uses it. *See id.* at 143.

III.

USING LINGUISTIC METHOD TO INTERPRET THE PHRASE
“USES OR CARRIES A FIREARM”

The individual words that make up the phrase “uses or carries a firearm” are extremely common. Thus, it seems almost incomprehensible that anyone would think it necessary to consult a dictionary to find meanings for them. The majorities in both *Smith* and *Muscarello* fully embrace Dictionary Method, using Verification arguments simply to provide a check that the verbs “use” and “carry” can have the meanings that they assign them. That approach is unsatisfying to the dissenting Justices, who have strong intuitions that there is something special about the phrases “uses a firearm” and “carries a firearm” that makes it inappropriate to focus solely on the verbs. But the dissenters’ analysis goes only halfway toward what I believe to be the correct approach—consideration of the entire statutory phrase “uses or carries a firearm.” The entire phrase is linguistically rich not only because of the complement “firearm” itself but also because of the disjunctive verb phrase that contains it. Unfortunately, the “urge to define” causes all of the Justices to focus on the meanings of individual words; Dictionary Method frames the debate.

In addition to spawning three U.S. Supreme Court opinions and numerous opinions in other courts,¹⁰¹ this little phrase in § 924(c)(1) has provoked much legal commentary.¹⁰² Most commentators follow the Court’s lead and focus either on the word “use” in the phrase “uses a firearm” or on the word “carry” in the phrase “carries a firearm.” The commentators generally use these cases as an opportunity to point out the inconsistencies in dictionary use by the Justices or to disagree

101. The federal courts have discussed 18 U.S.C. § 924(c)(1) in at least 1,932 cases since the *Smith* case was decided in June of 1993.

102. See, e.g., Clark D. Cunningham & Charles J. Fillmore, *Using Common Sense: A Linguistic Perspective on Judicial Interpretation of “Use a Firearm,”* 73 WASH. U. L.Q. 1159 (1995). In this post-*Smith* but pre-*Bailey* article, the authors focus on semantics of the verb “use.” Their choice to focus on “use” was based on the Court’s determination in both *Smith* and *Bailey* that the “use” prong of the phrase was at issue in the cases. This article contains some valuable insights about the semantics of “use.” See also, e.g., Aprill, *supra* note 18; A. Raymond Randolph, *Dictionaries, Plain Meaning, and Context in Statutory Interpretation*, 17 HARV. J. L. & PUB. POL’Y 71 (1994); Lawrence M. Solan, *Learning Our Limits: The Decline of Textualism in Statutory Cases*, 1997 WIS. L. REV. 235; Lawrence Solan, *When Judges Use the Dictionary*, 68 AM. SPEECH 50 (1993); Thumma & Kirchmeier, *supra* note 36; *Leading Cases*, *supra* note 94; *Hard Cases*, *supra* note 19; *Looking It Up*, *supra* note 36; James L. Weis, Comment, *Jurisprudence by Webster’s: The Role of the Dictionary in Legal Thought*, 39 MERCER L. REV. 961 (1988).

with the Court's legal analysis from a criminal law perspective.¹⁰³ While both points are surely worth making, there is another key point: to understand fully a sentence, one must focus on the syntactic relationships among its constituents, not simply on the meaning of each discrete word or lexical item.¹⁰⁴

By giving in to the urge to define, the Court and the commentators skipped an essential step in the statutory analysis: they did not parse the sentence first. The intuitions expressed by the dissents in *Smith* and *Muscarrello* hint that, as was true in our "chicken" sentences, there might be more going on in the phrase "uses or carries a firearm" than a dictionary can explain. In this section, I will offer an alternative analysis of the statutory text that begins with a full syntactic analysis of the phrase "uses or carries a firearm." My goal here is not to quibble with the Court about its legal analysis; rather, my goal is to reveal the intuitions that led the Court to have the debate about this phrase in the first place. I intend this analysis to demonstrate the

103. See, e.g., Thomas A. Clare, *Smith v. United States and the Modern Interpretation of 18 U.S.C. § 924(c): A Proposal to Amend the Federal Armed Offender Statute*, 69 NOTRE DAME L. REV. 815 (1994); Alan M. Gilbert, *Supreme Court Review: Defining "Use" of a Firearm*, 87 J. CRIM. L. & CRIMINOLOGY 842 (1997); Shane F. Hampton, Case Note, *Shooting from the Hip: The Supreme Court Interprets the Meaning of Carries a Firearm: Muscarello v. United States*, 524 U.S. 125 (1998), 25 S. ILL. U. L.J. 631 (2001).

