Beyond *Black’s* and *Webster’s*: The Persuasive Value of Thesauri in Legal Research and Writing

By Brian Craig

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I. Introduction

The U.S. Supreme Court has increasingly relied on dictionaries² and numerous articles have discussed the persuasive value of dictionaries to construe statutes, contracts, and patent claims.³ Despite this extensive theoretical literature, a dearth of scholarly literature remains on the efficacy of thesauri in the legal framework. This article discusses the value of thesauri, in conjunction with dictionaries, as persuasive secondary sources to ascertain the plain and ordinary meaning of words and phrases. Based on empirical research, this article examines the frequency of opinions that cite to thesauri from 1990 to 2006. The article also provides a review of opinions where courts found thesauri persuasive and unpersuasive in construing statutes, regulations, and contracts. Finally, the article discusses the benefits of using thesauri in legal research.

Peter Mark Roget created and published the first modern day thesaurus in 1852 with the *Thesaurus of English Words and Phrases*.⁴ The word *thesaurus* comes from the word *treasure* in Latin. *The Merriam-Webster Dictionary* defines a thesaurus as “a book of words or of information about a particular field or set of concepts; especially: a book of words and their synonyms.”⁵ Many modern day thesauri bear Peter Roget’s name, including *Roget’s International Thesaurus*, *Roget’s II: The New Thesaurus*, *Roget’s New Millennium Thesaurus*, and *Roget’s 21st Century Thesaurus*. Other popular general thesauri include *Webster’s Collegiate Thesaurus*, *Webster’s New World Thesaurus*, *Webster’s New Dictionary of Synonyms*, the *Random House Thesaurus*, and *Rodale’s The Synonym Finder*. *Burton’s Legal Thesaurus* and *West’s® Legal Thesaurus/Dictionary* are the two leading legal thesauri.⁶

Since the English language has a wealth of synonyms, a thesaurus can help to identify synonyms for certain terms. One source identified 223 different terms for the word *marijuana* and noted that Eskimos reputedly have 22 different words for *snow*.⁷

Judges in the American legal system have cited to thesauri in judicial opinions for many years. The earliest known reference to *Roget’s Thesaurus* in a

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¹ The views expressed in this article do not necessarily represent the views of Thomson-West or any of its employees.

² Note, *Looking It Up: Dictionaries and Statutory Interpretation*, 107 Harv. L. Rev. 1437, 1440 (1994). For example, the 1992 Term had a fourteenfold increase in citations to dictionary definitions over the 1981 Term. Id. at 1438.


⁶ Ballentine’s Legal Dictionary and Thesaurus and Ballentine’s Thesaurus for Legal Research and Writing are the only other known legal thesauri. Only one unreported case has cited Ballentine’s Legal Dictionary and Thesaurus. See Smith v. City of Hartford, 2000 WL 1058877, at *15 (Conn. Super. Ct. July 14, 2000). No reported opinions have cited Ballentine’s Thesaurus for Legal Research and Writing.

Since words are the tools of the lawyer’s craft, legal writers should employ all resources, including thesauri, to find the meaning of terms in the English language.

II. Methodology and Results

A. Methodology

The empirical study included in this article consists of comprehensive data derived from U.S. federal and state court reported opinions from 1990 through 2006 that explicitly cite to thesauri. To determine the frequency of judicial opinions that cite thesauri, searches were conducted in the Westlaw All Federal and State Cases database (ALLCASES). Prior empirical research has previously been conducted using Westlaw. Similar searches were also conducted on LexisNexis to confirm the results. Specific references to thesauri were identified to determine the number of cases that cite to each thesaurus in the study corresponding to calendar years from 1990 to 2006.

Thesauri with fewer than three references were excluded from the study. All unpublished cases were also excluded from the analysis. Furthermore, the study excludes those opinions that merely mention the word thesaurus or an unspecified version of Roget’s Thesaurus without reference to one of the specific thesauri in the study. The results in Table 1 do not distinguish between the different editions of a thesaurus with the same name. For example, the column for Roget’s International Thesaurus includes references to the third, fourth, and fifth editions. Likewise, references to Burton’s Legal Thesaurus also include citations to any edition, including the 1980, 1992, and 1998 editions. Any references to the Merriam-Webster Collegiate Thesaurus are included with citations to Webster’s Collegiate Thesaurus. In Table 2, results show the frequency of citations to legal thesauri, including specific citations for all three editions of Burton’s Legal Thesaurus. Where a single opinion cites to the same thesaurus more than once, only one reference is included. The references include instances where courts found thesauri both persuasive and unpersuasive. Further analysis of specific cases where courts found thesauri persuasive and unpersuasive is provided below. The Westlaw queries, conducted on August 31, 2007, are on file with the author.

