

LEGAL LEXICONOGRAPHY: A VIEW FROM THE FRONT LINES

BY BRYAN A. GARNER

The writer of a modern law dictionary has to answer five questions—pretty much the same questions faced by lexicographers of old, from Rastell to Jacob to Bouvier to Black:

1. To what extent should a law dictionary be a *dictionary*, as opposed to a legal encyclopedia—that is, to what extent should it merely define terms, rather than expansively discuss the law relating to those terms?
2. To what extent is a law dictionary a work of original scholarship, as opposed to a compilation of definitions taken from judicial opinions and other legal sources?
3. To what extent should we worry about the formalities of defining words—that is, about getting the lexicography right as well as getting the law right?
4. To what extent can the modern lexicographer rely on the accuracy of predecessors?
5. How does the editor find the material to include in a dictionary?

As a practicing lexicographer, I've had to answer those questions, and I continue to answer some of them ad hoc, from day to day and week to week. My answers largely explain why the seventh through ninth editions of *Black's Law Dictionary* (1999–2009) look so different from earlier editions. Let's take these questions one at a time.

1. To what extent should a law dictionary be a *dictionary*, as opposed to a legal encyclopedia?

Early law dictionaries were essentially glossaries, with short explanations of legal terms. In the 18th century, Giles Jacob, a British lawyer, was the first to combine a dictionary and an abridgment.¹ He was trying to expound the law by using an alphabetical arrangement of legal terms. After all, the title of his dictionary is *A Law-Dictionary: Containing the ... Whole Law ...* His entry for *jointenants* (which he spelled as one word, dropping one *t*) was an essay that took up four long columns of small type, in which he set forth all the court holdings he could find on joint tenancy. This discursive essay is more than 3,400 words long.

When Thomas Edlyne Tomlins, also British, took over Jacob's *Law Dictionary*, Tomlins's first edition of 1797 more

than doubled the entry on *jointenants* to some 7,500 words. He was writing more of an encyclopedia—the kind of entry that *Corpus Juris Secundum* contains today. The same was true of most contemporaries of Jacob and Tomlins.

John Bouvier, the American, reacted against the encyclopedic nature of his predecessors' dictionaries. In 1839, in the first edition of his *Law Dictionary*, he criticized other dictionaries: "It is true such works contain a great mass of information, but from the manner in which they have been compiled, they sometimes embarrassed [the reader] more than if he had not consulted them" (page v). His entry for *joint tenants* (which he spelled as two words) runs to only 46 words:

JOINT TENANTS, estates, are two or more persons to whom are granted lands or tenements to hold in fee simple, fee tail, for life, for years, or at will. 2 Black. Com. 179. The estate which they thus hold is called an estate in joint tenancy.

The later editions of Bouvier's work, as expanded by others, rejected his concise approach and moved once again toward an overdeveloped encyclopedic treatment of the entries. In the 1914 edition by Francis Rawle, one of the last editions, the entry for *joint tenants* ran to 512 words—more than 10 times as long as the 1839 entry—and cited 11 case holdings, all of which look (to the modern eye) very antiquated.

This kind of excessive growth occurred throughout Bouvier's dictionary after the first edition. I'm convinced that hypertrophy is what led Bouvier's law dictionary to become obsolete. It couldn't accurately restate the whole law in two or three volumes. The essays had already been superseded by treatises written by specialists and by much larger encyclopedias. It became impossible to keep the essays up to date. So by the late 1930s, the publishers had abandoned Bouvier's dictionary as an unworkable venture.

Other 19th-century dictionaries appeared before and after *Black's Law Dictionary* was published in 1891, but none was as important as *Black's*.

Henry Campbell Black was a learned lawyer with varied interests. The list of his full-length treatises is impressive and includes treatises on constitutional law,² on the removal of cases from state to federal court,³ on the law of judgments,⁴ on the rescission of contracts,⁵ on bankruptcy,⁶ on the income tax,⁷ on tax titles,⁸ on mortgages and deeds of trust,⁹ and on statutory interpretation.¹⁰ He even wrote a book called *Black on Intoxicating Liquors*.¹¹ There can be little doubt that, perhaps apart from John Cowell, Black

was the most erudite lawyer ever to write a dictionary. It's interesting to speculate whether he thought his law dictionary might become something of a household name.

