



Language Wars Truce Accepted (with conditions)

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IN A RECENT ISSUE of this journal, Bryan Garner, who is becoming increasingly prominent as a legal lexicographer, addressed what he describes as a “war” between descriptive and prescriptive grammarians. As the title of his article suggests, he proposes that we should be *Making Peace in the Language Wars*.¹ After describing himself as a “descriptive prescriber” who nonetheless places himself “mostly in the prescriptive camp,”² Garner proposes a truce. The terms are essentially that the describers should let the prescribers prescribe, and vice versa. In other words, live and let live. It is an appeal to peace and tolerance, which should resonate well with modern readers.

As the self-appointed negotiator for the field of linguistics, I am prepared to accept the truce that Garner proposes, subject to certain conditions and clarifications.

Many of us know who Bryan Garner is. He is the editor in chief of *Black’s Law Dictionary*, recently released in its eighth edition. His editorship has produced a vast improve-

ment over earlier versions of this venerable dictionary. He has also written several books on legal usage and style, and most recently a manual on usage in general, *Garner’s Modern American Usage*.

Although the distinction between prescriptive and descriptive practices might seem rather arcane, Garner’s influence in the world of legal lexicography makes his defense of prescriptivism, nuanced as it is, potentially worrisome. It matters whether he is a descriptivist, a prescriptivist, or some kind of hybrid. This is especially true because he is not just a style guru, but also a lexicographer in his role as editor of *Black’s*, as well as an expert on usage, as evidenced by his *Dictionary of Modern Legal Usage*. While style gurus can, almost by definition, be expected to display a certain measure of prescriptivism, anything called a “dictionary” should be based entirely on careful observation and description of actual usage.

At the least, those who rely on Garner’s work, which includes much of the legal pro-

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1 Bryan A. Garner, *Making Peace in the Language Wars*, 7 Green Bag 2d 227 (2004).

2 *Id.* at 230.

fession, should know what they're buying into. I doubt that purchasers of Garner's expanding oeuvre will want their money back after they understand the lexicographer's role more clearly. But hopefully³ they will have a better appreciation of what it means to "look up" a word in the dictionary or to consult one of his usage or style manuals.

My conclusion will be that Garner is more of a descriptivist than he admits, and less of a prescriptivist than he claims. And, from a linguistic point of view, that's a complement. Or is it compliment?

Descriptivism vs. Prescriptivism

When linguists distinguish between *descriptive* and *prescriptive*, it is usually with respect to rules of grammar or usage. Much of the controversy in some way or other relates to the nature of a *rule* in the context of language, an issue that lawyers should be able to relate to. An example may be found in the previous sentence. Many people claim that there is a rule in English that a sentence should never end with a preposition. Hence, the "correct" way to phrase the clause in question would be "an issue to which lawyers should be able to relate."

Of course, stranded prepositions are extremely common in ordinary speech. Most of us recall the comment attributed to Winston Churchill: "This is the sort of English up with which I will not put."⁴ Churchill, or whoever else might have said it, was clearly spoofing this purported rule.

A prescriber thus uses the word *rule* in a normative sense. The rule prescribes or dictates how a person *ought* to speak. As we have seen, there are prescriptivists who claim

that it is a rule of English that sentences should not end in a preposition. Other prescriptive rules include the maxim that *ain't* is not a word, that you should never use *but* or *however* at the beginning of a sentence, or that the relative pronoun *which* should only introduce a nonrestrictive relative clause. The prescriptivist notion of a rule is therefore very similar to the legal conception. A rule is a norm that governs behavior. Its purpose is not to *describe* how people act, but rather to *modify* how they act.

In a legal context it is generally clear who has the authority to make rules. The Constitution gives Congress lawmaking power. This raises an interesting question: if rules relating to language can be prescriptive – if they can dictate how we ought to speak and write – who decides what those rules are or should be? Where do prescribers derive the power to legislate how the rest of us ought to use language?

A linguist (the adjective "descriptive" is virtually redundant in this context) has a far different conception of rules. The rules that linguists posit are meant to describe or explain regularities that naturally occur in language and that are passed on from one generation to the next with little conscious thought. If a rule posited by a particular linguist is not an accurate portrayal of actual linguistic behavior, it must be modified to correctly reflect the data. The linguistic notion of a rule is therefore similar to how the concept is used in the sciences. It is based on hard data: how people actually use language to communicate.

