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A Statute by Any Other (Non-Acronomial) Name Might Smell Less Like S.P.A.M., or, The Congress of the United States Grows Increasingly D.U.M.B.

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1 Associate Professor of Law, Cleveland State University. My special thanks for excellent research assistance to a Naturally Inspired and Curious Observer of Legal Events, who also Helps Investigate Trite, Cliché Humor (“N.I.C.O.L.E. H.I.T.C.H.”). Not long ago she graduated S.C.L. (summa cum laude) from law school, and I expect it couldn’t happen to a nicer person.
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Abstract:

While the question why we Americans name our statutes is rarely asked and not obvious, it turns out to be extremely interesting and, at least in the case discussed in this essay, illuminating. Namely, it appears to have occurred to someone on Capitol Hill that there is something to be gained by devising statute names that spell out clever acronyms. These things normally aim to be amusing or cute in some sense, and also usually serve some rhetorical purpose. A first surprise about them is their recent and shocking profusion. During the first two hundred years of the Republic there appear to have been perhaps two such statutes. In the twenty years since, there have been at least fifty-three.

On closer examination the practice turns out to be not actually so amusing after all, and thinking about it is not just some trite diversion. This trend in its detail turns out to have something fairly sobering to say about the way our Congress has operated for some years now. It also has something to say about who our elected representatives are as people, how they see their responsibilities, and just how low their opinions of we their constituents really must be. The ugliest thing about it is that, with we Americans, this sort of thing works; American democracy, like the popular names of several recent statutes, is a joke that isn’t funny.

As in other circuses, where clowns sometimes cry poignant tears, humor in the U.S. Congress can be tinged with a certain sadness. Under the actual Big Top the irony is deliberate.

To wit, it appears to have occurred to a number of lobbyists, Hill staffers, Members, and other drafters of legislation that there is something to be gained rhetorically in our fairly unusual American institution of “popular” statute names. Few outside the Beltway have really noticed, as not many of us are in the habit of reading the Popular Names Table for fun, but the trick is to specify a short name in a given bill whose initials spell out some meaningful acronym. They have started doing this a lot. There appear to have

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2 Though librarians are paying attention, God bless ’em. See Mary Whisner, What’s in a Statute’s Name?, 97 L. Lib. J. 169 (2005).
been two or possibly three of these things in the entire history of the Republic prior to 1988. In the twenty years since then, there have been more than fifty.

It appears that the cuter the name is the better, and a few of these have actually been pretty amusing. The 2003 CAN-SPAM Act, for example, whose title presumably consumed at least a few lobbyist billables, seems pretty funny to me.\(^3\) Also fairly charming is a bill introduced several times to combat the power of foreign oil producers, the No Oil Producing and Exporting Cartels Act—you guessed it, NOPEC.\(^4\) Some other statute names of late have approached the genuinely funny, mainly by exploiting the power to laugh at one’s self. Witness California’s recently proposed How Many Legislators Does It Take to Change a Light Bulb Act.\(^5\) So when I first decided to look into this trend, I expected with what I think was a reasonably open mind to find it quite fun.

Sadly, it was not. However witty any individual member of our Congress might be, as a collective soul the organization has a sense of humor akin to that of the average bag of hair. The overall trend, in other words, turns out to be not really that amusing at all. Still, this project would have been merely tedious were it no more than a tour through the abject horror of U.S. congresspersons trying to be funny. Instead, the real message turned out to be nothing contained in any particular joke itself. The message was actually an ugly one, because I think the people drafting most of these bills aren’t actually trying to be funny. I think many of them are doing the very thing that makes our form of government so often such an awful, transparent charade. Even our new Attorney General found one of these statute names, a recent and much talked-about abomination couched in a rhetorically manipulative acronym, to be “Orwellian.”\(^6\) And so, alas, what follows is not just a drab tale of humorless dreck. The ugliest thing about it is that, with we Americans, this sort of thing works.

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Why we name our statutes is a rarely asked and non-obvious question. They might all be known by citation only, as indeed some are. Lawyers all know § 1983, antitrust lawyers all know §§ 1, 2 and 7, and litigators all know § 1331. Or, they might all have purely functional names, as they sometimes do in the United States⁷ and commonly do elsewhere.⁸ There also was a time when we frequently called statutes by their sponsors’ names, but that appears to be more and more a thing of the past.⁹ In any case, in this country statutes normally are not known by purely functional names. The 2006 Popular Names Table is 1302 pages long and contains something in the neighborhood of 10,000 entries; really quite few of them are merely functional or commonplace.

