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**PROCEEDINGS OF A CONFERENCE**  
**DECEMBER 6-8, 2001**  
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# INTRODUCTION



**Roy M. Mersky\***

In celebration of the acquisition of its Millionth Volume, the staff of the Jamail Center for Legal Research and I decided to undertake the organization of a major international conference on language and the law. That conference, the result of more than a year of planning, was finally held December 6–8, 2001 at The University of Texas School of Law in Austin. The conference focused on the interaction between law and language on many different levels, as evidenced by the diversity of the contributions included herein. But the conference also highlighted and paid tribute to the Millionth Volume itself, John Rastell's *Exposicions of (th)e Termys of (th)e Law of England*, which was formally introduced into the collection during the conference. Joseph D. Jamail, a 1953 graduate of our law school and long-time supporter of the library, made this landmark acquisition possible through his generous donation. Other donors—Bryan and Pan Garner, Jenkins Garrett, The Hon. Joe R. Greenhill Sr., Chauncey D. Leake Jr., and Jenni Parrish—subsequently provided the funds for the acquisition of the million-and-first volume, *Vocabularius Utriusque Juris*, an incunabular Roman law dictionary

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\* Director, Tarlton Law Library, Jamail Center for Legal Research, University of Texas School of Law; Harry M. Reasoner Regents Chair In Law and Director of Research.

published in 1488. Together these volumes strengthen the rare law dictionary collection housed at the Jamail Center and contribute to making it one of the most outstanding such collections in the nation, if not the world. For more information on the dictionary collection, including a selection of color plates, please visit the Tarlton Law Library's website at <http://www.law.utexas.edu/raredictswb.html>.

The presentations at the Language and the Law Conference brought forth so many interesting ideas and provoked such stimulating discussions that it is my privilege to share with you the final papers submitted by the participants. The conference brought together the world's leading legal scholars, lawyers, and law librarians, who pooled their knowledge and experience in an effort to make sense of the synergies of language and law across history and in our time. Individually these papers further an understanding of the interaction between language and the law, ranging from perceptive analyses of the works of the earliest British lexicographers to the present-day international trend toward plain legal language. Collectively these papers evidence the debates provoked at the conference, the lively discussions that ensued, and the range of topics covered.

This volume is organized according to the conference program, with the papers grouped by panel. Some participants submitted papers at the same time they delivered their remarks, others chose to revise their papers based on discussions and feedback given during the conference, and a few speakers were unable to submit a paper. They have been edited with an eye to consistency in format rather than any substantive change.

The conference opened with a discussion of the Age of Rastell, beginning with my description of the "Jamail" Rastell dictionary, our Millionth Volume. Mike Widener, Head of Special Collections, gave more detailed information on the provenance of this volume and explained why it is so unique. John Baker<sup>1</sup> provided a historical look at John Rastell and his many accomplishments. Rastell was not only a printer, but also a lawyer, playwright, philosopher, member of Parliament, and world traveler. Rounding out the first program, Anthony Taussig continued the Rastell family story. John's son William joined the

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1. John H. Baker could not attend in person, so Joe Dowell, a circulation supervisor at the Jamail Center for Legal Research and an announcer for KMFA, the local classical music radio station, read Professor Baker's paper.

family business and, as a twenty-two year old, was licensed to publish several important law books. Mr. Taussig suggested that the both the licenses and editorial improvements made to those texts may have been thanks in part to Rastell's uncle, Sir Thomas More.

The second program focused on the evolution of legal lexicography in the English-speaking world since Rastell. My eminent colleague Morris Cohen continued with an account of English law dictionaries from the seventeenth through nineteenth centuries. The most important innovators were John Cowell, Thomas Blount, and Giles Jacob, men whose books were so respected that they continued to be published, not for years or decades, but for centuries. George Grossman discussed the distinguished American lexicographers Noah Webster, John Bouvier, Alexander M. Burrill, and Henry Campbell Black. Mary Whisner used her experience as a law librarian to relate an instructive tale of a patron looking for Bouvier's dictionary. In so doing, she gave a myriad of examples that demonstrate the continuing importance of centuries-old dictionaries.

Bryan A. Garner, one of the foremost lexicographers in the United States, discussed some of the issues he confronted as editor of the seventh edition of *Black's Law Dictionary*. Many of the unanswerable questions his experience raised are similar to those faced by lexicographers of old. To what extent is a dictionary an encyclopedia? To what extent should the work of predecessors be trusted? To what extent should a law dictionary be an original work of scholarship?