An important feature of rules, as describers understand the concept, is that they are passed on naturally from one generation

3 I was tempted to check what Garner might have to say about the use of "hopefully" but decided that I should rely on my own instinct, which is that its use in the meaning "I hope" is sufficiently well established to allow the word to appear in this sense in relatively formal prose.

4 John Bartlett, *Familiar Quotations* 746 (15th ed. 1980).

to the next. People sometimes consciously learn language, of course, and parents may sometimes try to instruct their offspring on certain aspects of the language. But conscious instruction and learning are not essential. Barring a serious mental or physical impediment, every human being who has sufficient exposure to a language as a child learns to speak it. Prescriptive rules, on the other hand, must be explicitly taught and learned.

Incidentally, the notion of a descriptive rule is not entirely foreign to the law, even if most legal rules are prescriptive. A good example of descriptive rules are those in the various restatements. The rules contained in the restatements are meant to restate or describe the general common law as developed in the United States.⁵ They are not purely descriptive, of course, because the temptation to improve or clarify is likely to be irresistible. But the main focus of the enterprise is descriptive. If for no other reason, the restatements are descriptive because the lawyers and judges who draft them have no authority to prescribe anything.

There is a common misconception that because descriptive rules are based on actual behavior, linguists believe that a speaker, by definition, cannot make a mistake. Anything goes. Garner seems to belong to this camp when he criticizes describers as believing “that native speakers of English can’t make a mistake and that usage guides are therefore superfluous.”⁶ It may be that some linguists, filled with zeal to promote a more scientific approach to language, have made rash statements of the kind that Garner suggests. It is not the standard view in the field, however.

No less a figure than Noam Chomsky, one of the founding fathers of linguistics, pointed

out that there is a critical difference between a speaker’s *competence* and *performance*:

Linguistic theory is concerned primarily with an ideal speaker-listener, in a completely homogeneous speech-community, who knows its language perfectly and is unaffected by such grammatically irrelevant conditions as memory limitations, distractions, shifts of attention and interest, and errors (random or characteristic) in applying his knowledge of the language in actual performance.⁷

Although virtually all of Chomsky’s ideas have been the subject of debate and revision, most linguists would agree that we need to distinguish between the sentences that speakers produce in the real world (performance) and the sentences that their internal grammars would produce under ideal circumstances (competence). In other words, we all make mistakes in actual speech production. Unless we ignore random errors, it would be impossible to posit general rules of a language.

Another area of difference between describers and prescribers is what they mean by “usage.” Both groups agree that usage – what people actually say and write – is at the heart of the matter. For linguists, any description of a language must correspond to actual usage. Garner also acknowledges the importance of usage. He carefully monitors usage by the legal community, using it to inform his stylistic and lexical judgments. And he admits that if a prescriptive rule of language no longer corresponds to at least some usage in the speech community, it is time to toss in the towel.

With respect to usage, the main difference between describers and prescribers is that the latter focus on usage by those they deem

5 See Harvey S. Perlman, *The Restatement Process*, 10 Kan. J. L. & Pub. Pol’y 2 (2000).

6 Garner, Green Bag, at 228.

7 Noam Chomsky, *Aspects of the Theory of Syntax* 3 (1965).

which are to us ward.	Pf. xl. 5.
U'SAGE. <i>n. f.</i> [<i>usage</i> , Fr.]	
1. Treatment.	
Which way Might'st thou deserve, or they impose this <i>usage</i> , Coming from us?	Shakesp. <i>K. Lear</i> .
The lustre in your eye, heav'n in your cheek, Plead you fair <i>usage</i> .	Shakesp. <i>Troil. and Cressida</i> .
My brother Is pris'n'd to the bishop, at whose hands He hath good <i>usage</i> , and great liberty.	Shakesp. <i>Hen. VI</i> .
What <i>usage</i> have I met with from this adversary, who passes by the very words I translated, and produces other pas- sages; and then hectors and cries out of my dissimilarity. <i>Stil</i> .	
Are not hawks brought to the hand, and to the lure; and lions reclaimed by good <i>usage</i> ?	L'Estrange.
Neptune took unkindly to be bound, And Eurus never such hard <i>usage</i> found In his Æolian prison.	Dryden.
2. Custom; practice long continued.	
Of things once received and confirmed by use, long <i>usage</i> is a law sufficient. In civil affairs, when there is no other law, custom itself doth stand for law.	Hooker, <i>b. ii</i> .
3. Manners; behaviour. Obsolete.	
A gentle nymph was found, Hight Aftery, excelling all the crew, In courteous <i>usage</i> , and unstained hue.	Spenser.
U'SAGE. <i>n. f.</i> [<i>usage</i> , Fr. from <i>usage</i>] One who has	