Black's entry for *joint tenancy* ran to 153 words (citing two statutes and no cases). The entry characteristically begins with a definition and then expands modestly on it. Although he does not attempt to restate the entire law, he does include some encyclopedic information:

JOINT TENANCY. An estate in joint tenancy is an estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The grand incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivor. Pub. St. Mass. 1882, p. 1292.

A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. Civil Code Cal. § 683.

In his second edition, published in 1910, Black wisely relegated the phrase *joint tenancy* to a subentry under *tenancy*. This was a smart move because it allowed the dictionary user to compare all the types of tenancy at a glance. Black carefully gave a cross-reference under the letter *J* and he added four case citations: to courts in Kansas, Indiana, Michigan, and Pennsylvania.

When the sixth edition of *Black's Law Dictionary* appeared in 1990—before I became involved in the project—the entry for *joint tenancy* remained pretty much as it had been in 1891, except that all the caselaw was removed. Two new judicial definitions were added, one with a citation to a federal district court and one with a citation to the Arizona Supreme Court. These judicial definitions mostly repeat the older definitions (in an earlier paragraph), using different words.

When I became editor in chief of *Black's Law Dictionary* in 1994, the prevailing view among lexicographers was that dictionaries should define words—that they shouldn't attempt to be encyclopedias.¹² But there was a growing view that some encyclopedic information is indispensable and that there's no easy dividing line between what is definitional and what is encyclopedic. This was very much in line with Henry Campbell Black's approach. I developed a system for dividing definitions from discursive information: my colleagues and I used bullets to separate the two. And we came to refer, in our own in-house jargon, to "BBS" (before-the-bullet stuff) and "ABS" (after-the-bullet stuff). So the entry for joint tenancy reads as follows:

joint tenancy. A tenancy with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. • A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share (in some states, this right must be clearly expressed in the conveyance—otherwise the tenancy will be presumed to be a tenancy in common). See RIGHT OF SURVIVORSHIP. Cf. *tenancy in common*.

"The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole—e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument—e.g., the same deed or will. The joint tenants must get the same kinds of estates—e.g., in fee simple, for life, and so on." Thomas F. Bergin & Paul G. Haskell, *Preface to Estates in Land and Future Interests* 55 (2d ed. 1984).

The bullets allowed us to provide concise, substitutable definitions while including some encyclopedic information—or ABS—whenever our research turned up something interesting or useful. This use of bullets was something of an innovation in lexicography.

There's something else new about that entry. West asked me to add citations to the entries where I could. I decided to integrate another level of encyclopedic information by briefly quoting major authorities on various words and phrases. In the entry above, it's Bergin and Haskell on future interests. In other entries we quoted Blackstone on the law of England, Buckland on Roman law, Chitty on criminal law, Dworkin on legal philosophy, Gilmore and Black on the law of admiralty, Wright on federal courts, and so on. My colleagues and I looked for the most enlightening discussions of legal terminology, preferably from an acknowledged expert in the field. If the quotation happened to be from a leading judicial opinion, so much the better. But I gave no preference to judicial opinions.

One commentator has questioned why my editions of *Black's Law Dictionary* have more quotations from treatises than from cases. My answer is threefold. First, a scholar who has studied and written extensively in a given field of law is more likely to have a solid, informed discussion of a legal term. I'd rather quote Douglas Laycock on the irreparable-injury rule (as the seventh and later editions do) than an intermediate court in Louisiana (as the sixth edition did). Doug Laycock knows more about this rule and has written about it in far greater depth than some appellate judge in Louisiana. Second, caselaw is readily available and searchable electronically, whereas the treatises so frequently quoted in the current edition are not as accessible. Anyone wanting to research the caselaw in a given jurisdiction can do so online. Third, the chances that a reader of *Black's Law Dictionary* is actually looking for a

Louisiana precedent seems remote. Treatise writers tend to be more expansive in their view and to discuss variations among jurisdictions: all this can be enormously helpful to the user of a dictionary.

