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Bouvier's, Black's, and Tinkerbell*

Mary Whisner**

A patron's complaint about the location of a dictionary leads Ms. Whisner to ponder the nature of cognitive authority and its impact on how we assess reference tools.

¶1 Several years ago, a patron (call him Mr. P.) was upset that our library stored our copies of *Bouvier's Law Dictionary* in the basement with the old materials that still had Dewey Decimal Classification numbers. Circulation staff members retrieve materials from the basement four times a day and they were happy to take Mr. P.'s request, but still he thought that the library was impeding his research. The issue was larger than mere convenience, for, according to Mr. P., *Bouvier's* is the only law dictionary the Supreme Court pays any attention to. In addition to discussing his complaint with library staff, he approached several law students in the reading room. He told them that the law school was giving them a bad legal education because it placed *Black's Law Dictionary* on dictionary stands but withheld *Bouvier's* from them.

¶2 Students seemed to shrug off his pronouncements, but his campaign got our attention. In response to his complaints, we moved the various editions of *Bouvier's* to the top of our retrospective conversion list. A cataloger reclassified them and we moved them to the open stacks. Soon Mr. P. had easy access to *Bouvier's*.

¶3 Meanwhile, I did a little research. I had not heard of *Bouvier's* and wanted to know more about this source that inspired such loyalty in Mr. P. *How to Find the Law* gave it one sentence: "For almost a hundred years, the numerous editions of John Bouvier's *A Law Dictionary* were most popular among American lawyers."¹ *Fundamentals of Legal Research* had this:

Bouvier's Law Dictionary and Concise Encyclopedia (3d revision), 8th ed., West Publishing Company, 1914, 3 volumes; reprinted in 1984 by William S. Hein & Co., Inc.

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1. MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 412 (9th ed. 1989). A footnote adds that it was first published in 1839 and that the final edition was *Bouvier's Law Dictionary and Concise Encyclopedia*, 3d rev. (8th ed.) by F. Rawle (West, 3 vols., 1914).

This edition is out of date in some respects. It is a particularly scholarly work, however, and many of its definitions are encyclopedic in nature. It is still very useful for many historical terms.²

¶4 Finally, I checked Julius Marke's daunting work annotating entries from the collection of New York University's law library at mid-century.³ He quoted Mudge saying that the 1914 edition of *Bouvier's* was "the standard American law dictionary"⁴ and Pollack saying that it is "perhaps the most scholarly [of legal dictionaries] in its treatment, providing besides definitions articles on many of the legal topics."⁵

¶5 This much convinced me that *Bouvier's* was important enough to make it more accessible in our library. The old editions we had moved to the open stacks were showing their age, so I proposed to our Collection Development Council that we buy the Hein reprint and put it in our reference stacks. The committee readily agreed and now the reprint is there, easily accessible by Mr. P. and anyone else who wants a scholarly legal dictionary from 1914.

¶6 Still, I kept thinking about the incident. What about Mr. P.'s claim that *Bouvier's* was the only dictionary that the Supreme Court pays attention to? I ran searches in the genfed;us library on LEXIS-NEXIS to see whether the claim had a basis. *Bouvier's* was indeed the winner in the citation count race—but only through the 1930s. *Black's* and *Bouvier's* were each cited five times in the 1940s and 1950s, then *Black's* pulled ahead. The citation score was ten to five *Black's* in the 1960s and 1970s; *Black's* showed a commanding ninety-four to nine lead in the 1980s and 1990s.⁶

2. J. MYRON JACOBSTEIN ET AL., *FUNDAMENTALS OF LEGAL RESEARCH* 456 (7th ed. 1998).
3. JULIUS J. MARKE, *A CATALOGUE OF THE LAW COLLECTION OF NEW YORK UNIVERSITY* (1953). This catalogue is often useful for questions such as "What are the classics of international law?" and "What are the standard sources for property?"
4. *Id.* at 1201 (quoting ISADORE G. MUDGE, *GUIDE TO REFERENCE BOOKS* 130 (6th ed. 1936)).
5. *Id.* (quoting ERVIN H. POLLACK, *LEGAL RESEARCH AND MATERIALS* 166 (1950)).
6. LEXIS-NEXIS searches performed Jan. 23, 1996. Since my main point here is not the numbers in and of themselves but rather a comparative snapshot, I have not rerun the search. For a thorough study of the Supreme Court's citation of dictionaries, see Samuel A. Thumma & Jeffrey L. Kirchmeier, *The Lexicon Has Become a Fortress: The United States Supreme Court's Use of Dictionaries*, 47 *BUFF. L. REV.* 227 (1999). Appendix C lists dictionaries and the cases that cited them through the 1997–1998 term. According to the authors' list, various editions of *Black's* have been cited in some 134 cases, while various editions of *Bouvier's* have been cited in only thirty-six. *Id.* at 477–94 (This is my count; duplication is possible, e.g., if two editions are cited in one case).

