

Lean on Me—Attorney, Client, Barrister, Esquire, Lawyer, Solicitor, and Versus

by Bill C. Berger

Words ought to be a little wild for they are the assaults of thought on the unthinking.

—John Maynard Keynes

As attorneys, we use words in many ways, to provoke, to persuade, and to point. In court, we pile words upon and beside each other in dark nimbus clouds of pregnant thought. In contracts, we heap them, one upon the next, in light airy cumulus clouds, each clause capable of holding years of the parties' conduct.

Yet we rarely take the time to realize how words mold us. To be sure, words are the tools of our trade, but just as surely, we are the tools of their trade. Indeed, we are the sole means by which they exist. Words survive only as long as we use them. Words want to be useful.

So they should. Words are powerful things. Their origins are far more ancient than our memories, older even than our culture and many times older than our profession.

No words are more "wild" than those that describe the legal professional. Whether *attorney*, *barrister*, *esquire*, *lawyer*, or *solicitor*, these are all old words, originating long before law was first practiced in America. These words seem synonymous—they all refer to those who practice our profession—but they come from different cultures, and each word reflects a different but important aspect of our work. People have used these words to describe us as professionals, and they describe us so well that many of these words continue to be used years after their creation. These words say something about what we do, who we are, and even whom we should aspire to be.

Attorney, Client, and Versus

attorney. (14c) 1. Strictly, one who is designated to transact business for another; a legal agent.—Also termed *attorney-in-fact*; *private attorney*. 2. A person who practices law; **LAWYER**.—Also termed (in sense 2) *attorney-at-law*; *public attorney*. **CF. COUNSEL** (2).—Abbr. att'y. Pl. **attorneys**.¹

client. (14c) A person or entity that employs a professional for advice or help in that professional's line of work—**cliental**, adj.²

versus. (15c) Against.—Abbr. v.; vs.³

The word *attorney* probably best describes what we do. When Bill Withers sang, "Lean on me, when you're not strong/And . . . I'll help you carry on," he unwittingly captured the original meaning of the attorney-client relationship.

Attorney's roots trace back through Norman French to Latin. In Norman French, unlike modern French, the word *atorné* meant "having been assigned or appointed."⁴ An attorney was the person assigned or appointed to represent someone. In modern America, we still refer to someone as either an "attorney-at-law"—a person assigned to represent someone in legal matters—or an "attorney-in-fact"—a person appointed to act on another's behalf.

Atorné is a contraction of the Latin phrase *ad tornāre*—*ad* meaning "to" and *tornāre* meaning "to turn."⁵ In modern Italian, the verb *tornare* still means to return or come back. Thus, an attorney is the person to whom one turns, the person one comes back to for help.

According to the *Oxford English Dictionary* (OED), there once was a longstanding but incorrect line of thought about this "turning" concept. As stated in the OED, "The statement found in the law dictionaries for the last 200 years, that the word means 'one who acts in the turn of another,' is a bad guess."⁶ We are not named *attorneys* because we act in the turn of our clients.

Indeed, the origin of the word *client* adds meaning to the nature of the relationship. It comes from the Latin *clināre*,⁷ meaning "to lean, to bend, as in, to recline." A client is one who leans on or who relies on an attorney.

A reader might wonder: If the attorney is the person on whom the client leans, in other words, to whom the client turns, who is the person the client turns *against*? The answer is his opposing party, of course. A client turns against his opponent. *Versus* is Latin for "against, turned toward," from *vertere*, "to turn," as in the modern word, controversy, meaning "turned against."⁸ Thus, a client leans on and turns to his attorney while simultaneously turning against his opponent.



About the Author

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Esquire or Solicitor

esquire. (15c) 1. *Hist.* A candidate for knighthood who assisted knights in martial endeavors. 2. *Hist.* A member of the gentry whose rank was inferior to that of a knight. 3. *Archaic.* A landed gentleman; a member of the landed gentry. 4. (*usu. cap. as an honorific*) A title of courtesy commonly appended after the name of a lawyer—Abbr. Esq.