The quotations also lend a greater degree of scholarly reliability to the dictionary. Of course, the *Oxford English Dictionary* (OED) is famous for its illustrative quotations—sentences illustrating how a term was actually used through the centuries. Our quotations in *Black’s* are rather different: my colleagues and I didn’t just quote a sentence to show how a term is used. Instead, we quoted substantive experts precisely for their expertise, and we typically

quoted two to five sentences. This is something that a specialized dictionary can do to give the entries greater historical and intellectual depth. Once again, though, to my knowledge no previous dictionary had ever systematically used quotations in quite this way.

2. To what extent is a law dictionary a work of original scholarship, as opposed to a compilation of definitions taken from judicial opinions and other legal sources?

There are two traditions in legal lexicography: the law dictionary and the judicial dictionary. The judicial diction-

A Sample Entry from *Black’s Law Dictionary*

<i>Black’s Law Dictionary</i> 1st edition (1891)	<i>Black’s Law Dictionary</i> 6th edition (1990)	<i>Black’s Law Dictionary</i> 9th edition (2009)
<p>JOINT TENANCY. An estate in joint tenancy is an estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The grand incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivor. Pub. St. Mass. 1882, p. 1292.</p> <p>A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. Civil Code Cal. § 683.</p>	<p>Joint tenancy. An estate in fee-simple, fee-tail, for life, for years, or at will, arising by purchase or grant to two or more persons. Joint tenants have one and the same interest, accruing by one and the same conveyance, commencing at one and the same time, and held by one and the same undivided possession. The primary incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivors, and at length to the last survivor.</p> <p>Type of ownership of real or personal property by two or more persons in which each owns an undivided interest in the whole and attached to which is the right of survivorship. Single estate in property owned by two or more persons under one instrument or act. <i>D’Ercole v. D’Ercole</i>, D.C. Mass., 407 F.Supp. 1377, 1380. An estate held by two or more persons jointly, each having an individual interest in the whole and an equal right to its enjoyment during his or her life. <i>In re Estelle’s Estate</i>, 593 P.2d 663, 665, 122 Ariz. 109.</p>	<p>joint tenancy. A tenancy* with two or more coowners who take identical interests simultaneously by the same instrument and with the same right of possession. A joint tenancy differs from a tenancy in common because each joint tenant has a right of survivorship to the other’s share (in some states, this right must be clearly expressed in the conveyance—otherwise, the tenancy will be presumed to be a tenancy in common). See right of survivorship. Cf. tenancy in common.</p> <p>“The rules for creation of a joint tenancy are these: The joint tenants must get their interests at the same time. They must become entitled to possession at the same time. The interests must be physically undivided interests, and each undivided interest must be an equal fraction of the whole—e.g., a one-third undivided interest to each of three joint tenants. The joint tenants must get their interests by the same instrument—e.g., the same deed or will. The joint tenants must get the same kinds of estates—e.g., in fee simple, for life, and so on.”</p> <p>Thomas F. Bergin & Paul G. Haskell, <i>Preface to Estates in Land and Future Interests</i> 55 (2d ed. 1984).</p> <p>*The genus <i>tenancy</i> having already been defined just above, in the main headword, the word may be used in defining the species <i>joint tenancy</i>.</p>

ary—such as *Stroud's Judicial Dictionary* (a leading English authority since 1890) or *Words and Phrases* (a 90-volume collection of judicial pronouncements)—is both broader and narrower than a law dictionary, because the former collects whatever words and phrases judges have had occasion to define. The judicial dictionary is broader in the sense that judges often, in deciding a case, are called on to define ordinary words. For example, one page of *Words and Phrases* (volume 5A) collects definitions for the terms *Boston cream pie*, *Boston Firemen's Relief Fund*, *bosun's chair*, and *botanical garden*—none of which can properly be called a legal term. At the same time, judges are seldom called on to interpret certain legal terms. For example, one page of the current *Black's* has definitions for *legal realism*, *legal research*, *legal secretary*, *Legal Services Corporation*, and *legal theory*. None of these appear in *Words and Phrases*, and only two of them appeared in *Black's Sixth* (*legal secretary* and *Legal Services Corporation*).