Scholars have noted the increasing resort to dictionaries by the Supreme Court. See, e.g., Thomas W. Merrill, *Textualism and the Future of the Chevron Doctrine*, 72 *WASH. U. L.Q.* 351, 355–57 (1994) (dictionaries cited in 1 percent of statutory interpretation cases in the 1981 term, 13 percent in the 1988 term, and 33 percent in the 1992 term); Jane S. Schacter, *The Confounding Common Law Originalism in Recent Supreme Court Statutory Interpretation: Implications for the Legislative History Debate and Beyond*, 51 *STAN. L. REV.* 1, 18 (1998) (dictionary cited in 18 percent of majority opinions in statutory interpretation cases in 1996 term); Note, *Looking It Up: Dictionaries and Statutory Interpretation*, 107 *HARV. L. REV.* 1437, 1438–40 (1994) ("Although the Court has consulted dictionaries almost since its inception, it rarely did so more than a handful of times per Term before the 1980s. . . . By contrast, in the six Terms between 1987 and 1992, the Court

¶7 The searches disproved Mr. P's factual claim (that *Bouvier's* is the only dictionary the Supreme Court cares about), but I was still struck by the intensity of his belief. So I examined my own. When a patron comes to the reference office and asks for a law dictionary (or asks for a definition of a legal term), I begin with *Black's Law Dictionary*. Either I reach for the one behind the desk or I wave my hand, pointing out the *Black's* on dictionary stands in the reading room. If the patron asks for more, then I suggest other law dictionaries or *Words and Phrases* or perhaps other research strategies, but most often, *Black's* is the end as well as the beginning. Why? What makes me so confident that *Black's* is the right source to offer?

¶8 I trace my own belief in *Black's* to my first year of law school. I think one of my professors—or maybe more than one—advised students to look up unfamiliar terms in *Black's Law Dictionary*. The librarian who gave the first-year class lectures on legal research may have held it up as well. Did I use it myself? I do not recall. I know I sometimes referred to a small, off-brand, paperback law dictionary that someone had given me as a going-away present. Still, even though I did not actually use *Black's* much, if at all, I accepted that it was the standard. That early indoctrination has only been reinforced by my years working in law libraries. My library is probably typical in its institutional endorsement of *Black's*: we have copies in the reference office, on reserve, and in the faculty library, with multiple copies in the reading room. By sheer numbers, the institution is announcing that this law dictionary is more important than any of its rivals. And this library is not alone. I expect that nearly any American law library I visited would have copies of *Black's* at the ready, often in multiple locations.⁷

¶9 We—lawyers, law librarians, law students—form a community that shares beliefs about what books are worth consulting. We did not have a meeting to decide to downplay *Bouvier's* and promote *Black's*, but that is the effect. We librarians promote *Black's* by setting out multiple copies for students and others to use. (Although I disagree with Mr. P's conclusion that we were giving the students a bad legal education, he was right that our institutional choices—even what books to put out on dictionary stands—do shape legal education.) It is a good bet that the legal writing professors will not raise eyebrows when students cite *Black's*. Professors still suggest that students look up unfamiliar terms in *Black's*. Lawyers ask for *Black's*. And so on. We did not all get together and have a vote,

never cited dictionaries fewer than fifteen times, with a high point of thirty-two references during the 1992 Term."); *Id.* at 1454 (bar graphs of dictionary citation patterns 1935–1992 and 1842–1992).

