

Middlesex University Research Repository

An open access repository of
Middlesex University research

<http://eprints.mdx.ac.uk>

Durant, Alan (1996) On the interpretation of allusions and other innuendo meanings in libel actions: the value of semantic and pragmatic evidence. *International Journal of Speech Language and the Law*, 3 (2). pp. 195-210. ISSN 1748-8885

Available from Middlesex University's Research Repository at
<http://eprints.mdx.ac.uk/8168/>

Copyright:

Middlesex University Research Repository makes the University's research available electronically.

Copyright and moral rights to this thesis/research project are retained by the author and/or other copyright owners. The work is supplied on the understanding that any use for commercial gain is strictly forbidden. A copy may be downloaded for personal, non-commercial, research or study without prior permission and without charge. Any use of the thesis/research project for private study or research must be properly acknowledged with reference to the work's full bibliographic details.

This thesis/research project may not be reproduced in any format or medium, or extensive quotations taken from it, or its content changed in any way, without first obtaining permission in writing from the copyright holder(s).

If you believe that any material held in the repository infringes copyright law, please contact the Repository Team at Middlesex University via the following email address:

eprints@mdx.ac.uk

The item will be removed from the repository while any claim is being investigated.

'On the interpretation of allusions and other innuendo meanings in libel actions: the value of semantic and pragmatic evidence', *Forensic Linguistics*, volume 3 number 2 (1996), 195-210. ISSN 1350-1771

Alan Durant

Introduction

This paper presents an account of evidence I provided in an English libel action in 1992 regarding the meaning of the expression 'economical with the truth'. The interest of such a description, I suggest, lies in the fact that the contested expression poses difficulties to legal interpretation as a result of its origin as a quotation. Distinction between use as a formulaic idiom and as a more specialised allusion can become crucial within English libel law, in that qualification is allowed to the 'ordinary reader' test of meaning only in cases of so-called 'innuendo' meanings (that is, meanings believed to be available only to a sub-set readership with relevant, specialised knowledge).

Discussion in this paper of semantic and pragmatic evidence suggests that the linguist can valuably narrow the scope of plausible interpretations of contested expressions. Such evidence may also contribute to more general understanding of both 'ordinary reader' and 'innuendo' tests of meaning. Generalising from the particular case outlined, I comment finally on established means of attributing meanings (and responsibility for meaning) in legal cases, and delineate emergent tendencies in the related fields of forensic linguistics and critical legal studies.

Meaning in the courts

In cases of defamation (whether of slander, which is the spoken form, or of libel, which is the written form¹), defamatory meaning is not essentially a matter of intention. Rather, it inheres in whatever an expression, in what is sometimes referred to as 'its ordinary signification', would mean to 'right-thinking members of society generally'. It is this aspect of libel law which explains, for example, how it is possible for there to be occasional actions for 'unintended libel': defamation is viewed as a fact, or demonstrated effect, rather than a supposed intention².

Whether an expression is defamatory or not is determined by means of a two-stage process. The presiding judge decides whether the expression *is capable of bearing* a libellous meaning; this is a matter of law. It is then for the jury to decide whether the expression in question *does in fact bear* such a libellous meaning in the case pleaded before them.

Capability to bear a libellous meaning is decided, as has been suggested, on the basis of the 'ordinary reader' test. That ordinary reader is not, however, someone with only narrow or literal interpretative skills. Rather, such a reader is

endowed... with considerable wisdom and knowledge of the way of the world. The literal meaning is not conclusive: the ordinary reader knows all about irony. [...] The ordinary reader is impressed by the tone and manner of publication, and the words chosen to headline the story.[...] The courts accept that ordinary readers are not literal-minded simpletons. They are capable of divining the real thrust of a comment, and able to respond to a joke, even a joke in bad taste, in the spirit intended by the commentator (Robertson and Nichol, 1984:28-9).

In this respect, it is interesting that, despite the clearly stated primacy of the notion of effect, the author's attributed intention is still relevant; the above quotation continues, 'the author's intention does play an indirect part in determining the meaning of the words in question, because that meaning is decided by the ordinary reader's response to the question: "What on earth is the author getting at?"'(Robertson and Nichol, 1984:29).

The 'ordinary reader' test is subject, however, to qualification in the sub-set of cases involving so-called 'innuendo meanings'. Such meanings derive from expressions which are not defamatory at face value, but which nevertheless carry discreditable implications to those with specialized, rather than general, knowledge. The concept of defamatory innuendo allows a statement to be deemed defamatory on the strength of its meaning to those with knowledge of relevant circumstances not themselves stated. In such cases, the ordinary reader test is overruled by a concept of 'meaning for the reader with knowledge of the relevant facts'.