At times, *Black's Law Dictionary* has erred on the side of being a judicial dictionary. For example, the fourth edition—the only one in print from 1951 to 1979—had an entry for *Boston cream pie*, which it defined as follows: “two layers of sponge cake with a layer of a sort of cream custard.” For that definition, the book cited an opinion from the District of Columbia Court of Municipal Appeals.

To round out the seventh edition of *Black's Law Dictionary* in 1999, I wanted to do three things. First, I wanted to be sure that *Black's* wouldn't be a mere judicial dictionary. I wanted to define everything that might legitimately be called a legal term—whether it was about a judicially created doctrine or a type of legal philosophy that courts would never have occasion to address directly. Second, I wanted to be sure that my colleagues and I, as lexicographers and lawyers, did our best to define terms as fully and accurately as possible—without uncritically accepting some judicial pronouncement about what a word means. Third, I didn't want to duplicate what *Words and Phrases* already does so comprehensively.

I, for one, consider lexicography to be serious scholarship. Samuel Johnson and Noah Webster amply demonstrated this, as did the editors of the *Oxford English Dictionary* and of the *Century Dictionary* as well as the 20th-century editors of the various editions of *Webster's International Dictionary* and of the *Oxford English Dictionary Supplement*. Therefore, I rejected the idea of being a mere compiler of judicial scraps, and I dismissed the idea of including nonlegal terms: *Boston cream pie* is only one egregious example among many.

3. To what extent should we worry about the formalities of defining words—that is, about getting the lexicography right as well as getting the law right?

This is an interesting and a challenging question. Naturally, when updating *Black's Law Dictionary*, I wanted to get the lexicography right as well as the law.

But in legal lexicography, this is difficult. As a result of the two phenomena already discussed—the tradition of having legal encyclopedias masquerade as law dictionaries

and the tradition of simply copying judicial definitions—most law dictionaries have been very loose in the definitions they give. *Black's Law Dictionary*, as I inherited it, was no exception. Although Henry Campbell Black had been pretty systematic in his entries, the various contributors to the book in the third through sixth editions—most of whom were anonymous—had allowed the book to sprout all sorts of stylistic inconsistencies. Meanwhile, as far as I have been able to tell, they hadn't really been trained in lexicography.

In fact, it seems that the contributors to the earlier editions rarely followed five basic tenets of defining words:

- Make the definition substitutable for the word in context,¹³ so that the entry begins with the definition itself—never with a phrase such as “a term meaning” or “a term referring to.”¹⁴
- Indicate every meaning of the headword in the field covered by the dictionary.¹⁵
- Don't define self-explanatory phrases that aren't legitimate lexical units (including such phrases as *living with husband*).¹⁶
- Define singular terms, not plurals, unless there's a good reason to do otherwise.
- Distinguish between definitions and encyclopedic information (that is, textbook descriptions).¹⁷

These are challenging commands for the lexicographer—especially the first, which refers to substitutability. *Black's Sixth* had hundreds of entries that weren't substitutable. They read, for example, after the headword: “Exists where ... ,”¹⁸ “Term refers to ... ,”¹⁹ “Term used to describe ... ,”²⁰ and “A Saxon term for”²¹ It had hundreds of other entries in which adjectives were defined as if they were nouns, and nouns were defined as if they were adjectives. For example, *litigious*, an adjective, was defined as a noun: “That which is the subject of a lawsuit or action.”²² Henry Campbell Black wrote that definition in 1891, and it was carried through every edition up through the sixth in 1990. But examples like that one proliferated in the intervening years, and you'd find this sort of thing on almost every page of the sixth edition.