Ellen Aprill discusses lexicographic principles and uses them to critique judges' use of (and failure to use) dictionaries. Ellen P. Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 ARIZ. ST. L.J. 275 (1998).

7. "The Sixth Edition sold more than one million copies, a figure which the Seventh Edition is expected to surpass." E-mail message from Lori Hedstrom, Program Manager, Librarian Relations, West Online (Oct. 27, 1999) (on file with the author). The sixth edition was published in 1990; the seventh in 1999.

but somehow we reached the consensus that *Black's* is the standard law dictionary—and so it is.

¶10 Bob Berring terms this endowing of authority on a work by group opinion “the ‘Tinkerbell’ phenomenon.”⁸ We believe the work to be credible because our community does. A committed skeptic might say that we should only believe what we know from first-hand experience to be true. But that is a limit that none of us can live with.⁹ All people need to rely on others for information, and we make judgments (often without much conscious thought) about how much to believe any source—that is, how much cognitive authority it should have. If my neighbor says that her son is in kindergarten, I believe her, without going to the school to see him with his class.¹⁰ If one officemate tells me that the other called in sick, I believe them both—the first one that the call came in and the second one that she is sick. I believe almost everything my brother tells me, although his cognitive authority suffered when we were children and he told me that baker’s chocolate would taste good.

¶11 My good friend Nancy has a book coming out about Robert M. La Follette.¹¹ I know I will find this a credible book. Why? A large measure is due to the same sort of personal trust that exists in the examples above: I have known Nancy since seventh grade and I believe what she says. If she says that she dug through the La Follette papers at the Library of Congress, I believe her (I even had dinner with her when she was in Washington to do so). Since I trust her, I will trust her book. Of course, most of us do not have personal relationships with the authors of the books we rely on. Since I work in a law school, I do know the authors of some hornbooks, law review articles, and monographs, but the sources written by people I know are just a tiny slice of the universe of law books I use. Most people who read Nancy’s book will not trust it because they have known her for thirty years. Instead they will depend on other marks of credibility, such as the fact that it is published by a respected academic press and the fact that she has academic credentials (a Ph.D. in history and a teaching post). With luck, they will see positive reviews by authors they trust, writing in publications they trust. They may scan her endnotes and find the book more believable because she documents her sources. When they read the book, they will fit the story Nancy tells about La Follette and Progressivism in with other things they know or believe about United

8. Robert Berring, *Chaos, Cyberspace and Tradition: Legal Information Transmogrified*, 12 BERKELEY TECH. L.J. 189, 193 (1997). Since Tinkerbell is said to exist only if children believe she does, Berring says she stands for “the classic bootstrapping of authoritativeness.” *Id.* n.17.
9. “Experience teaches, but not much.” PATRICK WILSON, *SECOND-HAND KNOWLEDGE: AN INQUIRY INTO COGNITIVE AUTHORITY* 9 (1983). On the other hand, “[i]t is possible to live a life almost free of reliance on second-hand knowledge beyond what was part of the initial stock acquired in one’s youth”—however, the picture of information poverty Wilson paints is not pretty. *Id.* at 150–51.
10. Cognitive authority has to do with a particular sphere of interest. For me, my neighbor is an authority on her son but not an authority on, say, Keynesian economic theory.
11. NANCY C. UNGER, *FIGHTING BOB LA FOLLETTE: THE RIGHTEOUS REFORMER* (forthcoming fall 2000).

States history and will assess whether they find her story credible. They might even be influenced by the dashing photo of La Follette on the book jacket (despite the adage, we *do* judge books by their covers).

¶12 We all make these sorts of judgments, often without thinking about them much, if at all. Generally, the process works. Why *not* give *Black's Law Dictionary* some cognitive authority, based on the recommendation of professors who seem smart, informed, and worthy of trust? Why not accept the wide consensus of my professional community? Of course, we should not go on reputation alone, against all odds. For example, if we found that *Black's* omitted definitions of legal terms we needed defined, we should question it. Likewise if its definitions were poorly written and hard to understand. Or if just did not seem to get things right much of the time. So far, nothing has happened to shake *Black's* from its primacy in the mainstream legal community.¹²

¶13 While my community (law librarians and lawyers) accepts *Black's* as the leading legal dictionary, Mr. P., who does not share my professional affiliations, may have formed his preference for *Bouvier's* as part of a different community. Searching the Internet gives me a glimpse at what that might be.¹³ For example, a company offering an electronic version of *Bouvier's Law Dictionary* states that it "is a *must* for anyone participating in Constitutional or Common Law research. It is the law dictionary preferred for use by the U.S. Supreme Court."¹⁴ Seeing this statement does not make me believe Mr. P.'s claim about the Supreme Court—I find the results of my LEXIS-NEXIS search more persuasive—but it does show that Mr. P. is not alone in his belief.

