

Legal Lexicography

A VIEW FROM THE FRONT LINES

Bryan A. Garner

THERE ARE ESSENTIALLY five big questions for the writer of a modern law dictionary – and they’re pretty much the same questions faced by lexicographers of old, from Rastell to Jacob to Bouvier to Black. They are:

- (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, as opposed to expansively discussing 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 judicial definitions?
- (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 do you find the material to include in a dictionary?

As a practicing lexicographer, I’ve had to answer those questions – and some of them I continue to answer ad hoc, from day to day and week to week. My answers largely explain why the seventh edition of *Black’s Law Dictionary*, which came out in 1999, looks so different from earlier editions. Let’s take these questions one at a time.

I. To what extent should a dictionary contain encyclopedic information?

Early law dictionaries were essentially glossaries, with short explanations of legal terms. In the 18th century Giles Jacob was the first to combine a dictionary and an abridgment, so that he was essentially trying to expound the law according to an alphabetical arrangement. The title of later editions of his dictionary, after all, is “A Law-Dictionary: Containing the Whole Law” His entry for *jointenants* (which he spelled as one word) was an essay that runs to four long columns of small type, in which he set forth all the court holdings he

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could find on joint tenancy. This discursive essay runs to 3,400 words.

When Thomas Edlyne Tomlins took over Jacob's *Law Dictionary*, his 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. So it was also with 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 in this way: "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" (p. v). His own entry for *joint tenants* (spelled as two words) runs 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 rejected his concise approach and moved once again more toward an overdeveloped encyclopedic treatment. The 1914 edition by Francis Rawle, one of the last editions, ran to 512 words – more than ten times as long – and cited 11 case holdings, all of which look (to the modern eye) very antiquarian.

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 specialist treatises and by much bigger 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.

There were other 19th-century dictionaries that appeared before and after *Black's Law Dictionary* appeared in 1891, but none as important. Henry Campbell Black was a learned lawyer with varied interests. His list of full-length treatises is extremely impressive. He wrote full-length treatises on constitutional law,¹ on the removal of cases from state to federal court,² on the law of judgments,³ on the rescission of contracts,⁴ on bankruptcy,⁵ on the income tax,⁶ on tax titles,⁷ on mortgages and deeds of trust,⁸ and on statutory interpretation.⁹ He even wrote a book called *Black on Intoxicating Liquors*.¹⁰ 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 ever knew that his other books would pass into oblivion, while his law dictionary would become something of a household name.

Black's entry for *joint tenancy* ran to 153 words (citing two statutes and no cases). The

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- 1 Henry Campbell Black, *Handbook of American Constitutional Law* (1897).
 - 2 Henry Campbell Black, *Removal of Causes from State Courts to Federal Courts* (1889).
 - 3 Henry Campbell Black, *A Treatise on the Law of Judgments* (1891).
 - 4 Henry Campbell Black, *A Treatise on the Rescission of Contracts* (2d ed. 1929).
 - 5 Henry Campbell Black, *A Handbook of Bankruptcy Law* (1898).
 - 6 Henry Campbell Black, *A Treatise on the Law of Income Taxation* (1913).
 - 7 Henry Campbell Black, *A Treatise on the Law of Tax Titles* (1893).
 - 8 Henry Campbell Black, *A Treatise on the Law of Mortgages and Deeds of Trust* (1903).
 - 9 Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* (1896).
 - 10 Henry Campbell Black, *Black on Intoxicating Liquors* (1892).

entry characteristically begins with a definition and then expands modestly on it. While there's no attempt to restate the entire law, he does include a modest amount of 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 of 1910, Black wisely relegated the phrase *joint tenancy* to be a subentry under *tenancy*. This was a good move because it allowed the dictionary user to compare all the types of tenancy at a glance. Meanwhile, Black carefully gave a cross-reference under 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 deleted. 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 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 – that they shouldn't attempt to be encyclopedias.¹¹ 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 bullet dots 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:

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 UNITY (2); 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).

¹¹ See, 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 & Gregory James, *Dictionary of Lexicography* 48-50 (1998).

