

# Dictionary Research for Lawyers

BY NICK HARRELL

Lawyers use dictionaries, among other tools, to interpret constitutions, statutes, and regulations. In 2018, the U.S. Supreme Court, the U.S. Court of Appeals for the Tenth Circuit, and the Colorado Supreme Court all published dozens of opinions referencing dictionaries.<sup>1</sup> For example, in *Wisconsin Central Ltd. v. United States*, both the majority opinion and the dissent cite to historical dictionaries to interpret language in the Railroad Retirement Tax Act.<sup>2</sup> Lawyers also use specialty dictionaries to understand subjects and language outside of their expertise. This article provides tips for researchers on using and accessing dictionaries.

## Background Reading

Lawyers debate the relative importance of dictionaries in legal interpretation. While some see the dictionary as one of many tools to use, others rely on dictionaries as the primary tool to interpret an ambiguous term. That debate is beyond the scope of this article, but the litera-

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ture the debate has generated can help lawyers effectively deploy dictionaries in their work.

A good place to start is “A Note on the Use of Dictionaries,” by Justice Scalia and Bryan Garner.<sup>3</sup> In this short article, the authors describe their “primary principles” of using dictionaries, discuss some common challenges and benefits of using dictionaries, and provide a chronolog-

ically arranged bibliography of widely available English-language and law dictionaries. This article provides a solid starting point, but other articles more thoroughly discuss how to use dictionaries for legal interpretation.

For example, researchers using dictionaries to interpret the U.S. Constitution and the Bill of Rights could turn to Gregory E. Maggs’s “A Concise Guide to Using Dictionaries from the Founding Era to Determine the Original Meaning of the Constitution.”<sup>4</sup> In particular, the article lists common criticisms of dictionary use, provides responses to those criticisms, and concludes with a list of easily accessible Founding Era dictionaries. Researchers looking to impeach the overreliance on dictionaries could consult Ellen P. Aprill’s “The Law of the Word: Dictionary Shopping in the Supreme Court,”<sup>5</sup> Stephen C. Mouritsen’s “The Dictionary is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning,”<sup>6</sup> or the often-cited *Harvard Law Review* note “Looking It Up: Dictionaries and Statutory Interpretation.”<sup>7</sup> The Mouritsen article also discusses corpus linguistics, a methodology that uses large databases of texts from a particular time frame to determine how individual words or phrases were used during that time frame. In addition to its criticism, the *Harvard Law Review* note analyzes which dictionaries the Supreme Court cites and how frequently. Researchers wanting a deeper dive into the history of dictionaries and the law might consult Roy M. Mersky’s “The Evolution and Impact of Legal Dictionaries.”<sup>8</sup>

Researchers can find more articles on dictionaries by searching Google Scholar,<sup>9</sup> Google,<sup>10</sup> or their preferred legal research database for the titles of the above articles or keywords such as “dictionary,” “legal,” and “interpretation.”

## Tips on Dictionary Usage

Scholarship from the non-law disciplines can also provide insight into how lexicographers see their craft and products.<sup>11</sup> Researchers should pay particular attention to articles discussing the pitfalls, benefits, and best practices of dictionary use.

Some of the tips from those articles echo good practices when conducting any type of legal re-

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search. One such tip is to consult front material in a dictionary to learn how the dictionary was compiled and arranged. From this, a researcher may learn whether the dictionary organized multiple definitions for a single word by popularity, date, or randomly. Researchers may also learn whether the dictionary is descriptive or prescriptive<sup>12</sup> and how entries are arranged (e.g., does the entry for “et al.” appear before or after the entry for “etch”). Similarly, researchers using online dictionaries should familiarize themselves with the search operators for the respective database.

When conducting research online or in print, researchers should determine when a resource was last updated. Likewise, researchers should determine whether they need a current dictionary or one from a different time period. In the *Wisconsin Central Ltd.* case, Justice Gorsuch chose dictionaries from the 1930s and 1940s to interpret the word “money” in the Railroad Retirement Tax Act of 1937.<sup>13</sup> Similarly, in *Carpenter v. United States*, Justice Thomas chose an 18th-century dictionary to learn how the word “search” was understood during the ratification of the Bill of Rights in the Founding Era.<sup>14</sup> And Justice Gorsuch chose to use a 2016 dictionary to interpret “any” in a recently enacted statute.<sup>15</sup> These choices are necessary

because definitions evolve over time (e.g., an 18th-century definition of “drone” would not include anything about pilotless aircraft) and because new words are added to our lexicon (e.g., “cryptocurrency” would not appear at all in an 18th-century dictionary).