12. Surely that must be why the substantial reworking of the seventh edition under the editorship of Bryan Garner retained the respected brand name. BLACK'S LAW DICTIONARY (Bryan A. Garner ed., 7th ed. 1999). It may be more Garner's dictionary now than Black's, but no one would recognize the name *Garner's Law Dictionary*. "A standard reference work that is repeatedly revised may be thought of as an institution in its own right. Those responsible for its revision may derive their reputation from this connection rather than the work deriving its reputation by reflection from theirs." WILSON, *supra* note 9, at 169.

13. I do not know whether Mr. P. is a part of the community represented by the Web sites discussed below. The sites represent a community that values *Bouvier's*, but it may not be a community Mr. P. is a part of.

14. *Inductel Multimedia Dictionaries* (last modified Oct. 8, 1996) <<http://www.liberty.com/home/inductel/law.html>> (offering the Sixth Edition [no date given] "in software").

Another vendor, Y2KFoods, offers a reprint of *Bouvier's* with a similar statement about *Bouvier's Law Dictionary*: "If you wan't [sic] to know what they were thinking when the US courts were developed, then this is the book to get. It is still the dictionary used in Congress, and as a rule takes precedence over Blacks in our courts. . . . First American law dictionary to be published. Long recognized as a leading authority, all other American law dictionaries are inevitably compared with this one. A concise encyclopedia of Anglo-American law, its outstanding feature is its emphasis on the American elements in the law." Y2KFoods, *Home Education Section* (visited Oct. 31, 1999) <<http://y2kfood.com/s39p129.htm#Message354>>. Y2KFoods, as the name suggests, specializes in food that may be stored in preparation for man-made or natural disasters, but it includes a home education section with law books, such as *Bouvier's* and *Blackstone's Commentaries*, along with, interestingly, some classic children's books, such as *Little Women* by Louisa May Alcott. It links to a home schooling site.

¶14 Searching for “bouvier’s law dictionary” on AltaVista leads to many Web sites with information about movements outside the mainstream legal community. For example, the Lawful Path, a site “dedicated to study of the True Law, and a return to Lawful Government,” maintained by some activists in “Michigan territory,” features *Bouvier’s*.¹⁵ Other documents in the same section discuss the justification for the militia movement, the New World Order, and other topics. Another site posts a document called “Nitty Gritty Law School: Strong Medicine,”¹⁶ which includes a section titled “Thoughts about Building Your Private Law Library.” *Bouvier’s* is first on the list, described as “the only dictionary every [sic] blessed by Congress[.] One advantage is that the attorney’s [sic] don’t have it. Knowledge is power—use it as a resource to confuse the opposition. Their research costs will go up trying to figure out what only can be found in this dictionary.”¹⁷

¶15 Ralph Kermit Winterrowd 2nd, a Patriot activist in Alaska, includes all of the 1856 edition of *Bouvier’s Law Dictionary* on his Web site.¹⁸ Many other sites link to his for *Bouvier’s*. The AltaVista search also leads to a variety of doc-

