



The Art of Boiling Down

JAMES FITZJAMES STEPHEN AS DRAFTER & LEXICOGRAPHER

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THE ENGLISH JURIST AND philosopher James Fitzjames Stephen (1829–1894) has had many kindred spirits in the generations before and after he lived. Think of Lord Mansfield, who gave Stephen what almost amounted to his motto in drafting the digests of evidence¹ and criminal law² in the years 1875 to 1877. Mansfield wrote a sentence that typifies Stephen’s thinking but goes against the current of the traditional common-law mind: “The law does not consist of particular cases, but of general principles which are illustrated and explained by those cases.”³ Or think of Stephen’s contemporary American counterpart,

David Dudley Field, the leader of the New York codification movement – whose codes met with more success in various American jurisdictions than Stephen’s codes met with in England.⁴ Or think of Glanville Williams, who, writing about the “general part” of the criminal law in the 20th century,⁵ consistently displayed the kind of close semantic analysis that, to a somewhat lesser extent, characterized Stephen’s work.

But the closest comparison – the one recognized by Stephen’s circle of friends – is to Samuel Johnson, a literary man who was enormously learned in the law. Stephen was a legal figure who was enormously learned in

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- 1 Stephen, *A Digest of the Law of Evidence* (4th ed. 1881).
- 2 Stephen, *A Digest of the Criminal Law* (Sir Herbert Stephen & Harry Lushington Stephen eds., 5th ed. 1894).
- 3 *R. v. Bembridge* (1783) 3 Doug. 332 (per Lord Mansfield) (quoted favorably in Stephen, Introduction, *A Digest of the Law of Evidence* xviii (4th ed. 1881)). Cf. p. xix of the *Digest*, where Stephen says: “I do not think the law can be in a less creditable condition than that of an enormous mass of isolated decisions, and statutes assuming unstated principles; cases and statutes alike being accessible only by elaborate indexes.”
- 4 See Grant Gilmore, *The Ages of American Law* 119–20 n.13 (1977).
- 5 See Glanville Williams, *Criminal Law: The General Part* (2d ed. 1961).



James Fitzjames Stephen.

literary matters. The physical resemblance between the men was there, no doubt. But there's much more. Both had undistinguished achievements in university studies.⁶ Both were polymaths. Both tried their hands at lexicography. Both had penetrating intellects with sharp contours. And both left a prodigious body of influential work. So it's understandable that Stephen's brother, Leslie, would write that Fitzjames's "friends not

unfrequently compared him to Dr. Johnson"⁷ – and that the *Dictionary of National Biography* entry for Stephen would say that he "was pre-eminently a man of ... Johnsonian power of mind."⁸

On a stylistic level, though, the comparison falls apart. Whereas Johnson wrote a pretty consistently elevated form of prose, at its worst known as "Johnsonese,"⁹ Stephen tended to prefer a simpler, more down-to-earth style. What we'll consider here is Stephen's style as a drafter of legal digests, with a goal of understanding his strengths and weaknesses. And we'll have a look at his work in defining terms in his digests – his lexicography, if I may call it that.

Stephen the Drafter

As a teacher of writing, I've found it useful to analyze the four phases that every writer must go through: (1) coming up with ideas, (2) organizing the ideas, (3) producing a draft, and (4) critiquing the draft.¹⁰ Dr. Betty S. Flowers of the University of Texas has given these four skills personalities and names: Madman (the creative imagination), Architect (the organizer), Carpenter (the builder of drafts), and Judge (the critic and self-editor).¹¹ It's a useful paradigm for thinking about writing: few writers hold these four skills in any kind of equilibrium. Yet a complete writer develops all four.

If we use this paradigm in consider-

6 Stephen: 18 *D.N.B.* 1051, 1051 (1917) (noting that "[w]ant of accurate scholarship ... made his academical career [at Trinity College, Cambridge] unsuccessful"). See Leslie Stephen, *The Life of Sir James Fitzjames Stephen* 357 (2d ed. 1895) ("at college, he was distanced in the race by men greatly his inferiors in general force of mind, but better provided with the talent for bringing their gifts to market").