Court process

How, then, is the expert linguist likely to become involved? To understand at what stages linguistic expertise might be drawn on, it is necessary to understand the overall process of an English libel action.

Libel cases (in English law) take the following general form. The plaintiff has to demonstrate three things: first, that the words complained of do have a defamatory meaning; second, that the words refer to the plaintiff; and third, that the defendant was responsible for publishing them (in cases of innuendo meaning, the plaintiff also has to prove that the article was in fact published to persons who were able to make the identifying connection). Once these matters are established, the burden of demonstration shifts to the defendant, who must convince the judge and/or jury (but only on balance of probability, not beyond reasonable doubt) that the words were true, or the comment was fair (or honest), or that the report was 'privileged', or - far less commonly - that there had been consent.³

Matters of law are for lawyers; linguists' expertise is correspondingly directed towards a narrow and precise channel of application. While it is conceivable that an expert witness might be helpful in distinguishing 'statements of fact' from 'opinions' in an 'honest comment' defence, the limited role for linguists in English libel typically occurs, if at all, during the first stage of the legal process described above. The question for the linguist - argued initially before the judge as a matter of law rather than before a jury - is most likely to be whether an expression *is reasonably capable of* carrying a defamatory meaning. It is a complex instance of such an argument which I report below.

Defining an appropriate research method

The libel action in which the phrase 'economical with the truth' was complained of involved an editorial article in which the phrase was used to describe the behaviour of a prominent businessman. The phrase occurred within a piece which overall contrasted an alleged failure to disclose essential information with a public right of information. The businessman pleaded in his statement of claim that the expression 'economical with the truth', in context, carried the meaning of dishonourable concealment and misconduct, and as such conveyed discreditable implications regarding his professional probity. In defence of the article, the publishers proposed to argue - not that the suggestion was true or that it was fair comment - but straightforwardly that it is mistaken to assume that the expression 'economical with the truth' involves any derogatory, and therefore potentially libellous, import; rather, they maintained, it may even convey an element of praise.

In developing my initial report on the meaning of the expression, it was essential to consider both the 'ordinary reader' and 'innuendo' possibilities. I examined not only the apparent meaning of the phrase in context, which would later be a matter for the court to determine, but also its history and patterns of more general current usage.

The origin of the phrase as a quotation, and so the fact that it may be argued to function as an allusion, poses special interpretative difficulties. An 'innuendo' effect would depend on the recognizability of the literary or cultural reference to a given readership, and so the probable generation of inferences specifically associated with or derived from that reference. But allusions, like metaphors, also become sedimented in the language and take on a life of their own, to the extent that their meaning in a given context cannot be simply read off from an 'original' sense any more than the current meaning of a word can be derived directly from its etymology. An expression which begins life as a quotation may acquire an 'ordinary reader' meaning independent of, or which even directly cancels out, a sense earlier associated with a precise literary reference.

Given these difficulties, it was appropriate in assessing the significance of the expression to adopt a combined method of enquiry which examined its history, the scale and contexts of its current use, and the probable interpretative horizons of readers likely to have encountered the expression in the article in which it was used. Accordingly, my report sought to triangulate evidence from

- (i) literary concordances (for origins of the expression as a quotation, as well as influential early uses);
- (ii) the *Oxford English Dictionary* and other dictionaries and reference sources (for the historical development of and current conventions regarding its meanings);
- (iii) a transcript of relevant parts of the *Spycatcher* trial, held in Sydney in 1986 (for the context in which the expression was most famously used in recent times, in evidence by Sir Robert Armstrong);
- (iv) two corpora of English usage (one, an article search from the Financial Times Business Service covering the period 1983 - when the Service began - through to 1992; the other, the Survey of English Usage held at University College,

London, which offers a large, representative body of English discourse for years prior to 1986.

- (v) a sample of English-speaker informants (for patterns in speakers' intuitions about contemporary usage) for intuitions of English speakers.

Being 'economical with the truth'

Before the mid 1980s, the phrase 'economical with the truth' appears to have had only an extremely restricted currency, involving a rare and very specific allusion to *either or both of two* literary sources. One of the possible allusions is to Mark Twain's, 'Truth is the most valuable thing we have. Let us economise it' (where the phrase involves an element of absurd or paradoxical humour, applying to 'truth' an evidently inappropriate system of valuation). The other possible allusion is to Edmund Burke's comment, 'I do not impute falsehood to the Government, but I think there has been considerable economy of truth', in which, through the rhetorical contrast established by the adversative connective 'but', a critical sense seems implicit.⁴

The phrase (as well as grammatically-related variants on it) entered widespread currency in English following its use by Sir Robert Armstrong, the then British Cabinet Secretary, during legal proceedings over Peter Wright's book *Spycatcher* in Sydney, Australia, in November 1986. Although neither the individual words which make up the phrase, or even the phrase as a whole, was new (indeed Sir Robert Armstrong prefaced his use of the phrase with the words, 'as one person said'), the expression seemed to enter English usage as a sort of neologism: a distinctly new idiom, with its own quite particular meanings and resonances.