104. Sometimes strings of words form a lexical unit. Dictionaries often contain entries for lexicalized phrases right along with their definitions of individual words. All entries in dictionaries can be referred to as "lexical items." In fact, lexicalized phrases often behave like words syntactically in sentences. Consider the following examples (an "*" indicates an unacceptable sentence on the reading intended):

1. (a) John kicked the ball, and Mary kicked one too.
* (b) John kicked the bucket, and Mary kicked one too.
2. (a) John kicked the ball, and so did Mary.
(b) John kicked the bucket, and so did Mary.

Sentence 1(b) is unacceptable because the entire phrase "kicked the bucket" is a lexical unit, and its meaning is corrupted when one of its constituents ("the bucket") is not present. Notice, too, that the passive form in Sentence 2 seems unacceptable.

3. *The bucket was kicked by John. (meaning that he died)

Wallace Chafe explains an interesting phenomenon concerning the semantics of these idiomatic expressions, which he calls "literalization." Chafe explains that "[i]t is often possible to observe a kind of semantic leakage in the literalization of the idiom. If I say, for example, *Sam kicked the bucket*, both my hearer and I may have some vague image of him striking a pail with his foot, even though my intention was to say that he died and even though my hearer understands perfectly well what my intention was." WALLACE L. CHAFE, *MEANING AND THE STRUCTURE OF LANGUAGE* 70 (1970). Although I would not contend that "uses a gun" or "carries a gun" is an idiom in the same way that "kick the bucket" is, each phrase does have a very specific meaning, especially in the context of a criminal sentencing statute. Although the general definitions of each of the words can come through (just like Sam's foot on the pail), the special, and almost idiomatic, meaning seems stronger.

need for more rigorous and informed linguistic interpretation of statutory sentences.

A. *Using Linguistic Method to Reveal Linguistic Intuitions about Disjunctive Verb Phrases*

Although it is possible, and quite easy, to look up the definitions of each word in the phrase “uses or carries a firearm” in a dictionary, it is not possible to look up the meaning of the entire phrase “uses or carries a firearm” in any standard reference guide. No dictionary lists the possible meanings of verbs and all of their possible disjuncts in the context of every possible complement.

Fortunately, however, all speakers of English have something better: their linguistic intuitions based on their internalized knowledge about the rules of English grammar. Unlike a dictionary, these tools of sentence interpretation are constant and produce identical judgments from all speakers of English. Using Linguistic Method to unmask linguistic intuitions about disjunctive verb phrases can help to shed some light on the meaning of the statutory phrase “uses or carries a firearm.”

Consider Sentences 17 and 18. Under certain conditions, Sentence 17 can be “reduced” to Sentence 18.

17. John fried the rabbit or John roasted the rabbit.

18. John fried or roasted the rabbit.

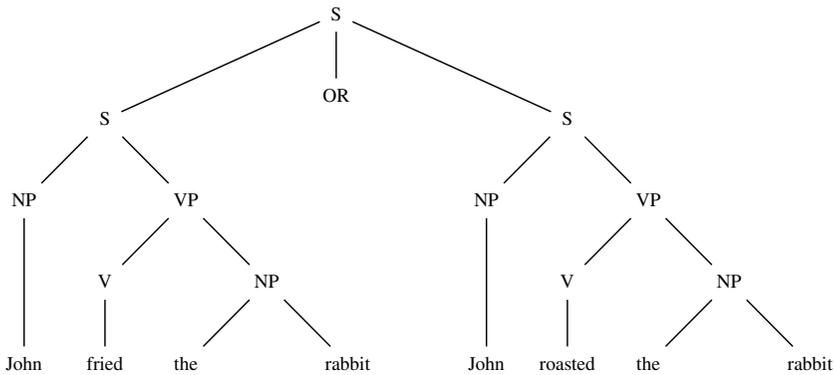
This syntactic process, often called “conjunction reduction” or, in this case, “predicate reduction,” can occur when two syntactic heads of one phrase type are followed by syntactically similar complements.¹⁰⁵ In Sentence 17, the verbs “fried” and “roasted” are both