7 Leslie Stephen, *The Life of Sir James Fitzjames Stephen* 131 (2d ed. 1895).

8 18 *D.N.B.* 1051, 1054.

9 See Eric Partridge, *Usage and Abusage* 174–75 (1942) (s.v. "Johnsonese").

10 See, e.g., Garner, *The Winning Brief* 3–49 (2d ed. 2004); Garner, *Legal Writing in Plain English* 5–10 (2001).

11 Betty S. Flowers, *Madman, Architect, Carpenter, Judge: Roles and the Writing Process*, 44 *Proceedings of the Conference of College Teachers of English* 7–10 (1979).

ing Stephen's work, it seems plain that he excelled as Architect and Carpenter – and mainly as Architect. He had a less well developed Madman, and his Judge was really rather underdeveloped. Now let me defend that assessment.

As for Stephen's Madman, it's fair to say that he showed vision and creativity in seeing the need for codification. It would be unfair to say that he was unimaginative. But Sir Frederick Pollock was probably right in his assessment of Stephen: "[I]t cannot be said that he made any considerable addition to the substance of legal ideas. His mind was framed for legislation rather than for systematic interpretation and development."¹²

By all accounts, it was Stephen's zeal for organization that made him shine. That's what drove him toward codification of the law, which Stephen defined as "merely the reduction of the existing law to an orderly written system, freed from the needless technicalities, obscurities, and other defects which the experience of its administration has disclosed."¹³ He was a legal cartographer: he wanted good maps. He complained that without codification, it's as if the learner "wants a general plan of a district, and you turn him loose in the forest to learn its paths by himself."¹⁴ Or, with a different trope (a simile), he complained that "[w]orks

intended for reference ... are unavoidably crowded with details to such an extent that to get out of them any general notion of law is like looking at a landscape through a microscope."¹⁵ He called the shape of English law "studiously repulsive."¹⁶

Stephen rebelled against obscurity, and what bothered him most was the kind of obscurity resulting from a morass of cluttering detail. It was a turn of mind evident throughout his career. As early as 1856, Stephen wrote that what England needed was a code: "the old law books and reports must be distilled into a portable and intelligible form, so that the nation at large may have some conception of its rights and obligations, and the lawyers some chance of understanding their profession."¹⁷ In the 1860s, when first in India, he said that "[t]o compare the Indian Penal Code [Macaulay's work] with English law is like comparing cosmos with chaos. Any intelligent person ... could get a very distinct and correct notion of Indian Criminal Law [from it] ... I appeal to you to imagine the state of mind of a man who should try to read straight through the very best of English books on the subject ..."¹⁸

Hence, despite the widespread lawyer's "prejudice which exists against all attempts to state the law simply," Stephen cultivated the art of boiling down.¹⁹ In fact, "boiling down" has aptly been called "Stephen's professional

12 Sir Frederick Pollock, "Stephen, Sir James Fitzjames," 25 *Encyclopaedia Britannica* 883, 885 (11th ed. 1911). Cf. A.V. Dicey, *Law and Public Opinion in England* 206 n.1 (1905; 2d ed. 1914; repr. 1962) (in which Dicey, Stephen's cousin, says that Stephen "hardly claimed to be ... a reformer of the law").

13 3 Stephen, *A History of the Criminal Law of England* 350 (1883).

14 Leslie Stephen, *The Life of Sir James Fitzjames Stephen* 377 (2d ed. 1895).

15 Stephen, *A General View of the Criminal Law of England* v (1863).

16 Stephen, "Codification in India and England," 12 *Fortnightly Rev.* 644 (Dec. 1872).

17 Stephen, "Law Reform," *Saturday Rev.* 252 (2 Feb. 1856) (as quoted in John Hostettler, *Politics and Law in the Life of Sir James Fitzjames Stephen* 156–57 (1995)).

