

**BLACK'S
LAW
DICTIONARY**

TENTH EDITION

BRYAN A. GARNER
EDITOR IN CHIEF

Black's Law Dictionary[®]

Tenth Edition

Bryan A. Garner

Editor in Chief



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Preface to the Tenth Edition

Most dictionary users do not read the front matter. They should but don't. You are among the cognoscenti.

After 33 years as a legal lexicographer, I can attest that marshaling, defining, arranging, and elucidating the whole of the legal vocabulary—as well as ascertaining the most classic and useful explications of terminology to be found in the literature—has never been more challenging. This tenth edition, my fourth as editor in chief, contains new material on every page: material that will be valuable to a range of dictionary users, from students to practicing lawyers to scholars and historians.

Several features of this new edition are noteworthy:

- The dating of terms is significantly more extensive. Fred Shapiro of the Yale Law Library has extended his research for this project by providing dates of earliest uses in English for nearly all the terms here recorded.
- Some 7,500 new entries have been added, after painstaking research over the past five years. Some of these new terms are colorful (e.g., *affluenza defense*, *legaldygook*), and some edgy (e.g., *judgitis*, *judicial diva*), but most are mainstream words that perhaps might have been included years ago (e.g., *rationale*, *reason*, *requisition*).
- The number of sources quoted and cited has more than doubled. Hence the bibliographic coverage has become radically more extensive—and mostly from classic works.

This last point merits elaboration. As I noted in an earlier preface (p. xxiv), I have developed a new method in this dictionary for providing illustrative quotations in which scholars comment usefully on a term, its history, its nuances and ambiguities, or the distinctions between it and its near allies. The quotations are longer than those found in the *Oxford English Dictionary* mostly because they are more than illustrative: they are substantive. With each quotation, I have tried to provide the seminal remark—the *locus classicus*—for an understanding of the term. Identifying and locating these passages was no small endeavor, yet it was a solo endeavor: this part of the work I undertook singlehandedly because it is hardly a delegable task, requiring as it does a fairly thorough grounding in Anglo-American legal literature.

Why did I not choose more quotations from caselaw? There's a simple answer and a more complex one. The simple answer is that courts, in their opinions, rarely discuss terminology in a way that elucidates anything other than the case currently being decided. They are eminently unquotable perhaps because, unlike leading scholars, they haven't spent years grappling with the subtleties of the one crucial word or phrase. Instead, they spent perhaps a day or a week writing an opinion that decides a particular case, in the course of which they may discuss a crucial word or phrase. But the discussion is typically context-specific, and often statute-specific, in a way that makes the comment of local interest only.

Contrast that approach with what my late friend Neil MacCormick, the Scottish legal philosopher, pithily wrote about the terms *lie* and *social democracy*. Or consider

any of the hundreds of other examples you can readily find in these pages, for which I'll cite just a few representatives: Holdsworth (*arbitration*), Dhokalia (*codification*), G.W. Keeton (*family law*), Clapham (*human rights*), Black (*interpretation clauses*), Williams (*justification*), Plucknett (*murder*), Lieber (*nation*), Story (*promissory note*), and Paton (*vested*). A few are pleasingly fanciful, as with Palmer (*simplify*) and Pigott (*statute*). None should prove unilluminating to someone interested in the particular term.

The authors of these quotations lend the book a good deal of historical depth. Yet unlike the words of courts in their judicial opinions, the passages cited are not readily available to most lawyers and scholars, even through computer searches. They must be found the old-fashioned way: by consulting the books themselves.

Librarians and bibliographers have thanked me for the thorough bibliography in previous editions. Here it is twice the length and is set forth with greater detail in publishing history (pp. 1995–2016). Although these sources are not the only classics in legal literature, they are among the best on questions of terminological nuance. One curiosity I've noted over the years is that many legal scholars (perhaps half?) can write long books and articles without so much as a single noteworthy comment on words and phrases. As a lexicographer, I find these works dreadfully abstract and tedious. Other legal scholars are almost obsessed with words, how they are used, what they mean (or should mean), and their history. Glanville Williams comes to mind as the archetypal example. These scholars write not only with verbal astuteness but also, typically, with verve and flair. They contribute enormously to what is good in legal literature.

Black's Law Dictionary is commonly classified as a secondary resource, and that would be correct if it were merely a compilation of judicial statements—as it verged on being when I took on the editorship. If you are curious, look at the sixth edition's entry for *hotel*: not only is the definition substantively flawed, but it is also ungrammatical. It was taken nearly verbatim from the judicial opinion there cited. So were many other definitions in that edition.