105. I am using the terms “conjunction reduction” and “predicate reduction” here as names for the intuitions that speakers have about certain related sentences. I do not intend to endorse any particular theoretical treatment of these sentences; I intend only to point out what the intuitions are and how they might affect the Court’s interpretation of the phrase “uses or carries a firearm.” For a full discussion of conjunction reduction in sentences involving “and,” see BARRY SCHEIN, *CONJUNCTION REDUCTION REDUX* (forthcoming 2003). See also, e.g., Alan Munn, *Topics in the Syntax and Semantics of Coordinate Structures* (1993) (unpublished Ph.D. dissertation, University of Maryland) (on file with *The New York University Journal of Legislation and Public Policy*).

The first step in any linguistic analysis is descriptive: i.e., to describe the intuition observed. I contend that all speakers of English can be easily trained to isolate these intuitions by using Linguistic Method. The next (and more demanding) step is explanatory: i.e., to explain the described intuitions with the theoretical treatment that can most efficiently and elegantly account for them. For a discussion about the tensions between descriptive adequacy and explanatory adequacy in current minimalist theory, see HORNSTEIN, *supra* note 19. Hornstein argues that modern linguistic theory has been driven by the need to explain the facts of language acquisition. By focusing

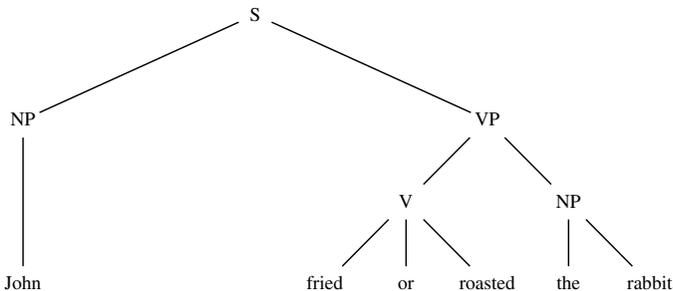
heads of independent verb phrases, the structure of which appears in 19 below.

TREE 19.



In Sentence 18, the two verbal heads of these verb phrases are reduced to form the structure represented in 20.

TREE 20.



This operation of phrasal reduction is part of the grammar of English. All speakers of English are unconsciously aware that heads of the same syntactic category can sometimes be disjoined to form complex heads of the same category. But we are also aware that this can happen only under certain conditions. In Sentence 18, phrasal reduction works because the two verbs—"fried" and "roasted"—denote the same type of relationship between the subject "John" and the direct object "rabbit." By contrast, the sentence "John fried or outran the rabbit" would not come naturally to an English speaker's lips. Using

on explaining the facts of acquisition, Hornstein argues, the theory has lost sight of general evaluation criteria for scientific theories. The discussion is well beyond the scope of this paper, but Hornstein's view has exciting possibilities for the future of linguistic inquiry.

Linguistic Method to compare different pairs of verbs reveals this intuition.

The same sort of phrasal reduction also occurs with noun phrases, adjective phrases, and prepositional phrases, as shown in Sentences 21, 22, and 23, respectively. As a child learns English, he needs to learn only that English permits phrasal reduction, and he can easily form the full array of sentences in 21 through 23.¹⁰⁶

- 21.(a) John went to France or Mary went to France.
- (b) John or Mary went to France.
- 22.(a) John bought a blue truck or John bought a red truck.
- (b) John bought a blue or red truck.
- 23.(a) John looks fine in his clothes; John looks fine out of his clothes.
- (b) John looks fine in or out of his clothes.