In fairness to those who worked on the third through the sixth editions of *Black's*, I can point to three mitigating facts:

- Defining terms rigorously isn't an easy matter. Even after months of training, most of my own assistants (past and present) have tended to stumble on the principle of substitutability, and I'm sure I've stumbled occasionally as well.
- To the extent that the compilers used judicial pronouncements, and parroted ill-phrased definitions, they were just following the precedent of judges who were less than adept at defining terms. A good example of this is the Utah Supreme Court's definition of *hotel*, a nonlegal term included in *Black's Sixth*: “a building held out to the public as a place where all transient persons who come will be received and entertained as

guests for compensation and it opens its facilities to the public as a whole rather than limited accessibility to a well-defined private group.” In that example, a noun phrase turns into a clause in the latter part—and the definition itself is inaccurate, even if a state supreme court said it.

- The users of *Black’s Law Dictionary* through the years seem never to have complained about one part of speech being defined as if it were another part of speech. It could be that only professional lexicographers complain about this sort of thing. Then again, it could be that users trust dictionary writers to get the definitions and parts of speech right.

Like the first tenet, substitutability, the other tenets are fairly routinely flouted in pre-seventh editions of *Black’s*: meanings aren’t clearly enumerated,²³ many entries aren’t legitimate lexical units,²⁴ there are plural headwords and even plural definitions of singular terms,²⁵ there are entries in which definitions of verbs and nouns are run together without differentiation,²⁶ and many entries contain exclusively encyclopedic information without any definitions at all.²⁷

It was a major challenge putting the seventh edition of *Black’s* into a consistent format and implementing the modern rules of lexicography. But I never doubted that this was the right course.

4. To what extent can the modern lexicographer rely on the accuracy of predecessors?

As you might have guessed, I believe it’s unwise to repeat predecessors’ work. My policy has been, as much as possible, to research anew every entry in *Black’s*. My colleagues and I didn’t merely rely on earlier editions. Within the time constraints we had, we researched every definition in every entry and generally wrote the definitions from scratch. We rethought, second-guessed, and re-researched every item in the dictionary, and we second-guessed everything.

I’ll give you an interesting example of the task we undertook. When I was working on the *V*’s—a letter that grew enormously from the sixth edition to the seventh—I came upon the word *vitiligate* included in *Black’s Sixth*:

vitiligate. To litigate cavilously, vexatiously, or from merely quarrelsome motives.

Never having heard of this word, I thought it was an extraordinary discovery. Of course, I needed to verify its existence. So, as with almost every other entry, I checked the *OED*, and did not find *vitiligate*; instead, the *OED* recorded *vitilitigate*, citing Blount’s *Nomo-Lexicon* of 1670. Similarly, *Webster’s Second New International Dictionary* (1933) recorded *vitilitigate*, as did the *Century Dictionary* (1914). The meaning was the same in both dictionaries.

Looking at many other sources confirmed that *vitiligate* was simply a typographical error in a headword. I looked in the first edition of *Black’s* and found that it was correctly recorded there: *vitilitigate*, not *vitiligate*. So

I wondered when the mistake had crept into the book. It appeared in the fifth edition (1979), in the fourth (1951), in the third (1933), and even in the second (1910). And the second edition, remember, was published in Henry Campbell Black’s lifetime. The typesetter had apparently dropped a syllable in 1910, and this typographical error was perpetuated in every edition of *Black’s* for the next 89 years. Fortunately, I couldn’t find any caselaw using the bastardized form in reliance on *Black’s*. We put things right in *Black’s Seventh*.

My decision to second-guess old research also took another form. *Black’s Law Dictionary*, like most law dictionaries, is chock-full of terms and maxims taken from Roman law. Being an American lawyer with a typical American legal education, I didn’t feel competent to review the material that had originated in Roman law. I had read a great deal about Roman law, and I had built a small library of English-language materials on Roman law, but still I knew that specialist reviewers would have to get involved when it came to these terms.

So I went straight to the top of the field. I hired Professor Tony Honoré of Oxford University and Professor David Walker of the University of Glasgow to review every entry in the book. Not only did they correct a lot of the material taken from Roman law—from Latin headwords recorded incorrectly to incomplete and inaccurate definitions—but they also improved the treatment of material taken from English law and Scottish law. There isn’t a single page of *Black’s Seventh* that wasn’t improved by the erudition and industry of these scholars; and all future editions will be improved as well.