Although Armstrong (and others subsequently) have drawn on the reference to Burke to establish a 'praising' meaning for the expression, senses directly modelled on the two references cited above could be taken to be largely immaterial in the context of the contested use. While over two-thirds of my questionnaire sample were familiar with the phrase from press and media usage (and approximately one-third could remember having used the phrase themselves), when given a selection of twelve possible names with which to associate the expression, no respondents at all associated it either with Edmund Burke or with Mark Twain.

The history of the phrase following Armstrong's use is arguably more significant. It is commonly believed, for instance, that the allusive quality of the expression, in a British context, involves direct or oblique reference to his use of it. Even so, only a quarter of my sample linked the phrase directly with Armstrong. Equally interestingly, the most frequently chosen name associated with the expression (after Armstrong) was that of Richard Nixon, who is of course also widely associated with a neologistic expression, the loosely similar-sounding phrase 'expletive deleted', as well as being widely associated in the popular mind with dishonesty in office.

There is, however, a fairly compelling reason to link the increased use of the expression with the widespread media reporting of Sir Robert Armstrong's use. While there is not a single entry for the phrase 'economical with the truth' in the written and spoken English collected in the Survey of English Usage corpus (which has as its end-date 1985), there are approximately

450 uses simply in those national newspapers covered by the Financial Times Business Service corpus during the years 1986-1992. Indeed, the 450 citations show a very high frequency of co-occurrence between the phrase and Armstrong's name, including references to how Armstrong showed wit and originality in *introducing* the phrase: 'Sir Robert's ringing phrase'; his 'immortal words'; 'Sir Robert... entered the history books as the author of the phrase'; 'Sir Robert's remark...assured the proceedings a place in dictionaries of quotations'; his 'brilliant *hapax legomenon*'; etc. On the basis simply of the collocation evidence, it seems reasonable to infer that the widespread perception that the expression entered popular, especially journalistic and media, currency as a result of Sir Robert Armstrong's single use of it is substantially correct.

Spycatcher

To understand the contemporary meaning (or meanings) of the term, accordingly, it was necessary to consider the context of Sir Robert Armstrong's use of it in 1986. Cross-examined by Malcolm Turnbull during the *Spycatcher* trial, Sir Robert Armstrong was questioned about whether in fact the Government of the day already *had* a copy of *Spycatcher*, when it represented in a letter to the publisher William Armstrong that it did not. The courtroom dialogue continued:

Q: So that letter contains a lie, does it not?

A: It contains a misleading impression in that respect.

Q: Which you knew to be misleading at the time you made it?

A: Of course.

Q: So it contains a lie?

A: It is a misleading impression, it does not contain a lie, I don't think.

Q: What is the difference between a misleading impression and a lie?

A: You are as good at English as I am.

Q: I am just trying to understand.

A: A lie is a straight untruth.

Q: What is a misleading impression - a sort of bent untruth?

A: As one person said, it is perhaps being economical with the truth.

During the immediately surrounding cross-examination, Turnbull tests Armstrong with what amounts to a series of possible glosses for the expression ('lie or convey a misleading impression', 'misrepresenting facts', 'misstate the facts', '[the letter was] written so as not to disclose the fact', 'mislead people'), to the extent that the presiding judge at one point presses the cross-examination forward with the comment that, 'We may have fallen into an exercise in semantics'.

As a result of widespread international interest in the *Spycatcher* trial, (and in Sir Robert Armstrong's evidence in particular), the phrase 'economical with the truth' passed into popular usage - a fashion given new impetus when Armstrong was made Lord Armstrong of Ilminster a year or so later. It is clear nevertheless that, despite his elevation, Lord Armstrong's reputation was not generally enhanced by his court appearance. He is reported as having 'made the Government look silly'; he 'achieved notoriety when he admitted being economical with the truth'; and his 'string of embarrassing, headline-making admissions' made 'the man

who is popularly called Britain's most powerful civil servant appear ill-at-ease, ineffectual and ill-informed'. In fact, Lord Armstrong's name came to be widely seen as synonymous with an idea of parsimony with the resource of 'truth'; his name, and the expression with which it became associated (whether used of him or of someone else) entered popular mythology as a symbol of only half-apologetic official dishonesty.