Heralds and experts on honour for a long time regarded serjeants either as inferior to esquires or at most as being equals by reason of office. James Whitelocke, a barrister with historical interest and a future serjeant, said in 1601 that becoming a serjeant carried with it the status of esquire, so that the proper description was “A.B. esquire, serjeant at law.” Chief Justice Dyer, however, argued in 1580 that the name of esquire was “drowned” on creation as a serjeant, the latter being a higher degree; and the same point of view was urged in 1611 by the serjeants in a precedence dispute. It was probably not until the eighteenth century that the heralds accepted the priority of serjeants before esquires. By that time the rank of esquire had begun its decline, and according to the courts it belonged to all barristers at law by virtue of their profession. J.H. Baker, *The Order of Serjeants at Law* 52 (1984).⁹

solicitor. (15c) 1. A person who seeks business or contributions from others; an advertiser or promoter. 2. A person who conducts matters on another’s behalf; an agent or representative. 3. The chief law officer of a governmental body or a municipality. 4. In the United Kingdom, a lawyer who consults with clients

and prepares legal documents but is not generally heard in High Court or (in Scotland) Court of Session unless specially licensed. Cf. BARRISTER. 5. See *special agent* under INSURANCE AGENT. 6. A prosecutor (in some jurisdictions, such as South Carolina). 7. See *special agent* under INSURANCE AGENT.¹⁰

What, then, is it that the client leans on an attorney for? What is it that we provide our clients? How you answer that question will tell you whether you should consider yourself an *esquire* or a *solicitor*.

I probably would answer that we are first and foremost *esquires*. Later in “Lean on Me,” Bill Withers crooned, “I just might have a problem that you’d understand.” Here, he captured the meaning of the word *esquire*.

Esquire comes from the Latin *sciare*, to know.¹¹ *Sciare* also is the root of the word *science*. The essence of knowledge is the ability to split useful information from the irrelevant and immaterial. Interestingly, the word *ski* comes from *sciare*. *Ski* refers to a piece of “wood split off from a board.”¹² What, then, happened to the board from which the *ski* was split? The Romans called that a *scutum* or shield. An *esquire* is one who compiles the good, useful, relevant, and material information, and in so doing, is able to construct a shield to protect his or her client.

The word *scutum* eventually became, by way of Old German, the word *shyster*, meaning one who deals in useless waste—specifically, one who deals in fecal waste. When people use the word *shyster* to ridicule *esquires*, they are not only using a word with the exact opposite meaning but the exact opposite root. Truly, an *esquire* is the exact opposite of a *shyster*.

You might be wondering how *esquire* also became the title for nobility—specifically, one of the lowest levels of nobility. It is not because lawyers, being a learned profession, were somehow closer in the social order to nobility. Shakespeare put it this way in Act III of *Henry IV*, Part 2: “I am Robert Shallow, sir; a poor esquire of the county, and one of the king’s justices of the peace.” One thought is that the word comes from *scutum*. A shieldbearer was a *scutarius*, which became *squire*. *Squire* remains the word for a shieldbearer in the service of a knight.¹³ The *OED* makes short work of that view,

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though, saying it simply is a phonetic coincidence. “In France, the word has been influenced by a mistaken association with *écurie*,” a nobleman’s stables, which finds its root in a completely different Latin word, *equus*—horse.¹⁴ Over the centuries, the words sounded so similar; *esquire* came to refer to both a person whose knowledge permits him or her to separate the useful from the non-useful and a person who fought from horseback. Their roots make clear that they are separate and unrelated meanings, which simply have found a shared home in the same word.