The bullets allowed us to provide concise, substitutable definitions and to include some encyclopedic information – or ABS – whenever our research turned up something interesting or useful. As far as I know, 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 a further 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 judicial opinion, so much the better. But I gave no preference to judicial opinions.

One commentator has questioned why the seventh edition of *Black's Law Dictionary* has 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 good, informed discussion of a legal term. I'd rather quote Douglas Laycock on the irreparable-injury rule (as the seventh edition does) 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 seventh edition are not so accessible. Anyone wanting to research the caselaw in a given jurisdiction can get 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 a dictionary-user.

The quotations also lend a greater degree of scholarly reliability to the dictionary. Of course, the *Oxford English Dictionary* is famous for its illustrative quotations – sentences illustrating the actual use of a term through the centuries. Our quotations in *Black's Seventh* 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 specialist dictionary can do to give the entries greater historical and intellectual depth. Once again, though, to my knowledge no previous dictionary has 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 judicial definitions?

There are two traditions in legal lexicography. There's the law dictionary, and there's the judicial dictionary – such as *Stroud's Judicial Dictionary* (a leading English authority since 1890) or *Words and Phrases* (a 90-volume collection of judicial pronouncements).

A judicial dictionary is both broader and narrower than a law dictionary because it collects whatever words and phrases judges have had occasion to define. It 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 *Black's Seventh* has definitions for *legal realism*, *legal research*, *legal secretary*, *Legal Services Corporation*, and *legal theory*. None of these appear in *Words and Phrases*; 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 *Black's Seventh*, 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 try to do 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; so 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 *OED Supplement*. So I rejected the idea of being a mere compiler of judicial scraps, and I scrapped the idea of having 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, I wanted to get the lexicography right as well as the law.

But in legal lexicography, this proves 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 their defining. *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, five basic tenets of defining words seemed rarely to be followed. The tenets are:

- Make the definition substitutable for the word in context,¹² so that the entry begins with the definition itself – never with a phrase such as *a term meaning* or *a term referring to*.¹³
- Indicate every meaning of the headword in the field covered by the dictionary.¹⁴
- Don't define self-explanatory phrases that aren't legitimate lexical units (including such phrases as *living with husband*).¹⁵
- Define singular terms, not plurals, unless there's a good reason to do otherwise.

12 Sidney Landau, *Dictionaries: The Art and Craft of Lexicography* 164 (2d ed. 2001).

13 *Id.* at 163.

14 *Id.* at 187.

15 *Id.* at 187.

- Distinguish between definitions and encyclopedic information (that is, textbook descriptions).¹⁶

These are challenging commands for the lexicographer – especially the first: substitutability. *Black's Sixth* had hundreds of entries that weren't substitutable. They read, for example, after the headword: "Exists where ...,"¹⁷ "Term refers to ...,"¹⁸ "Term used to describe ...,"¹⁹ "A Saxon term for ..."²⁰ It had hundreds of other entries in which adjectives were defined as if they were nouns, and nouns 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."²¹ Henry Campbell Black wrote that 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. First, 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. Second, to the extent that the compilers were following judicial pronouncements, they parroted ill-phrased definitions: they were

just following the precedent of judges who were less than adept at defining. 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. As a third mitigating fact, 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 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,²² many entries aren't legitimate lexical units,²³ there are plural headwords and even plural definitions of singular terms,²⁴ there are entries in which verb definitions and noun definitions are run together without differentiation,²⁵ and many entries

¹⁶ Id. at 187.

¹⁷ See, e.g., *Black's Law Dictionary* 229, 935 (6th ed. 1990) (s.v. chain conspiracy, living separate and apart).

¹⁸ See, e.g., *Black's Law Dictionary* 743, 796, 1425 (6th ed. 1990) (s.v. hybrid class action, insider trading, subject-matter jurisdiction).

¹⁹ See, e.g., *Black's Law Dictionary* 1479 (6th ed. 1990) (s.v. third degree).

²⁰ See, e.g., *Black's Law Dictionary* 888 (6th ed. 1990) (s.v. lazzi).

²¹ *Black's Law Dictionary* 934 (6th ed. 1990).