Among those many thousands of not-simply-functional names, in about the past 20 years or so quite a large number have come to be cute. Admittedly, popular statute names that are cute in one way or another are not new. One of them, as it happens, is really old, and is from a central moment in the early Republic: Thomas Jefferson’s handling of the British attack on an American cargo ship in Boston Harbor, which resulted in the infamous Embargo Act of 1807 and precipitated the War of 1812. For its economic consequences the public came to know the Embargo Act by mocking, anagrammatic names like “go bar ‘em” and “mob-rage.” Apparently as a result of a famous political cartoon, the bill is even now sometimes known as the “O Grab Me” Act, which is “embargo” spelled backwards.¹⁰

But those names, of course, were never intended by the bill’s lofty progenitor, and the text in Statutes at Large identifies it only as “An Act Laying an Embargo on all Ships and Vessels in the Ports and Harbors of the United States.”¹¹ In fact, it appears that even though vernacular short-hand names were fairly common throughout the 19th century, they arose purely through popular usage. The practice of deliberately including statutory short names in bills themselves did not flourish in America until the New Deal, and

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⁹ While of course there are still statutes named after their sponsors, it is telling that nowadays the choice seems most commonly made to indicate that a bill had bi-partisan co-sponsors. McCain-Feingold and Sarbanes-Oxley come to mind. It seems telling because it shows that the practice of statutory short names is now a rhetorical one.

¹⁰ See generally Thorp Lanier Wolford, Democratic-Republican Reaction in Massachusetts to the Embargo of 1807, 15 New Eng. Q. 35, 46 (1942).

¹¹ Ch. 5, 2 Stat. 451, 451 (1807).
appears to have occurred for the first time no earlier than a federal statute of 1916. That gesture itself may have been in response to a formal request by law librarians in 1914.

Moreover, there was apparently not a deliberately cute statute name until 1950, when the U.S. adopted the AID Act for humanitarian assistance overseas. A few more trickled in during the next few decades, the next one possibly being the FINS Act of 1964 (which sets aside a “national seashore” and so might have been intended to allow visitors to observe finned sea-life), though it appears fairly likely that that was simply a coincidence. There has also long lingered the possibly apocryphal story that the title of 1970 RICO statute conceals a pun. The first clearly deliberately cute acronyms after the AID Act were the IDEA Act of 1970, relating to public school special education programs, and the VISTA Act of 1973, which set up a federal volunteer service program. The current glut of aspirationally clever acronyms did not really take off until fully fifteen years later, beginning with the WARN Act of 1988.

Long, elaborately engineered and verbally acrobatic titles came even later. Though it turns out they did not begin with the infamous USA PATRIOT Act in 2001, they first appeared not much earlier. The first seems to have been a foreign aid bill of the early 1990s, which tried to capture the post-Cold War spirit by naming itself the FRIENDSHIP

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12 See Whisner, supra note XXX, at 175-76 (surveying the New Deal legislation and reporting as the earliest instance she was able to discover the Federal Farm Loan Act, ch. 245, § 1, 39 Stat. 360, 360 (1916).
13 See id. at 176 & n.52 (citing a request formally made that all state and federal legislation contain short titles, a request made by the American Association of Law Libraries in Report of the Committee on Legal Bibliography, 7 L. Lib. J. 53, 57 (1914)). This fact was uncovered in Ms. Whisner’s remarkable article. See Whisner, supra note XXX, at 176.
Act, followed some years later by the bill to finally undo the FDA’s long campaign against saccharin, the SWEETEST Act of 2000.

To be fair, among the explosion of acronomial names many are not just sad, allegedly amusing little puns. Some, like the FACE Act and one of the two (count ‘em, two) FACT Acts, don’t even bear any obvious connection to their legal subject matter. A few are basically only inside jokes or matters of personal amusement, like the 2005 highway spending bill named for the relevant committee chairman’s wife. Also of note, since the point of this practice seems to be to persuade, is that a clever acronym is no guarantee of legislative success. In the federal Congress alone scores of acroniomally named bills have failed. Just in the past few years no fewer than six have been allegedly FAIR, but only two of them passed.

But in any case, and for whatever reason, there have suddenly come to be a lot of these things. So far as I can tell, there were at the most four of them during the entire first two centuries of the country’s history, and arguably only two, if the RICO story is a myth and the FINS Act is a coincidence. In just the past 20 years there have been at least fifty-three.

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21 The bill, which, following amendments that among other things made its short name even acroniomally cuter, is the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users, known as “SAFETEA-LU,” see Pub. L. 109-59, 111 Stat. 1144 (2005). SAFETEA-LU was drafted by Chairman Don Young of the House Committee on Transportation and Infrastructure, whose wife’s name is Lu.

Fareed Zakaria, noting that SAFETEA-LU was among the most pork-laden bills in American history, and one for which Congress was excoriated, wondered if the next highway spending bill would grant Mrs. Young a necklace. See Fareed Zakaria, Leaders Who Won’t Choose, NEWSWEEK, Sept. 26, 2005, p. 38.
22 Somehow the list of failed bills comes off sounding even more ridiculous than those that passed. It includes, among quite a few others, SMUT, HERO, RID, BACK (as in, could it be, baby got?), yet another HELP, and NOPEC.
For whatever it may be worth, then, here they are, every con-sarne d one that I could find: AMBER24; ART25; BEACH26; CAN-SPAM27; CARE28; the superficially-but-evidently-not-quite-so humane CHIMP law29; COATS30; a seemingly well intended “competitiveness” bill for funding science education, called America COMPETES, which may have been just a fat pile of pork31; CREATE32; ENHANCE33; E-SIGN34;
FACE\textsuperscript{35}; two things called FACT\textsuperscript{36}; two things called FAIR (each of which no doubt seems to somebody somewhere not to be)\textsuperscript{37}; another two f-ing things called SAFE\textsuperscript{38}; three things any American can cherish, FREEDOM\textsuperscript{39}, FRIENDSHIP\textsuperscript{40} and HOPE\textsuperscript{41}; an item of which everybody needs a little, that is, HELP\textsuperscript{42}; IDEA\textsuperscript{43}; LEGACY\textsuperscript{44}; the unaccountably culturally ecumenical LIBERTAD\textsuperscript{45}; LIFE\textsuperscript{46}, LIFT\textsuperscript{47}; the LOCAL TV law, which despite its promising title will do precisely nothing to put hard-hitting, “investigative” local news reporters in prison\textsuperscript{48}; MD-CARE\textsuperscript{49}; the national embarrassment of the MEDS Act, which addresses rising prescription drug prices by
allowing Americans to benefit from Canadian health care policy; the NET law, which protects multi-billion-dollar, publicly traded corporations from graduate students; No FEAR; ORBIT; PEP; PRIME; PROTECT; REAL ID; the REAP law, which

