

KICKSHAWS

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Readers are encouraged to send their own favorite linguistic kickshaws to the Associate Editor. All answers appear in the Answers and Solutions at the end of this issue.

When Two Are One

Of all the professions, the law is probably of greatest potential interest to the logophile. Not only is it the source of a prodigious number of pleasingly archaic words such as replevin, distrain, and sur-rebutter (something akin to Devonshire cream, perhaps?); not only is it vitally concerned with interpreting ambiguous language, but at least half of all civil and criminal violations, it would seem, are committed not by some purely physical act but by the spoken or written word. A few such violations are: misrepresentation, breach of contract, espionage, invasion of privacy, subornation, perjury, "pornographology", sedition, disturbing the peace, slander, libel and conspiracy (to do anything unlawful or against the public interest).

After dinner last month with Jack Carney, a Long Beach, California lawyer and logophile, we raised a question on defamation, eliciting a long reply from Carney that caused us to take out our notepad, as we always do when we hear something we think will interest this department's readers.

Defamation, both crime and tort, is subdivided into slander (oral) and libel (written). The elements of libel and slander and the defenses thereto are not the same since their sources are different. Slander was originally dealt with in the English ecclesiastical courts, and since slander actions were almost always civil, there was an established body of law regarding the tort of defamation when the secular courts assumed jurisdiction over it in the 16th century. About that time, when the political press was becoming influential, the Star Chamber made the crime of libel its particular concern. By the time the Star Chamber was abolished, the common law courts found differing precedents with respect to the two types of defamation. Profound differences still exist in the definitions of criminal defamation versus the tort of defamation. But the differences in the legal treatment of slander, as opposed to libel, based primarily on the fact that the spoken word is less enduring and tends to reach a more limited group of observers, have diminished in the last century with the appearance of radio, films, television, records and tapes.

The basic legal definition of the tort of defamation is: the communication by defendant to at least one third party of a false, damaging report about the plaintiff. If you tell your neighbor that he is a panderer, that is not defamation. If you tell it to the police, it may well be.

According to English common law, a husband and wife are one. Carney outlined a pair of cases and the decision in each, based on cases in England, Canada, and those of the states of the U. S. that follow English common law. As an appellate judge, assuming the facts to be as stated, how would you rule on the legal question of whether a defamation occurred?

1. Mr. A told Mrs. A that Mrs. B was cheating on Mr. B. When Mrs. A confronted Mrs. B with the accusation, Mrs. B, who was innocent of the calumny, sued Mr. A for slander. In his defense Mr. A asserted that there was no "publication"; since he and his wife were legally one, there was no third party. Your opinion?
2. Mrs. C told Mrs. D that Mr. D was stepping out on her. The charge was false, and when Mrs. D confronted Mr. D with it, he sued Mrs. C for slander. In her defense she maintained that there was no publication. Since the Ds were legally one, her action had the same legal effect as if she had told Mr. D in private that he was a philanderer. Your opinion?

The Verdicts

"The law is an ass -- a idiot" said Mr. Bumble in a scene in Oliver Twist that must rank as one of the literary high points in ironic humor. Nevertheless, if we laymen read a sufficient sample of abridged decisions over the past four or five centuries, we are liable to be impressed with the fact the law in its evolution is not nearly as stupid as we thought; indeed, if precedent and uniformity seem opposed to common sense, the latter almost always triumphs.

1. Held for the defendant. The unity of husband and wife under common law bars an action for defamation. Had Mrs. A gone on and passed the calumny along to some third party, a defamation would, of course, have occurred. In such a case the damage could be immeasurable. Thus the unity rule is not capricious, but is based on equity. For if Mr. A had kept silent in his wrong-headed belief, Mrs. B would still have been damaged, though only in the eyes of Mr. A; in the present case, Mrs. A became privy to her husband's opinion, but since no allegation was made that the opinion was broadcast further (than to Mrs. B) it is presumed that marital privity prevented a chain of gossip. Since two trifles are hardly more serious than one, the unity rule governs.
2. Held for the plaintiff. The apparent conflict between upholding the action for defamation and the common law rule of the unity of the spouses is illusory. The unity doctrine does not hold that a husband and wife can both cross a river and legally refuse the ferryman more than one fare. In the present case, the act of the defendant tended to cleave the plaintiff and his wife asunder!

The doctrine of the unity of husband and wife is, as we all should know, a legal fiction, as are the arguments in the first case that support it and those in the second case that point out the exceptions. But the fact that the distinction is made seems right and proper. What the law would say if it let down its hair would be simply this: if you vilify your neighbor, the harm is much more serious if it is done in the hearing of your neighbor's spouse than if it is done in the hearing of your own spouse.