²² Compare *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).

²³ See, e.g., *Black's Law Dictionary* 935 (6th ed. 1990) (s.v. living with husband).

²⁴ See, e.g., *Black's Law Dictionary* 897 (6th ed. 1990) (defining legal usufruct as "usufructs established ...").

²⁵ See, e.g., *Black's Law Dictionary* 562 (6th ed. 1990) (s.v. exchange).

contain exclusively encyclopedic information without any definitions at all.²⁶

It was a major challenge putting the seventh edition of *Black's* into a consistent format and implementing the modern rules of dictionary defining. But I never doubted whether 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 rely on 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. Instead, within the time constraints we had, we researched every definition in every entry and generally wrote them from scratch. We wanted to rethink everything in the dictionary. We second-guessed everything.

I'll give you an interesting example of this. 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*. There it was 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 it wasn't there. Instead, the *OED* recorded *vitilitigate*, citing Blount's *Nomo-Lexicon* of 1670. Likewise, *Webster's Second New International Dictionary* (1933) recorded *vitilitigate*, and so did the *Century Dictionary* (1914). The meaning was the same.

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 got perpetuated in every edition of *Black's* for another 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 Roman-law terms and maxims. Being an American lawyer with a typical American legal education, I didn't feel competent reviewing the Roman-law material. 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 become involved.

So I went straight to the top of the field. I hired Professor Tony Honoré of Oxford and Professor David Walker of Glasgow to review every entry in the book. Not only did they correct a lot of the Roman-law material – from misrecorded Latin headwords to incomplete and inaccurate definitions; they also improved the treatment of English law and Scots law. There isn't a single page of *Black's Seventh* that wasn't improved by their erudition and industry.

Lawyers sometimes ask me why I put in so much additional Roman-law material. The answer is simple: Roman-law principles underlie many modern civil-law and common-law concepts. Students of legal history often come across references to Roman legal terms. I had the opportunity, with the help of Honoré and Walker, to get things right. It would have been serious malfeasance not to take advantage of

²⁶ See, e.g., *Black's Law Dictionary* 1479 (6th ed. 1990) (s.v. thin capitalization).

their suggested additions.

I should also point out my two other major consultants: Joseph F. Spaniol Jr., former clerk of the U.S. Supreme Court, and Professor Hans W. Baade of the University of Texas law faculty. Spaniol's broad knowledge of American law, especially of the federal system, was enormously helpful. And Professor Baade, who became involved at a late stage in the project, made many valuable contributions, not least of which was making our citations to Blackstone consistent.

For *Black's Eighth*, which is still several years away, I am happy to report that I've engaged Professor A.N. Yiannopoulos of Tulane Law School to review the manuscript. At the moment, *Black's* is better in covering Scots law than it is in covering Louisiana law. With Professor Yiannopoulos's help, we'll bring the text into an even better state of jurisdictional equilibrium.

Meanwhile, I've appealed to the academic community for help, and it has responded. Because I'm working with an enormously complex manuscript of 3,750 single-spaced pages, I've appealed to the best legal minds I know, at universities throughout the United States, to scrutinize 100-page batches of manuscript. When the panel of academic contributors is listed in the front matter of *Black's Eighth*, it will read like a who's who among academic lawyers. They will have helped take *Black's* to greater heights.

5. How do you find the material to include in a dictionary?

One thing we tried to do in *Black's Seventh* 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 5 subentries under *interest rate* – in other words, just 5 types of interest rates; *Black's Seventh* defines 15. Likewise, from the sixth edition to the seventh, *Black's* went from 15 subentries under *bond* to 19, from 9 subentries

under *marriage* to 12, from none under *reinsurance* to 4, and from 3 under *veto* to 14.

So where did we find all this additional material? We did it partly, as lexicographers must, by examining other reference books. But the more important method was examining hornbooks and treatises that deal systematically with a given legal field. For more than 12 years, I've had a habit of reading and marking about one lawbook a month. I highlight potential headwords, and then a typist follows my work and types in all the potential headwords. Then either my assistants or I will research and draft an entry for each headword. Any good dictionary-maker must have some type of reading program for gathering new material in this way.

