

the New York company's lawyers. Included in the 18 paragraphs of fine print was the following provision: "... the Lessee hereby designates Florence Weinberg [wife of one of the officers of the New York company] . . . as agent for the purpose of accepting service of any process within the State of New York."<sup>11</sup>

Justice Black characterized this provision as "boilerplate"<sup>12</sup> and criticized the majority for enforcing it:

In this very case the Court holds that by this company's carefully prepared contractual clause the Szukhents must, to avoid a judgment rendered without a fair and full hearing, travel hundreds of miles across the continent, probably crippling their defense and certainly depleting what savings they may have, to try to defend themselves in a court sitting in New York City.<sup>13</sup>

And there you have the current legal meaning and flavor of *boilerplate*: a standard contract provision, one that is at least formulaic, probably legalistic, and possibly unfair.

— Carol Bast  
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1. CEDRIC RIDGELY-NEVITT, *AMERICAN STEAMSHIPS ON THE ATLANTIC* 13-14 (1981); C. HAMILTON ELLIS, *THE LORE OF THE TRAIN* 18, 24 (1987).
2. RIDGELY-NEVITT, *supra* note 1, at 90.
3. *Id.* at 90, 281.

4. ALBERT A. SUTTON, *DESIGN AND MAKEUP OF THE NEWSPAPER* 246-47 (1948).
5. *Id.* at 247.
6. See *THE OXFORD COMPANION TO THE ENGLISH LANGUAGE* 138 (Thomas McArthur ed., 1992) (offering several definitions of *boilerplate* "by analogy with the production of steel plates for boilers").
7. RICHARD WEINER, *WEBSTER'S NEW WORLD DICTIONARY OF MEDIA AND COMMUNICATIONS* 55 (1990).
8. *MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY* 129 (10th ed. 1993).
9. *Philadelphia, W. & B. R.R. v. Dubois*, 79 U.S. (12 Wall.) 47, 62, 63 (1871); *Schlesinger v. Beard*, 120 U.S. 264, 267 (1887); *Lehigh Valley R.R. v. Kearney*, 158 U.S. 461, 465 (1895).
10. 375 U.S. 311 (1964).
11. *Id.* at 319.
12. *Id.* at 328.
13. *Id.* at 329.

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### Foul Is Fair: What Shakespeare Really Thought About Lawyers

We've all heard the line delivered with a smirk: "As Shakespeare said, 'The first thing we do, let's kill all the lawyers.'"<sup>1</sup> I've often wished that someone would *tell* all the lawyers what the quotation really means in context. Daniel J. Kornstein has ably taken on that charge, and a great deal more, in his thought-provoking book, *Kill*

*All the Lawyers? Shakespeare's Legal Appeal* (1994).

"Once heard," Kornstein observes, the famous lawyer line "clings to the mind like a burr."<sup>2</sup> That may be why it so often appears in court opinions,<sup>3</sup> treatises and law reviews, and the general media. Some legal writers treat the quotation as a negative reflection on lawyers,<sup>4</sup> while others just quote the language, implying that its significance is clear on the surface.<sup>5</sup> But it's not.<sup>6</sup> And Kornstein shows why in his second chapter. [References to this chapter are not pinpointed by page number. Ed.]

The nettlesome quotation was delivered in *The Second Part of King Henry VI*, one of Shakespeare's least-known plays, by Dick the Butcher, one of Shakespeare's least-known characters.

Shakespeare's trilogy about Henry VI covers the enthronement and fall of the 15th-century king. Alas, both in life and in the play, Henry was a softer man than politics calls for: "simple and sincere, a morally courageous and genuinely religious man."<sup>7</sup> Seeing his vulnerability, challengers schemed to overthrow him. The nobleman Richard Plantagenet was a serious threat. To weaken Henry, Plantagenet incited another challenger of lesser stature, Jack Cade, whom Shakespeare makes "a figure of mockery."<sup>8</sup> Cade's cohort was Dick the

Butcher. Kornstein describes him as "an unschooled, buffoonish peasant who is part of a class rebellion to overthrow the king and his lawful government. He lacks credibility and is totally irrational."