18 Stephen, 18 *Fortnightly Rev.* 664, 654 (1872).

19 *Ev. Dig.* xix. Leslie Stephen was perhaps quoting a letter from his brother when, in the biography, he used quotation marks in reference to the *Digest of the Law of Evidence*: "Here was another case of 'boiling down' ... He undoubtedly boiled his materials down to a small size." *The Life of Sir James Fitzjames Stephen* 377–78 (2d ed. 1895).

leitmotiv.”²⁰ This was primarily an architectural enterprise: taking a huge, unwieldy array of cases and reducing their principles to a manageable system laid out in an easy-to-follow format. He yearned for “a body of law for the government of the country so expressed that it may be readily understood and administered ... without extrinsic help from English law-libraries.”²¹

And if Stephen was primarily an Architect, it’s easy to see why he so disdained the gangly, ill-organized writings of Jeremy Bentham, whose work Stephen called “original chaos” that needed to be “cleaned, washed, and translated into French.”²²

Stephen was also an extraordinary Carpenter, producing great amounts of work during short periods. Sir Courtenay Ilbert called him a “Cyclopean builder,” adding that he “hurled together high blocks of rough hewn law.”²³ The digests of evidence and criminal law were produced in three short years (1875–1877).²⁴ Though at times he professed to suffer from sluggishness,²⁵ he never suffered seriously from writer’s block.²⁶

It was as Judge – or self-critic – that Stephen was most deficient as a drafter. That has been the historical consensus. In the year of Stephen’s death, Courtenay Ilbert,

his friend, frankly said that Stephen undeniably “left behind him some hasty work in the Indian Statute Book, some defective courses of masonry which his successors had to remove and replace.”²⁷ Seven years later, in 1901, Ilbert called Stephen’s “workmanship ... deficient in accuracy and finish.”²⁸ That same year, Lord Bryce commented: “His capacity for the work of drafting was deemed not equal to his fondness for it. He did not shine either in fineness of discrimination or in delicacy of expression.”²⁹ Leon Radzinowicz has commented that Bryce’s “criticism was justified.”³⁰

Although as a drafter I’m probably looking at points different from those of Stephen’s earlier critics, in general I agree. But before I point out some of Stephen’s shortcomings as a drafter, it’s only fair to observe four ways in which his drafting was brilliant.

First, Stephen cut out most of the verbosity that plagued his sources. He wrote reasonable sentences. In the *Digest of the Law of Evidence*, his average sentence length was 35.5 words; in the *Digest of Criminal Law*, his average was 22 words. Anyone who has spent much time looking at 19th-century statute books knows that nothing like those averages holds for most of them – and that

20 K.J.M. Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* 53 (1988).
 21 Stephen as quoted in Sir Courtenay Ilbert, *Legislative Methods and Forms* 149 (1901).
 22 Stephen as quoted in Abigail Smith, *James Fitzjames Stephen: The Last Great Codifier*, 139 *New L.J.* 954, 954 (1989).
 23 Courtenay Ilbert, *Sir James Stephen as a Legislator*, 10 *Law Q. Rev.* 224 (1894).
 24 Leslie Stephen, *The Life of Sir James Fitzjames Stephen* 377 (2d ed. 1895).
 25 18 *D.N.B.* 1051, 1052.
 26 A.W.B. Simpson has aptly referred to Stephen’s “unremitting literary achievements.” *Biographical Dictionary of the Common Law* 488 (1984).
 27 Courtenay Ilbert, *Sir James Stephen as a Legislator*, 10 *Law Q. Rev.* 224 (1894).
 28 Sir Courtenay Ilbert, *Legislative Methods and Forms* 162 (1901). See also 18 *D.N.B.* 1051, 1054 (noting that Stephen’s work was “marred in some ways by want of finish”). *Contra* K.J.M. Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* 53 (1988) (referring to Stephen’s “impressive accuracy and clarity”).
 29 1 James Bryce, *Studies in History and Jurisprudence* 129 (1901).
 30 Leon Radzinowicz, *Sir James Fitzjames Stephen 1829–1894 and His Contribution to the Development of Criminal Law* 14 (1957).

this is a primary source of their obscurity. Stephen explained his approach in the *Digest of Criminal Law*: “Where the language of a statute appeared needlessly verbose for common purposes, the leading word or an equivalent is preserved in the text, and the words omitted are inserted in a foot-note for reference if necessary.”