I have always thought that a dictionary, properly written, should be considered a primary resource—that is, a primary lexicographic resource. The *Oxford English Dictionary* has achieved that distinction and, as the most widely cited lawbook in the English-speaking world, *Black's Law Dictionary* can certainly lay claim to it. When my colleagues and I prepare an entry, we may consult 5, 15, or perhaps 50 cases to write a definition. And we *write* them. We are not mere compilers. So no single citation to a case, or even two, would suffice to signal the authority on which the definition is based because not all the nuances would be captured in the source cited.

Citations to the West Key Number System have been eliminated from this tenth edition for a simple reason: they are constantly being altered, so that the book's citations would gradually become inaccurate. Unable to change this reality, I have simply removed them. The good news is that the extra space has proved invaluable for supplying all the new substantive material.

You might like a window into one aspect of how part of this book was produced. Let me illustrate how 900 new Latin maxims were collected and defined for Appendix B (pp. 1897–1969). Although the ninth edition of *Black's* already contained the most extensive and accurate listing of maxims in print (see page xix), I unearthed more. Consulting a 40-volume encyclopedia published between 1901 and 1913, I noticed that its coverage

of legal maxims was particularly thorough. Several different editors of that set, beginning with a man named Howard P. Nash, were put in charge of maxims for that encyclopedia. I assigned two student assistants who had studied Latin to find all the maxims not included in the ninth edition. After 90 days of reviewing tens of thousands of pages in that encyclopedia, my assistants identified a thousand new maxims—or, rather, old maxims that had never been recorded in *Black's*. Then one of my lawyer-colleagues at LawProse, Heather Haines, meticulously verified the accuracy of their work against the early-20th-century encyclopedia. That was a painstaking process, and Heather made many corrections. Once all was in line with the encyclopedia, I edited the definitions in a nonsubstantive way so as to make the wordings more idiomatic and modern. Then I sent the thousand maxims off to two superb classicists in Missouri, Professor Edwin Carawan and his wife, Alison Parker, both of whom had served as consultants on maxims in the seventh through the ninth editions. They spent three months correcting the Latin, amending the translations, and supplying many citations to Roman-law classics such as Justinian's Digest, as well as to Coke. They identified 100 as being mere gibberish; these I rejected. In all, Carawan and Parker thoroughly revised about 85% of the newly discovered maxims. By all reports, it was an arduous process that showed the unreliability of the old encyclopedia.

Once all the Carawan and Parker corrections had been entered, I sent the remaining 900 maxims to Professor Tony Honoré of All Souls College, the emeritus regius professor of Roman law at Oxford University. He modified the translations of perhaps half the maxims, noting that a certain medieval concept might be better translated with a term other than the one used in the then-current draft.

It took Professor Honoré 60 days to do his work. Back in Dallas, all his corrections were entered and doubly verified.

The polished revision went back to Carawan and Parker, who found several remaining errors in the Latin. They were grateful to see Honoré's work, and they found several additional points of improvement.

Once the final corrections were entered and verified, the maxims went into Appendix B. It took a week for a LawProse staffer to verify the alphabetical ordering of all 4,000 maxims.

Having gone through this same process with all the Latin maxims over the seventh through ninth editions, we've uncovered and corrected hundreds of errors in the Latin that had appeared in the first six editions. Those errors might have occurred in the sources that Black and other lexicographers consulted in the 19th century, or they might simply have been transcription errors.

What I've just described is the typical process. We've put all the definitions in the book through a similar process of research, review, and revision by LawProse staff and by law professors, judges, and practitioners—among the best in their fields.

I would be remiss if I didn't profusely thank my dedicated colleagues at LawProse Inc. We're a small company of six lawyers, two paralegals, a staff editor, and an MBA. But that hardly tells the story. Jeff Newman has laid out every page of the last two editions—as well as most of my other recent books; he is also a superlative editor and researcher. Tiger Jackson, who joined the company in 2000, is likewise a prodigious

editor and researcher, and I'm fortunate to have the benefit of her perceptive eyes. Becky McDaniel minutely verified all the thousands of edits that I and others made throughout the course of the project, and did much more besides. My wife, Karolyne H.C. Garner, reviewed many of the entries as I composed them and, as a member of the patent bar, contributed enormously to the IP terminology throughout. Heather Haines typed and proofed hundreds of quotations I selected for inclusion, almost all of them from books held in our LawProse library. (We like to own original copies of the books we cite.) Ryden Anderson and Hayden English edited with a keen eye and verified all the cross-references, among many other tasks. Ashley Stroope ably handled many logistical tasks during the final year of the project. Without the devotion of such a talented team, the qualities of this dictionary would be impossible to attain.