The speakers on our next panel discussed storytelling in law. Rachel Moran argued that law involves expressive acts that constitute and reflect identity. By looking at legal history through the eyes of individuals—in this case, two criminal defendants—we can see that the form of their narrative is as important as the legal result. Richard Weisberg continued the discussion by pointing out some peculiarities in our legal language, as well as some of the more elegant writing by judges and lawyers. In discussing Judge Cardozo's architectonics, Professor Weisberg explored the notion that writing does not merely encapsulate a thought but actually *produces* the thought. As counterpoint, Al Martinich pointed out the early connections between history and law from the fifteenth through seventeenth centuries.

During the last program of the conference's first day, participants analyzed the language of the law from various perspectives. Lawrence



Solan highlighted the awkward nature of the relationship between judges and lexicographers. He gave particular attention to the courts' use of dictionaries in determining the ordinary meaning of a word or phrase. The unintended consequences of these practices have serious implications for all involved in the legal profession. Christopher Balmford emphasized the international trend away from legalese and toward plain language. He contended that there is no justification for legal professionals to use jargon and, in fact, made a convincing case that the use of plain language results in greater precision, accuracy, and clarity. Hilary Penfold ended this program with a presentation on the power of visual aids in communicating legislative text. She also cautioned us about some typical misuses or disadvantages of graphics.

In Saturday morning's program, the speakers explored how legal language has been interpreted in particular cases. In the law of wills, as explained by Peter Tiersma, the text is regarded as the authoritative and complete expression of the legal actor's intentions. He suggested that this rigid adherence to form over intent could benefit from reexamination. The title of Fred Shapiro's talk guaranteed strong reaction. Once he had everyone's ear, he proceeded to explain how electronic databases can be used to trace the origins of words and quotations. Particularly colorful quotations from the Texas Court of Criminal Appeals illustrated his points and made for an entertaining and instructive speech.

The last program focused on the role of law libraries. Thomas Reynolds began the discussion with a brief history of libraries of the ancient world and moved on to Scott Bennett's theory that the present time is "the golden age of libraries," effectively putting to rest gloomy predictions of the impending obsolescence of libraries. Don Dunn rattled off acronym after acronym familiar to any law librarian but probably unknown to anyone outside of the profession to highlight the plethora of law library-specific jargon. M. Kathleen Price summed up two days' worth of programs while interweaving instructive tales from her own experiences.

The conference culminated with the remarks of one of its most prominent participants, Sir David Williams, at the closing luncheon. In a discussion as eloquent as it was substantive, he analyzed the process of statutory interpretation and used many of his favorite cases to illustrate key points. The art of communication, Sir David made clear, cannot be divorced from the proper use of language.

The Language and the Law Conference was a tremendous success in every respect and I was proud to be a part of it. The issues raised during the conference will continue to fuel new discussions and provide greater insights and understanding of the impact of language on the law. The participants' invaluable contributions will ensure that the significance of the conference survives its duration. The conference also benefitted from the tremendous support of The University of Texas at Austin. I would like to thank President Larry Faulkner for giving such powerful opening remarks. Also, I am grateful for the support of Dean William C. Powers of The University of Texas School of Law who gave the introduction during the first program of the conference. Their enthusiasm for the Library is invaluable and very much appreciated. I would like to thank them both for their great support of the Language and the Law Conference in particular, and their continued support of the Jamail Center for Legal Research. A number of faculty members also enhanced the scholarly content of the conference by their participation and so I would also like to thank Norma Cantu, Lee A. Fennell, Sanford Levinson, and Gerald Torres.

I would also like to take this opportunity to acknowledge the tremendous efforts of Tarlton staff members who worked together for so long to make this Conference a success. The Language & the Law Committee included Gwyn Anderson, Rhonda Hankins, Holly Lakatos, Tobe Liebert, Cathy Mantor-Ramirez, Kumar Percy, Marlyn Robinson, and Mike Widener. During the conference itself every member of the Library worked to make it a success and I would like to express my appreciation to the commitment to excellence evinced by the Tarlton staff. And, it should be noted that this volume has benefited greatly from the editorial eagle eyes of Rhonda Hankins, Jeanne Price, and Barbara Washecka.

The Language and the Law Conference was made possible, in no small part, through the generous contributions of sponsors and I would like to thank West Group, LexisNexis, and William S. Hein & Co. for their irreplaceable support. They provided not only financial contributions, but also had wonderful exhibits in the conference pavilion that added much appreciated scholarly content. Other sponsors and exhibitors included Harrassowitz; Haworth Press; Innovative Interfaces, Inc.; LawProse, Inc.; Oceana Publications, Inc.; and Scribes.