Current usage

The principal question for the forensic linguist involved in a defamation action remains, however: what sense or senses had the phrase, once in wider and unattributed contemporary currency, become *capable* of meaning in the context in which it had been used?

Judging on the basis of my corpus, and in the light of responses to my survey, I arrived at the view that the phrase means overwhelmingly to be deliberately misleading, by misrepresenting (or omitting to represent) an actual and relevant state of affairs. The phrase may have started life as a polite, even subtle, euphemism, but subsequently became a transparent figurative expression meaning to deceive or lie, especially the concealment of discreditable or unprofessional conduct by people in public office. While Lord Armstrong has continued to maintain that the expression means 'leaving unsaid things which might be embarrassing and which ought to be kept secret from the public', even the interviewer to whom he originally offered this opinion went on to report, 'To most people it is a Civil Service euphemism for telling lies'.

Evidence for the 'lying' sense can be found fully across my data. As has been suggested above, there was no correlation among my respondents between knowing a literary origin for the phrase and attributing a meaning to it. This suggests strongly that the phrase has established itself within the language beyond those local contexts in which it could plausibly function as a specific allusion. To test the scope of possible meanings further, I invited my sample to choose between alternative possible glosses. While nearly 10% thought it could mean an amount of succinct paraphrase or *précis*, or some degree of oversight or accidental omission, 80% maintained that it necessarily involved some degree of deliberate deception. My questionnaire also invited comment on a scenario in which the respondent herself or himself is judged to have been 'economical with the truth'. Given four graded alternatives, over two-thirds felt it would mean *they had lied about something*. Asked how they would interpret such an expression as a comment on their own character, only 4% of respondents considered that it conveyed high praise or praise; 13% deemed it a neutral observation; while 80% felt it entailed criticism, strong criticism or insult.⁵

Questionnaire data of this kind tallied closely with corpus evidence, especially analysis of patterns of co-occurrence of words and phrases which in context offer approximate synonyms, reformulatory 'glosses', cognate concepts, semantic scales, or suggestive contrasts. Such patterning of restatements and opposites offers helpful bearings on, and can further anchor, the meaning a speaker appears to be giving an expression.

Among the clusters of speaker-synonyms for the phrase 'economic with the truth' in the corpus, for instance, were 'slithering around with the facts'; uttering 'patent nonsense'; 'not revealing the facts or the complete truth'; indulging in 'weasel evasion'; turning 'the English

Language inside out in an effort to hide the more negative aspects of [something]'; or even a rough paraphrase attributed to Prince Philip, to 'fiddle with the truth'. Rhetorical contrasts included: 'Mr Dennis Howarth...accused the board of being "economical with the truth". Either you don't know your jobs or you are not telling the truth.'. A similar contrast, in the following quotation, underscores a link between being 'economical with the truth' and 'lying': 'Mr Bush's image-makers have been plastering the inaugural events with T-shirts and posters and plastic cups that bear the faces of the first President who "could not tell a lie", and the newest incumbent, whose election campaign last year was so economical with the truth'. Scalar effects, produced by the sequence of items in a list, locate the meaning of the expression, too (in this case, in a scale of degrees of deception): 'being economical with the truth' lies close to, but may be slightly less than, outright lying, as a result of the official authority with which it is performed; this can be detected in hedging qualifications such as, 'at best economical with the truth, at worst a liar' or 'at best contradictory, at worst economical with the truth'. A more dramatic scale of distinctions, however - which clearly identifies where on the emotional and moral spectrum being 'economical with the truth' is to be located - is the following: 'Ollie North and Robert Armstrong in *The Good, The Bad, The Ugly* and *The Economical with the Truth*'.

Other textual features in the corpus reinforce the sense indicated above. The class of verbs and verbal expressions on which the phrase is typically grammatically dependent generally carries negative moral overtones, and includes 'is accused of', 'admits to being', 'is guilty of', 'creates the suspicion that'. Or again, titles of articles within which the expression occurs provide a generic framework for understanding the expression in a given passage. Under a title, 'Body language: the tell-tale signs of a liar', we are told, 'He's not lying but he is leaving out a crucial piece of information - "being economical with the truth", as they say', where the phrase 'as they say' points to euphemistic and figurative qualities of the expression. And in a suggestive series of associative links, under a heading 'Life and times: Lie of the land in the land of the lie', we learn of, '...the comforting zeitgeist [of the 1980s] which promoted the lie as a way of life. But politicians are economical with the truth. Robert Armstrong...'

