

# Washington University Law Review

---

Volume 73

Issue 3 *Northwestern University / Washington University Law and Linguistics Conference*

---

January 1995

## Law and Linguistics: Is There Common Ground?

William D. Popkin

*Indiana University School of Law*

Follow this and additional works at: [https://openscholarship.wustl.edu/law\\_lawreview](https://openscholarship.wustl.edu/law_lawreview)



Part of the [Legal Writing and Research Commons](#)

---

### Recommended Citation

William D. Popkin, *Law and Linguistics: Is There Common Ground?*, 73 WASH. U. L. Q. 1043 (1995).  
Available at: [https://openscholarship.wustl.edu/law\\_lawreview/vol73/iss3/12](https://openscholarship.wustl.edu/law_lawreview/vol73/iss3/12)

This Conference Proceeding is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact [digital@wumail.wustl.edu](mailto:digital@wumail.wustl.edu).

# LAW AND LINGUISTICS: IS THERE COMMON GROUND?

WILLIAM D. POPKIN\*

What can lawyers learn from linguistics? Here are some thoughts, focused on statutory interpretation, and suggested by the Law and Linguistics Conference.<sup>1</sup>

It is possible that linguistics and law people have such different ideas of language that they cannot get much help from each other. Lawyers do not view words as scientific data, but as things that occur in a context which nourishes their meanings. The following comments and questions seemed of little interest to the linguistics group. If that is so, it suggests something about how useful an interchange between the two disciplines would be.

## 1. *Audience*

Lawyers are very concerned with the audience for a text. For example, a statute has several possible audiences: technical vs. lay; historical vs. future; lawyers vs. people affected by the statute; the interpreting judge. Is there anything in linguistics that determines who the audience for a document is?

## 2. *Context*

I am sure linguistics experts agree that some context is needed to understand all language, but how much context (past, present, and future) can be considered before you are no longer talking about the meaning of language? I thought that “pragmatics” had something to say about this, but the linguistics experts seemed much more concerned with syntax.

## 3. *Intent*

What is the role of the author’s intent in determining the meaning of language? I do not mean secret meanings, but the author’s intent about textual meaning. The House of Lords recently decided that authorial intent that “cost” mean a “marginal” cost prevailed over what the Law Lords

---

\* Walter W. Foskett Professor of Law, Indiana University School of Law (Bloomington). A.B. (1958), LL.B. Harvard University (1961).

1. *Law and Linguistics Conference*, 73 WASH. U. L.Q. 785 (1995).

originally thought the text meant—which was “average” cost.<sup>2</sup>

What specific historical facts limit the meaning of a text—that is, how does a linguistics expert view the debate between original intent versus original meaning? I do not see how original intent can be ruled out a priori as one of several plausible theories of what a text means.

#### 4. *Language genres*

How can the linguistics group duck the issue the lawyers kept raising about law language as a type of language? Put differently, is not law a genre with its own linguistic rules, at least as far as semantics and pragmatics are concerned? Indeed, contracts, wills, treaties, constitutions, and statutes may each have their own rules.

#### 5. *Empirical data*

There is sophisticated empirical work on how people understand language, which counters simplistic claims about “plain meaning.” Can it be extended in the following ways?

First, how much context would people routinely consider to determine meaning? For example, how would ordinary folks determine whether “representative” includes elected judges?<sup>3</sup> Would people not want to know a lot about the civil rights statute in which the word appeared? And, more broadly, would they not want to know how meaning is determined in specialized areas of usage, like law? If so, that would counter the implication, which I detect among the linguistics group, that people view language as a storehouse of meaning which can be borrowed for use in particular settings.

Second, lawyers may be asking for the wrong kind of help from linguistics experts. We seem to be asking for help in finding plain or ordinary or literal meaning (is an ambulance a *vehicle*), when we really want to know what meaning a text can *bear*. A statement that texts can bear a meaning is a statement of fact that should be as testable as any other statement. An answer might help judges because it is acceptable law talk when deciding hard cases.

---

My guess is that linguistics experts, seeking “scientific” meaning, would be unwilling to explore some of these questions. The linguistics group (at

---

2. See *Pepper v. Hart*, [1993] 1 All E.R. 42.

3. See *Chisom v. Roemer*, 501 U.S. 380 (1991).

least *this* group) sounds a lot like the March Hare who admonishes Alice to say what you mean—with the implicit assumption that a science of language can help Alice do just that. The lawyers do not exactly agree with Alice's response—which equated "I mean what I say" with "I say what I mean"—but lawyers view themselves as operating somewhere between these two extremes, trying to get meaning out of what someone says but not limiting meaning (always) to what was said.