The famous line is spoken well into the play, in act 4, scene 2. It's a good place for buffoons to provide some comic relief. Enter Cade and Dick, along with their scraggly band of rebels. First, Cade goes through his pedigree, after each item of which Jack delivers a deflating aside. For example:

Cade: Therefore, am I of an honourable house.

Butcher: [*aside*] Ay, by my faith, the field is honourable, and there he was born, under a hedge; for his father had never a house but the cage.

Cade then launches into a call to revolt, promising that, when he is king, seven halfpenny loaves will be sold for a penny, beer pots will have ten handles instead of three, and it will be a felony to drink weak beer. He concludes that his subjects will "worship me their lord." Following Cade's extravagant speech, Dick gamely proposes: "The first thing we do, let's kill all the lawyers."

Kornstein's first meaning for this line is the surface one, a criticism of lawyers as elite protectors of the rich and powerful. Although

Kornstein does not stress its comic dimensions at this level, the line rings of comic hyperbole even when it is read as criticism. (Kornstein does note that the conduct of the rebels appears to be comic relief.) Shakespeare certainly knew the value of a laugh, and as Kornstein points out, the line no doubt got a reaction from the lawyers and law students who populated Shakespeare's audiences. In the context of a humorous scene, spoken by a "totally irrational" character, Dick's proposal is a comic one-liner.

Why was it funny? Spoken for the first time, it would prompt laughs of surprised recognition, both from lawyers at the mention of their in-group, and from others who were either close to that group or who had varying degrees of hostility toward lawyers. After all, lawyers have always had enough knowledge and power to inspire a mixture of hostility and respect. Even in Shakespeare's time, many harbored hostility toward lawyers as a group.<sup>9</sup> Laughter is a socially acceptable way to vent hostility.<sup>10</sup>

At its second level, Kornstein says, the line is dramatic irony, meaning the opposite of what it says on its face. The discussion that follows it corroborates this second meaning. Cade and the crowd propose to hang a man simply because he can read and write. These char-

acters see lawyers and the literate as a threat to their schemes. But the literate Shakespeare could not have seriously meant that the literate should be hanged. Thus, the line really suggests its opposite: that lawyers and literate citizens are in fact quite valuable, precisely *because* they hinder fools and tyrants. As Kornstein puts it, "To have a successful revolution, you must get rid of the lawyers."

Dick's line also has a third, often overlooked, meaning as a critique of perverse misapplication of the law. The whole of *The Second Part of King Henry VI* deals with upsetting the social order. In addition to the plots against Henry, the play recounts an intrigue by nobles against the Duke of Gloucester, who had been Henry's popular protector. The nobles frame Gloucester's wife as a witch, falsely accuse Gloucester of treachery, and have him killed. Energized after the good Gloucester's death, the mob assembles for Cade's rally. So when Dick proposes to kill the lawyers, Kornstein says he may be protesting against "perverted, false law, such as accused and killed the good duke of Gloucester."

Kornstein develops these theories in a scholarly yet readable manner in chapter 2 of his book. Despite a strained digression in which he proposes that the con-

temporary film *Hook* somehow illuminates the meaning of Dick's line, the rest of the chapter rings true as an explication of its multiple levels of meaning. At the chapter's end, Kornstein emphasizes the line's nuances:

To give lawyers a simple thumbs up or thumbs down flattens out the ambiguities of politics and history, turning the chiaroscuro of real life into a one-dimensional caricature in primary colors. Is it likely that Shakespeare, usually so subtle in his personality portraits, made legal characters into stick figures in a morality drama?

Kornstein then urges those who would thoroughly understand the quotation to look at Shakespeare's approach to the law in his other plays.<sup>11</sup> Thus Dick's line is both title and leitmotif of this book as it explores Shakespeare's view of lawyers and the law.