Stylistic parody, too, highlights the sense of concealment by understatement, and so reinforces the derogatory resonance of the expression. Consider the parallelism between the two sentences in the following quotation: 'You may prefer to say that you are economical with the truth. You may declare grandly that you have been known to utter the odd terminological inexactitude'; or the analogy drawn in, 'Following Lord Armstrong's efforts during the *Spycatcher* trial, in which he confessed to being "economical with the truth", the word is now defined as "deliberately withholding something from public knowledge". Similarly, "dead parrot", once applied to Liberal party leader David Steel, is "something irrevocably moribund"'. Cases such as these draw attention to what is seen as an inadequacy in the innocuous nature of particular phrases to convey the seriousness of the failings they allude to.

Finally, larger discourse patterns, often combining a number of the stylistic features described above, build up not only a fairly consistent specific sense but also a recurrent set of weaker but equally suggestive connotations and implications: 'economical with the truth, or lenient with lies'; 'it is risky to be economical with the truth.. false pretences.. get away with a lie'; 'economical with the truth... entirely unscrupulous'; '...was economical with the truth. Neither can he now do a Pontius Pilate...'; "'economical with the truth", as he [Sir Robert Armstrong,

'the man who gave lying a good name'] put it, will now be used by anybody accused of holding back information or misleading or even lying'; 'You and I, to our shame, tell lies. But governments are different. They are merely economical with the truth'; 'The Government may also extend the Trade Description Act to cover the tendency of some estate agents to be "economical with the truth" when describing a property'; 'This may be a high-tech way of being economical with the truth. Alternatively, could it be that there are lies, damned lies and facsimiles?'; or finally the vividly code-switching, 'I have to say that sounds to me not so much a case of being "economical with the truth" as telling what, in Cockney rhyming slang, is known as a "pork pie"....

Could the conventional meaning be overridden?

The two kinds of evidence outlined in brief above (empirical evidence from a survey of speakers, and linguistic analysis of a large corpus of published usage) clearly support the view that the generally accepted current meaning of the expression is what might be called the 'professional lie' meaning (the loose equivalent of a professional foul in football). Used of people in office, the expression would appear therefore almost invariably to carry a discrediting implication, imputing dishonesty or dishonourable conduct and so lowering the person in public esteem and at the same time ridiculing him or her.

Such a meaning is not in any simple sense an 'innuendo' meaning, of course. Rather, I have suggested that the originally innuendo meaning (the literary allusion almost certainly accessible only to those with a particular educational background) has become, through a process of language change, a naturalized idiom, functioning irrespective of the availability of the innuendo sense. Given the slippery nature of allusive, ironic, or innuendo possibilities, however, I felt I should in constructing my report also consider whether there might be circumstances in which the 'deception' or 'deliberately misleading' meaning I had established could be overridden by context. I identified four main possibilities to evaluate (a to d below); but felt that each finally could be discounted.

- a. In using the expression, a speaker or writer might wish to invert or reverse the conventionalised idiom, and instead invoke a particular sense associated with Burke (or Twain). For a meaning associated with these sources to be activated, however, some explicit reference to one or other author seems to be necessary if the far more immediate and accessible allusion to *Spycatcher*, which would undoubtedly be inferred as a sort of default context by an ordinary contemporary reader or listener, is to be cancelled. The current remoteness of the Burke reference, in fact, is signalled in Lord Armstrong's own more recent effort to be 'economical with words - although I hope not economical with the truth, save in the sense recommended by Edmund Burke' - a formulation which ironically confirms the general meaning and negative overtones of his earlier expression, 'economical with the truth'. Without an explicit reference to Burke or Twain, my survey suggests, an allusion to them would be extremely unlikely to be recognized. (Significantly, too, the Burke quotation cited above is not to be found in *any* of the dictionaries of quotations on sale in bookshops included in my informal survey.)
- b. In using the expression, a speaker or writer might be appealing to a 'conspiratorial'

sense, in which the speaker presumes on the part of addressees a belief system in which deliberately misleading the public will be seen as a positive virtue. This possibility, however, depends on a mutual assumption that deliberately misleading statements are a right-thinking way of behaving, and do not escape the charge of being defamatory (since the belief-system presumed in defamation is that of 'right-thinking' people).⁶ In my survey, it is interesting nevertheless that a significant number of respondents saw the phrase as being less damaging to character or self-esteem in a hypothetical situation in which they were ascribing the tendency to be 'economical with the truth' to their own behaviour than in a situation in which the expression was used by someone else about *them* - where the criticism or insult effect was generally felt to be clear.

