Glenn C. Altschuler: Terms of Endearment

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For lawyers, words matter. They tell stories and are literary critics. They search for "the penumbra of express statutory mandates." They traffic in customary, complex, specialized and often redundant phrases, like "cease and desist," and "ordered, adjudged, and decreed." Ordered to produce proof of the corpus delicti, they pay homage to a dead language.

In Lawtalk, a legal lexicographer, two law professors, and a law librarian provide jargon-free explanations of the origins and uses of terms that are connected to the law or frequently used in talking about it.

Lawtalk is not encyclopedic. There are no entries, for example, for sedition, sidebar, slander, or subpoena. But the subjects the authors do present in elegant, deliciously detailed, and authoritative little essays, ranging alphabetically, from "the abuse excuse" to "the whole truth," and covering terms from contemporary popular culture, including the "CSI effect" and "indict a ham sandwich," as well as from the courtroom, demonstrate that learning can be fun.

Clapp & Company are at their best explaining the etymology of legal language. An "indenture," they reveal, is, in fact, all about teeth. To insure that each party to a contract did not substitute different wording, lawyers made two copies of the agreement on a single piece of parchment, separated with a zigzag cut (often through a vertically written line of text). The resulting documents had jagged edges like the teeth of a saw, which could then be aligned for authentication.

Although it sounds Shakespearean, "scofflaw," they indicate, was invented during Prohibition as the winning entry in a contest designed to find a word that would stigmatize a "lawless drinker" as a "bad citizen." Among the losing entries were boozshevik, lawjacker, and patrinot. Although, in the end, the drys did not prevail (Prohibition was repealed in 1933), "scofflaw" became entrenched, and was applied to, among others, persistent violators of traffic and parking regulations.

And, according to the authors, "shyster," invented in 19th century America, was a Teutonic term associated with excrement.

Just as charming is the etymological myth-busting in Lawtalk. "Blackmail," they write, does not refer to the not-so-shining armor worn by medieval knights or the transmission of extortion threats by written communication; "an eye for an eye" appeared first, not in the Bible, but in the Code of Hammurabi; "testify" is not derived from an ancient Roman custom which required a man to grasp his testicles while reciting an oath; and Benjamin Franklin did not coin the phrase "nothing is certain in life except for death and taxes." Although RICO, the acronym for Title IX of the Racketeer Influenced and Corrupt Organizations act, may well have been designed with the main character (Caesar Enrico Bandello) of the film Little Caesar in mind, cop ("constable on patrol") and rap sheet ("record of arrest and prosecution") are "backronyms" - after-the-fact associations of a word with a phrase.

The authors exhibit a healthy irreverence for lawyers and the law. By putting its prestige behind "billable hours" (instead of flat fees), they suggest, the American Bar Association "helped create a monster." No wonder, they suggest, a legend persists in law firms of a former football star who billed more than 24 hours for a day's work because he was traveling coast-to-coast across time zones.

The lawtalkers claim as well that "hearsay," a "patchwork of often ill-thought-out rules and exceptions," designed to shield juries from statements that were not made under oath and cannot be subject to cross-examination, has outlived its usefulness. At the O.J. Simpson trial, they point out, Judge Lance Ito excluded evidence from Nicole Brown Simpson's diary and conversations with friends that the former football star had beaten her up and stalked her. In other countries, such a ruling would be "unthinkable."

On a few occasions, the authors' politics make their way into Lawtalk. Finding arguments that affirmative action undermines self-esteem "paternalistic," they are "still waiting for evidence of a single white male doctor, lawyer, businessman, or construction worker racked by self-doubt because he got his start when the system affirmatively favored his "kind." The treatment of detainees suspected of terrorism, they believe, "evokes comparison with the Star Chamber at its worst." And they heap contempt on the elimination of the estate tax (the "death tax"), opining that "the ancient adage may have to be revised. For the very wealthy, it seems, nothing is certain but death."

Agree with them or not, these political pronouncements come with important lessons. At times, as Dickens' Mr. Bumble alleged, "the
law is an ass," in its language, substance, and the ways in which it is interpreted. But, then again, for all their imperfections, the authors remind us that, more often than not our laws "meet the needs, accommodate the customs, and embody the morals of an evolving society." It almost makes you want to stop telling lawyer jokes.

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