Researchers should consult multiple secondary sources, when available, to overcome potential inaccuracies, shortcomings, and biases of individual sources. That practice extends to dictionary use, too. Using multiple dictionaries can help researchers mark various boundaries of definitions, and hopefully triangulate a more precise and accurate meaning. To that end, courts have not ordained particular dictionaries as “official.”

#### **English-Language Dictionaries**

Although courts have not explicitly required particular dictionaries, the dictionaries listed

in Scalia and Garner’s article have been widely cited.<sup>16</sup> Perhaps the most cited dictionaries for Founding Era laws are editions of Samuel Johnson’s *A Dictionary of English Usage*, which can be found online for free through Hathitrust.<sup>17</sup> Various editions of Webster’s dictionaries can also be found on Hathitrust or on Google Books by executing keyword searches in either database for the word “dictionary” and the proper name associated with a particular dictionary (e.g., “Johnson”), and then filtering by date for relevant dictionaries. Google Books sometimes provides previews of e-books even if the full version is not available.

Libraries are also an excellent source for a wide variety of dictionaries. Most law and public libraries maintain print copies of the larger *Webster’s Third New International Dictionary*,<sup>18</sup> as well as other abridged options. While dictionaries can usually be found with other

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reference materials, older dictionaries might be kept in a special location, so it's a good idea to contact the librarian for assistance.

### Law Dictionaries

Beyond general English-language dictionaries, legal researchers rely on law dictionaries to find definitions in a legal context. Most researchers are familiar with *Black's Law Dictionary*,<sup>19</sup> which is available at law libraries and some public libraries. Most law libraries will also have *Bouvier's Law Dictionary*,<sup>20</sup> *Merriam-Webster's Dictionary of Law*,<sup>21</sup> *Ballentine's Law Dictionary*,<sup>22</sup> and *Garner's Dictionary of Legal Usage*.<sup>23</sup> Some older versions of these law dictionaries are freely available online, including Henry Campbell Black's *A Dictionary of Law* (1891)<sup>24</sup> and John Bouvier's *A Law Dictionary* (1878,<sup>25</sup> 1892,<sup>26</sup> and 1897<sup>27</sup> editions).

For those with access, HeinOnline has older versions of *Bouvier's* and dozens of other law dictionaries, including law dictionaries from other countries.<sup>28</sup> *Ballentine's Law Dictionary* is available on Lexis Advance, and *Black's Law Dictionary* can be found on Westlaw.

### Other Specialty Dictionaries

Whether interpreting laws or merely trying to understand the subject matter of litigation or a transaction, legal researchers may need to consult other specialty dictionaries. For example, a medical dictionary might be important for a medical malpractice case or a patent case. Two of the more common medical dictionaries are *Stedman's Medical Dictionary*<sup>29</sup> and *Taber's Cyclopedic Medical Dictionary*.<sup>30</sup> Both books are available in library reference collections or may be purchased online.<sup>31</sup> A free preview of *Taber's* is also available on Google Books.<sup>32</sup> These works provide definitions and illustrations that researchers may find informative.


Many other disciplines (e.g., engineering, chemistry, and business) have their own dictionaries as well. These dictionaries can be found in many law and public libraries. Librarians can lead researchers to authoritative dictionaries in the various disciplines.

Researchers working in foreign or international law may find a need for foreign language dictionaries. Google Translate<sup>33</sup> can provide a

rough translation of foreign language materials. However, some situations will require a foreign language dictionary, and specifically a foreign language law dictionary. The latter are less common, and are most likely found in large law library collections. But some, like *Japanese Law Translation*, are available online for free.<sup>34</sup> Keep in mind that foreign law dictionaries are not replacements for professional translators.

### Conclusion

The debate over the relative importance of dictionaries in legal interpretation will not likely end soon, and courts show no sign of ending the practice of citing to dictionaries.

Consequently, the need for researchers to consult and reference dictionaries in their work will continue. The above resources—and a skilled librarian—can help lawyers identify the appropriate dictionaries in their legal work. 