Reduced predicates, such as that in Sentence 18, constitute a syntactic unit that is subject to other syntactic operations. For example, English grammar also permits an operation that is sometimes referred to as “gapping.”¹⁰⁷ Notice that Sentence 24(b) means the same as Sentence 24(a).

- 24.(a) John fried or roasted a rabbit, and Mary fried or roasted a rabbit.
- (b) John fried or roasted a rabbit, and Mary did too.

The predicate “fried or roasted a rabbit” is treated as a unit in the “gapped” version in 24(b) and the marker “did” appears instead. Gapping is equally natural with the statutory phrase “uses or carries a gun,” as shown in Sentences 25(a) and 25(b):

- 25.(a) John uses or carries a gun, and Mary uses or carries a gun.
- (b) John uses or carries a gun, and so does Mary.

Indeed, gapping is appropriate even where the direct objects are not identical, as shown in Sentences 26(a) and 26(b). Other types of gapping occur in English as well.

- 26.(a) John uses or carries a pistol, and Mary uses or carries a rifle.
- (b) John uses or carries a pistol, and Mary a rifle.

106. This knowledge is a fundamental part of all mature speakers’ grammar of English. As such, the rule is unconsciously and consistently applied by all speakers, regardless of educational background or access to dictionaries. For a discussion of the role that phrase structure rules play in our “wired-in” grammar of English, see *THE LANGUAGE INSTINCT*, *supra* note 19, at 89–95.

107. Lightfoot uses these gapping constructions as further evidence that speakers’ internalized grammars are biologically based and not the product of learning. See *LIGHTFOOT*, *supra* note 20, at 18–21.

Although gapping is a fairly common syntactic operation, there are semantic constraints on its acceptability to speakers. In order for a gapping of this type to “sound right”—that is, in order for it to conform to our linguistic intuitions about gapped verb phrases—the gapped verb must stand in the same relationship to the complements. For example, notice that in Sentences 26(a) and 26(b), John and Mary are both “using or carrying” similar items for similar purposes, and the resultant gapping is felicitous. Stated differently, the phrase “uses or carries” shares a specialized meaning with “pistol” and “rifle” so the gapping works. Notice, however, that Sentence 27 is much less natural.

27. John uses or carries a gun, and Mary a box.

Although it is clear what the speaker intends by Sentence 26(b), it is not clear at all what he intends by Sentence 27. In hearing a gapped construction, speakers infer that the relationships between the verbs and their nominal complements are intended to be parallel. Sentence 27 seems odd because both verbs “use” and “carry” have a specialized meaning with the noun “gun” but not with the noun “box.”¹⁰⁸ Although one may either “use” or “carry” a box, the reduced phrase is extremely unnatural. One is left asking “use or carry a box *for what?*” Because “use or carry a gun” does not require a further “purpose” phrase whereas “use or carry a box” does, the gapping in Sentence 27 fails.

As with gapping, semantic constraints also limit the syntactic operation of phrasal reduction. For example, we only reduce independent verb phrases to disjunctive verb phrases when their meanings are somehow related.

Consider Sentences 17 and 18, repeated here as Sentences 28(a) and 28(b):

28.(a) John fried the rabbit or John roasted the rabbit.

(b) John fried or roasted the rabbit.

Here, the two verb phrases contain the same complement (the noun phrase “the rabbit”). Because the two verb phrases refer to alternative ways John could have prepared the rabbit in a culinary sense, it seems natural to create a disjunctive verb phrase in which both verbs share the complement. Conversely, speakers infer this parallelism—that is, a specialized relationship between the disjunct and the direct

108. It is interesting to note that all of the Justices in the majority and dissent in *Smith*, *Bailey*, and *Muscarello* agreed that this sense is possible; they simply argued that it is not required; however, it seems to be.

object—whenever they parse a reduced predicate construction. Next, consider Sentences 29(a) and 29(b):

- 29.(a) John sprayed the walls, or John rolled the walls.
 (b) John sprayed or rolled the walls.

