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LAWTALK

*The Unknown Stories Behind
Familiar Legal Expressions*

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Lawtalk

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Behind Familiar
Legal Expressions*

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Preface

Law is so much a part of everyday life that we scarcely notice it; it is a presence in everything from the simplest purchase at the corner store to the quality of the very air we breathe. Likewise, law-related language pervades our everyday speech; we use it all the time, often with little awareness of its origins or its actual legal significance. Even lawyers can be oblivious to the linguistic and cultural history embodied in the terms they use.

In this book we tell the stories behind the words. We delve into a wide range of what we call *lawtalk*: words and phrases—most of them familiar to nearly everyone—that have a particular connection with law or are used in talking about law. This is quite a different thing from mere legal terminology. This is *not* a book about insider jargon of the sort featured in a story purportedly told of a pompous judge and a wry local barrister in a nineteenth-century case in western Ireland:

JUDGE: Mr. Houlihan, is your client aware of the maxim *in pari delicto potior est conditio defendentis*?

COUNSEL: My Lord, in the bogs of Connemara they speak of little else.

Unlike that Latin maxim (which states that when the parties are “in equal fault, the position of the defendant is stronger,” which is to say that the court will not come to the assistance of a plaintiff who is as much to blame as the defendant), the terms chosen for this book are generally well known—not in the nineteenth-century bogs of Connemara, perhaps, but in the twenty-first-century streets of America. Some are words that originated in law and expanded into nonlegal use; some are words from outside law that acquired special meaning in legal contexts. Some phrases are of ancient origin, some come from recent popular culture. Some terms had a life cycle that has run its course; some are still evolving. The one thing that they all have in common is that they have a story to be told—

though the stories themselves range from tragic to hopeful to comic, and often have elements of all three.

In each case, the information we present goes well beyond anything amassed before. For example, in tracing the origins of the terms, by using modern electronic databases available to universities we have been able to track many expressions back to dates considerably earlier than had previously been known—findings that will be of particular interest to linguists and lexicographers. In addition, we use original sources—both legal writings and nonlegal materials ranging from newspapers to literary works—to trace the evolution of terms under discussion and to highlight the differences between popular and legal understandings of these terms. (Of course, this isn't legal advice. General statements of legal principles are always subject to qualification in specific circumstances.) And we have drawn extensively upon contemporary scholarly writing in law and history to put these developments into context and flesh out the human events and concerns that underlie legal affairs. Our focus is on American law and language, but for history and comparison we often deal with England and occasionally discuss Europe or other English-speaking countries.

A great deal of popular discourse about law and lawyers is in the form of jokes and humor—and that, too, is lawtalk. Many of the entries, therefore, are augmented by sidebars containing jokes or historical material, usually lighthearted, related to the subject of the entry. And because urban legends and false etymologies about legal terms are also a kind of lawtalk (and a kind that is spread with particular ease in the Internet age), we have called attention to such myths and misconceptions and taken pains to separate fact from fiction.

Our object throughout has been to convey to general and specialized readers alike the history, the drama, and the humor behind these terms in an entertaining and readable form while providing new and reliable information that will be of interest to linguists, legal scholars, and others in the scholarly community. For the benefit of that community, we include appropriate documentation; for the benefit of readers who do not need such details, we consign the documentation to the back of the book.

The cumulative lesson from this venture is that legal history and linguistic history are, in the last analysis, cultural history. Language and law

develop to meet the needs, accommodate the customs, and embody the morals of an evolving society. The accounts in this book, ranging as they do over a broad array of topics united only by the fact that there is something interesting to learn about them, collectively constitute a picture window on American cultural history.

JAMES E. CLAPP
ELIZABETH G. THORNBURG
MARC GALANTER
FRED R. SHAPIRO

Note on Quotations and Sources

Many historical quotations in this book are from times before spelling and punctuation became standardized. To capture the full flavor of the quoted passages, unless otherwise stated in the notes the spelling, punctuation, and capitalization of quotations are as in the original, except that the modern alphabet has been used (so that, when appropriate, *i* is rendered as *j*, and *u* as *v*, and *uu* or *vv* as *w*), and a truncated sentence at the beginning of a quotation may begin with a capital letter or, at the end of a quotation, may end with a period. Unless otherwise indicated, however, ellipses and bracketed material in quotations are our own.

Similarly, some older texts were very liberal and, to a modern eye, quirky in their use of italics. Any emphasis shown in a quotation is in the original unless otherwise stated in the notes. However, some quotations from court cases and from newspapers and magazines have been obtained from databases that provide only plain-text copies. In such cases our quotation might not include italics that appeared in the original printed text.

Conventional legal citation form is substantially followed for citations to statutes, court cases, and academic journals (mostly law reviews), though names of journals are spelled out for the benefit of those not accustomed to legal abbreviations. (In this style, the volume number precedes the name of the publication and the page number follows it, and reports of opinions of a state's highest court are usually indicated simply by an abbreviation of the name of the state.) For other sources a conventional humanities style is followed.

Except as otherwise noted, all quotations from Shakespeare are from *The Arden Shakespeare Complete Works*, edited by Richard Proudfoot, Ann Thompson, and David Scott Kastan (Walton-on-Thames: Thomas Nelson, 1998). And except as otherwise noted, quotations from the Bible are from the Authorized King James Version, edited by Robert Carroll

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and Stephen Prickett (Oxford: Oxford University Press, 1997), but with words in italics or small capitals rendered here in ordinary roman type. When a translation of the Bible into modern English is needed for clarity—particularly in quoting biblical law—we use the New Revised Standard Version.

Acknowledgments

This book was conceived of by Marc Galanter, who also was primarily responsible for the jokes and other sidebars. For history, context, and analysis of most of these jokes and many others, see Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (Madison: University of Wisconsin Press, 2005). The illustrations and permissions were collected primarily by Fred Shapiro, who also provided research and coordination for the entire project. All the authors contributed to all the entries; however, primary and ultimate responsibility for each individual entry rests with the author who wrote it, whose initials appear at the end of the entry.

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Lawtalk

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