**Nick Harrell** is a research and reference librarian at the U.S. Courts Library, 10th Circuit—[nick\\_harrell@ca10.uscourts.gov](mailto:nick_harrell@ca10.uscourts.gov).

**Coordinating Editor:** Robert Linz, [robert.linz@colorado.edu](mailto:robert.linz@colorado.edu)

### NOTES

1. A search for *dictionary!* in any of the major legal research platforms will return these opinions.
2. *Wisconsin Cent. Ltd. v. United States*, 138 S.Ct. 2067 (2018).
3. Scalia and Garner, "A Note on the Use of Dictionaries," 16 *Green Bag* 2D 419 (2013), <https://goo.gl/VuoGQY>.
4. Maggs, "A Concise Guide to Using Dictionaries from the Founding Era to Determine the Original Meaning of the Constitution," 82 *Geo. Wash. L. Rev.* 358 (2014), <https://goo.gl/U7vGP6>.
5. Aprill, "The Law of the Word: Dictionary Shopping in the Supreme Court," 30 *Ariz. St. L. J.* 275 (1998), <https://goo.gl/ybKikj>.
6. Mouritsen, "The Dictionary is Not a Fortress: Definitional Fallacies and a Corpus-Based Approach to Plain Meaning," 2010 *BYU L. Rev.* 1915 (2010), <https://goo.gl/8WmGgU>.
7. Note, "Looking It Up: The Supreme Court's Use of Dictionaries in Statutory and Constitutional Interpretation," 107 *Harv. L. Rev.* 1437 (1994) (amended version available at <https://goo.gl/DwNdTb>).
8. Mersky, "The Evolution and Impact of Legal Dictionaries," 23 *Legal Reference Services Q.* 19 (2004).
9. Google Scholar, <https://scholar.google.com> (e.g., <https://goo.gl/fihKbk>).
10. Increasingly, legal scholarship is discoverable on Google thanks to the work of academic institutional repositories that are search engine optimized.
11. E.g., Hobbs, "Defining the Law: (Mis)using the Dictionary to decide Cases," 13 *Discourse Stud.* 327 (2011), <https://goo.gl/8kHpai>; Butters, "Language, Meaning and the Law," 15 *J. Sociolinguistics* 532 (2011), <https://goo.gl/UnrRpn>.
12. Definitions in descriptive dictionaries reflect how a word is used; prescriptive dictionaries

reflect how a word should be used.

13. *Wisconsin Cent. Ltd.*, 138 S.Ct. at 2070.
14. *Carpenter v. United States*, 138 S.Ct. 2206, 2238 (2018).
15. *SAS Inst., Inc. v. Iancu*, 138 S.Ct. 1348, 1354 (2018).
16. Scalia and Garner, *supra* note 3.
17. E.g., *A Dictionary of the English Language* (1773), <https://goo.gl/gga6GT>.
18. Gove, ed., *Webster's Third New International Dictionary of the English Language, Unabridged* (2002).
19. Garner, ed., *Black's Law Dictionary* (10th ed. 2014).
20. Sheppard, ed., *Bouvier Law Dictionary* (2012).
21. *Merriam-Webster's Dictionary of Law* (2016).
22. Anderson, ed., *Ballentine's Law Dictionary* (3d ed. 1969).
23. Garner, *Garner's Dictionary of Legal Usage* (3d ed. 2011).
24. <https://goo.gl/TQm6aY>.
25. <https://goo.gl/2MCGz>.
26. <https://goo.gl/BYof5U>.
27. <https://goo.gl/gKRKZF>.
28. HeinOnline, <https://home.heinonline.org>.
29. Stedman, *Stedman's Medical Dictionary* (28th ed. 2006).
30. Taber, *Taber's Cyclopedic Medical Dictionary* (19th ed. 2001).
31. Access to *Stedman's* can be purchased at <https://stedmansonline.com>, and web and app versions of *Taber's* can be purchased from [www.tabers.com/tabersonline](http://www.tabers.com/tabersonline).
32. <https://goo.gl/jbQjcr>.
33. Google Translate, <https://translate.google.com>.
34. Japanese Law Translation, [www.japaneselawtranslation.go.jp/dict/?re=](http://www.japaneselawtranslation.go.jp/dict/?re=)

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