Like the verbs “use” and “carry,” the verbs “spray” and “roll” are very common words that have many meanings, and they can be used in countless different contexts. When paired with the noun phrase complement “the walls,” however, we only understand them to be used in their specialized meanings of applying paint. The word “paint” appears nowhere in either sentence, but any speaker of English would understand what Sentence 29(b) means. Notice that Sentence 30 seems much less natural.

30. John sprayed or detested the walls.¹⁰⁹

Similarly, consider Sentences in 30(a) and 30(b). Even though the disjunctive construction in 31(a) is a *syntactic* candidate for reduction, speakers would not choose to reduce sentence 31(a) to 31(b) because the verb and complement do not bear the same relationship to each other.

- 31.(a) John used the bathroom, or John painted the bathroom.
 (b) John used or painted the bathroom.

Sentence 32(b) has the same oddness.

- 32.(a) John recognized a tune, or John carried a tune.
 (b) John recognized or carried a tune.

By using Linguistic Method to examine these syntactic constructions, we can infer two things about our linguistic intuitions concerning predicate reduction. First, all phrasal categories are subject to the syntactic operation of reduction. Second, because of our linguistic intuitions about reduced phrases, we expect that the phrasal heads will bear a similar relationship to the complement that they share.

Now consider the statutory sentence from § 924(c)(1), reproduced as 33, and the sentence pair in 34(a) and 34(b).

33. [A]ny person who, during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm . . . shall . . . be sentenced . . .
 34.(a) John uses a firearm, or John carries a firearm.
 (b) John uses or carries a firearm.

109. One could set up a context where a sentence like Sentence 30 might become more natural. If you knew that John were to be given one of two tasks to do, either to spray the walls or to measure the walls, perhaps as part of some redecorating project, you might utter the sentence “John sprayed or measured the walls.” Notice that you would thereby be creating a semantic link between the two verb phrases—each one would be something that John was known to be doing to the walls.

First, we notice that the phrase “uses or carries a firearm” has the same syntactic structure as the reduced verb phrases with disjunctive heads that we have seen in the previous examples. Also, as in those examples, both “use” and “carry” have specialized and related meanings with their shared noun phrase complement, “a firearm.” Because of speakers’ linguistic intuitions about disjunctive predicates, they are likely to intend the specialized meanings of “use a firearm” and “carry a firearm” when forming the disjunctive verb phrase “uses or carries a firearm.” Given our linguistic intuitions about disjunctive verb phrases with shared complements that are subject to specialized meanings, it is likely that speakers of English would interpret Section 924(c)(1) to have these specialized meanings. As with our ambiguous “chicken” sentences, which can easily be disambiguated by semantic context, the statute’s semantic context reinforces the specialized reading of “uses or carries a firearm.”

B. *Applying Linguistic Method to § 924(c)(1)*

I have suggested that the Court’s reliance on the “old technology” tool of Dictionary Method prevented it from recognizing the most natural parse of the statutory phrase “uses or carries a firearm.” If the Court were to have had Linguistic Method as one of its tools of statutory interpretation, it could have pursued its initial parsing task to a more linguistically satisfying conclusion.¹¹⁰

The majorities in *Smith* and *Muscarello*, and a unanimous Court in *Bailey*, applied a Verification-type Dictionary Method analysis to

110. Lawyers, like judges, have not taken proper advantage of the recent progress in linguistic theory. The examples discussed in this paper reveal that Linguistic Method can illuminate for lawyers (and for law students) the linguistic intuitions that guide their understanding of statutory sentences. It is important that all lawyers understand the difference between “grammatical rules” and the internalized set of rules that linguists call the “grammar of English.” One need not be a linguist to recognize linguistic phenomena that reflect speakers’ internalized grammars. In fact, the examples in this paper can help students to see that they, and all speakers of English, share identical judgments about linguistic phenomena. Revealing these internalized intuitions to lawyers invariably raises their awareness about language and heightens their interest in careful textual interpretation. The law students of today, of course, are the appellate brief writers of the future. Teaching Linguistic Method in law schools will not only raise students’ linguistic awareness but also pique their interest in using Linguistic Method as a way of approaching indeterminate statutory language. As students (and lawyers) learn more about their linguistic intuitions and how to test them, they will be able to create more accurate and persuasive linguistic arguments to support their legal arguments about statutory sentences. By offering elective courses teaching Linguistic Method, and by demonstrating to students the inadequacies of Verification arguments, law schools have an opportunity to move linguistic arguments beyond the middle-ages and to shape linguistic debate in the courts.