Second, in the *Digest of Criminal Law*, Stephen took every statutory *shall* and replaced it with *must*. Perhaps he was aware of George Coode’s warnings in 1842 about the many ambiguities of *shall*.³¹ More than a century after Stephen labored to eliminate *shall*, the battle continues in American drafting circles: the Standing Committee of Rules of Practice and Procedure voted in 1993 to eliminate *shall* from all amendments to federal rules, and now we have two sets of rules – appellate and criminal – that have been stripped of the chameleon-hued word, in favor of *must*.³² But in rule-making committees, arguments still frequently emerge because so many judges and lawyers remain badly ill-informed about the troubles with *shall*. So it’s a mild shock to the modern drafter to see, without further explanation, the bland prefatory statement in Stephen’s *Digest*: “Where ‘shall’ is used as an imperative [in a statute] ‘must’ is substituted.”

By the way, the *Digest of the Law of Evidence* similarly avoids *shall*, but generally not by using *must*. Instead, Stephen there usually states his rules as policies, as by stating: “A declaration is deemed to be relevant if” To the modern drafter, the repetitious use of

the verb *deem* is a fault: it would be better simply to say that “a declaration is relevant if” But all in all, it’s simply a joy to see a 19th-century code shorn of the word *shall*.

Third, Stephen wisely sticks to the present tense, perhaps once again taking a lesson from Coode’s 1842 treatise on legislative drafting. In the preface to the *Digest of the Criminal Law*, Stephen writes: “The future and past future [known more commonly as the “future perfect”] are uniformly altered to the present tense.” As Coode had explained some 35 years before, “the law is regarded, while it remains in force, as *constantly speaking*.”³³ Hence the wise drafter uses the present tense for all facts and conditions required to be concurrent with the operation of the legal action, and the present perfect tense to express all facts and conditions required as being precedent to a legal action. Stephen generally follows these guidelines – whereas 20th- and 21st-century drafters mostly know nothing about the guidelines and show an astonishing degree of ineptitude with tenses.

Fourth, Stephen was exceptionally forward-thinking in his use of visual devices. In his *Digest of the Criminal Law*, he uses what we would call a flowchart to illustrate the steps in analyzing homicide; a tabular representation for purposes of analyzing intentional violence; and an alphabetical guide of indictable offenses, once again in tabular form.

But despite the brilliancies, the drafting does have blemishes. They illustrate the fallibility of Stephen’s Judge in our writing-

31 See George Coode, *On Legislative Expression* (1842); see also Garner, *A Dictionary of Modern Legal Usage* 830–31 (2d ed. 1995) (paraphrasing and updating Coode); *id.* at 939–42; Garner, *Legal Writing in Plain English* § 35, at 105–07 (2001). Soon the Federal Rules of Civil Procedure will be purged of all *shalls*: in February 2005, the Standing Committee issued for public comment a massive redraft of the rules by recasting them according to the best modern principles of drafting. See Edward H. Cooper, *Restyling the Civil Rules: Clarity Without Change*, 79 *Notre Dame L. Rev.* 1761 (2004).

32 See Garner, *Guidelines for Drafting and Editing Court Rules* art. 4.2, at 29–30 (1995); reproduced at 169 *F.R.D.* 176, 212–13 (1997).

33 Garner, *A Dictionary of Modern Legal Usage* 831 (2d ed. 1995) (paraphrasing Coode).

process paradigm. Somehow, in the *Digest of the Criminal Law*, Stephen let at least one *shall* creep into the text – and not even in a mandatory sense: “No person who takes any oath or engagement ... shall be justified or excused thereby, unless ...” Elsewhere, he introduces inconsistencies by avoiding his preferred *must* and using instead the verbose formula *It is the legal duty ...*. He would have been wiser to stick to a single method of expressing duties: the serviceable *must*.