15. *The Lawful Path* (visited Oct. 27, 1999) <<http://users.netonecom.net/~gallan/TLP/>>. The library section includes “Maxims of Law from Bouvier’s 1856 Law Dictionary” (visited Oct. 27, 1999) <<http://users.netonecom.net/~gallan/TLP/ref/maxims.htm>>. The files section includes downloadable files of the 1856 edition in WordPerfect format.
16. *Nitty Gritty Law School: Strong Medicine, Part II, Aurora, Colorado* (May 31, 1986) <<http://web3.foxinternet.net/djf/NOTES.TXT>>. The parent site begins with these lines: “It’s gonna take a lot of work. A lot of study. A lot of unlearning what you think you know. If you stay, you will learn about THE LAW. It’s not what you think it is! (visited Oct. 27, 1999) <<http://web3.foxinternet.net/djf/>>”
17. *Id.* The author also recommends the fourth edition of Black’s because the fifth edition “leans away from Common Law toward Equity Law.” See also *The Frog Farm FAQ* (Mar. 4, 1994) <<http://www.worldtrans.org/worldtrans/sov/frogfarmfaq.txt>> (“[W]hether or not you can exercise and defend Rights will depend on whether or not you have the following things: . . . Access to a good law dictionary. (Bouvier’s is the best; use Black’s only if you have no other choice.)”).
18. *Dictionaries* (visited Oct. 27, 1999) <http://www.alaska.net/~winter/dictionaries_law.html>. Winterrowd was the Alaska Patriot Party’s gubernatorial candidate in 1994. Natalie Phillips, *Tax Protesters Fight an Uphill Battle*, ANCHORAGE DAILY NEWS, Dec. 21, 1997, at 1B.

In addition to the 1856 edition of *Bouvier’s*, which he offers in full, he also posts selections from *Black’s Law Dictionary*, 6th ed., and the 1897 edition of *Bouvier’s Law Dictionary*, but with caveats. He offers the following editorial comments about Black’s:

Editor’s Note: This is the Corporation Law Dictionary. Check the definitions in a Peasant’s Dictionary or in the earlier Law Dictionaries. Also be aware that the meanings of words have been changing for the last two hundred years to deceive us on what our forefathers really meant by the words they used in the United States Constitution, etc. *Dictionaries, supra*.

He includes only three terms (“federal,” “federal government,” and “law of nature”) from the 1897 edition of *Bouvier’s*, with this note:

Editor’s Note: This is the KING’S Dictionary. Check the definitions in a Peasant’s Dictionary. Also be aware that the meanings of words have been changing for the last two hundred years to deceive us on what our forefathers really meant by the words they used in the United States Constitution, etc. *Dictionaries, supra*.

uments that cite *Bouvier's*. Position papers and briefs, citing *Bouvier's*, argue that a fringe on the flag changes the jurisdiction of the court;¹⁹ a state cannot compel a person to have a driver's license in order to drive;²⁰ the Articles of Confederation remain in effect;²¹ there are two types of citizenship (created before and after the Civil War), and a new meaning of "state" was imposed during the Civil War;²² an "abatement" procedure can be used against government officials;²³ Americans are still subject to the English Crown;²⁴ the current U.S. monetary system is illegitimate;²⁵ the federal income tax system is illegitimate;²⁶ and more.

¶16 The reasons these authors favor *Bouvier's* mirror the reasons I favor *Black's*. I first heard of *Black's* from my teachers. Similarly, many of the activists probably first heard of *Bouvier's* from their teachers—perhaps other members of the movement who conduct workshops. I like it that *Black's* has been revised