the phrase “uses or carries a firearm.” Because the Court began its statutory analysis with Dictionary Method, it forced itself to reduce its focus to a word-level inquiry. By defining individual words, the Justices ignored their own strong intuitions about the meaning of the statutory phrase. In turning to a dictionary to provide “authority” for its analysis, the Court missed significant syntactic cues that underlay the strong intuitions that speakers have about these phrases. Dictionary Method prevented the Court from providing a full parse of the statutory sentence. It is true that the more general readings chosen by the majorities in *Smith* and *Muscarello* are equally plausible as a matter of word-by-word definition. Nonetheless, the examples discussed in this section show that speakers are likely to prefer the readings chosen by the dissents. Parsing the statutory phrase as a whole, and recognizing the linguistic intuitions that attend that parsing, reveals that the specialized reading of the phrase is the more natural.

The Court in *Smith*, for example, would have approached the statutory language differently if it had had Linguistic Method in its interpretive tool bag. Because all of the words in the phrase “uses or carries a firearm” are so common, the Court would have quickly ruled out Dictionary Method. A linguistically aware Court would reserve Dictionary Method for those infrequent cases where the “language problem” to be addressed was one of definition.

Having decided to explore their linguistic intuitions through Linguistic Method, the Justices would then construct analogous examples that would reveal the syntactic complexity of the phrase. These examples, such as those given here in Sentences 17 through 34, would support a linguistic conclusion that one “uses a firearm” within the meaning of the full phrase “uses or carries a firearm” when he uses it as a weapon. Linguistic Method would, therefore, provide an initial parse of the sentence, which the Court could then use as an objective starting point for its legal analysis.

Based on its principled parse of the statutory sentence, the legal question in *Smith* would be whether one who trades a gun for drugs is “using or carrying a firearm as a weapon.” It is possible that the Court could find that having a gun in plain sight during a drug deal may qualify as “using a gun as a weapon.” Dissenting justices could then disagree with that legal interpretation. Inappropriate Dictionary Method arguments would be obviated and the debate would properly focus on the legal issue.

The same linguistic analysis would apply equally in both *Bailey* and *Muscarello*. The *Bailey* Court would not need to revisit the linguistic analysis provided by the *Smith* Court, and it would be free to

decide the legal issue of whether the facts before it constituted “using a firearm” within the meaning of the phrase “uses or carries a firearm.” In *Muscarello*, the Court would focus on whether having guns in the trunk of a car or in a glovebox constituted “carrying firearms” within the meaning that the *Smith* Court established as the meaning of the full phrase “uses or carries a firearm as a weapon.” Again, the Court would avoid distracting Dictionary Method arguments, and the debate could focus on the legal analysis.

Linguistic Method would settle the linguistic issue in an appropriate manner for all three cases and allow the Court to focus the debate on legal issues. The advantage of using Linguistic Method is that it provides a satisfying parsing of the statutory language. The linguistic issues in the cases can recede to their appropriate place as an important initial inquiry.

IV.

CONCLUSION

Although dictionaries are useful for divining the derivations and denotations of individual lexical items, dictionaries are not so useful when interpreting complex phrases in legal texts. Lawyers and judges resort to dictionaries out of habit and ignorance. By looking carefully at the U.S. Supreme Court’s uncritical use of Dictionary Method, it becomes clear that the habitual resort to the dictionary is far from harmless. As the legal profession becomes more aware of the practical benefits of using Linguistic Method when interpreting legal texts, statutory interpretation can become more consistent with linguistic intuitions and, consequently, more likely to create stable and informed precedent.