

legal spectator

By Jacob A. Stein

Law Talk



The TV actor who plays the part of a lawyer uses lawyer talk. He says things like “a grand jury would indict a ham sandwich,” “white-shoe law firms,” and “rainmakers.” He tells the young associate that he should be “thinking like a lawyer.”

We now have a book written by a group of distinguished professorial lawyers who tell us the history and meaning of lawyer talk.¹ The book is called *Lawtalk: The Unknown Stories Behind Familiar Legal Expressions*.²

Let’s start with that ham sandwich. I heard it first while sitting in a New York court. The judge said something about a grand jury indicting a ham sandwich. I couldn’t put it all together at that time. *Lawtalk* gives the history.

A New York state court judge, Sol Wachtler, resented the hypocrisy of prosecutors who say that it is the members of the grand jury who draft indictments. We all know that the prosecutor drafts indictments. Judge Wachtler believed that the grand jury process was a waste of time.

One day, when a prosecutor talked about grand juries and indictments, the judge said, publicly, that a prosecutor, if he wanted to, could get the grand jury to indict a ham sandwich. Judge Wachtler repeated it in and out of court. He said he regretted using the ham sandwich as his foil. He wished the sandwich had been corned beef rather than ham.

I next take up the phrase “white-shoe law firm.” We have all heard about white-shoe law firms, firms such as Davis, Polk & Wardwell LLP. In 1961, Davis, Polk had 38 partners, 26 of whom were listed in the New York *Social Register*. These white-shoe lawyers mingled with the wealthy. They graduated with degrees from the best eastern colleges and law schools. They wore the white bucks for summer casual wear in their exclusive sailing excursions on the Cape.

In the past, white-shoe law firms excluded candidates on the basis of race, sex, religion, or anything else. Those days

are over. The law practice is too competitive. Whether your shoes are white, brown, or black (or maybe no shoes at all), it is the book of business that kicks open the door, even at Davis, Polk.

There was another type of lawyer who did not wear white shoes. Clarence Darrow was one. He wore a white suit while performing in the 1925 famous Tennessee Scopes trial. Darrow, with his disheveled hair, his rumpled white suit, and his snappy suspenders, was the perfect picture of the defender of the poor, the needy, and the helpless.

If you want the 1925 Darrow look, you sleep in your 100 percent linen white suit. Wear half-soled shoes and snapper black

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suspenders. The choice of hose is optional. I have seen photographs of Darrow wearing both black and white hose (at different times; no garters) with his white suit.

Lawyers from the Bayou Country report that once they put on a white suit like Gregory Peck in *To Kill a Mockingbird*, their personality changes—and for the better. The vocabulary is wistful poetry South. The classics are quoted. Didn’t Cicero and Quintilian wear white in the Roman courts?

If you stand in front of one of the southern courthouses in your white suit, don’t get too close to a mud puddle. The cab you just hailed will pull up quickly and convert your act into a Buster Keaton comedy.

Lawtalk contains an entry about the word “rainmaker.” In 1960 it was a word connected with pilots who attempted to induce rain by cloud seedings. In the 1970s the *Wall Street Journal* picked up the word and used it to designate lobbyists and influence peddlers. In the late

1970s lawyers adopted the term.

In 1980 Robert Nelson, a sociologist, conducted studies about large Chicago law firms. He reports that the word rainmaker describes a lawyer who gets new clients.

Lawtalk also offers an entry on the phrase “thinking lawyer.” We are told that a thinking lawyer must be precise, cautious, resourceful, and logical. She must make pertinent, startling distinctions between this and that.

Furthermore, the thinking lawyer is detached. She listens to a narration of tragic events involving the death of two gifted young people killed in a horrible automobile accident and considers it without sympathy, compassion, or despair. No, her thoughts are when and where the deaths occurred and the applicable wrongful death statute. Were the deaths instantaneous, or was there time between injury and death? Was there conscious pain and suffering? Who had the light and was the braking distance within the speed limit? Where is the best place to file suit? Is there diversity jurisdiction? This is the legal mind at work.

Lawtalk does not include the words “home cooking.” A lawyer in a so-called foreign court may be told that he may get some home cooking. This means that the so-called foreigner may not like the local menu. I am told that the phrase home cooking was first used in a few small-town courts in West Virginia.

So when you are in “foreign territory” and you hear that you are to receive some home cooking, get yourself local counsel right away.

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Notes

¹ The contributors are James Clapp, a legal lexicographer and author of *Random House Webster’s Dictionary of the Law*; Elizabeth Thornburg, a civil procedure professor at Southern Methodist University Dedman School of Law; Marc Galanter, a professor emeritus at the University of Wisconsin-Madison who wrote *Lowering the Bar: Lawyer Jokes and Legal Culture*; and Fred Shapiro of Yale Law School who edited *The Yale Book of Quotations*.

² Yale University Press, November 2011.