Some Randomly Selected Entries from the New Edition of *The Bouvier Law Dictionary*

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In 2011, Wolters-Kluwer – the global law publisher that includes Wolters-Kluwer Law and Business, CCH, Loislaw – and other legal information resources, will publish the first new edition of the Bouvier Law Dictionary for a century. This dictionary has been in production at the University of Arkansas School of Law for nearly a decade, and many, many of our students have worked in researching the quotations and sources that support the drafting of its entries.

The first product will be the Concise Edition, which is about 1,200 pages long, which will be released in August 2011. In the late winter, the Desk Edition, of about four times that length, will be released, including many of the quotations on which the definitions are based.

For fun, I have selected, for your consideration, a few of the entries from among the 8,000 entries that are included in both editions. Most of the entries are a bit more mundane than some I have picked for this sample. In any event, the entries are structured in groups as much by subject as by alphabet, and the entries below that have a hyphen are actually sub-entries under other, fairly obvious entries. The book will be available through the university bookstore as well as Amazon.com and wolterskluwer.com. I hope you find the project useful and, occasionally, entertaining.

– **A as Criminal Label** A brand for adultery. A was the brand for those found guilty of adultery who were not executed. It is depicted as a cloth letter A worn for life in Nathaniel Hawthorne's novels, which is perhaps not historically accurate. The punishment for adultery in colonial Massachusetts was death, or whipping followed by a requirement to wear an AD for a time.

– **Contra Proferentem (Against the Drafter)** An ambiguous clause is read against the interest of its drafter. Under the doctrine of contra proferentem, a clause in a contract susceptible to several meanings will be given the meaning most favorable to the non-drafting party, particularly when the non-drafting party had a distinct disadvantage or the drafting party had a distinct advantage from the clause. The doctrine may not apply, however, when the parties to a contract are each sophisticated negotiating parties with equivalent bargaining power.

– **Expressio Unius Est Exclusio Alterius (Expressio Unius Exclusio Alterius Est)** The omission of an item from a list is presumed to exclude it. Expressio unius ut exclusio alterius, or "the expression of one thing is the exclusion of another," is a maxim of inter-

pretation applied to statutes, contracts, and other instruments, in which a list that omits something is presumed to have been written deliberately to exclude it. Such a maxim should not, generally, be given priority over clear evidence of a scrivener's error or of an intent by the drafter to the contrary.

– **God (Supreme Being or Creator)** The divine creator of all human-kind. God is the subject of an unlimited number of descriptions or beliefs. When "God" is written or said in the law of the United States, however, it usually represents one or more of the monotheistic concepts of God, either brought to the United States by immigrants from Christian Europe or developed along similar lines. The two major divisions among these concepts are whether God acts in history after the creation (the primary difference between deism — God set up the universe and now it goes on its own — and theism — God set up the universe but continues to intervene), and whether God created only good or is also the creator of evil. These divisions are often argued among theologians, and though they may have little practical effect in the law, legal usage does appear sometimes to favor one or another concept. For example, some usages of God in the law appear theistic, such as the assumption underpinning the idea of an "act of God" or invocations for God's intercession at the start of a session of Court or of a legislature. On the other hand, many aspects of the founding of the country appear deistic, such as the recognition of a "creator" who is "nature's God" in the Declaration of Independence. This sense of God is perpetuated in the symbols associated with "ceremonial deism," or at least in that analysis of them.

In some contexts, the term "God" might embrace a broader notion of a "Supreme Being," which would include many additional concepts of the divine, including forms of polytheism that suggest a unity among gods or a superiority of a god, or a still broader definition that might include a concept that accepts immortal beings of supernatural powers, or a concept of a divine aspect of the Earth, or of natural forces, or of humanity itself.

The federal Constitution, particularly in the Free Exercise clause of the First Amendment and in the state constitutions, protects individuals and groups from persecution based on their beliefs regarding God. The restriction of citizenship, office, or any other public good on the basis of a belief or rejection of a belief in God is likely to violate several strictures of the U.S. Constitution, including the Free Exercise Clause and Establishment Clause, the Due Process Clauses, the Equal Protection Clause, and the Religious Test clause, as well as provisions in most state constitutions.

– **Image of God (Imago Dei)** Each person is created equal. That mankind is made in the image of God is an article of faith for Jewish, Christian, and Islamic belief. The concept both justified and labeled an important argument among Christians in Europe and America in the seventeenth to nineteenth centuries, which rejected the claims to a divine right of kings or of nobility to rule, as well as to a theological defense of slavery, because all people are made in the image of God. This argument is central to the statement of the Declaration of Independence in 1776, that all people "are created equal, that they are endowed by their Creator with certain inalienable rights. . . ."

– **Injustice (Unjust)** The failure to ensure justice for an individual, group, or state. Injustice is both the absence of justice and the affirmative wrong in the abuse of neglect to use the power of the law. Injustice occurs as a matter of fact, as a matter of means, and as a matter of ends. Injustice in fact occurs when a person who is innocent is accused or convicted of a crime, or a person who has done no wrong suffers a judgment, regardless of how fair or careful the legal requirements or process that resulted in the wrongful accusation,

conviction, or judgment. Injustice in means is the creation or enforcement of laws without regard for the effect of the law on each person, so that the burdens of the legal system fall negligently upon many people, as when officials favor the needs of a political party over the needs of all, or expedience is preferred to justice in each case. Injustice in ends occurs when legal officials employ the law for any end but for the benefit of each person subject to it, when they ignore the dangers to anyone that law should guard against, or when the law itself favors some over others.

Injustice is usually perceived differently from justice, and it serves as a useful means, in practice, for the pursuit of justice. Practically, the most just answer to any question is likely to be the answer that is the least unjust. Note: unjust is the adjectival form for the noun, injustice.

– **Illegitimi Non Carborundum** Don't let the bastards get you down. "Illegitimi Non Carborundum" is a popular motto in mock Latin that is seemingly beloved of a certain stripe of lawyer, who universally accepts it as meaning, literally, "Don't let the bastards grind you down." Actually, it was invented in the twentieth century and means nothing sensible in Latin at all. If one must say such things, a more appropriate formulation is "Nunquam filii canis sinam vincere."

– **Is** The present of "to be," at the time or at all times. Is, the third person, present tense of "to be," stands for the state of affairs at a given time. The word therefore has an ambiguous temporal element: it may refer to the limited time in which the statement is made or to the whole of time before and after the statement. This sort of temporal ambiguity is common in verb forms. It gave rise to the most famous legal definition of the 1990's, whether "is" is what is or what was and will be. The question was never really resolved.

– **Ye** Once "the" or "thee" but now "you." " Ye" in contemporary usage is an anachronistic form for "you," used in both the plural and the singular, as in "hear ye" for "each and all of you, hear this." In older documents, particularly deeds, "ye" represents either "the" as the definite article or "thee" as the form of "you." Indeed, the y is not really the letter y in the modern alphabet but the letter thorn, which has been so forgotten that the word is now routinely pronounced with a letter y sound as it has in yellow, rather than the th sound it had when its use was commonplace.

– **Aesthetic Zoning** Regulations of the appearance of land and buildings. Aesthetic zoning is the regulation of the appearance of real property, buildings, or other uses of land. Zoning authorities have a legitimate public purpose in creating a harmonious appearance throughout a community, but this purpose is limited in that the regulations may not be so extensive as to amount to a taking of the property or to a limitation on the freedom of speech by its owners.