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51 See the No Electronic Theft Act, Pub. L. No. 105-147, 111 Stat. 2678 (1997), now codified as amended in scattered sections of Titles 17 and 18 U.S.C. (amending various sections of copyright and criminal codes to reverse United States v. LaMacchia, 871 F. Supp. 535 (D. Mass. 1994), which held criminal penalties unavailable for copyright infringement not involving any commercial gain; see H.R. Rep. No. 105-339, at 3-4 (1997); defendant LaMacchia was an MIT graduate student who had encouraged illegal online sharing of computer games).

52 See the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002, Pub. L. No. 107-74, 104, 116 Stat. 566 (2002), now codified at 5 U.S.C. § 2301 Note. Under the No FEAR Act, federal agencies that are defendants in whistleblower and employment discrimination claims by their employees must reimburse the “judgment fund” of the Treasury Department for any judgments and settlements paid to such claimants following the filing of litigation. Prior to No FEAR, the agencies were responsible for making such payments out of their own budgets only where they were handled administratively and no lawsuit had yet been filed. No FEAR’s aim is to incentivize agencies to reign in workplace discrimination by rendering them financially accountable for it. See S. Rep. No. 107-143, at 1-4 (2002).


56 See the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003), now codified at scattered sections of Titles 18 and 42 U.S.C. PROTECT was the larger bill that included the AMBER Alert law; PROTECT included a variety of provisions to address child abduction, abuse, and pornography.

57 REAL-ID is a funny one. The bill identifies itself by that name, using all capitals, but it doesn’t seem anywhere to lay out what the acronym is supposed to stand for. Neither the House or Senate versions of the bill nor any other legislative history seem to explain what is was supposed to stand for or why, if it doesn’t stand for anything, it was capitalized. Anyway, see Pub. L. No. 109-13, Div. B, 119 Stat. 302 (2005), now codified at scattered sections of Title 8 U.S.C. In substance the REAL ID law is schizophrenic. Half of the statute does the mundane work of setting tighter restrictions on the granting of state government ID cards. The other half repeals the writ of freaking habeas corpus. See generally Aaron G. Leiderman, Note, Preserving the Constitution’s Most Important Human Right: Judicial Review of Mixed Questions Under the REAL-ID Act, 106 COLUM. L. REV. 1367 (2006).
of course could be introduced only after SEED\textsuperscript{59}; SAFE-ID\textsuperscript{60}; SAFETEA-LU\textsuperscript{61}; SAFETY\textsuperscript{62}; SAVER\textsuperscript{63}; SCAMS\textsuperscript{64}; SPARTA\textsuperscript{65}; SWEETEST\textsuperscript{66}; TREAD\textsuperscript{67}; the disappointingly predictable USA,\textsuperscript{68} which followed only shortly after the aesthetically and otherwise execrable USA PATRIOT\textsuperscript{69}; VISTA\textsuperscript{70}; and—\textit{phew}—two different things called WARN.\textsuperscript{71}

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Acronyms are overwhelmingly ubiquitous and daily. Please RSVP in re: the CEO’s BLT, and do it PDQ, MoFo, or you’ll be SoL. I mean, dude, WTF? Also, revealed preference suggests that the public (or at least the practicing bar) \textit{wants} acronymically clever statutes and otherwise adorable public policy. The clunky old Public Company


\textsuperscript{61} See supra note XXX.

\textsuperscript{62} See the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Pub. L. No. 107-296, tit. VIII, subtit. G, 116 Stat. 2135 (2002), now codified at 6 U.S.C. \S\S 441-44 (tort reform provision limiting recovery where plaintiff’s injury arises from the use of “qualified anti-terrorism technology” during a terrorist attack, if defendant is a third party manufacturer who sold the technology to a federal, state, or local government, and if the technology was first certified by the Secretary of Homeland Security).


\textsuperscript{66} See supra note XXX.