Post-Obiter Dictum

Logophiles tend to enjoy reading or hearing about an exception to a rule of thumb, when it can be supported by a logical argument, especially when the logic is just convincing enough to mask the sophistry. An example, akin to the above defamation cases, is a question that high school grammarians "resolved" about the time we attended high school, viz., is committee singular, plural, or both? Americans tended to say, "The Ways and Means Committee is considering adjourning till October". Perversely, the British would say, "The Committee on Foreign Affairs are meeting next week". American grammarians decided that context would govern. If a vote is unanimous, for example, obviously the committee is acting as one (the committee enthusiastically extends its congratulations to ...). Where conflict is evident, the committee is acting as more than one and is, therefore, plural (for the third straight week, the committee have failed to agree on their by-laws).

Obviously this is nothing more than a clever makeshift. An American seeing his demoralized football team members hitting each other in the mouth during practice would instinctively say: "The team is (rather than are) at it again!" So much for committee, which in the U.S. is always singular, except in grammar books.

Speaking of Clever Makeshifts

Lawyers can be most entertaining conversationalists, especially when they are asked by laymen to recount legal inconsistencies and the casuistries by which they were resolved. An anthology should be written (and probably has been) of the tortuous manner in which great legal minds have reconciled equity with consistency.

Suetonius was a venomous gossip but in The Twelve Caesars he gives the Emperor Claudius (undoubtedly the brainiest of the twelve) grudging admiration for settling a legal dispute in his capacity of criminal court judge. A man had been indicted for posing as a Roman citizen, and the prosecutor objected to his appearance in court dressed in the Roman toga. The defense attorney rejoined that since his client had pleaded innocent and was in fact a Roman citizen, he had the right to wear the toga unless and until he was proven not to have that right. Claudius ruled that the defendant could wear the toga when he took the stand in his defense, but that on cross-examination by the prosecutor he must appear in cloak and tunic. Solomonic.

The Pedant's Corner

The Pedant sent in this quiz on which, he assures me, none of you will score 100 per cent. Each statement is to be labeled either true or false:

- | | |
|----------------------|--------------------------|
| 1. a whale is a fish | 3. a spider is an insect |
| 2. a spider is a bug | 4. a bat is a bird |

Finished? Here are The Pedant's answers, taken from Webster's Seventh New Collegiate:

- | | |
|----------------------------|---|
| 1. true (see <u>fish</u>) | 3. true (see <u>insect</u>) |
| 2. true (see <u>bug</u>) | 4. false (who in hell would call a bat a bird?) |

Actually a more appropriate title for this kickshaw would have been The Pedant Scorner, for who (asks the Pedant) is more pedantic than the fellow passenger who takes it upon himself to "correct" your warning not to miss that big fish spouting and otherwise disporting himself on the starboard side? If this were a zoology class instead of a ship's deck, he'd be on solid ground (chuckle), but out here in the Pacific he is attempting to replace a usage hallowed with time and still current with an arrant scholasticism. He might with equal justice object to the use of the term group applied to people, on the grounds that mathematicians attach a very specialized meaning to the word, and no collection of people meets the mathematician's "group postulates".

The Pedant also objects strenuously to what he calls "dialogue with false padding" in books and on television and the screen. He has a theory that the less an author knows about a certain activity or occupation, the more likely he is to wax pleonastic when writing dialogue concerning it. For example, he asks you to read some padded dialogue and then to substitute what real live people would say instead:

1. (In the legislature) "I make a motion that . . ." "I second the motion"
2. (In the courtroom) "Objection sustained"
3. (At the poker table) "I'll see your ten and raise you twenty"
4. (In the cockpit of a fighter plane) "Roger, over and out"

If you give up, see Answers and Solutions.

Middle Initials

There is a peculiar phenomenon associated with your middle initial. (If you don't have one, use the middle initial of the U. S. president who was in office the day you were born; all of the presidents except Harry S Truman had middle names, though finding some of them takes a bit of research.) In the five rows of letters at the top of the next page, write down the first letter of each row in which your middle initial appears. For example, if your middle initial is M, it ap-

A C E G I K M O Q S U W Y
 B C F G J K N O R S V W Z
 D E F G L M N O T U V W
 H I J K L M N O X Y Z
 P Q R S T U V W X Y Z

appears in the three rows headed by A, D, and H. Convert these letters to their numerical equivalents based on alphabetic order. Thus A, D, and H convert to 1, 4, and 8. Add these numbers,

and convert the sum back to a single letter, using the same numbering scheme.

Though it may be difficult to believe, it is invariably the case that if you are a bona fide logophile, the letter you arrive at by converting the numerical row headings to numbers and totalling them turns out to be your middle initial!