Samuel Johnson's prescription or description of "usage" in the fifth edition of his *Dictionary*.

the "better" users of language. They also tend to focus more on written language. Linguists, in contrast, are interested in the usage of the entire speech community.

Of course, since linguists are describers, they are aware of the existence of "proper" English. Generally, they prefer to call it something like "Standard American English" (or SAE). The origins of SAE must be sought in England, where a type of standard written language emerged several centuries ago, based largely on the dialects of London and

the East Midlands.⁸ SAE is to some extent the daughter of standard British English, but at the same time it reflects the influences of the many regional varieties of English spoken throughout the United States.

Linguists often say, somewhat disparagingly, that SAE is just another dialect of English. There is a sense in which this is true, as the origins of SAE indicate. The point is that there is no inherent reason to privilege SAE. Why should the speech of New Yorkers or African Americans be considered less

8 Barbara A. Fennell, *A History of English: A Sociolinguistic Approach* 122–3 (2001).

correct than the speech of upper-class white Midwesterners, whose native dialect is quite similar to SAE? Those who grow up speaking dialects of English that strongly diverge from SAE are clearly at a disadvantage compared to children growing up in homes where a dialect close to SAE is spoken.

But if all we can say about SAE is that it is another dialect of English, we have severely mischaracterized the role of standard English in our society. It would simply be a bad description of reality. The statement can be justified to some extent on linguistic grounds, but only at the cost of ignoring important social attitudes towards language. Linguists tend not to like such attitudes, but we cannot ignore their existence.

Thus, linguists must ultimately recognize (as most do) that speakers of English realize that there is such a thing as standard English. They also recognize that many speakers aspire, for a variety of social and economic reasons, to speak and write standard English. Because few people acquire this variety of English naturally, they need to learn it. This, of course, is where Bryan Garner and other prescriptivists enter the picture.

To some extent, therefore, the battle between describers and prescribers can be said to boil down to semantics. Linguists will always complain when prescribers proclaim that they are teaching people to speak "correctly." But if the prescribers would suggest that their mission is to help interested people learn how to speak and write according to the norms of standard English, I imagine that few linguists would seriously object. This is especially true if prescribers would also admit that there are multiple varieties of English, and that while standard English may be the most appropriate option when writing a

report at work, it may not be the best choice when hanging out with your friends in front of the liquor store.

On another level, however, the battle is more than semantic. The difference between a descriptive and prescriptive approach has important real-world implications with respect to the art or science of compiling dictionaries and, to a lesser extent, style manuals. We have now come back to the original point of this essay: it matters whether Garner is a describer or a prescriber, because he has become a force to be reckoned with in both the field of legal lexicography and what we might call the "style business."

Why Garner Should Be a Describer

One of Garner's roles is the editorship of *Black's Law Dictionary*. From what I can tell, he is doing a fine job. *Black's* has improved because Garner has instituted sound lexicographic principles. Most importantly, his definitions are based upon actual usage by the profession. He and his staff have combed through a vast assortment of legal texts, including not just the predictable statutes and judicial opinions, but also legal encyclopedias, restatements, law reviews, treatises, and even the Nutshell series.⁹ Garner also had three distinguished scholars vet the entire manuscript of the seventh edition, and asked an additional 30 lawyers, judges, and academics to read parts of it.¹⁰ The recently-published eighth edition received input from even more experts, and the entire dictionary was reviewed by a panel of academic contributors.¹¹ Specialists will probably quibble about some details, but all in all it is a remarkable revitalization of an old workhorse.

9 See *Black's Law Dictionary* (7th ed. 1999, appendix G).

10 *Id.* at xiii.

11 *Black's Law Dictionary* v (8th ed. 2004). I was one of those contributors.