\textsuperscript{68} See the Unity in the Spirit of America Act, Pub. L. No. 107-117, \S 1301, 115 Stat. 2230 (2002), now codified at 42 U.S.C. \S 12671 (providing funds for memorials to September 11 victims, the funds to be administered through the Points of Light Foundation, a non-profit organization dedicated to encouraging private altruistic volunteerism, which was itself created by Title III, \S\S 301-05 of the National and Community Service Act of 1990, Pub. L. No. 101-610, 104 Stat. 3127, 380-83 (1990), now codified at 42 U.S.C. \S\S 12661-64; see generally POINTS OF LIGHT FOUNDATION, STRATEGIC PLAN 2004-2009 (2003), available at www.pointsoflight.org).

\textsuperscript{69} See supra note XXX.

\textsuperscript{70} See supra note XXX.

\textsuperscript{71} As to the first, the Worker Adjustment and Retraining Notification Act, see supra note XXX. The second is the Warning, Alert, and Response Network Act, Pub. L. No. 109-347, tit. VI, 120 Stat. 1936 (2006), now codified at 47 U.S.C. \S\S 1201-05 (directing the FCC to develop program for emergency alert capabilities over cell phone services).
Accounting Reform and Investor Protection Act of 2002,\(^\text{72}\) which could probably have gone by “PCARIPA” (might one say pik-ə-’rip-ə?), and commonly goes by the more melodious “Sarbanes-Oxley,” has become widely known as “SOX.”\(^\text{73}\) Among federal transportation lawyers the U.S. Surface Transportation Board is known as the “Surf Board,” and rumor has it that within the agency entrusted with its administration the Federal Oil and Gas Royalty Management Act is known as “Foggy Grandma.”\(^\text{74}\) Can you stand it? Lawyers even complain about failure to come up with a cute acronym, or at least an easily pronounceable one, as in recent belly aching over the so-called “all-vowel statute,” the IAEAA.\(^\text{75}\) The lay public does this too, “COBRA” being an example. The leaving of a job with portable health insurance rather unexpectedly took its name from the bureaucracy of the federal budget process, and is now known as “COBRA-ing.”\(^\text{76}\)

We are also quick to savor the Schadenfreude of accidental acronymial malaprops; consider if you will the ill-advanced “Ohio Department of Development.”\(^\text{77}\) The risk is dread enough that some groups try to short-circuit it pro-actively, though it turns out not be that easy to give yourself your own nickname (I recall a colleague once named Gordon who was known by precisely no one as “Gordo” despite his signing of every email as “Gordo”). The National Association of Area Agencies on Aging, evidently to avoid undue negativity, chooses to go by “N4A” (because otherwise they would be “NAAAA”\(^\text{78}\)), and one wonders just exactly why the professional association of British law professors recently changed its name to the Society of Legal Scholars, whereas they had been the Society of Public Teachers of Law.\(^\text{79}\) (Admittedly I may just be trying too hard to find these things. I hesitated recently, for example, for fear of the tragedy of colorectal cancer it might presage, before joining the American Society of Political and Legal Philosophy.)

A sociology of acronyms would perhaps better explain why we do these things, and would also observe that a prevalence of acronymial shorthand requires pervasive literacy and a written language with some simple, regular system of characters. As to the latter point, for example, the practice presumably could not arise in Chinese. Anyway, it seems likely that we do it for different reasons at different times.

\(^{77}\) No kidding. See http://www.odod.state.oh.us.
\(^{78}\) See www.n4a.org.
\(^{79}\) Cf. www.legalscholars.ac.uk/text/about/page.cfm?no=11.
I think the reason why Congress has started making these things aspirationally cute or funny is a special and illuminating case. Admittedly, it might reflect only our large amount of legislation. One can’t actually say how many federal statutes there are in force, but on one reasonable estimate the number is well into the tens of thousands. Ordinary acronyms (i.e., those that don’t spell something) can no longer do that job. According to Popular Names, three separate statutes are commonly known as the FAA, two are known as FAAA (one imagines people say “F-triple-A”), and one is known unbelievably as FAAAA (do people say “F-quadruple-A,” or “F4A,” or just faaaaaaaaaaaaaaaaahhhhhhhhhhhhhhh?). Maybe any of these could be confused with other statutes, like FACA or FAACWA. So cute acronyms might help keep our legislation straight, perhaps through a minor anthropomorphosis.

Or, this could be a purely aesthetic innovation, driven by our representatives’ spiritual longing for creative liberation. If so, maybe it really is an aesthetic improvement over more conventional naming rites. While non-cutesie-pie statutory acronyms are common, most of them are awkward and peculiar, like the “4R Act,” which in part kicked off deregulation in the 1970s. Neither is much warmth kindled in one’s heart by, say, NCRPA, NAGPRA, NANPCA, or BGEPA, and, for God’s sake, does anybody

80 See Email from Shameema A. Rahman, Legal Reference Specialist, U.S. Library of Congress, to Schuyler Cook, Librarian, Cleveland State University Cleveland-Marshall College of Law (Sept. 29, 2005) (explaining that, excluding private laws and simple resolutions, the number of federal laws adopted through the end of the 108th Congress was 44,291. The number must be discounted substantially, as many of those laws are no longer in force, and many of them merely amended or repealed one or more other existing laws. Further, all of the foregoing begs the metaphysical question of how one defines a unitary “law,” since for example the Internal Revenue Code could be thought of as one “law” or thousands of them).


83 This statute is actually one of the two known as “FAAA”—the Federal Aviation Administration Authorization Act of 1994. Popular Names says it goes by both handles.