Stables are not the only territory this versatile word has conquered with its phonetic flexibility. According to the *OED*, the word *esquire* also is used to refer to a Mason’s square, again because of its homophony with the word *square*.¹⁵

If you feel your role as an attorney is more combatant than scholar, perhaps you would consider yourself a *solicitor*. A *solicitor* is one who stirs up trouble.¹⁶ The Latin word, *sollicitus*, means “upset, agitation, restlessness.”

In the modern English system, the term *solicitor* has largely lost this sense. Instead, a *solicitor* is contrasted with a *barrister*. A *solicitor* functions in England like most American attorneys here. A *solicitor* can talk to clients and even engage in some aspects of litigation. A *barrister* is more like what we Americans colloquially call a “trial jockey.” The *barrister*’s role is to argue a case in court, as instructed by the *solicitor*, who in turn has conversed with the client. When we think of Rumpole in his robe and wig arguing a case at the Old Bailey, he is a *barrister*—the gentleman in a three-piece suit who talks to the client, then relays key facts to Rumpole, is the *solicitor*.

The historical distinction between *solicitors* and other types of *attorneys* was even narrower than now. Not only were *solicitors* distinguished from *barristers*, but they also were distinguished from *attorneys-at-law*. The *OED* observes that, originally, a *solicitor* played the role described above only in courts of equity; an *attorney-at-law* did so in the courts of law.¹⁷

Barrister

barrister. (15c) In England or Northern Ireland, a lawyer who is admitted to plead at the bar and who may argue cases in supe-

rior courts. • In many other Commonwealth nations, the legal profession is similarly divided into barristers and solicitors. (4)—**barristerial, adj.**

inner barrister. 1. QUEEN’S COUNSEL. 2. A student member of an Inn of Court.

outer barrister. A barrister called to the bar, but not called to plead from within it, as a Queen’s Counsel or (formerly) serjeant-at-law is permitted to do; a barrister belonging to the outer bar.—Also termed *utter barrister*.

vacation barrister. A barrister who, being newly called to the bar, for at least three years must attend inn of court functions that are held during the long vacation.¹⁸

It may be common knowledge that a *barrister* is someone who has passed the bar.¹⁹ What I was surprised to learn is that the “bar” in question is not the physical bar that separates the courtroom from the public viewing area. I always had thought a barrister was a person who could step through a gate from the public viewing area into the courtroom and sit at counsel table. That interpretation gave root to the phrases *prisoner at the bar*, meaning a prisoner who is admitted into the courtroom for the sake of appearing before the judge, and *case at bar*, meaning the case currently before a court. However, it was not that bar from which our professional ancestors took their title.

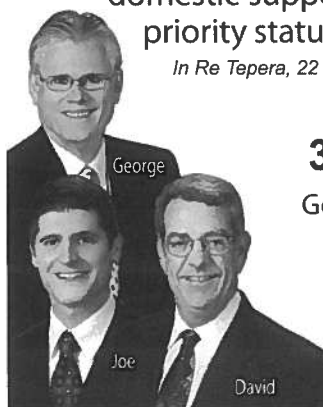
Barristers took their title instead from a different bar—actually, several different bars. In each of the Inns of Court in England, there was another physical bar that separated the “lodging, dining,

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In Re Tepera, 22 CNB 373, (Bankr. S.D. Texas, 2/9/12).



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libraries and other facilities” from the mock courtroom where students were taught how to litigate.²⁰ When a student had learned enough to participate in the mock courtroom proceedings, he was allowed to pass the bar, enter the mock courtroom, and participate. The student had become a *barrister*. In fact, there were a series of barristers, depending on their level of achievement. They ranged from the junior *benches* to the most senior *utter barristers*. The *OED* says that the juniors were so called because they sat on inner benches within the mock courtroom while their seniors sat on the outer (*utter*) edges of the courtroom, on the actual bar, or as the *OED* puts it, “on the formes which are called the Barr.”²¹

And, no, the word *bar*, as in a place that serves alcohol, does not take its name from any kind of physical bar. It is mere coincidence that the counter of many bars is rimmed by a brass bar. Rather, a *bar* take its name from a contraction of the Latin verb, *bibere*, to drink.