The shame is that I haven't found a William Chester Minor – someone to be a madman to my professor, someone locked away with nothing to do other than read and mark lawbooks, and to do it knowledgeably. For the most part, I've had to be my own madman. That's not to say, by the way, that I don't get prisoner letters. I get plenty of those at LawProse. Unfortunately, the prisoners read the name of my company as if it were "Law Pro Se." But those letters are always asking me for help, never offering it.

But back to gathering source materials for *Black's*. On the seventh edition, I did have the help of three full-time lawyers that I had trained as lexicographers, including my senior assistant editor David W. Schultz. And I now have the help of two fine lawyer-lexicographers, Tiger Jackson and Jeffrey Newman. Having a team, even a small one, is enormously useful.

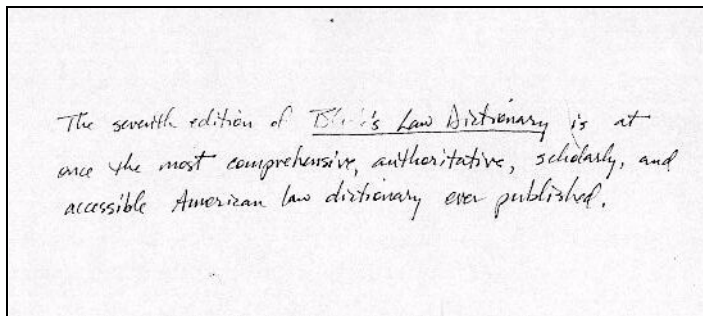
And there's another way of gathering materials a little more systematically. For the past couple of years, I've been working on specialist glossaries for West's publishing program. So far, we've produced handbooks of basic law terms, business-law terms, criminal-law terms, and family-law terms. The last is a

good example: one colleague and I spent the better part of a year reading every text we could find on family law, and we produced a glossary that has 1,500 terms not yet found in *Black's*. We had several family-law specialists review the whole text, adding terms, refining definitions, and suggesting after-the-bullet stuff (that is, encyclopedic information). Although this has been my worst-selling book, I'm convinced that producing it was well worth the effort: once we include the new material in *Black's Law Dictionary*, the big book will benefit for as long as *Black's* stays in print.

Right now I'm at work, with my in-house colleagues at LawProse and various patent and

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, 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 only time will tell. I've tried here to



The Dinner Napkin

copyright specialists (most notably Herbert Hammond and Beverly Ray Burlingame of Dallas), on a glossary of intellectual-property terms. We are carefully poring over every intellectual-property text we can find so that we can strengthen the coverage in this fast-growing field. It may seem like tedious work, but every time we find a term that hasn't yet been recorded in a law dictionary – and this happens daily, if not hourly – we feel genuine excitement. In our own little way, we're adding to the storehouse of human knowledge and making the law more easily accessible to anyone interested in it.

DASHING ONE'S FRAME

Despite all the computers that make the job so

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.

I do thank the West Group for giving me free rein to refashion the book. It continues to be a work in progress. And I would be a fool to write for the *Green Bag* and not enlist the help of any readers who are willing to lend a hand. If you ever encounter a definition that isn't quite right in some way, please let me hear from you (at lawprose.org). Meanwhile, I hope to continue my harmless drudgery for many years to come.

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.”²⁷ 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 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.



²⁷ Robert W. Burchfield, *Unlocking the English Language* 176 (1989).

A Sample Entry from Black's Law Dictionary

<i>Black's Law Dictionary</i> 1st ed. (1891)	<i>Black's Law Dictionary</i> 6th ed. (1990)	<i>Black's Law Dictionary</i> 7th ed. (1999)
<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. In re <i>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 <i>UNITY</i> (2); <i>RIGHT OF SURVIVORSHIP</i>. 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.” Thomas F. Bergin @ Paul G. Haskell, Preface to <i>Estates in Land and Future Interests</i> 55 (2d ed. 1984).</p>

* The genus tenancy having already been defined just above, in the main headword, the word may be used in defining the species joint tenancy.