B. Results of Empirical Study

The results of the empirical study demonstrate that courts have increasingly relied on thesauri since 1990. Other studies have noted the increased reliance on dictionaries by the U.S. Supreme Court. It seems a logical extension that courts have also increasingly relied on thesauri since dictionaries and thesauri are both common reference books for the English

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10 See Thumma & Kirchmeier, supra note 3.
The U.S. Supreme Court has explicitly cited to thesauri to determine the meaning of specific words in three separate opinions.

The empirical data demonstrates that courts have increasingly relied on legal and nonlegal thesauri as persuasive secondary sources. Although courts have cited Burton’s Legal Thesaurus and Roget’s International Thesaurus most frequently over the past 15 years, legal writers should also consider the benefits of consulting other thesauri including Roget’s II: The New Thesaurus, Roget’s New Millennium Thesaurus, Roget’s 21st Century Thesaurus, Webster’s Collegiate Thesaurus, Webster’s New World Thesaurus, Webster’s New Dictionary of Synonyms, Merriam-Webster’s Online Thesaurus, Random House Thesaurus, The Synonym Finder, and West’s Legal Thesaurus/Dictionary.

III. Treatment by the U.S. Supreme Court
As the highest court in the land, the U.S. Supreme Court serves as standard-bearer of American jurisprudence and lower courts respond to guidance and trends from the U.S. Supreme Court. The U.S. Supreme Court has explicitly cited to thesauri to determine the meaning of specific words in three separate opinions. In McLaughlin v. Richland Shoe Co., Justice Stevens cited to Roget’s International Thesaurus to ascertain the meaning of the word willful. Stevens wrote that “the word ‘willful’ is considered synonymous with such words as ‘voluntary,’ ‘deliberate,’ and ‘intentional.’” In McLaughlin, Justices Rehnquist, White, O’Connor, Scalia, and Kennedy joined Justice Stevens in delivering the opinion of the court.

Besides Justice Stevens, Justice Scalia is the only other justice to explicitly cite to a thesaurus in a U.S. Supreme Court opinion. Other commentators have previously observed that

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11 See Michael E. Solimine, Judicial Stratification and the Reputations of the United States Courts of Appeals, 32 Fla. St. U. L. Rev. 1331, 1332 n.7 (2005) (noting that “[v]arious types of citation analysis have been used for decades in the legal community to gauge the impact of books, law review articles, court decisions, or judges, among other things”).


14 Id.

15 Based on a Westlaw search for the term thesaurus in the All U.S. Supreme Court Cases database (SCT) on Aug. 31, 2007.
Justice Scalia frequently cites to dictionaries and Roget’s Thesaurus in textual legal analysis. A search for the term thesaurus in opinions written by Justice Scalia yields two cases. In one opinion in which he concurred in part and dissented in part, Justice Scalia cited to Roget’s International Thesaurus to find the plain and ordinary meaning of the adverb regularly, writing that it “can mean ‘constantly, continually, steadily, sustainedly.’” In another dissenting opinion, Scalia cited to Roget’s Thesaurus of Synonyms and Antonyms to construe the term compile. While the U.S. Supreme Court has not extensively relied on thesauri, a review of opinions indicates that some justices, particularly Justices Stevens and Scalia, will look to thesauri as persuasive secondary sources in certain situations.

IV. Selected Cases Where Courts Found Thesauri Persuasive

When a state legislature fails to define a statutory term, courts often apply the ordinary meaning of the term as found in the dictionary. Although courts routinely look to dictionaries such as The Merriam-Webster Dictionary or Black’s Law Dictionary, the question remains open on whether thesauri can serve as helpful secondary sources when trying to determine the plain and ordinary meaning of words in constitutions, statutes, regulations, and contracts.

