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Briefly: Definitive definitions can be difficult to determine

By: Minnesota Lawyer, Eric Magnuson, Eric Boettcher

Lawyers live in a world of words. Statutes, ordinances, case precedent, motions, and trial briefs all require the lawyer to be facile and erudite when it comes to using the English language.

But more than that, lawyers want their writing to show not only what they know, but that the words they use carry the force of prior authoritative approval. That's why we cite case precedent, and that's how the common law operates.

In the statutory realm, we turn to the canons of legislative construction set forth in Chapter 645. Minn. Stat. § 645.08 declares that in construing statutes, "words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition."

That might seem clear enough on its face, but the legislature felt it had to go further, and provide specific definitions for a whole bunch of terms that one might think were obvious on their face. See Minn. Stat. § 645.44 (defining, among other things, "Appellate courts" to mean the Minnesota appellate courts, "Chair" to mean "chairman, chairwoman, and chairperson," and "County, town, city" to mean "the particular county, town or city appropriate to the matter"). Lawyers like certainty, even at the price of redundancy.

So it should be no surprise that when lawyers are arguing about what a particular word or combination of words means, they want to cite authority. After all, it's not good enough if you or we say it, but it is good enough if we can cite to someone else who says it.

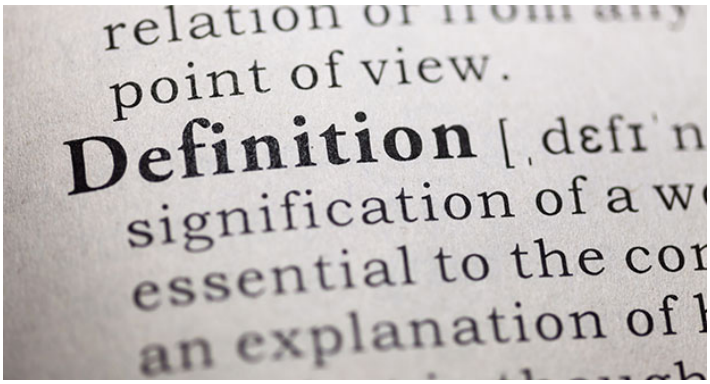
One of the greatest examples of this, albeit in parody, is the famous University of Pennsylvania Law Review article The Common Law Origins of the Infield Fly Rule, 123 University of Pennsylvania Law Review 1474 (1975). That short article has footnotes for nearly every term used. Most notably, the very first word in the article, "The," in true law review form, has a footnote after it with a citation to 11 Oxford English Dictionary 257–60 (1961). That's scholarship.

We have previously written about grammatical matters that are seemingly arcane, but can be case dispositive, like the use of an Oxford comma. See Ryan Marth & Steve Safranski, Appeals Courts: Reports of the Comma's Demise Are Greatly Exaggerated, Eighth Circuit Bar Association Newsletter Summer 2017. When it comes to words, we need only look at a few decisions from the Minnesota Supreme Court to discover the frequent (and at times perhaps excessive) use of a dictionary to put a spin on words that would, to a layperson, seem to need no definition.

Although a wide range of dictionaries make appearances in the decisions of the Minnesota Supreme Court, a few stand out as favorites of the court. The American Heritage Dictionary of the English Language is popular, and Merriam-Webster's Collegiate Dictionary and the New Oxford American Dictionary appear frequently. For legal definitions, Black's Law Dictionary predominates.

Although the court may invoke a dictionary such as these to inject an air of certitude into its decision, frequently not all are convinced. Where the court's opinions employ dictionaries, there is often a dissenting opinion that also references dictionaries and finds fault with the majority's use or interpretation of dictionary definitions with respect to the words at issue. See, e.g., Cox v. Mid-Minn. Mut. Ins. Co., 909 N.W.2d 540, 548 & nn.1-2 (Minn. 2018) (Anderson, J., dissenting) (contending that majority misinterpreted definitions of "delivered" and "delivery" to require personal delivery); State v. Nelson, 842 N.W.2d 433, 449-50 (Minn. 2014) (Dietzen, J., dissenting) (considering statutory phrase "care and support" and arguing that majority relied on uncommon definition of the word "care" to "artificially create separate obligations to provide 'care' and to provide 'support'").

Likewise, dissents may lean heavily on dictionary definitions in cases where the corresponding majority opinions elect to not bring dictionaries into the mix at all. See State v. Campbell, 814 N.W.2d 1 (Minn. 2012) (justices examining whether the words "another offense" used in Minnesota Sentencing Guidelines refer only to felony offenses or to all criminal offenses); Bd. of Regents



of the Univ. of Minn. v. Royal Ins. Co. of Am., 517 N.W.2d 888 (Minn. 1994) (justices disagreeing whether air inside a building is "atmosphere" for purposes of an insurance policy exclusion).

Unsurprisingly, parties also frequently fail to see eye to eye on the meaning of a pivotal word—it is not unusual to find parties going to different dictionaries to find different definitions for the same term, each asserting that their authority is controlling on the issue. See State v. French, 460 N.W.2d 2, 4 n.1, 13 (Minn. 1990) (justices disagreeing about the meaning of the words "cohabit" and "cohabitation," with majority referring to definition in The American Heritage Dictionary of the English Language (1980) (New College Dictionary) and dissent referring to definitions in Webster's New International Dictionary (2d ed.) and Webster's New Collegiate Dictionary (1976)). Parties and justices can also disagree whether a particular word is a "technical" word that makes a definition from a specialized dictionary like Black's Law Dictionary superior to those found in general English language dictionaries. See Cocchiarella v. Driggs, 884 N.W.2d 621, 629-31 (Minn. 2016) (Anderson, J., dissenting) (concluding that the word "occupying" is not a technical word and refers "to actual, physical possession or residence, not merely a legal right to possession").

Even if there is general agreement regarding the dictionaries used, there is still room to argue that a particular interpretation improperly relies on lower-listed entries for a word. See Shire v. Rosemount, Inc., 875 N.W.2d 289, 297-98 (Minn. 2016) (Anderson, J., dissenting) (contending that majority, in interpreting the word "voluntary," erred by referencing lower-listed entries that focused on the absence of constraint instead of first-listed entries that focused on free will).

The permutations are numerous. Dictionaries can be pliable tools to suit an advocate's purposes, and like all tools, they are often only as good as the manner in which they are used. As Dr. Johnson once observed, "Dictionaries are like watches, the worst is better than none, and the best cannot be expected to go quite true." Letter from Samuel Johnson to Francesco Sastres (Aug. 21, 1784), in 4 The Letters of Samuel Johnson: 1782–1784, 379 (Bruce Redford ed., 1994).

So what does all of this mean to the average lawyer and average judge? Like anything else in the law, where there is room for argument, lawyers will argue. But they also try to argue with some authority, and not with the ipse dixit of their own logic. That's how we were trained.

In the end, dictionaries probably are a decent source of authority, and it is probably rare that one dictionary gives a fundamentally different definition than another. But if it helps the client, an enterprising lawyer will find that different definition. Because in the end, it's not good enough to tell the court, "Because I say so." Instead, we all want to be able to say, "See, somebody else said so, too."

Eric J. Magnuson is a partner at Robins Kaplan LLP and served as Chief Justice of the Minnesota Supreme Court from 2008 to 2010. Eric Boettcher is an associate at Robins Kaplan LLP practicing in the areas of complex civil litigation and appellate litigation.