Lawyers sometimes ask me why I added so much material from Roman law. The answer is simple: because principles of Roman law underlie many modern concepts found in civil law and common law, students of legal history often come across references to Roman legal terms. With the help of Honoré and Walker, I had the opportunity to get things right. It would have been serious malfeasance not to take advantage of their suggested additions.

5. How does the editor find the material to include in a dictionary?

One thing we tried to do in *Black’s Seventh* and later editions was to improve the coverage of legal terms. You’ll see this in various ways that are fairly easy to quantify. For example, the sixth edition had only five subentries under *interest rate*—in other words, just five types of interest rates—whereas *Black’s Ninth* defines 15 types. Similarly, from the sixth edition to the ninth, *Black’s* went from 75 subentries under *bond* to 122, from 9 subentries under *marriage* to 33, from no subentries under *reinsurance* to 4, and from 3 subentries under *veto* to 8.

So where did we find all this additional material? We found it partly, as lexicographers must, by examining other reference books. But the more important method was by examining hornbooks and treatises that deal systematically with a given legal field. For more than 12 years, I’ve read and marked up about one lawbook a month. I highlight

potential headwords to be typed into a list followed by the illustrative quotations I've marked. Then either my assistants or I will use that information as the basis for further research and will draft an entry for each headword. Any good dictionary editor must have some type of reading system for gathering new material in this way.

On the seventh edition, I had the help of three full-time lawyers whom I had trained as lexicographers, including my senior assistant editor, David W. Schultz. And for the more recent editions, I have had the help of four fine lawyer-lexicographers: Tiger Jackson, Jeffrey Newman, Karolyne H. Cheng, and Becky R. McDaniel. Having a team, even a small one, is enormously useful.

Finally, I rely on the users of *Black's*, who are always welcome to suggest new entries and to comment on and critique existing ones. Anyone may contact me at bgarner@lawprose.org with submissions or requests—with the understanding that my colleagues and I seriously vet all suggestions to ascertain actual legal usage.

What Will the User Find in the Latest Editions of *Black's Law Dictionary*?

With each new edition of *Black's*, I seek not only to add relevant new entries but also to strengthen certain features of the book. Some of these innovations have attracted scholarly comment.²⁸

In *Black's Seventh*, the primary focus was on (1) untangling the messy definitions of terms found in earlier editions and ensuring accuracy; (2) weeding out headwords that were not logical; (3) retranslating Latin maxims and collecting them in an appendix, as opposed to spreading them throughout the main lexicon; (4) adding several

thousand scholarly quotations; and (5) improving the pronunciation system.

In *Black's Eighth*, the focus was on (1) enhancing the coverage of specialty areas, such as intellectual property, family law, and criminal law; (2) double-checking the accuracy of Latin maxims yet again; (3) adding several thousand headwords; (4) systematically supplying key-number citations that would be perpetually updated; and (5) redesigning the pages to make the book easier to use.

In *Black's Ninth* (2009), the focus was on (1) supplying the earliest known uses for the major terms; (2) revising all definitions for consistency of approach; and (3) continuing apace with each of the other innovations introduced in the two prior editions, including the addition of thousands of key-number citations and thousands of new entries and subentries. Fred Shapiro of Yale Law Library has researched the earliest-recorded uses for thousands of terms, thereby conferring on the book a whole new level of scholarly reliability.

As for what's in store for *Black's Tenth*, that's a closely guarded trade secret. Sorry.

With each successive edition I have enlisted the editorial assistance of more and more law professors and practicing lawyers. A proper dictionary must be based on the expertise of many people. For the seventh edition, I recruited 30 judges, lawyers, and academics to scrutinize our entries. For the eighth, I assembled a panel of 62 academic contributors and 13 practitioner contributors. By the ninth edition, the total number of law-trained editorial advisers had grown to 303. Specifically, the professors and practitioners were each sent 50- to 100-page batches of manuscript and asked to make editorial improvements, including amplifying and elaborating on entries, tightening or sharpening

An Excerpt from the Preface of *Black's Ninth*

Since becoming editor in chief of *Black's Law Dictionary* in the mid-1990s, I've tried with each successive edition—the seventh, the eighth, and now the ninth—to make the book at once both more scholarly and more practical.