86 See the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (Feb. 5, 1976), now codified at various sections of Title 45, U.S.C.

seriously want there to be statutes with names like FRRRPA or FRRRRA? Who could forget dear old ACFCMA, which someone somewhere no doubt calls “ack-’fick-mə”?

Also, cute acronyms might sometimes improve on the non-acronomial short names that have been common, which are often also unlikable. Consider the Hog Choler Serum Act, or the very cheery old Bill of Abominations of 1828. God have mercy on the poor Dick Act, which must have been teased terribly in junior high. The Fastener Quality Act, which bars federal contractors from bilking the government by providing goods with substandard nuts and bolts, surely would be less forgettable if it were named the Secure Connector Reliability, Efficiency, Workability and Justice On Building Act.

But I don’t think any of those things explain it.

First of all, there now exist so many frivolously acronomial statutes that it’s hard to believe their names actually help keep them straight, and indeed a handful now even have the same cute acronym. There are two different FACT Acts, two different SAFE Acts, two different WARN Acts, and not only are there already two different FAIR Acts in force, but just in the past few years four other FAIR Act bills have been introduced unsuccessfully. Moreover, the practice of giving statutes specific names is a very old one in Anglo-American law, with antecedents from a time when statutes comprised a far smaller proportion of our law than they now do. So the naming of bills, as such, seems to serve some other purpose.

Anyway, no one else in the world does this—no other country so far seems interested in the would-be adorably acronomial statute-name game. This may bear some relationship to our American solitude in other fetid embarrassments like the Liberty Fries fiasco (launched in part by my fellow Ohioan and a convicted felon). More in that connection momentarily.

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89 See supra notes XXX.
80 Consider, for example, the famous Statute of Monopolies, 21 Jac., c. 3 (Eng. 1623).
90 To wit, “french fries” served in restaurants in U.S. House buildings were renamed “freedom fries” by Bob Ney, a Republican Representative from rural northeastern Ohio, who had been Chair of the House Committee on Administration and is now doing time. He did this to protest the now seemingly pretty raisonnable French opposition to American imperialism in the Gulf states. If I were Queen for a Day, I would have put him in prison for that alone, though there was also some bribery and stuff. In any case, one must simply love the French for their reactions at the time. The French Embassy’s only official response was a diplomatic communiqué pointing out that french fries are actually from Belgium, see Neal Conan, NPR: TALK OF THE NATION, Mar. 11, 2003 (interview with Andrea Seabrook), and an Embassy spokeswoman told a reporter that “We are at a very serious moment dealing with very serious issues, and
One other observation before moving on. If this trend really were to betray some new willingness of federal policymakers to laugh at themselves, that might be a welcome thing, even if the jokes are normally stupid. Surely the great scourge of the weak has been the distinguished self-importance of gray-haired men in high office, because it is in taking government seriously that abuses occur on that field of pain and death that is our law. But in drafting these statutes I think they are not laughing at themselves. If they are laughing at anyone in particular, I expect it is us.

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Instead, the cute-names phenomenon and the general practice these days of naming statutes seems to be pretty political. That is, at a minimum, it is intended to persuade, at least with respect to narrow goals like legislative victory and campaign-trail self-congratulation, and perhaps with some more general, darker purpose. One hint about this fecund and bountiful recent tumor of acronyms is that, several years before it began, the birth of organizational standing in the Article III courts was also the very font of acronomially rhetorical opportunism. That is, once pressure groups could sue, they suddenly seemed to take on clever acronomial names left and right. Why else but to curry favor would an advocacy group choose any name, acronomial or otherwise? And if political advocacy organizations have all recently decided to name themselves in this clever, clever way, does that not suggest something sociologically about why anybody might play this game? Of course, a difference between reductive and polemicizing rhetoric in the name of a statute and the same thing in the name of an organization whose chief function is to appear in court is that, unlike apparently quite a lot of other Americans, federal judges tend not to be easily hoodwinked simps.

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we are not focusing on the name you give to potatoes,” Tom Feran, Don’t Supersize My Freedom Fries, CLEVELAND PLAIN DEALER, March 14, 2003, at E1.

As evidence that America simply no longer is the country it once was, we might observe how a real American makes fun of France. Twain said this: “France has neither winter nor summer nor morals. Apart from these drawbacks, it is a fine country. France has usually been governed by prostitutes.” 2 MARK TWAIN, MARK TWAIN’S NOTEBOOKS AND JOURNALS bk. 18 (Frederick Anderson, ed. 1976).

96 See United States v. Students Challenging Regulatory Action Procedures (S.C.R.A.P.), 412 U.S. 669 (1973) (upholding organizational standing). The plaintiff there was an ad hoc group, formed solely for litigation, to oppose an Interstate Commerce Commission tax on railroad transport of scrap metal for recycling. Perhaps they also wanted either to SCRAP the ICC, or to suggest that the agency’s policies were a big, steaming pile of (S)CRAP.