- c. In using the expression, a speaker or writer might be seeking to contrive a neutrally humorous or ironic meaning, in which the phrase creates incongruity by being applied as it were in reverse, with the literal rather than the figurative seeming the surprise interpretation. A rare example of this type in the corpus might be 'To be economical with the truth, the core of market analysis can be expressed in three words: prices affect quantities', where the context makes clear that 'economic' refers only to number of words, without any detectable implication regarding what else *should have been* said. The artifice of this type of use, it should be noted, lies precisely in the way it exploits familiarity with (and indeed expectation of) the deprecatory sense in order to create a surprise effect with the reversal to a flat 'literal' interpretation.
- d. In using the expression, a speaker or writer might be illustrating a more general commentary on 'our times' or the state of the language, by alluding to a socially damaging culture of political euphemism. In such a view, a lexicon of what might be called, following Winston Churchill's expression while a minister at the Colonial Office in 1906, 'terminological inexactitudes' disguises bureaucratic remoteness, corruption, and dishonesty. An example of this type in the corpus is the following comment on the idea that being 'economical with the truth' involves a 'weasel evasion': 'George Orwell recommended that we should inoculate ourselves against the litotes disease by memorising the sentence, "A not unblack dog was chasing a not unsmall rabbit across a not ungreen field". Orwell was an Englishman who did not suffer from the English vices of hypocrisy, evasion and understatement'. Such a usage does not, however, free the expression from the capability to defame, since the comment on political euphemism is predicated on a serious objection to the kind of political behaviour it (mis)represents.

Each of the four cases I identified was extremely rare in the corpus I consulted. What is perhaps more significant, in any case, is that each relies on, and so in its own way reinforces, the underlying polemical sense of the expression rather than cancelling it out. Departing from the corpus, too, it was also notable how difficult it is even to *construct* plausible contexts in which that critical sense can be reversed rather than presumed as a sub-stratum beneath an additional ironic twist.

Conclusions

The 'ordinary reader' test in defamation actions dispenses with psychological or philosophical complexity, and replaces such difficulties with the reassuring sense of a judge and jury readily knowing what discourse means. The evidence reported in summary above, by contrast, is likely to seem complex and technical in ways which conflict with the general spirit of reasonable action which characterises the law of tort, of which defamation is a part. Indeed, the sense conveyed by linguistic technicality that the meanings of utterances may be multi-dimensional and sometimes difficult to establish can render linguistic evidence especially unappealing to English law and lawyers. It is appropriate, therefore, to conclude with some more general reflections on the research reported above, and the prevailing notion of legal meaning in relation to which it was commissioned.

Firstly, it is reasonable to ask how effective in court proceedings the sort of evidence linguists might provide can be. In the case reported, when linguistic evidence on the capability of the expression to bear a defamatory meaning was judged admissible and passed to the defence team, a settlement out of court substantially in favour of the plaintiff was quickly arranged. But presentation of such evidence raises broader questions than those of immediate outcomes. For practising linguists, perhaps the most immediate questions regarding legal consultancy in the area of defamation are those of admissibility. The 'ordinary reader' test conflicts quite fundamentally with any appeal to commissioned, specialist leverage on questions of meaning; unless the case reported had been pleaded in terms of an innuendo meaning, what the expression 'economical with the truth' is capable of meaning might simply have been determined on the spot by a judge. An important question which arises is accordingly how the extent to which linguists could in principle *usefully* contribute to the process of determining meanings can be reconciled with given limitations on the *admissibility* of such evidence in court.

At present, it is only in the minority of libel cases alleging innuendo meanings (or where the so-called 'ordinary signification' of a word or statement is in doubt) that capability to bear a meaning is likely to be argued with the help of a linguist. It is not clear, however, that such cases, theoretically considered, in fact constitute a minority. With allusions in particular, there may as I have suggested be a risk of confusing two co-existing but divergent meanings, only one of which retains a link with the quotation.

To generalise from such cases, the principle might be argued that meanings are always representations constructed within a matrix of demographic variables and in circumstances of language variation and change. As such, meanings spread, and are distributed, in complex and uneven ways. Consequently, heterogeneous readerships (or 'interpretive communities') are the general rather than an exceptional condition. Even the illustration offered by Robertson and Nichol to exemplify the working of the 'ordinary reader' test (contained in a sentence omitted from the abbreviated quotation presented above) demonstrates this. After pointing out that the ordinary reader knows all about irony, Robertson and Nichol suggest, "To say of John Smith "His name is certainly not George Washington" is capable of being defamatory of Smith: the ordinary reader knows that George Washington could never tell a lie, and is likely to infer that Smith is therefore untruthful". (Robertson and Nichol, 1984:28). It is problematic, however, how far the 'George Washington's honesty' cultural reference is widely recognizable, or any

more part of general knowledge than the Beatles or many of the other cultural entities whose existence or social meaning has been famously queried by English judges.