Over the years, I have been fortunate to have acquired many friends and lexicographic allies. Not least are the contributing editors (p. v), all of whom added a great many terms within their specialties: criminal law (Muldoon), conservation and litigation (Schwing), federal agencies (Spaniol), Roman law and legal philosophy (Honoré), financial litigation (Melendez), intellectual property (Hammond), and lexicographic dating (Shapiro). I could never have imagined the degree of their assiduity and learning, nor indeed of their warm friendship. Similarly invaluable were the professors on our academic panel (p. vi) and the judges and lawyers on our practitioner panel (pp. vii–ix). Among others who merit special mention are my correspondents Marco Barreto, Josiah Daniel, Peter Kirchikov, Sandra Tomasi, and Bruce Volbeda, all of whom have sent me useful materials.

During our collaboration on two books, Justice Antonin Scalia helped me on countless terms: I'd sneak in a lexicographic query during one of our marathon sessions in Washington as we took a short break from writing *Making Your Case* or *Reading Law*. Justice Scalia rightly insisted that the definitions in *Black's* must be utterly even-handed and must be written as much as possible from an omniscient perspective. That advice echoed extensive conversations I once had with Charles Alan Wright, my legal mentor, when I assumed the editorship in the mid-1990s. My colleagues and I have strived to make the entries as balanced, objective, and neutral as possible, whatever the subject.

I thank Thomson Reuters for all the cooperative work, especially in the electronic versions, which should be more helpful than ever. Jean Maess and John Wierzbicki have been strong supports and publishing allies. So have Heather Axtman, Andrea Delsing, Lisé Freking, Michelle Montana, Michael Mars, Susan Martin, Michael Poccia, Chris Schultz, Lora Thody, and Sarah White.

Law librarians near and far have lent helping hands. My profound thanks go to Gail Daly and Gregory Ivy of Southern Methodist University's Underwood Law Library; Cattleya Concepcion, Melanie Knapp, and Debbie Shrager of the George Mason University Law Library; Scott B. Pagel of the George Washington University Law Library; Uwe Beltz of the Texas Tech Law Library; and Barbara A. Bintliff of the University of Texas's Tarlton Law Library. They all generously made their resources available to me whenever I was in the area, and I am grateful. The book would not have been as good as it is without them.

The incomparable Samuel Johnson once said: "Dictionaries are like watches: the worst is better than none, and the best cannot be expected to go quite true." He was

PREFACE TO THE TENTH EDITION

right, of course. He also said, somewhat cynically, that a lexicographer cannot aspire to praise, but at most to escaping censure. Again, he was right, as almost any experienced lexicographer can attest.

Even as we go to press, I find things I'd like to supplement or alter. That's in the nature of all scholarship. Yet this edition must have an end. So I present it to the profession in hopes that it will prove to be a valuable resource.

Bryan A. Garner
Dallas, Texas
17 March 2014

Preface to the Ninth Edition

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.*

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 the ninth editions appear to be entirely different books. That's true throughout the work.

But it's not as if I've revised the book with any hostility toward historical material. In fact, I've added hundreds of Roman-law terms that had been omitted from earlier editions and retranslated all the others on grounds that current users of the dictionary might need to look up the meanings of these historical terms. But whatever appears here, in my view, should be plausibly a law-related term—and *closely* related to the law.

Users ought to be reminded once again about the handy collection of legal maxims in Appendix B. It is, I believe, the most comprehensive and accurate set of translated maxims to be found anywhere in print—thanks to the erudite revisions of two civil-law experts of the first rank: Professor Tony Honoré of Oxford and Professor David Walker of Glasgow.

A lexicographer must do what is practicable to improve each new edition of a dictionary. One of the notable features of this new edition is the dating of the most common terms—that is, the parenthetical inclusion of a date to show the term's earliest known use in the English language. For researching these dates, I'm grateful to the distinguished and industrious lexicographer at the Yale Law Library, Fred R. Shapiro.

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

PREFACE TO THE NINTH EDITION

As a lexicographer, I've learned a great deal from my friends and mentors in the field—especially the late Robert W. Burchfield, editor of the *Oxford English Dictionary Supplement* during the latter half of the 20th century. Like his 19th-century precursors at the *Oxford English Dictionary*, Burchfield had a battalion of lexicographic volunteers from around the globe to help him in his momentous work.