Garner's reworking of *Black's* illustrates not merely that he is aware of modern lexicographic principles, but also that – contrary to his stated views in this journal – he is very much a *describer*.

Lexicographers of the past sometimes let their own predispositions influence how they defined a word. They might leave out a word entirely, or ignore a common meaning of a word, because they deemed it unacceptable. Today, it seems to me, most people would agree that a dictionary should not engage in self-censorship, as the *Académie Française* does for its dictionary of French. If you hear people talking about *spamming* or *blogging* or how many *megs* of *ram* their computer has, shouldn't you be able to find out in a dictionary what speakers mean when they use these words? And even though school teachers may tell you that *ain't* is not a word, shouldn't an immigrant learning English or a foreign high-school student reading *Huckleberry Finn* be able to find its meaning in a dictionary? You can't function very well as a speaker of English without such knowledge. If a dictionary is a repository of information about words, it needs to include items that we might consider slang, neologisms, dialect, and any other word that someone might want to look up.

Likewise, the definitions should be based on actual usage, not on someone's idea of how a word *ought* to be used. I once had a legal secretary who sent back my memos with comments such as "*conclusory* is not an English word" and "*hypothetical* should not be used as a noun." Interestingly, the seventh edition of *Black's* provides a definition of *conclusory* (although my spell-checker keeps objecting as I write this). Oddly, the seventh edition does not explain what a *hypothetical* is, despite its ubiquitous use by lawyers and law professors. But the word appears without pejorative comment in Garner's *Diction-*

ary of Modern English Usage (second edition), which goes so far as to express a preference for *hypo*.

Of course, part of the knowledge that speakers have about words such as some of the above is that they are considered informal, jargon, obscene, and so forth. Speakers' attitudes about these words are very real. Usage tags thus have an important function. But even usage tags should be based on sound descriptive practices, not prescription. A term should be marked *slang* because speakers generally regard it as such, not merely because the editors do so. There will be difficult judgment calls, of course. When exactly a word like *spam* (in the sense of unwanted email) ceases to be slang cannot be precisely delineated. But if legislative bodies are considering *anti-spam* legislation, it is hard to deny that the word has entered the general vocabulary.

Thus, when Garner, the editor-in-chief of *Black's*, refers to himself as primarily a prescriber, it makes me somewhat nervous. I am only slightly nervous, because in actual practice he seems to be a sound describer. The danger is that in the act of describing he may unwittingly slip into prescription. There is a fundamental distinction between *is* and *ought*, and only the former belongs in a dictionary.

Is There Still a Role for Prescribers?

Garner has also gained increasing prominence as what we might call a style or usage guru. Style gurus are traditionally allowed – even expected – to be moderately prescriptive. After all, people look to them for advice. They want to know how to speak and write properly, which inherently involves a certain amount of judgment. When people consult Miss Manners for advice on how

to arrange the silverware at a formal dinner, they want a clear-cut answer. The same goes for questions that people have about choosing and arranging words. Is it *that* or *which*, *who* or *whom*, *complement* or *compliment*? Does someone *graduate college* or *graduate from college*? *The data prove* or *the data proves*?

Comparing prescribers to Miss Manners may seem to trivialize the useful work that Garner and other prescribers have done and the scholarship that underlies their efforts. That is certainly not my intention. Yet it is worth noting some interesting overlap. A critical question that we could ask of both Mr. Style and Miss Manners is how they know what is “proper” or “correct.” Miss Manners would probably reply that she learned how to behave properly by observing people who have good manners. Of course, what it means to have good manners, and who has them, is debatable. Certainly in the past, however, there was a group of people – often wealthy white Protestants – who were viewed as knowing how to act properly, and many people strove (or is it *strived*?) to imitate them.

So, how do style and usage gurus know what to prescribe? Like Miss Manners, they mostly base their judgments on the linguistic habits of people who they believe know how to how to speak and write “properly.” Prescribers may believe that they intuitively have a good sense of what is correct and what is not, but such a sense surely derives from a great deal of reading works that one considers to be good English and unconsciously absorbing the rules that the writers of those works follow. More careful prescribers, like Garner, go a step further by explicitly

researching the habits of good writers to justify their pronouncements.