Anyone who cares to put this book alongside the sixth or earlier editions will discover that the book has been almost entirely rewritten, with an increase in precision and clarity. It's true that I've cut some definitions that appeared in the sixth and earlier editions. On a representative sample of two consecutive pages of the sixth can be found *botulism*, *bouche* (mouth), *bough of a tree*, *bought* (meaning “purchased”), *bouncer* (referring to a nightclub employee), *bourg* (a village), *boulevard*, *bourgeois*, *brabant* (an obscure kind of ancient coin also called a *crocard*), *brabanter* (a mercenary soldier in the Middle Ages), and *brachium maris* (an arm of the sea). These can hardly be counted as legal terms worthy of inclusion in a true law dictionary, and *Black's* had been properly criticized for including headwords such as these.¹

Meanwhile, though, within the same span of terms, I've

added entries for three types of boundaries (*agreed boundary*, *land boundary*, *lost boundary*), as well as for *bounty hunter*, *bounty land*, *bounty-land warrant*, *boutique* (a specialized law firm), *box day* (a day historically set aside for filing papers in Scotland's Court of Session), *box-top license* (also known as a *shrink-wrap license*), *Boykin Act* (an intellectual-property statute enacted after World War II), *Boyle defense* (also known as the *government-contractor defense*), *bracket system* (the tax term), *Bracton* (the title of one of the earliest, most important English lawbooks), and *Brady Act* (the federal law for background checks on handgun-purchasers). And all the other entries have been wholly revised—shortened here and amplified there to bring the book into better proportion.

Hence, in one brief span of entries, the sixth and ninth editions appear to be entirely different books. That's true throughout the work.

¹See David Mellinkoff, *The Myth of Precision and the Law Dictionary*, 31 U.C.L.A. L. REV. 423, 440 (1983).

definitions, and adding ABS (after-the-bullet) encyclopedic information. My team in Dallas incorporated the best of these suggested edits.

In a few cases, I enlisted specialist reviewers—a task that requires a great deal of preparatory work for each batch. For example, for the eighth edition, E. Allen Farnsworth (1928-2005) of Columbia University agreed to review the terminology that dealt with contract law. He painstakingly edited about 100 single-spaced pages of material, making valuable improvements throughout the complex entries on permutations of acceptance and consideration and hundreds of specific doctrines (some of which were new even to him). In the final year of his life, he and I spent many hours on the telephone as we hammered out improved definitions for dozens of terms.

Dashing One's Frame

Despite all the computers that make the job so much easier, the issues with which a modern legal lexicographer must deal are much like those that Rastell and Jacob and Bouvier and Black dealt with. My editorial decisions often depart from those of my precursors, but this is largely because of strides made in the field of lexicography.

Shortly before *Black's Seventh* was completed, my publishers at West, over dinner in St. Paul, asked me how I would describe the book. I still have the dinner napkin on which I wrote: "The seventh edition of *Black's Law Dictionary* is at once the most comprehensive, authoritative, scholarly, and accessible American law dictionary ever published." Whether my colleagues and I met that goal with that edition, and later ones, only time will tell. I've tried here to give some explanation of why that claim might actually hold.

When you write a dictionary—especially in a field as wide-ranging as law—you're battling your own fallibility. I'm constantly second-guessing my own work as well as that of my colleagues, and I've gone to great lengths to find other knowledgeable second-guessers. Only with that kind of vigilance can you feel confident about the scholarship.