State Names

As documented in Chadwick's Encyclopedia, King Charles II, "with a stroke of the penn", granted a large tract of land to William Sylvania. By a natural coinage, the land acquired the name Pennsylvania. In the May 1972 Word Ways, Kickshaws suggested that some diligent reader compile the origins of state names which are not coinages, but arose from native languages. Darryl Francis informed us that the World Almanac and Book of Facts (Centennial Edition, 1968), published by NEA, Inc., N. Y. has an article that does just that: "Origins of the U.S. State Names". In response to a query by the editor, Virgil J. Vogeles cited the Bibliography of Place-Names in Literature (Amer. Library Assn., 1967), by Sealock & Sealy. But Professor Vogeles warns that several states including Idaho, Iowa, Oregon, Tennessee, and Wisconsin have name origins that are still moot. With respect to these unresolved cases, all references, especially Chadwick, should be taken cum grano.

College Metonymy and Class I Diseases

We wonder why it is that Poughkeepsie, a singularly uninteresting city in New York, with little to boast of except for the highly-regarded women's college, Vassar, is not used, for that very reason, as a synonym for Vassar, in the same way as Ann Arbor is used to denote the University of Michigan. Economy is not the criterion, since Ithaca is sometimes used metonymously for Cornell, but never South Bend for Notre Dame. Why again do Boulder, Berkeley, and Chapel Hill "represent" the universities of Colorado, California and North Carolina, while Austin, Albuquerque, and Reno fail to represent the universities of Texas, New Mexico and Nevada? Athens is the University of Georgia; why isn't Durham equivalent to Duke? And when West Point is the Military Academy, and Annapolis is the Naval Academy, shouldn't Colorado Springs be the Air Force Academy?

The questions are, of course, rhetorical. Inconsistent as our language is, we'd have it no other way, for if it were consistent, we couldn't play the disease game with you. This trivial makethink is based on an old parlor game in which the "victims" are required to find the subtle basis for an unusual dichotomy. The British monthly

magazine Games & Puzzles, mentioned in this department in August, features this sort of game regularly. One of the marvelous expansions of the underlying concept of dichotomies was realized in the early 60s in Robert Abbott's card game, Eleusis. Back to the diseases. In Class I appear: plague, mange, hives, mumps, measles, croup, gout, bends, crabs, colic, grippe, flu, whooping cough, shingles, and chicken pox. Class II diseases include: yaws, scurvy, dropsy, malaria, beri-beri, athlete's foot, pellagra, diphtheria, cancer, rabies, pleurisy, catarrh, leprosy, dysentery, and rickets.

The basis for the dichotomy is very simply stated, but we doubt that you'll find it. If we're right, check Answers and Solutions. You'll note that both classes contain "plural" (as opposed to "plural") diseases, both contain childhood diseases, adult diseases, and diseases of vitamin deprivation. The basis for the dichotomy is lingual. Another clue: we can think of no other Class I diseases at the moment. Virtually all diseases are Class II.

Plot Idea For a Short Story

A high-level diplomatic conference is protracted so long that one day the participants suddenly discover that they no longer require the services of the interpreters.

Pro and Con

Jack Levine's second volume in the pattern word series, A List of Pattern Words of Lengths Ten Through Twelve, is now out, and those logophiles lucky enough to have obtained one of the limited number of copies are assured of double benefits. These compilations are useful in solving a large and varied class of problems of interest to Word Ways readers; beyond that, they are a pleasure to graze through, and only a very unruminate reader can browse them for long without discovering fresh green territory for logophilia.

Before we get further entangled in metaphor, we must compliment Mr. Levine on having solved a practical problem in computer memory access, sorting, and cataloging. The present volume bears a new more compact printout format, which the author advises us has been tried out on the original volume (words of lengths two through nine) with a reduction to half the number of pages. Jack Levine wishes that any kudos for these two catalogs and the final volume containing word lengths of thirteen through sixteen (not yet out) should cite the indispensable contribution of R. M. Willett, to whom belongs most of the credit for overpowering the enormous work factor in behalf of the computer.

While picking up some ordered tapes, we found a dusty cartridge entitled Kermit Schaffer's Latest and Greatest "The Best of Bloopers" Volume I, a Kapp 8-track stereo tape cartridge. It may be available in open reel, cassette, and/or disk, and there may be several volumes or only one. We had no success in looking up the title in several references of records and tapes, both available and out of print. We hope you'll have better luck; on the strength of Volume I,

we can recommend the entire series to you. There are too many funny shows, funny stories, funny magazines, funny movies, etc. that evoke the smile indulgent or the chuckle appreciative. We need more Bloopers, which we guarantee will produce for you laughs belly. From memory, only a few excerpts of authentic recorded boners from radio and television, comprising only a small fraction of Bloopers, Vol I: "...the Canadian Broadcorping Castration" "... and now our singer Marian Anderson will sing in this season of joy Oy Vay Maria" "The rumor that the president will veto the bill comes from high White Horse souses" "... Virgin of the Governor's Islands" "Wilt Chamberlain was high with 47 pints". Evidently the bare blooper sequence was played before a live audience and the laughs included on the marketed tape. It would have been better left bare, but don't let that stop you from buying Bloopers, for \$5.95.