The texts are plagued by other minute inconsistencies. In some places, he uses the serial comma; in others, he doesn’t. In some places, he writes *every person* at the outset of a rule; in others, he writes *every one*; in still others, he writes *whoever*. In some places, he introduces a condition with *if*; in others, he uses *where*. Generally, he wisely sticks to the singular (*every meeting*); in places, though, he uses an ill-advised plural (*all assemblies*).

Stephen’s numbering system is underdeveloped, so that he has many subparagraphs that are simply indented but unnumbered – making large parts of his digests essentially uncitable without some cumbersome description.

Also, he oddly sets out provisos – those caveats introduced with some variation of *provided that* – in separate capitalized sen-

tences. Coode had warned against using provisos, but this seems to be a stylistic point on which Stephen didn’t heed Coode’s advice. The solution, of course, isn’t to use a semicolon before *provided that*, the way so many modern drafters do, thereby grossly driving up the average sentence length. Instead, the best modern drafters would simply replace *provided that* with a capitalized *but* to introduce an exception expressed in a follow-on sentence. The United States Constitution contains eight such exceptions introduced by a capitalized *but*. In at least one place – in yet another stylistic inconsistency – Stephen uses a capitalized *but* where one would expect to find *provided that*.

There are other weaknesses in the drafting. Apart from provisos, Stephen engages in a fair amount of legalese, especially the *here-* and *there-* words: *hereto*, *therefor*, *therein*, *thereof*, and *thereon*. He uses *the said child* for *the child*. Although he often uses *such* in the sound nonlegalistic way, he also engages in the legalistic *such* that has been so much criticized.³⁴ He repeatedly mispunctuates *ten years’ penal servitude* by omitting the apostrophe.³⁵ And his digests contain too many typographical errors, including, in one place, the drafter’s worst nightmare: a dropped *not*.³⁶

34 For example, Sir Frederick Pollock, while editor of the Law Reports, wrote to Justice Oliver Wendell Holmes: “As to *such*, this is the kind of attorney’s clerk’s slang I have tried to choke off: ‘The plaintiff was the tenant of a house in X street. Such street was admitted to be a new street within etc., etc.’ They think it looks more professional. And so it has crept even into judgments.” 2 *Holmes-Pollock Letters* 251 (Mark D. Howe ed., 1941). See also, among many others, H.W. Fowler, *A Dictionary of Modern English Usage* 581–82 (1926) (calling this “the illiterate *such*”); Elmer A. Driedger, *The Composition of Legislation* 88 (1957); David Mellinkoff, *The Language of the Law* 430–31 (1963); Theodore M. Bernstein, *The Careful Writer* 432 (1965) (calling it “legalistic”); Reed Dickerson, *The Fundamentals of Legal Drafting* 131 (1965); Michele M. Asprey, *Plain Language for Lawyers* 124 (1991).

35 See, e.g., *Crim. Dig.* art. 259, at 198; art. 263–64, at 204; art. 274, at 211; art. 279. Even 19th-century grammarians required the possessive apostrophe. See, e.g., Gould Brown, *The Grammar of English Grammars* 514 (10th ed. 1851) (calling the apostrophe-less construction “manifestly bad English”).

36 *Ev. Dig.* art. 11, at 15 (“When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice, or other state of mind or of any state of body or bodily feeling, the existence of which is in issue or is or is deemed to be relevant to the issue; but such facts or words may [not] be proved merely in order to show that the

On a less minute scale, I might also point to some of Stephen's own maladroit drafting that is less than clear. Consider article 236 of the *Digest of the Criminal Law*, with its roundabout wordings and confusing pronouns:

It is the legal duty of a person who is unable to provide for any person necessities which he is legally bound to provide for him to make application to the proper authorities for parochial relief in cases in which such authorities are legally bound to furnish such relief.

Essentially, that means simply this:

A person who is bound to provide necessities to another but cannot do so must apply to the proper authorities for parochial relief if it is available.