Acronomial organization names are of course now omnipresent. A quick google of what I thought might be just one likely acronym for a political organization (W.A.T.C.H.) came up with no fewer than ten separate private groups bearing that name: World Against Toys Causing Harm; see www.toysafety.org; Washington Association of Teaching Christian Homes, see www.watchhome.org; Waltham Alliance to Create Housing, see www.watchdc.org; Washington Area Theatre Community Honors, see www.watchtheater.org; Washington Access to Criminal History, see http://watch.wsp.wa.gov; World Assembly on Tobacco Counters Health, see www.watch-2000.org; Wireless Approach to Cabling Homes, see www.watchtv.net; Women and the Church, see www.watchwomen.com; Weight Assessment for Teen and Children’s Health, a clinic at the UCSF Hospital, see www.ucsfhealth.org; and Writers, Artists and Their Copyright Holders, see http://tyler.hrc.utexas.edu/us.cfm.

But by far the most important evidence is that on Married With Children Al Bundy’s fraternal organization was the National Organization of Men Against Amazonian Masterhood.
The most delicious clue of all in this recent war of W.O.R.D.S. was that uniquely heroic blunder by which the present U.S. military misadventure was launched. The 2003 invasion of Iraq was initially announced by White House Press Secretary Ari Fleisher, at a press conference in late March of that year, as “Operation Iraqi Liberation.” You guessed it: they originally called this thing OIL, a fact the political blogosphere required approximately one billionth of a second to pounce upon. Like the Lady who protested too much, the White House proved the rhetorical power of meaningful acronyms by the speed with which they renamed their Iraqi maneuver.97

Also, after all, there is this, which somehow seems like it has to prove something: WMD was an acronym.

So, my first sociological point is really an obvious one. The acronymically cute statute name-game is, like everything else on the Hill, a game of manipulative political advocacy. As we shall see, it is often polemical, reductive, and misleading, and so I think it is also pretty grim.

Suasion in itself may not be a sin, even when it amounts to cold strategy in the aggressive zero-sum division of finite spoils, because that is the ugly spectacle of democracies everywhere. It also may be no sin to simplify deliberately, since capturing the real complexity of issues in public exchange must be beyond any electorate’s attention span. Politically simplifying symbols, like persuasive short names, may be the regrettably necessary compromise of humankind with its own epistemic reality. Perhaps for that reason, symbolism in political rhetoric has always existed, and it also has always been simplifying and therefore at least a little misleading.98

Indeed, no one should be surprised by yet additional familiar bullshit, and this game of statute names is after all simply bullshit. Some of it fits precisely the meaning offered by Harry Frankfurt. He says that bullshit is political talk that does not deliberately lie, but is recklessly indifferent to its own truthfulness. Frankfurt thinks the large amount of bullshit today may simply reflect our advanced state of bureaucracy and mass communication:

Bullshit is unavoidable whenever circumstances require someone to talk without knowing what he is talking about. Thus the production of bullshit is stimulated whenever a person’s obligations or opportunities to speak about some topic exceed his knowledge of


98 Cf. LOUIS HARTZ, THE LIBERAL TRADITION IN AMERICA 75-80 (1955) (noting that during the founding generation Federalists called their opponents “levellers,” implying that they plotted for socialist material equality, whereas Anti-federalists described the Federalists as essentially monarchist “aristocrats”; on Hartz’s view, both criticisms were false because, then and now, American politics has remained almost homogeneously bourgeois liberalism, and there have never been significant radical traditions here on either the Right or the Left).
the facts that are relevant to that topic. This discrepancy is common in public life, where people are frequently impelled—whether by their own propensities or by the demands of others—to speak extensively about matters of which they are to some degree ignorant.\(^99\)

So maybe this particular load of bullshit is just one more case in which persons overwhelmed by their duties and political pressures lack the time, competence and incentive for the truth.

I happen to think it is much more malevolent than that. Symbolically simplifying rhetoric in Washington is not now simply some heuristic substitute for genuine debate, called for by competition for the public attention span within the daily cacophony. It has something rather to do with Americans as voters and citizens, who the people are in power and where their priorities lie, and, ultimately, just how low their opinion of us really must be.

First of all, this sad little game turns out to be just part of the larger malaise of the men and women by whom we are governed. Whether because their real interests are elsewhere or because they just don’t care, they appear eager to disguise their absolute lack of concern for substantive policy with symbols, and symbols alone. We should not be surprised by John Conyers’ confession of a few years ago that legislators rarely even read the bills on which they vote (a comment he made about no less an acronomial monstrosity than the PATRIOT Act).\(^100\) So, among the recent leadership of our federal government, this sort of approach—this evasion of intellectual substance in favor of reductive slogans and catchy one-liners—has come to be so much more than a calculating and invidious sleight of hand. It is a reflexive tic. Indeed, they often just do it because they do it, even when there is nothing else to gain by it at all. It is a fetish, an encompassing model of governance, a model of perfectly satisfactory policy and statecraft.

A case in point: the “General Accounting Office”—which is, after all, responsible for accounting for things, and seemed to do okay with the one solitary title it had had since its creation about 90 years ago—was recently renamed. It is now the “Government Accountability Office,” a title no doubt meant to convey the Old Testament fury with which the bill’s conservative-firebrand co-sponsors would tame our wasteful and jack-booted federal administrivia.\(^101\) However, not much explanation was given for what was broken, despite the willingness to fix it, and the statute whose function was to change the agency’s name did \textit{very nearly nothing else}.\(^102\)

\(^99\) See \textsc{Harry G. Frankfurt, On Bullshit} 63 (2005).

