



BIRTH OF A WORD

Jon O. Newman

IBET A LOT OF LAWYERS aspire to have coined a word, but to have seen one's offspring accepted by a dictionary is something special. This is the story of my own minor triumph.

Some years ago the late William Safire, in his capacity as the language maven of *The New York Times*, asked his readers to come up with a word to describe the common situation where two people, approaching each other from opposite directions in a narrow passageway, shuffle their feet while they determine who will step aside to let the other pass. A few weeks later he reported he had received more than 1,000 responses and printed his favorite five. My entry made the final cut.

I suggested that the word should evoke the old vaudeville team of Alphonse and Gaston, who hesitatingly deferred to each other, and gave rise to baseball broadcasters' favorite remark when two outfielders circle under a fly ball and let it drop between them: "They went into their Alphonse and Gaston act."

Knowing Safire's penchant for humor, I wrote that I rejected combining the names into "Gaphonse" because it sounded terrible and also rejected "Alston" because he unhesitatingly managed the Los Angeles Dodgers for 23 years. Instead, I suggested "gastonette," evoking the vaudeville team with a word that sounded like a dance step.

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A few years later, in my capacity as a federal appellate judge, I wrote an opinion in a case where four seamen and several banks were involved in two similar lawsuits pending in the bankruptcy court in New York City and the High Court of Singapore. We had to decide which court should rule first. I could not resist. Ruling that the United States case should await the decision in Singapore, I wrote, “We have no desire to consign the seamen to a jurisdictional limbo while the courts of two countries perform a gastonette, each awaiting a first move by the other.”¹ To my surprise, my two fellow judges never inquired about that word “gastonette.” In context, its meaning was apparently clear.

However, the word did arouse the curiosity of Professor Bryan A. Garner, the editor of *Black’s Law Dictionary*. In answer to his inquiry as to the source of “gastonette,” I made full disclosure about my response to the *Safire* column and asked if my word would appear in the next edition of *Black’s*. “No,” he replied, “a new word must have at least a second usage in the legal literature.”

¹ *In re McLean Industries, Inc.*, 857 F.2d 88, 90 (2d Cir. 1988).

Birth of a Word

Some years later, a law professor, aware of the word “gastonette” in my *McLean Industries* opinion, used it in a law review article.² I informed Prof. Garner.

A year later, he sent me the following excerpt from the ninth edition of *Black’s Law Dictionary*:

gastonette. (1988) A dilatory “dance” in which each of two responsible parties waits until the other party acts--so that the delay seems interminable; esp., a standoff occurring when two courts simultaneously hear related claims arising from the same bases and delay acting while each court waits for the other to act first. The term was coined by Judge Jon O. Newman in *In re McLean Industries, Inc.*, 857 F.2d 88, 90 (2d Cir. 1988), on the model of “After you, my dear Alphonse.” “No, after you, Gaston.”

O frabjous day!³



² See Alexandra D. Lahav, “Recovering the Social Value of Jurisdictional Redundancy,” 82 *Tulane L. Rev.* 2369, 2387 (2009).

³ Lewis Carroll, “Jabberwocky,” in *Through the Looking-Glass, and What Alice Found There* (1871).