Lest anyone think that the weaknesses I've pointed out – especially the small inconsistencies in wording – are niggling details, I hasten to point out that the drafter's job is to forestall arguments based on those inconsistencies. Stephen himself recognized this. He acknowledged it in one of his last judicial opinions, in 1891. In *Re Castioni*, he wrote that precision

is essential to everyone who has ever had, as I have had on many occasions, to draft Acts of Parliament, which, although they may be easy to understand, people continually try to misunderstand, and in which therefore it is not enough to attain to a degree of precision which

a person reading in good faith can understand; but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. It is all the better if he cannot pretend to misunderstand it.³⁷

Stephen the Lexicographer

Throughout his work, Stephen showed a concern for words and their meanings. He was a kind of semanticist. Even in his early work on criminal law, in 1863, he was sensitive about the phrase *criminal law* itself and argued that it is not entirely apt:

"Penal" would be a better phrase than "criminal" law, as it points out with greater emphasis the specific mark by which the province of law to which it applies is distinguished from other provinces; for the distinction arises not from the nature of the acts contemplated, but from the manner in which they are treated.³⁸

To the modern lawyer, familiar with the more modern writers on criminal law, Stephen's words sound as if they could be those of Glanville Williams: Stephen once said that to ask concerning any occurrence, "Is this a crime or is it a tort?" is ... no wiser than it would be to ask concerning a man, 'Is he a father or a son?' For he may well be both.³⁹ Many writers of legal texts are not so linguistically attuned.

One more example. In the *Digest of the Law of Evidence*, Stephen sorted out an am-

person so acting or speaking was likely on the occasion in question to act in a similar manner."). This typographical error is fixed in the American edition: Stephen, *Ev. Dig.* art. II, at 28 (George Chase ed., Am. ed. 1892).

37 *Re Castioni* [1891] 1 Q.B. 149, 167 (*per* Stephen J.). Cf. Stephen's less seasoned comment of 1879: "The critic [of a statute] is trying to detect faults. The judge is trying to do justice. The one, in other words, is intent on showing that this or that expression is incomplete, or capable of being misunderstood. The other is trying in good faith to ascertain the real meaning of the words before him." Stephen, "The Criminal Code," *The Nineteenth Century* 136, 141 (Jan. 1880).

38 Stephen, *A General View of the Criminal Law of England* 6 (1863).

39 J.W. Cecil, *Outlines of Criminal Law* 543 (16th ed. 1952) (quoting Stephen). Cf. the linguistic insight in Stephen J.'s adverbial observation that "[t]he mental element of most crimes is marked by one of the words 'maliciously,' 'fraudulently,' 'negligently,' or 'knowingly.'" *R. v. Tolson* (1889) 23 Q.B. 168.

biguity that still plagues legal writers:

The arrangement of the book ... is based upon the distinction between relevancy and proof, that is, between the question What facts may be proved? and the question How must a fact be proved assuming that proof of it may be given? The neglect of this distinction, which is concealed by the ambiguity of the word *evidence* (a word which sometimes means testimony and at other times relevancy) has thrown the whole subject into confusion, and has made what is really plain enough appear almost incomprehensible.

While later writers on evidence have argued that Stephen claimed too much with his principle of relevance – William Twining has said that his “efforts failed”⁴⁰ – the lexical point about the word *evidence* remains valid.

As a writer of digests and codes, Stephen defined terms assiduously – and generally pretty carefully. A reader of the digest is sometimes struck by seeming anomalies. Why is it a maiming to strike out a person’s tooth, or castrate a man, but it isn’t a maiming to cut off someone’s nose?⁴¹ That seems curious. But Stephen’s definition of *maim*, which undoubtedly codifies a good deal of caselaw on the subject, sorts out why that is so:

A maim is bodily harm whereby a man is deprived of the use of any member of his body or of any sense which he can use in fighting, or by the loss of which he is generally and permanently weak-

ened, but a bodily injury is not a maim merely because it is a disfigurement.

You might wonder whether losing a nose doesn’t “generally or permanently weaken” someone, but you can also see why Stephen held that it wouldn’t. As a legal lexicographer, I’ve found dozens of terms for which Stephen gives good definitions or insightful discussions in his digests.