\(^100\) See \textit{Farenheit 9/11} (Lions Gate Films 2004) (Conyers, responding to Moore’s question how so many congresspersons seem to have voted on the USA PATRIOT Act before reading it, said: “Sit down, my son. We don’t read most of the bills.”).

\(^101\) GAO was created by the Budget and Accounting Act of 1921, Act of June 21, 1921, ch. 18, 42 Stat. 20, section 301 of which named it the “General Accounting Office.” The bill renaming it was the GAO Human Capital Reform Act of 2004, Pub. L. No. 108-271, § 8(b), 118 Stat. 811 (2004), now codified at 31 U.S.C. § 701 Note. It was introduced by three arch-conservative House co-sponsors, Tom Davis of Virginia, the late Jo Ann Davis of Virginia, and Adam Putnam of Florida.

\(^102\) Admittedly, the bill modified GAO personnel rules in various miscellaneous ways, but it was otherwise unconcerned with the agency’s name and nothing in it would seem to have much of anything to
So, I think it is not coincidental that acronyms that serve no purpose except rhetoric and manipulation have been absolutely everywhere in Washington, often enough in the grim Newspeak that has been so eerily familiar in the past few years. At one time the current administration put some effort into a climate change program called VISION (as you might imagine, in light of its actual substance the program’s optimistic title and its superficial aspirations for environmental conservation turned out to be reeeeeaaaaallllllly ironic), and, apparently fearing no confusion of themselves with the Man from U.N.C.L.E., they also set up Operation FALCON. This is hardly surprising from an administration whose core political supporters are absolutely obsessed with symbols of every kind; consider the still ongoing effort to rename apparently every single object in the entire United States and the rest of Christendom after Ronald Reagan, and also to put his face on the dime.

Even as I write, there remains some risk that the public policy symbol fetish will be taken to the ultimate extent. If certain congresspersons and presidential candidates have their way it will take on bizarrely physical manifestation in the form of a wall across the U.S. border with Mexico. As if desiring to prove beyond all equivocation that form has fully replaced substance, this very expensive and dominating symbol seems by fairly common consensus to be one that wouldn’t really work, as a practical matter, and so it seems to have appeal only for what it signifies, metaphorically. In light of the huge number of our world’s other self-serving political symbols, one wonders just for whom this show would be intended—refugees of the Central American underclass, who will get here one way or another, or wealthy American voters? What is really interesting is that for a group so hung up on symbolic gestures supporters of the wall have been dense to do with making the government accountable. It’s also just a smidge surprising that the name change was apparently desired by the agency’s head, Comptroller General David Walker, but mainly because he thought it would help in hiring, not in making anybody or anything more accountable. See John Kelly, Answer Man: Name That Agency, WASH. POST, March 14, 2005, at C11. In any case, the need for the new name was explained in the legislative history thusly, and you just have to love the last line:

. . . The modern agency is focused on improving the performance and assuring the accountability of the federal government for the benefit of the American people. Importantly, although the name has been changed, the well-known acronym for the agency, “GAO,” remains the same.


103 See www.climatevision.gov (homepage of the White House’s “Voluntary Innovative Sector Initiatives: Opportunities Now” program; urging, one notes with now profoundly familiar and dispiriting ennui, voluntary greenhouse gas emission limitations by the private sector); www.usmarshals.gov/falcon3/index.html (homepage of the U.S. Marshalls’ “Federal and Local Cops Organized Nationally” program).

104 See www.reaganlegacy.org/main/page.php?page_id=2 (homepage of the Ronald Reagan Legacy Project). The project’s first and most controversial success was renaming National Airport in Washington, DC, a town whose half-million, congressionally unrepresented citizens vote overwhelmingly Democratic. Since then the project has renamed public facilities and landmarks around the country and overseas. The project is an offshoot of the lobbying group founded by Grover Norquist to push President Reagan’s tax legislation in 1986, known as Americans for Tax Reform.

the metaphorical resonances it would evoke—e.g., the least American of all images, and
the very bugbear of Ronald Reagan, a certain wall we used to hear a lot about in the
former East Germany.

But more importantly, manipulative language games are actually very dangerous, and
reflect not just sloth or incaution as to truth. In history they characterize dark times.
Toward the end of World War II, Orwell said that “[p]olitical language . . . is designed to
make lies sound truthful and murder respectable, and to give an appearance of solidity to
pure wind.”

It should be alarming that hundreds of federal statutes are wrapped in the flag,
reflecting that self-indulgent jingoism is just as dismally omnipresent in the Capitol as
one might expect. Fully fifty different U.S. statutes begin their names with the word
“America,” and scores more include it. Moreover, contrary to the diagnosis of merely
careless bullshit, statute names pretty often do deliberately lie, knowing that they state
falsehoods. As a matter of fact the naming of statutes has occasionally seemed almost
like some game of self-indulgently deceptive, rhetorical brinksmanship, by which our
leaders do nothing more than show just how virile and ballsy they really are. The
American Jobs Creation Act of 2004, for example, included a tax holiday scheme sold
as a boon to the American worker, but its chief use in application was apparently to fund
severance pay so that American workers could be laid off and their jobs shipped
overseas. Now that took some brass ones.