Webster's Dictionary of Proper Names, compiled by Geoffrey Payton, G. & C. Merriam Co., 1970, \$9.95, is a handsomely-printed book, consisting of 752 pages of well-described proper noun entries such as Teapot Dome Scandal in a generous and easily-readable typeface. The purpose of the book, I think, is to spare the reader the need for consulting an encyclopedia to find out more about some commonly-used proper term than he wanted to know. The entries obviously have more color than ordinary dictionary words, making the browsing a pleasant diversion if one is a reference browser. But the dictionary can never be considered a valuable reference, because the chance is only about one in four that you will find in it what you are looking for. Putting it differently, about 3000 pages in that typeface would probably be needed to do a 90 per cent job. We don't accuse the author of capriciousness in his selection of entries but of an inconsistency that proves such a labor cannot be undertaken essentially alone. A staff is mandatory to provide the diverse backgrounds necessary for an approximation of completeness. One can find endless inconsistencies: Johns Hopkins University has an entry, but not Notre Dame; Prometheus, but no Epimetheus; Ajax, but no Diomedes; Buck Rogers, but no Flash Gordon; Cape Cod Turkey (codfish), but no Rocky Mountain Oysters (rams' genitals); The Battle of Actium, but not that of Pharsalus; Tamburlaine, but no Attila. Readers are advised to wait for an expansion to three or four volumes.

The Emperor is in his birthday suit, and two out of every three New Yorker poems are as rich in meaning as the sleep-talking of someone who doesn't speak English. Abstraction, suggestion, rough delineation, etc. are all very well, but most of New Yorker poetry, like its snob-appeal ads (care to buy a glass sculpture of a mongoose for only \$7,500 from a limited edition of 40,000?) or the endless variations on duckpins by Trivialis Incredibilis, or the 5000-word reviews of movies the reviewer didn't think worth seeing -- all are strictly for the boreds.

Still, the magazine is worth subscribing to. The average level of the short stories is very high, and pains are obviously taken to make certain that profiles are as well-written and as well-edited as they were in the days of Ross. And every so often a poem is uncharacter-

istically good. In fact, on page 26 of the July 22, 1972 issue is a "Sonnet with a Different Letter at the End of Every Line", which we wish we had permission to reproduce for you. George Starbuck fails to mention in his title that every line ends in the sound oh. If you think that was an easy job, the terminal letters are HEMAFDPS LWTOUXG. Try finding appropriate words yourself, using a little poetic license. (Starbuck had some French words, one Chinese proper name (a Premier), and three standard abbreviations.) And his "sonnet", with an extra line for luck, was in perfect iambic pentameter, was amusing, and was not opaque. A miracle that it was accepted!

When circumstances force us to visit our barbershop, we usually pick up the latest issue of Playboy Magazine and, caring naught what impression we make by not immediately opening the center-fold, turn directly to what we consider the most worthwhile tidbit department in any American or English magazine, "Playboy After Hours". The playmates are OK if you prefer myth to reality. (It is rumored that the slightest movement on the part of the models, such as breathing, will undo five hours of tedious preparation. Silky, springy locks will turn into ordinary women's hair; rose-tinted marble becomes natural female skin.) But PAH has no need for fancy packaging; it is a fast-paced, racy model of the old New Yorker department, "Talk of the Town" when it was well-written by facile pens such as Wolcott Gibbs's or E. B. White's, with a few good news-breaks thrown in. If Playboy ever decides to fragmentize, like Saturday Review, PAH is the only fragment we feel would be worth subscribing to. Browse it at your neighborhood magazine stand.

Once a Word Ways reader puts down a novel by William Peter Blatty, Jacqueline Susann, or Irving Wallace, he'll never want to pick it up again.

An Editorial Postscript

The most recent catalog from Publishers Central Bureau (Department 1072, 33-20 Hunters Point Avenue, Long Island City, N. Y. 11101) offers for \$4.95 (plus \$.75 shipping, plus N. Y. or N. J. sales tax for residents of those states) two mono LP records by Kermit Schafer entitled "Pardon My Blooper!" No guarantee attached, but this sounds very much like the item mentioned earlier. For those interested, the catalog number is 890062.