19. See *A Military Flag*, a chapter in a longer work, *The United States is Still a British Colony* (visited Oct. 27, 1999) <<http://www.civil-liberties.com/books/colony5.html>>.
20. See, e.g., William D. Buff, *Brief on Travelling is a 'Right,' Not a Government Granted Privilege* (visited Oct. 27, 1999) <<http://www.claimhelp.com/traffic/travel.htm>> (tailored to Missouri); *Drivers License [sic]: Right or Privilege* (visited Oct. 27, 1999) <<http://bisc.com/home/netb/rx7/wash.html>> (tailored to Washington State).
21. See Sam Aurelius Milam III, *In Search of the Supreme Flaw of the Land: Perpetual Union* (last modified Sept. 25, 1999) <http://www.ida.net/users/Pharos/Flaw_of_the_Land_Essays/Perpetual_Union.html>.
22. See Scott Eric Rosenstiel, *Martial Law in America* (last modified April 16, 1997) <<http://www.netaxs.com/~delcolib/Martial%20Law%20in%20American.htm>>. Here is an example of the uses of *Bouvier's* and *Black's* in Patriot discourse:
 Bouvier's Law Dictionary, which was published before the war, said that a "state," within the meaning of the federal constitution, was "one of the commonwealths which form the United States of America." Every edition of *Black's Law Dictionary* (which was first published in 1891) says that a "state" is, "One of the component commonwealths *OR* states of the United States of America." It is identifying two classes of states: 1. Component commonwealths, and 2. States of the United States of America. The former is the old terminology from before the war. Since that expression identifies all of them (and not just the four states[1] that use the term 'commonwealth' in their official title), the "states of the United States of America" referred to must be identifying different "states" altogether. *Id.*
23. See John William & Joe Allen, *Common Law Procedure on Abatement: The Abatement* (Randy Lee ed.) (visited Oct. 28, 1999) <<http://syninfo.com/IAN/extr1120.htm>>.
24. See James Montgomery, *How Long Can a Corporation Live?* (Aug. 17, 1998) <<http://biblebelievers.org.au/king40.htm>>.
25. See Bruce McCarthy, *Theocratic vs Democratic Money* (visited Oct. 29, 1999) <<http://www.ourhero.com/library/Books/bgm.html>>; Richard Forest, *Money & the Gold Standard* (visited Oct. 29, 1999) <<http://www.escalix.com/freepage/privacy/gs.htm>>.
26. See Bruce Hatcher, *Irrecusable Obligation: "The Tie that Binds?"* (last modified Apr. 2, 1999) <<http://www.newwave.net/~mjolnir9/nexus1.htm>> (This includes one of my favorite sentences in the genre: "On June 5, 1933, the war of Conquest against the American People, which was begun by Abe Lincoln, was consummated by FDR-shepardized legislation." *Id.*) For a critique of many tax protestor arguments, see Christopher S. Jackson, *The Inane Gospel of Tax Protest: Resist Rendering Unto Caesar—Whatever His Demands*, 32 GONZ. L. REV. 291 (1996/97).

recently. In my view, it is good to use a legal dictionary that includes new terms and new meanings of old terms as the law evolves.²⁷ In contrast, many of the activists believe that the law took a wrong turn around the time of the Civil War, so they do not want sources that reflect changing legal standards. They like *Bouvier's* (especially the earlier editions) precisely because it does *not* have the new terms and new meanings of old terms.²⁸ I use *Black's* because it is used by the legal establishment.²⁹ Many of the activists consider themselves to be outsiders and distrust *Black's* for the same reason.³⁰ Since our communities' values are so different, it is unlikely that members of the two groups can persuade each other that their dictionary is better.

¶[17 One patron's request for a favorite dictionary to be moved up from the basement led to reflections on much bigger issues. I gained some knowledge about a piece of legal literature—the legal dictionary that dominated the market for a century. I pondered the nature of cognitive authority and how *Black's* benefits from the Tinkerbell effect. Finally, I learned some more about a community that thinks about law and legal sources in a dramatically different way than the dominant legal community. That's a lot to get from one patron's complaint about a library policy.

27. New entries in the seventh edition include "cyberstalking," "jurimetrics," "parental kidnapping," "quid pro quo sexual harassment," "reproductive rights," and "viatical settlement." BLACK'S LAW DICTIONARY, *supra* note 12, at ix.

28. See DAVID A. NEIWERT, IN GOD'S COUNTRY: THE PATRIOT MOVEMENT AND THE PACIFIC NORTHWEST 100 (1999):

The Freemen, unlike mainstream lawyers, feel no compunction about drawing from any laws produced by Western civilization going back to the Magna Carta—as well as, of course, the Bible. Indeed, much as they do with the Bible, the Freemen in the legal world engage in a kind of illogic which first decides what the truth is, and then finds passages in some obscure authority (frequently misinterpreted) to help justify their idea of the truth. Virtually any law that has ever been written, no matter how outdated or overruled, can be produced as evidence of their legal position. More important, they become calcified, much as Scripture is in their worldview: If a law was written three hundred years ago, then it remains in effect in the body of "common law."

29. *Bouvier's*, of course, is useful for mainstream legal scholars who are doing historical research. If you want to know what the understanding of a word was in the nineteenth century, a nineteenth-century dictionary is one obvious tool to use.

30. In this regard, the claims that *Bouvier's* is favored by the Supreme Court and by Congress are curious. The activists do not generally trust the Supreme Court and Congress—at least not the current institutions.