The general point is this: it is only by presuming an idealised notion of 'general' or 'standard' usage (often a conservative variety, linked to a specific, socially and educationally constructed notion of what is common knowledge) that the notion of the 'ordinary reader' can be sustained. If the interpretation of an expression is to include not only its linguistically-coded meanings but also those inferences reasonably triggered by its combination with the specific, anticipated assumptions of addressees (which is, after all, the accepted basis of defamatory meaning), then most or even all interpretations are likely to have a significant 'innuendo' dimension. In a linguistically and culturally diverse society, the burden of argument must increasingly fall on counsel to disentangle and establish which words mean what to whom.⁷

It is unlikely, of course, that English courts will question their own ability to judge the meanings of words, or the basis of legitimate or warranted inference. Rules on expert witness are likely to continue to be defined in ways which reinforce rather than query the court's authority in the matter of what utterances mean. For this reason, it is likely to continue to be a matter of linguistic rather than legal interest how far oblique rhetorical strategies (such as metaphor, allegory, allusion, or irony) - all exemplary in satire, and frequent visitors to the courts - expose questions of interpretation to fundamental problems concerning the social distribution of different kinds of interpretation. Such considerations challenge the 'ordinariness' of any reader, as well as the representativeness of the judge's deliberations, and demand more nuanced, and better informed, debate about patterns of usage, trends in public literacy, and the interpretative horizons at stake in acts of social discourse.

Two emphases in forensic linguistics in matters of defamation can be identified. In one, the linguist simply unpacks her or his specialist tool-kit on demand, leaving broader issues of legal context and procedure to lawyers. In the other, linguists make a contribution to cases within constraints determined by current legal procedure, but also endeavour - in ways compatible with the more philosophical and rhetorical concerns of critical legal discourse analysis⁸ - to contribute their own, sometimes different (and occasionally polemical) insights into language and meaning. The future and value of forensic linguistics in the field of defamation will be importantly defined by the relationship which develops between these two tendencies.

Sept 1995

Notes

1. The basic distinction between slander and libel concerns the presumed greater seriousness of an aspersion in permanent form (a libel) than in a transitory one (a slander). For a case of alleged slander to be actionable, the plaintiff has accordingly to demonstrate financial loss rather than simply damage to reputation. Development in the twentieth century of new technologies of transmission, broadcasting and reproduction has complicated what was earlier generally a distinction between writing and speech - although argument had previously established statues, caricatures, effigies, chalk marks on a wall, signs and pictures to be all capable of being libellous (see, for example, the judgement in *Monson v Tussauds Ltd* [1891-4]). *Youssouf v Metro-Goldwyn-Mayer Pictures Ltd* [1934], in which the plaintiff alleged that she, as 'Natasha' in a film, had been seduced by Rasputin, established that 'speech which is synchronized with the photographic reproduction and forms part of one complex, common exhibition as a circumstance' constitutes a libel rather than slander. Subsequently, distinctions surrounding broadcasting and theatrical performance were more fully codified in the Defamation Act 1952 and in the Theatres Act 1968 (though unscripted remarks made on live television may still be regarded as slander; for discussion and illustration of the distinctions, see Hepple and Matthews (1980:548-552); for a recent account of libel law internationally, see Braithwaite (1995).
2. See Robertson and Nichol, 34-36. Perhaps the most succinct statement of the position is Lord Justice Greer's, in *Cassidy v Daily Mirror Newspapers Ltd* [1929]: 'Liability for libel does not depend on the intention of the defamer, but on the fact of the defamation.' See Hepple and Matthews (1980:557).
3. Several features of English libel law (whose concern to protect the interest of reputation has historical origins in the social need to provide a legal alternative to duelling) are well known even outside legal circles: the right to trial by jury; the fact that legal aid is not available; the vast disparity in damages awarded, from massive exemplary damages to derisory, so-called 'contemptuous damages' which leave the successful plaintiff at a substantial loss because the scale of legal costs; and the possibility of issuing an apology admissible in evidence in mitigation of damages. For more detailed discussion of court procedures, however, see Robertson and Nichol (1984:23-64), and Hepple and Matthews (1980:568-587). Of the defences against libel, 'fair comment' is both most common and seemingly most problematic, not only because it can be defeated by demonstrating legally defined 'malice', but also because precise distinctions between comment and the facts on which comment is based are not always easy to draw. For the pragmatist, perhaps the most tantalising distinction is that conveyed in judgement of *London Artists Ltd v Littler* [1969] between defences of fair comment and justification: 'In fair comment, he [the defendant] need only prove the basic facts to be true. In justification he must prove also that the comments and inferences are true also.' See Hepple and Matthews (1980:571).
4. In the *Oxford English Dictionary* [OED] entry for 'economy' [sense III, 6b]), the following quotation is also offered: 'Falsehood and delusion are allowed in no case whatever. But [as in the exercise of all the virtues] there is an economy of truth...a sort

of temperance, by which a man speaks truth with reason that he may continue to speak it the longer' (*Two Letters on Proposals for Peace*, 1796, Part I, p.137).