Lawyer

lawyer. (18c) 1. To practice as a lawyer <associates often spend their days and nights lawyering, with little time for recreation>. 2. To supply with lawyers <the large law-school class will certainly help lawyer the state>.—**lawyering**, n.²²

With his client leaning on him constantly, what does our weary attorney set beneath himself for support? The law.

A *lawyer* is one who works with the *law*.²³ I had assumed the word *law* was merely a worn-out pronunciation, earned over the centuries, from *lex*, the Latin word for law. I reasoned that *lex* had become too hard to pronounce and was shortened to “le-“ then “law.” That is not the case. “Although they look like they should be related, there is likely no etymological relationship between *law* and *legal*,”²⁴ a derivative of the word *lex*. In fact, *law* comes from Old Norse, *lagu*, a thing that has been “set down, (put in) good order”²⁵ or in Old Icelandic, “something laid or fixed.”²⁶ Thus, a lawyer is literally one who lays down order.²⁷

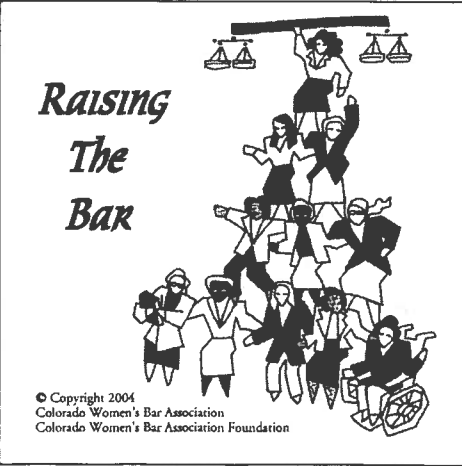
Conclusion

Etymology quickly becomes ontology: the study of a word’s origin leads to its meaning. Perhaps as evolution orders biology, generations of people preserve in their various languages only those

words whose roots match their point. That certainly is true for the words describing our profession. As *attorneys*, we should be proud to be the ones to whom a client turns—leaning on us for advice. As *esquires*, we should remember it is our ability to recognize the important. As *solicitors*, we sometimes must agitate the status quo. Finally, as *lawyers*, we should never forget that ultimately it is our job to bring order to society.

Notes

1. *Black’s Law Dictionary (Black’s)* 147-48 (9th Ed., West Group, 2009).
2. *Id.* at 289.
3. *Id.* at 1698.
4. Autry, *Word Origins for Lawyers* 20-21 (American Bar Association, 2012).
5. *Id.*
6. 1 *The Compact Edition of the Oxford English Dictionary (OED)* 139 (Oxford University Press, 1987) (emphasis in original).
7. *Id.*
8. Autry, *supra* note 4 at 220.
9. *Black’s, supra* note 1 at 625.
10. *Id.* at 1520-21.
11. Autry, *supra* note 4 at 52-53.
12. *Id.*
13. *Id.* at 194-95.
14. *OED, supra* note 6 at 886, 895.
15. *Id.* at 896.
16. Autry, *supra* note 4 at 194-95.
17. *Id.* at 139.
18. *Black’s, supra* note 1 at 171.
19. Of course, in England and in many other countries, “*barrister*” refers to an attorney who may address the court, and “*solicitor*” refers to an attorney who may counsel directly with a client. See *Black’s, supra* note 1 at 171.
20. Autry, *supra* note 4 at 27.
21. *OED, supra* note 6 at 171.
22. *Black’s, supra* note 1 at 968.
23. The suffix “*yer*” is the same as “*ier*” and “*er*.” The origins of these suffixes date back to Middle English.
24. Autry, *supra* note 4 at 119.
25. *Id.*
26. *OED, supra* note 6 at 1581.
27. Autry, *supra* note 4 at 119. ■



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