I have tried to do the same. Because I genuinely believe in a community of scholars—a community of learned people who understand the cultural and historical importance of having a first-rate dictionary, and are willing to play a role in producing it—I have called on volunteers to help in the production of this vast and complex dictionary. It has been rewarding to have so many lawyers, judges, and scholars answer the call. Take a moment, if you will, and scan the masthead on pages vi–ix. Consider that each of these contributors personally edited 30 to 50 pages of single-spaced manuscript—some more than that. They suggested improved wordings and solved editorial difficulties they encountered. Consider the geographical variety of the panelists, and ponder the years of specialist knowledge they brought to their work. Look at the panel of academic contributors (p. vi) and notice that they are distinguished scholars of the highest order, many of them household names among lawyers. They exerted themselves not just for the betterment of this book, but for the betterment of the law as a whole. For this is the law dictionary that the profession has relied on for over a century. Everyone who cares about the law owes our contributors a debt of thanks.

Bryan A. Garner
LawProse, Inc.
Dallas, Texas
April 2009

Preface to the Eighth Edition

This massive new edition of *Black's Law Dictionary* continues the undertaking begun by Henry Campbell Black in 1891: to marshal legal terms to the fullest possible extent and to define them accurately. But more than that, it continues the effort begun with the seventh edition: to follow established lexicographic principles in selecting headwords and in phrasing definitions, to provide easy-to-follow pronunciations, and to raise the level of scholarship through serious research and careful reassessment.*

The terminology in several fields of law now finds greater coverage in the book than ever before. Specialists generously improved our treatment of terms in admiralty (Michael F. Sturley), contracts (E. Allan Farnsworth), criminal law (Stephen A. Saltzburg, Robert Weisberg), ecclesiastical law (R.H. Helmholz), family law (Lucy S. McGough, Janice M. Rosa), federal agencies (Joseph F. Spaniol Jr.), international law (Thomas Buergenthal), Louisiana law (Saúl Litvinoff, Symeon Symeonides, A.N. Yianopoulos), oil and gas (John S. Lowe), parliamentary law (Brian Melendez), Roman law (Tony Honoré, O.F. Robinson, Ernest Metzger), and Scots law (O.F. Robinson, David Walker).

Beyond those specialized reviews, however, a newly created panel of academicians reviewed the entire alphabetical span of the book. That way, the entire text received thorough scrutiny by many of the best legal minds in the world. Entries have been updated and expanded to reflect both contemporary and historical usage. I am much indebted to everyone on the panel (see p. vi).

Many intellectual-property lawyers reviewed and commented on the terms in their field: Ray Aust, David L. Cargille, Li Chin, Jonathan A. Darcy, Michael J. Dimino, Herbert J. Hammond, Karen G. Horowitz, Audrey E. Klein, Nanda P.B.A. Kumar, Eric Myers, Jeff Mode, Todd A. Norton, Michael A. Papalas, Tracy L. Reilly, and Eric Sofir. Special thanks go to Herbert J. Hammond, who expertly drafted many entries for intellectual property.

The first two appendixes have been greatly amplified. Kurt Adamson of the Underwood Law Library at Southern Methodist University skillfully prepared the table of abbreviations found in Appendix A. The legal maxims in Appendix B were scrutinized and corrected by Professors Honoré and Walker. The maxims have been amended and supplemented to such a degree that it can probably be called the most exhaustive and authoritative collection anywhere to be found.

For the first time, *Black's Law Dictionary* contains citations to key numbers and to *Corpus Juris Secundum* — a significant aid to research. My special thanks to Robin Gernandt, who spearheaded the effort, along with his many colleagues: Jill Bergquist, Kara Boucher, Barbara Bozonie, David Brueggemann, Kevin Callahan, Dan Dabney, Lynn Dale, Lisa Dittmann, Robert Dodd, Wayne Foster, Valerie Garber, Phil Geller, Gerald Gross, Craig Gustafson, Nancy Johnson, Charles Kloos, Nicholas Koster, Jana Kramer, Patricia Larson, Jeffrey Locke, Richard Mattson, Timothy Nornes, Joel Nurre, Frederick Steimann, James Vculek, and Linda Watts. Three who did an extraordinary

*See generally Bryan A. Garner, *Legal Lexicography: A View from the Front Lines*, 6 Green Bag 2d 151 (2003).