This deliberate abuse of obviously simplistic symbols seems like just more of the
particular venom of our times. Recall that in recent years nothing has sold so well in
America as the simplistic, polemicizing symbol of the left-wing intellectual. Though it is
the sort of thing that puts one in not the greatest company historically, whipping that

105 GEORGE ORWELL, Politics and the English Language, in 4 THE COLLECTED ESSAYS, JOURNALISM
AND LETTERS OF GEORGE ORWELL 127, 139 (Sonia Orwell & Ian Angus, eds. 1968) (this essay was
originally published in the London periodical Horizon in April 1946).
107 The initiative was designed to encourage the “repatriation” of otherwise non-taxable foreign profits
through what was effectively a generous, temporary tax holiday on condition that repatriated funds be
reinvested in this country. The provision’s stated purpose was to “stimulate the U.S. domestic economy by
triggering the repatriation of foreign earnings,” H.R. REP. NO. 108-548 Part 1, at 146 (2004), but, despite
the Keynesian rhetoric, repatriated profits could be used in any way and they were rarely if ever used to
benefit the working class. Much of the was simply distributed directly to shareholders. See Postcards
From a Tax Holiday, N.Y. TIMES, Nov. 12, 2005, §A, Col. 1, Editorial Desk; Timothy Aeppl, Tax Breaks
Aeppl, Buybacks Soar; Firms Deny a Link to Repatriated-Profit-Tax Break, WALL ST. J., Oct. 25, 2005, p. A2 (noting that the other major purpose pursued by many repatriating companies appears to have been
stock buy backs).
common among the greatest presidential failures [is] an unswerving adherence to a simplistic ideology that
abjures deviation from dogma as heresy, thus preventing any pragmatic adjustment to changing realities.”). Cx. ROBERT PAXTON, THE ANATOMY OF FASCISM (noting the success with which fascist movements
manipulated public enthusiasm by way of demonized straw men).
particular straw man produced electoral success for quite a while.\textsuperscript{109} It also has been a pretty big falsehood or at least a hypocrisy. As Ron Suskind put it, administration elites, whose patrimonies and prestigious educations show in their exceedingly well tailored suits, “[are] a long way from Poplar Bluff.”\textsuperscript{110}

There is also more lurking behind this grim reality, by the way, of a kind we lawyers are apt to forget. Even the most harmless acronomial levity—CAN-SPAM, say—tends to neglect the real human gravity of its own institutional nature. A joke in the name of a statute, like every aspect of every law, takes place on a field of pain and death.

But in the end, and whoever is to blame, the saddest aspect of this behavior is neither its shallowness nor the deliberate malfeasance of anyone in government. Like some other tokens of prosaic American simplicity, susceptibility to the USA PATRIOT Act and like nonsense shows just how far our democracy is one of callow children who have earned no right of self-government. E.g., as shown by that saber-edged dialectic through which cable news pundits decide whether or not we should “play the blame game,” public debate is now reckoned especially cogent if it can be made to rhyme. No doubt this sort of thing sometimes reflects the psyche of a particular political candidate—that is, a particular person might resort to hollow, jejune sloganeering because he or she really just isn’t that intelligent. More likely it reflects a generally uninformed and disenchanted electorate disgusted by the personal awfulness of their elected officials, and discouraged by the complex opacity of public issues that actually matter. Their resulting disaffection renders them susceptible to severely reductive, polemical symbols. For example, recall if you will the roughly 1.5 years when our attention was riveted on Oval Office fellatio and the long-term domicile of little Elian. How many of us were really paying much mind back then to the fact that in a nation whose GDP is not only largest in the world, but the largest \textit{by a factor of three}, infants were dying of things like malnutrition? I mean, F.U.C.K. the poor.

This all might seem more harmless and amusing if we were running, say, Liechtenstein. But we are not. Men campaigning for the highest office in our order—men who propose that they be entrusted with \textit{nuclear bombs}—make important arguments out of “a thousand points of light” and “flip-flopper.” And on arguments like that they win. Our democracy is one in which the whims of a juvenile and apathetic electorate command an aspirationally imperial, world-wide military force of outlandish power, with plans to nurture and police a worldwide liberalism in its own image.\textsuperscript{111}

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\textsuperscript{109} See Ron Suskind, \textit{Without a Doubt}, N.Y. TIMES, Oct. 17, 2004 (quoting one Mark McKinnon, a “long-time senior media advisor” to the current federal administration, as saying “You see, you’re outnumbered 2 to 1 by folks in the big, wide middle of America, busy working people who don’t read The New York Times or Washington Post or The L.A. Times. And you know what they like? They like the way [the President] walks and the way he points, the way he exudes confidence. They have faith in him. And when you attack him for his malaprops, his jumbled syntax, it’s good for us. Because you know what those folks don’t like? They don’t like you!”).
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\textsuperscript{110} Suskind,\textit{ supra} note XXX.
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American democracy, like the popular names of some recent statutes, is a joke that isn’t funny.