Relying on the usage of good writers raises an obvious question: who decides which writers are the models to emulate? In Great Britain, people once aspired to speak the King’s English, since his English was proper by definition. So, should we Americans try to speak like President Bush? If the issue is legal usage, do we imitate Holmes? Cardozo? O’Connor? Scalia? Richard Posner, Duncan Kennedy, or whoever else happens to be our idol?

I suppose that the difficulties of making such decisions is why we appreciate the work of prescribers. We trust them to figure out who the good writers are, to determine what those writers would do when confronting a thorny lexical dilemma or syntactic quandary, and to package the answer to our question into a succinct paragraph that provides us with a clear-cut answer.

Thus, what it boils down to is this: can we trust Brian Garner and other prescribers to decide for us what is correct English and what is not? Noah Webster spoke out against “literary governors” who “dictate to a nation the rules of speaking, with the same imperiousness as a tyrant gives orders to his vassals.”¹² Ironically, Webster asked Justice John Marshall to endorse his dictionary of American English. Marshall refused, stating that in a democracy no one can dictate usage.¹³ Maybe so, but that doesn’t mean people can’t seek some good advice now and then.

Overall, Garner’s work as usage or style guru strikes a reasonable balance between adhering to rules of the language that are fairly well established, and letting go when the tides of change are simply too strong.

12 Quoted in Naomi S. Baron, *Alphabet to Email: How Written English Evolved and Where It’s Heading* 134 (2000).

13 Shirley Brice Heath, *A National Language Academy?: Debate in the New Nation*, 189 *Linguistics* 9, 33 (1977).

Thus, his *Dictionary of Legal Usage*¹⁴ refers to the rule about not ending a sentence with a preposition as “spurious” (p. 686). He allows the splitting of infinitives, albeit cautiously, quoting with apparent approval one of the opening lines in the Star Trek television series (“to boldly go where no man has gone before”) (p. 823). He roundly condemns the rule that prohibits starting a sentence with *and* or *or*, referring to it as “rank superstition” (p. 55). And he accepts (or declines to condemn) useful innovations, including legal neologisms like *hedonic damages* or *palimony*.

Whatever some of my former colleagues from the world of linguistics might say, just about anyone can use a good usage dictionary or style manual now and then. Even though SAE is to some extent artificial, and even though in a democracy no one can tell us how we ought to speak, it is undeniable that certain conventions regarding standard English – especially the written variety – have become well established. Any writer who flouts those conventions has less credibility with readers who are familiar with the conventions and expect them to be followed.

Yet at times Garner drifts too far from actual usage and is therefore overly prescriptive, at least for my taste. Let us return to the past tense of *strive*. The second edition of his *Dictionary of Modern Legal Usage* suggests that *strived* is incorrect and should be replaced by *strove*. That also reflects my own dialect of English. Yet my copy of the American Heritage Dictionary also lists *strived* as a possibility (although it is tagged as “rare”).¹⁵ Moreover, a search of the internet using the search engine Google found *strived* approximately 147,000 times, while the results for *strove* were 250,000. *Strove* is indeed used

more often, but the difference is not enormous, and it hardly merits tagging *strived* as “rare” or condemning it outright.

There is actually a lot of variation in the past tense and past participle forms of verbs. The problem that I (and most linguists) have with typical prescribers is that instead of acknowledging the existence of variation, they seem to have an almost irresistible urge to label one of the two variants as wrong or improper.

Another verb, *prove*, is an interesting illustration. Here, the contentious issue is the past participle, which can be either *proved* or *proven* (as in “the government has not *proved/proven* its case.”) Garner takes a strong position in favor of *proved*: “*Proved* is the universally preferred past tense of *prove*; *proven* ... properly exists only as an adjective.”¹⁶ Of course, if Garner is correct, the phrase “innocent until *proven* guilty” is ungrammatical. The famous Scottish verdict should be “not *proved*” in place of “not *proven*.”

It turns out that *proved* is indeed more common as a past participle among “better” writers than is *proven*. The American Heritage Dictionary has taken an innovative approach to such controversial usage issues by assembling a usage panel consisting of dozens of distinguished writers. Only about one quarter of the panel preferred *proven*.¹⁷ The U.S. Supreme Court also seems to have a preference for *has proved* (occurring 251 times in the sct database on Westlaw), as opposed to *has proven* (occurring 51 times).