Toward the end of his distinguished career as editor in chief of the *OED Supplement*, my friend Robert W. Burchfield wrote that it was "discouraging to see the waves of new words lapping in behind as one dashed one's frame against the main flood."²⁹ Perhaps it's a function of my age—and of the hope that I'll be able to supplement and perfect *Black's Law Dictionary* over the course of several more editions—but I welcome the flood of new legal terms and new legal meanings for old terms. And I imagine Henry Campbell Black felt the same way back in the 1890s. **TFL**

Bryan A. Garner is the editor in chief of Black's Law Dictionary, president of LawProse Inc., and author of many books on language, advocacy, and interpretation. He is Distinguished Research Professor of Law at Southern Methodist University. © 2012 Bryan A. Garner. All rights reserved.

Endnotes

¹Giles Jacob, *A NEW LAW-DICTIONARY* (1729).

²Henry Campbell Black, *HANDBOOK OF AMERICAN CONSTITUTIONAL LAW* (1897).

³Henry Campbell Black, *REMOVAL OF CAUSES FROM STATE COURTS TO FEDERAL COURTS* (1889).

⁴Henry Campbell Black, *A TREATISE ON THE LAW OF JUDGMENTS* (1891).

⁵Henry Campbell Black, *A TREATISE ON THE RESCISSION OF CONTRACTS* (2d ed. 1929).

⁶Henry Campbell Black, *A HANDBOOK OF BANKRUPTCY LAW* (1898).

⁷Henry Campbell Black, *A TREATISE ON THE LAW OF INCOME TAXATION* (1913).

⁸Henry Campbell Black, *A TREATISE ON THE LAW OF TAX TITLES* (1893).

⁹Henry Campbell Black, *A TREATISE ON THE LAW OF MORTGAGES AND DEEDS OF TRUST* (1903).

¹⁰Henry Campbell Black, *HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS* (1896).

¹¹Henry Campbell Black, *BLACK ON INTOXICATING LIQUORS* (1892).

¹²See, e.g., Sidney Landau, *DICTIONARIES: THE ART AND CRAFT OF LEXICOGRAPHY* 5-6 (1984); Tom McArthur, *WORLDS OF REFERENCE* 104 (1986); R.R.K. Hartmann and Gregory James, *DICTIONARY OF LEXICOGRAPHY* 48-50 (1998).

¹³Sidney Landau, *DICTIONARIES: THE ART AND CRAFT OF LEXICOGRAPHY* 164 (2d ed. 2001).

¹⁴*Id.* at 163.

¹⁵*Id.* at 187.

¹⁶*Id.*

¹⁷*Id.*

¹⁸See, e.g., *BLACK'S LAW DICTIONARY* 229, 935 (6th ed. 1990) (s.v. *chain conspiracy, living separate and apart*).

¹⁹*Id.* at 743, 796, 1425 (s.v. *hybrid class action, insider trading, subject-matter jurisdiction*).

²⁰*Id.* at 1479 (s.v. *third degree*).

²¹*Id.* at 888 (s.v. *lazzi*).

²²*Id.* at 934.

²³Compare *Black's Law Dictionary* 1026 (6th ed. 1990) (defining *natural* in two long unnumbered sentences from which two senses emerge) with *Black's Law Dictionary* 1048 (7th ed. 1999) (defining *natural* in seven numbered senses in about the same amount of space).

²⁴See, e.g., *Black's Law Dictionary* 935 (6th ed. 1990) (s.v. *living with husband*).

²⁵*Id.* at 897 (defining *legal usufruct* as "usufructs established ...").

²⁶*Id.* at 562 (s.v. *exchange*).

²⁷*Id.* at 1479 (s.v. *thin capitalization*).

²⁸See, e.g., Sarah Yates, *Black's Law Dictionary: The Making of an American Standard*, 103 *LAW LIB. J.* 175 (2011); Roy M. Mersky and Jeanne Price, *The Dictionary and the Man: The Eighth Edition of Black's Law Dictionary*, ed. by Bryan Garner, 63 *WASH. & LEE L. REV.* 719 (2006); Peter Tiersma, *The New Black's*, 55 *J. LEGAL EDUC.* 386 (2005).

²⁹Robert W. Burchfield, *UNLOCKING THE ENGLISH LANGUAGE* 176 (1989).