A. Construction of Statutes and Constitutional Provisions

In construing statutory provisions, courts may consult dictionaries in use at the time the statute was enacted. A thesaurus can also serve as an appropriate source to ascertain the ordinary, plain, and usual meaning of undefined terms.

A number of state courts have relied on Roget’s International Thesaurus as an aid in finding the plain and ordinary meaning of terms in statutory construction. The Iowa Supreme Court looked to Roget’s International Thesaurus along with dictionaries to find the plain and ordinary meaning of the terms policy-making duties, which the Iowa Legislature failed to define in the Iowa open meetings law. The Louisiana Supreme Court also relied on Roget’s International Thesaurus to conclude that the words imminent and impending in a statute are synonymous. Meanwhile, the Washington Supreme Court also cited to Roget’s International Thesaurus to conclude that the words arising from are synonymous with the words resulting from. Roget’s International Thesaurus provides helpful guidance to determine the plain meaning of state statutes by the court of last resort in many states.

Federal courts have also consulted Roget’s International Thesaurus, especially to determine the meaning of the word willful or willfulness. Following the U.S. Supreme Court’s reference to Roget’s International Thesaurus to arrive at the meaning of the word willfulness in McLaughlin v. Richland Shoe Co., the U.S. Courts of Appeals for the Second, Fourth, and Fifth Circuits have also cited Roget’s International Thesaurus to find the common usage of the word willful or willfulness. After the U.S. Supreme Court consults a specific thesaurus to find the meaning of a particular term, other courts


17 Based on a Westlaw search for jui(scalia) & thesaurus in the All U.S. Supreme Court Cases database (SCT) on Aug. 31, 2007.


21 Garza v. Delta Tau Delta Fraternity Nat., 948 So. 2d 84, 93 (La. 2006).


Courts have utilized other thesauri, including the Random House Thesaurus and Roget’s New Millennium Thesaurus, as aids in statutory construction.

Federal courts have also relied on the Merriam-Webster Online Thesaurus to find the plain meaning of words found in statutes where Congress has failed to provide express definitions. Two bankruptcy court judges cited to the Merriam-Webster Online Thesaurus to find the meaning of the term *subject to* under 11 U.S.C. § 521. The Fifth Circuit also cited to the Merriam-Webster Online Thesaurus to construe the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).

Relying on the online thesaurus, the Fifth Circuit recognized that the terms *plausible* and *credible* do not have identical definitions.

Courts have utilized other thesauri, including the *Random House Thesaurus* and *Roget’s New Millennium Thesaurus*, as aids in statutory construction. The Tenth Circuit relied on synonyms found in the *Random House Thesaurus* for the term *modify* to conclude that the term *modify* as used in 18 U.S.C. § 1818(i)(2)(F), is ambiguous.

The Mississippi Supreme Court consulted *Roget’s New Millennium Thesaurus* in a 2007 opinion in which the court found that synonyms for the word *duly* include “appropriately,” “fitly,” “properly,” and “suitably.”

While thesauri do not serve as the definitive source to interpret statutes, several courts have relied on thesauri, especially *Roget’s International Thesaurus* and *Burton’s Legal Thesaurus*, as aids in statutory construction.

B. Construction of Regulations and Other Agency Actions

Like dictionaries, thesauri can also provide guidance in construing regulations and other
actions by administrative agencies. It is well settled that it is appropriate to consult dictionaries to discern the ordinary meaning of a term not explicitly defined by regulation. Authority also exists for the use of thesauri to determine the plain and ordinary meaning of words in regulations where the administrative agency fails to provide an express definition.

The Tax Court of Indiana referenced the utility in consulting thesauri to find the plain and ordinary meaning of terms appearing in regulations and agency bulletins. The opinion states that where “specific words or phrases used in the statutes, regulations or documents like the bulletin in question are not defined, [the court] will strive to give those words or phrases their plain, ordinary and usual meanings . . . [and a] myriad of dictionaries and thesauri—both general and specialized—are available to assist the taxpayer in ferreting out a word’s or phrase’s meaning.”

Furthermore, the opinion states, “[t]he Court also reminds Counsel . . . that today’s word processing programs often have a thesaurus feature for ease of reference in assisting the writer in fleshing out the meaning of a word or phrase.”