Nonetheless, I’m sticking to *proven*. Preference for *proved* is hardly universal, even among good writers, and I see no reason to conform my language whenever I happen to be in the minority. As a matter of fact, I

14 Second edition, 1995.

15 The reference is to the first edition.

16 *Dictionary of Modern Legal Usage* 445 (1987).

17 Reference is to the first edition.

may well be in the majority with respect to actual usage. A search on the internet for the phrase *has proved*, once again using Google, found around 1,080,000 occurrences. *Has proven*, on the other hand, produced around 1,600,000 hits. The internet is an unruly place sometimes, so these results are only suggestive, but it may well be that *proven* is actually more common than *proved*.

My point is not that Garner is dispensing bad advice here, even if it goes against my own personal preference. Rather, somewhat less prescription and somewhat more description would be nice. Admittedly, there are a lot of people who seem to be hankering for a simple thumbs-up or thumbs-down on some of these issues. These are the sort of folks who are distressed by the fact that there are no less than three adjectives referring to Scotland (*Scots*, *Scottish*, and *Scotch*) and who are desperate for someone to tell them which one is "correct."

At the same time, I imagine that many more educated writers, such as lawyers and judges, would prefer a realistic description of actual usage, so they can evaluate the evidence for themselves and make their own decisions. In the case of *prove*, an accurate statement would be that both *proved* and *proven* are widely used as past participles in speech, and that both occur in writing, although *proved* seems to predominate in more formal written contexts. This gives me the sort of information I need to decide the issue for myself.

Garner is free to argue in favor of *proved* or *strove*. He can even prescribe it to those who seek his advice. He should do so, however, in light of solid descriptive evidence. The users of his works deserve to know when something really is a rule of standard English, accepted by virtually all good writers, and when there is variation even among the best literary or judicial talent.

Conditions for Accepting Truce

As a member in good standing of the Linguistic Society of America, I am now prepared to accept Garner's proposed truce, subject to some important conditions.

1. Any work labeled "dictionary," including *Black's*, should be purely descriptive. I use the word *descriptive* here in a relatively broad sense, encompassing not just actual usage in the legal community, but also (with respect to usage tags) the attitudes that the profession has towards language. Thus, if a term is in common use among lawyers, but mostly in spoken and informal contexts, it is appropriate to label it as slang. In fact, it seems to me that any definition of words like *punies* or *incidentals* would be incomplete without adding such information, because the fact that these words are slang is part of the knowledge that speakers have about them.

As far as I can tell, Garner already strives to base the definitions in *Black's* on actual usage, so he should not find it difficult to accept this first condition. The reason that I include it is that in some sense there is a conflict of interest between style gurus, who are inclined to condemn certain usages and beatify others, and lexicographers, who should faithfully record any usage that is likely to be encountered by those who consult a dictionary. Thus, when he wears his lexicographer's hat, Garner should be a describer, pure and simple.

2. Prescription should be based on sound descriptive observations. Any pronouncements of what is "proper" or "correct" should be grounded in the actual usage of well-regarded legal writers. Like all of us, Garner is entitled to his pet peeves, but when something is mainly his own preference, or where he believes that current usage should be changed, he should fully disclose that there are fine writers who do not agree.

Although Garner has strong opinions about some issues, he seems to be open to persuasion by evidence of actual usage. For instance, in the first edition of his *Dictionary of Legal Style*, which I skimmed through when I was preparing my book on legal language,¹⁸ I was stunned to see that he considered *chid* to be the preferred past tense and past participle form of *chide* in the United States (p. III). I can't recall ever hearing the form. Apparently, I was not the only person with this reaction; the second edition states that *chided* is preferred.¹⁹

I therefore challenge Garner to come out of the closet and openly declare that he is,

even in his role as usage or style guru, a careful observer of actual usage. He is, in other words, primarily a describer. What he describes is not the English that is spoken by ordinary people, nor even his own dialect, but the English that is written by good legal writers. He might as well admit it, because basing his advice on the usage of good writers can only enhance the authoritativeness of his work.



Anyway, Bryan, I am ready to sign the truce, subject to these modest conditions. Or maybe you'd rather just defect? *JB*

18 Peter M. Tiersma, *Legal Language* (1999).

19 In any event, it seems an odd item to add to a dictionary of legal usage.