Elsewhere, he gave a superb exposition of the dual meaning of *common law*, recording two senses: (1) “those parts of the known and ascertained law which are to be found in decided cases and in works of authoritative writers like Coke or Hale, but which have never been reduced to the form of a statute”; and (2) “the qualified power [that] judges possess of making new law, under the fiction of declaring existing law in cases unprovided for by existing statutes or other authorities.”⁴² So brilliant is that second sense that I intend to add it as a fifth sense to the ninth edition of *Black’s Law Dictionary* – and (of course) to credit Stephen. (Yes, Stephen recorded but two senses of *common law* – and missed three others.⁴³)

A few of Stephen’s definitions betray the fact that he was no professional lexicographer. For example, he defines the verb *break* as if it were a noun, and he uses the gerund *breaking* in the definition itself.⁴⁴ And he makes a similar mistake with *misappropriate*.

On the whole, though, his definitions are sound, and taken together they provide the modern researcher with a reliable source for

40 William Twining, *Theories of Evidence: Bentham and Wigmore* 4 (1985).

41 *Crim. Dig.* art. 227 (illustration), at 165. Under modern law, disfigurement such as cutting off a person’s nose does amount to a maim. See Rollin M. Perkins & Ronald M. Boyce, *Criminal Law* 241 (3d ed. 1982).

42 Stephen, “The Criminal Code,” *The Nineteenth Century* 136, 152 (Jan. 1880).

43 See *Black’s Law Dictionary* 293–94 (8th ed. 2004).

44 *Crim. Dig.* 282. For criticisms of modern legal lexicographers who have made similar blunders, see Garner, “Legal Lexicography: A View from the Front Lines,” 6 *Green Bag* 151, 156–57 (2003); Garner, “The Missing Common-Law Words,” in *The State of the Language* 235, 245 n.21 (Christopher Ricks & Leonard Michaels eds., 1990).

knowing how certain legal terms were understood during the last half of the 19th century – just as Johnson is the most reliable general guide to 18th-century meanings.

Conclusion

It's appropriate that we're holding this conference in April. It was an important month for Stephen. It was 128 years ago this month that he wrote in a letter that he had "just completed the hardest work he had ever done" – namely the *Digest of the Criminal Law*.⁴⁵ And it was 14 years later – 114 years ago this month – that Stephen resigned from the bench because of his failing mental powers.⁴⁶

It's also appropriate that this conference is considering Stephen's work from so many angles. Stephen was famous for looking at things from various points of view. A well-known anecdote about Justice Stephen illustrates the point. A debtor before the Queen's Bench was trying to escape liability by blaming his wife for the expenditure. Stephen is reported to have blurted out characteristically: "That is a very old excuse. I often felt that Adam – I mean – that is – well! I have always wished to hear Eve's account of the transaction."⁴⁷



A personal note: This conference has prompted me to consider the fascinating intersections that occur in life. The organizer of this conference, Christopher Ricks, was my teacher in Oxford in the summer of 1979. In the summer of 1981, two months before I was to enter law school, I was back in Oxford and arranged a lunch with Christopher on July 16 at a place called the Nosebag. Afterward, I told him that I wanted to find a used-book store that I'd been to two years before, not far from the Opium Den restaurant, and he told me how to get to Waterfield's bookseller. When we parted, I walked there, and outside I found a cart full of books discounted to #1. There was Stephen's *Digest of the Law of Evidence* – the 1881 edition that I'm holding right now – and I bought it. Inside is my signature from 1981, exactly a century from the publication date. Twenty-two years later, I learned for the first time that Christopher had an abiding interest in Stephen, that he wanted to know whether I knew anything about Stephen and his digests, and – when I said that I did – that he'd like me to speak about the digests at this conference. It's an extraordinary set of coincidences. All I can say is, Thank you, Christopher, for pointing the way to Waterfield's that day – and for pointing the way so often in my life since that day. *GP*

45 Leslie Stephen, *The Life of Sir James Fitzjames Stephen* 377 (2d ed. 1895).

46 18 *D.N.B.* 1051, 1053.

47 Stephen J. (as quoted in Marshall Brown, *Wit and Humor of Bench and Bar* 332 (1899)).