The Eleventh Circuit also cited to a thesaurus to find the meaning of the term frivolous to determine whether an alien filed a frivolous application for asylum. The court noted that “[s]ynonyms for frivolous are ‘carefree, fanciful, fickle, giddy, flippant, nonchalant.’ Roget, International Thesaurus (3d ed.1965). . . . Here we think that the record very clearly reflects that [petitioner] was sincere, albeit fraudulent, in his application. He was not nonchalant or flippant.”

In the construction of administrative regulations and other administrative agency actions, thesauri can serve as persuasive resources to find the plain and ordinary meaning of certain words and phrases.

C. Construction of Contracts

Thesauri can also assist in the interpretation of words and phrases found in contracts and agreements. In searching for the meaning of contractual terms, courts often resort to the dictionary to ascertain a term’s common meaning. Since thesauri are akin to dictionaries, courts also employ thesauri to find synonyms to find the plain and ordinary meaning of terms in contracts.

In a 2002 opinion, the Eleventh Circuit cited thesauri to construe terms not expressly defined in contracts. The court researched synonyms found in two thesauri to find the meaning of the word expense, which the court considered the crucial word in the disputed terms “health care expenses” in a contract. The court consulted Roget’s International Thesaurus and the Merriam Webster Online Thesaurus and found that synonyms for expense include expenditure, cost, outlay, and disbursement.

The Third and Ninth Circuits have also cited thesauri to construe contracts. The Third Circuit cited Burton’s Legal Thesaurus and dictionaries to find the meaning of the terms eligible and entitled. The Ninth Circuit also cited Burton’s Legal Thesaurus and dictionaries to find the meaning of the phrase “no longer” used in a contract.

Courts of last resort in several states have found synonyms helpful and persuasive in construing contracts. The Oklahoma Supreme Court cited Webster’s New World Dictionary and Thesaurus in construing the word jurisdiction where the court found that synonyms for jurisdiction include

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36 Id. (emphasis added).
37 Id. See also Korotko-Hatch v. John G. Shedd Aquarium, 65 F. Supp. 2d 789, 801 (N.D. Ill. 1999) where a U.S. magistrate judge consulted the thesaurus in the court’s computerized word-processing program, Corel® WordPerfect®, Version 8.0, to find synonyms for the terms youthful and academic.
39 Vencor Hosps. v. Blue Cross Blue Shield of Rhode Island, 284 F.3d 1174, 1181 (11th Cir. 2002).
41 United Food & Commercial Workers Union Local 1119 v. United Markets, Inc., 784 F.2d 1413, 1416 (9th Cir. 1986).
Although thesauri can serve as helpful secondary sources to determine the plain and ordinary meaning of words, courts do not always find thesauri persuasive. Legal writers should use some caution when relying on thesauri as persuasive resources in briefs.

In Price v. Time, Inc., the Eleventh Circuit outright rejected the efficacy of thesauri in determining a word’s plain meaning and instead relied especially on Black’s Law Dictionary and other standard reference works. To argue that the term newspaper included magazines such as Sports Illustrated in the Alabama shield law, the defendants in Price cited to Roget’s 21st Century Thesaurus in Dictionary Form in construing the phrase “fully satisfied” in a contract construction action. Federal and state courts alike have consulted a variety of thesauri to find the plain meaning of words when construing contracts.

V. Selected Cases Where Courts Found Thesauri Unpersuasive

Although thesauri can serve as helpful secondary sources to determine the plain and ordinary meaning of words, courts do not always find thesauri persuasive. Legal writers should use some caution when relying on thesauri as persuasive resources in briefs.

In Price v. Time, Inc., the Eleventh Circuit outright rejected the efficacy of thesauri in determining a word’s plain meaning and instead relied especially on Black's Law Dictionary and other standard reference works. To argue that the term newspaper included magazines such as Sports Illustrated in the Alabama shield law, the defendants in Price cited to Roget’s 21st Century Thesaurus in Dictionary Form and Merriam-Webster’s Collegiate Thesaurus because those books list magazine as one synonym of newspaper. The court found fault with counsel’s “selective synonymizing” since other thesauri not cited by defendants fail to list the term magazine as a synonym for newspaper. The Price court continued with its rejection of thesauri:

More fundamentally, a thesaurus is not a dictionary. It does not purport to define words but instead suggests synonyms and antonyms. A synonym is not a definition because words that are similar can, and often do, have distinct meanings. To illustrate the problems with the definition-by-thesauri approach, we note that the listing of “newspaper” that the defendants cite from Roget’s 21st Century Thesaurus in Dictionary Form, supra, also indicates that “scandal sheet” is a synonym of “newspaper.” Id. at 573. We doubt that most publishers of newspapers or magazines would define their product as a scandal sheet. Another example of the perils of using a thesaurus to define can be found when one looks up “lawyer.” Among the listed synonyms in one thesaurus are “fixer,” “mouthpiece,” “ambulance chaser,” and “shyster.” Roget’s International Thesaurus, supra, at 422–23. We doubt that counsel would concede that those synonyms define lawyers.

Based on this strong language in Price, counsel should consider the possible ramifications of citing to thesauri in briefs, especially where different thesauri provide inconsistent results. Although the Price decision does not outright reject the use of thesauri in all circumstances, counsel writing a brief before the U.S. Court of Appeals for the Eleventh Circuit should check entries in multiple thesauri before citing to a thesaurus to avoid “selective synonymizing.”

While some courts have rejected the utility of thesauri and found them unpersuasive in certain cases, no authority exists that outright prohibits the use of thesaurus as a helpful resource to find the plain and ordinary meaning of terms.

VI. Using Thesauri in Legal Research

Along with the persuasive value of thesauri as authoritative secondary sources, a thesaurus can also help those who conduct legal research. One author wrote that “often a thesaurus is more helpful for a writer than a dictionary, because the thesaurus uses information the writer already knows as a reference point.” Another article suggests that

44 416 F.3d 1327, 1336–1338 (11th Cir. 2005).
45 Id.
46 Id.
“[e]ven knowledgeable professionals occasionally need an encyclopedia, thesaurus, dictionary, or other general reference to serve as a springboard to further investigation or guide a creative problem-solving initiative.” 48 Another commentator recognized the value of thesauri, especially legal thesauri: “Just like a regular thesaurus, a legal thesaurus provides alternate terms for a specific word or phrase. This can greatly aid researchers who may not be aware of the legal terminology in the area in which they are researching.” 49 In further support of legal thesauri as helpful resources, the Library of Congress assigns legal thesauri the KF classification for U.S. legal authorities.

Thesauri and dictionaries can assist legal researchers in finding synonymous and related search terms to expand the search parameters. For example, Burton’s Legal Thesaurus lists “deliberate,” “inflexible,” “intractable,” “obstinate,” and “unyielding” as synonyms for the term willful. 50 Black’s Law Dictionary lists “act of nature,” “act of providence,” “superior force,” “vis major,” “irresistible superhuman force,” and “vis divina” as related terms for act of God. 51 These synonyms can assist the legal researcher. An article in the Law Library Journal also identifies thesauri as useful legal reference tools along with dictionaries. 52 Researchers can also use online thesauri to find synonyms and alternative terms not previously considered. Both Westlaw and LexisNexis have an online thesaurus feature to search for synonyms and related terms. The online thesaurus and related terms feature on LexisNexis contains data from the Burton’s Legal Thesaurus and Webster’s Collegiate Thesaurus. In addition to a standard thesaurus feature, Westlaw also has a Smart Tools® feature to improve search results by suggesting synonyms and related legal terms. Legal researchers can also search leading thesauri for free on the Internet.

Print and online thesauri can also assist those who conduct legal research to find and use the appropriate terms for effective searching.

VII. Conclusion
Although the synonyms found in thesauri are not determinative, legal professionals should consider the value of thesauri as helpful and persuasive secondary sources, in conjunction with dictionaries, to ascertain the plain and ordinary meaning of particular words found in statutes, regulations, and contracts.

**Table 1**
Frequency of Citations to Thesauri


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50 Burton’s Legal Thesaurus 600 (2006).
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### Table 2

**Frequency of Citations to Legal Thesauri**


**Legend**

A: *Burton's Legal Thesaurus* (all editions)
B: *Burton's Legal Thesaurus* (3d ed. 1998)
C: *Burton's Legal Thesaurus* (2d ed. 1992)
D: *Burton's Legal Thesaurus* (1980)
E: *West's Legal Thesaurus/Dictionary*

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