5. Largely because of pressure of time available in which to produce a report, my fieldwork was fairly crude. After an initial pilot, I simply conducted a small-scale survey involving questionnaires given to 100 respondents stratified across socio-economic groups and age-bands. Although there was a small degree of variation according to socio-economic background, gender and age, such variation was very small by comparison with the clear overall patterns which emerged. For a detailed critical review of linguistic research methods (and aims), see Cameron *et al* (1992); for a history and analysis of media audience studies, arguing the case for far more sophisticated ethnographic approaches to reception and meaning, see Morley (1992).
6. Alleged exposure of the plaintiff to hatred, ridicule and contempt is measured, in the words of Lord Justice Slesser in *Byrne v Deane* [1937], against 'the arbitrium boni, the view which would be taken by the ordinary good and worthy subject of the King (to quote the matter which appears in the old declarations)'. Damaging someone's reputation in the eyes of, for instance, corrupt politicians or fellow criminals, is not libellous. What constitutes the belief-system of the 'ordinary and worthy subject' is subject to change, however; it is no longer defamatory - as it has been - to call someone a Papist (*Row v Clargis* (1683)) or a German (*Slazengers Ltd v Gibbs and Co* [1916]). See Hepple and Matthews (1980: 553-4).
7. In most libel actions, frequency and patterns of collocation are likely to provide clearest evidence to the forensic linguist; a corpus-based research methodology, along lines described by Coulthard (1995) is therefore most likely to be appropriate. Coulthard's brief account of his colleague John Sinclair's persuasive, corpus-based evidence regarding the meaning of the word 'visa' provides an exemplary illustration (Coulthard 1995:37). For a comprehensive presentation of contextual approaches to word meaning within lexical semantics, see Cruse (1986). In instances where specialised cultural reference is directly at stake, more contextualised and historical analysis may however be necessary; perhaps as much interesting work along such lines has been done in literary studies as in linguistics (c.f. Empson (1951) and Williams (1976), whose prodigious studies of lexical meaning drew on notes made manually over a long period from a large, mainly literary corpus). The concept of 'interpretive communities' is outlined in Fish (1980); compelling discussion of the social distribution of meanings, conceived as an 'epidemiology of representations', can be found in Sperber (1985).
8. For what remains a landmark study of the goals and scope of critical legal discourse analysis, see Goodrich (1987).

REFERENCES

- Braithwaite N (1995) *The International Libel Handbook*, London: Butterworth-Heinemann.
- Cameron D, Frazer E, Harvey P, Rampton, M B H and Richardson K (1992) *Researching Language: Issues of Power and Method*, London: Routledge.
- Coulthard M (1995) 'On the use of corpora in the analysis of forensic texts', *Forensic Linguistics: the International Journal of Speech, Language and the Law*, 1 (1), 27-43.
- Cruse D A (1986) *Lexical Semantics*, Cambridge: Cambridge University Press.
- Empson W (1951) *The Structure of Complex Words*, London: Chatto and Windus.
- Fish S (1980) *Is There a Text in this Class?*, Berkeley: University of California Press.
- Goodrich P (1987) *Legal Discourse: Studies in Linguistics, Rhetoric and Legal Analysis*, London: Macmillan.
- Hepple B A & Matthews M.H. (1980) *Tort: Cases and Materials*, 2nd ed, London: Butterworths.
- Morley D (1992) *Television, Audiences and Cultural Studies*, London: Routledge.
- Robertson G and Nichol A G L (1984) *Media Law: the Rights of Journalists, Broadcasters and publishers*, London: Sage Publications Ltd.
- Sperber D (1985) 'Anthropology and psychology: towards an epidemiology of representations' (The Malinowski Memorial Lecture 1984), *Man* 20, 73-89.
- Williams R (1976) *Keywords*, London: Fontana.

Cases cited

- Byrne v Deane* [1937] Cr App 2 All ER 204.
- Cassidy v Daily Mirror Newspapers Ltd* [1929] Cr App All ER Rep 117.
- London Artists Ltd v Littler* [1969] Cr App 2 All ER 193.
- Monson v Tussauds Ltd* [1891-4] Cr App All ER Rep 1051.
- Row v Clargis* (1683) T Raym 482.
- Slazengers Ltd v Gibbs and Co* [1916] 33 TLR 35.
- Youssouppoff v Metro-Goldwyn-Mayer Pictures Ltd* [1934] Cr App 50 TLR 581.