The book includes a thorough exposition of Shakespeare's own encounters with the law, as revealed in public records.<sup>12</sup> Describing Shakespeare as "a litigious fellow in a litigious age,"<sup>13</sup> Kornstein believes Shakespeare learned this trait from his father, John. William, he says, became obsessed with a 20-year land dispute that ended in the loss of the family lands, a loss that may have made legal reform one of Shakespeare's goals. But Shakespeare had other experiences

with the law that were more neutral or even positive. Moreover, in London, "Shakespeare was part of the court crowd, involved in the jurisprudence of his day."<sup>14</sup> These experiences prompted Shakespeare to choose various settings and laws for his plays, creating a "wide-angle lens" on the law.<sup>15</sup>

Realizing that "courtroom trials make for good drama and feed a large public appetite,"<sup>16</sup> Shakespeare included them in two-thirds of his plays.<sup>17</sup> But even when Shakespeare was not staging trial scenes, he raised numerous legal issues that Kornstein engagingly argues are relevant today.

Kornstein uses *The Winter's Tale* to revisit the Bork hearings — a leap, but nonetheless an intriguing one. In *The Winter's Tale*, King Leontes accuses his wife, Hermione, of adultery. The innocent Hermione is tried in a court but appeals to Apollo, who acquits her. Thus, mercy trumps strict construction. Kornstein saw the same theme played out at the Bork hearings, where "Bork represented reason and strict law, [while Senator] Specter stood for emotion and discretion."<sup>18</sup> Not surprisingly, Kornstein concludes that Shakespeare provides no simple resolution of these two viewpoints.<sup>19</sup>

At another Supreme Court confirmation hearing, the very words of Shakespeare's character

Iago were introduced, and perhaps for the same inflammatory purpose as in the play *Othello*. Othello, the play's tragic hero, is a military officer who passed over Iago for promotion. Seething with resentment, Iago vows to ruin Othello. Acting the role of a friend while hinting to Othello that he knows a secret, Iago extols the importance of reputation:

Good name in man and woman, dear  
my lord,  
Is the immediate jewel of their souls.  
Who steals my purse steals trash; 'tis  
something, nothing;  
'Twas mine, 'tis his, and has been  
slave to thousands.  
But he that filches from me my good  
name  
Robs me of that which not enriches  
him  
And makes me poor indeed.<sup>20</sup>

When Othello insists on knowing Iago's secret, Iago falsely hints that Othello's wife, Desdemona, has been unfaithful, inciting Othello's jealousy and beginning his downfall.

At Clarence Thomas's confirmation hearing, Senator Alan Simpson, a Thomas supporter, read Iago's speech about reputation — ostensibly, Kornstein says, as “comfort for a troubled heart.”<sup>21</sup> But Kornstein suggests that Simpson, like Iago, may have been using the speech for an ulterior motive: to inflame Thomas's anger so that

both Simpson and Thomas could “[go] after Anita Hill as Desdemona.”<sup>22</sup>

The play *Richard II* recalls another Richard for Kornstein. The play tells the story of a king with unchecked power, and “should be read as a play about no one — not even the king — being above the law.”<sup>23</sup> Kornstein reminds the reader that the same theme emerged from *United States v. Nixon*.<sup>24</sup>

Kornstein finds one more legal issue in Richard II's pardon by his successor. President Nixon was of course pardoned by President Ford, and later the defeated President Bush pardoned government officials for their involvement in the Iran-Contra affair. Kornstein explains that, characteristically, Shakespeare presented both sides of the complex issue of pardons. Richard expressed the side of mercy, entreating, “Say ‘pardon,’ King; let pity teach thee how.”<sup>25</sup> Another character presented the objections to pardons: “If thou do pardon, whosoever pray,/ More sins for this forgiveness prosper may.”<sup>26</sup> Kornstein clearly sides with the objectors when he remarks on the unrepentant attitude of those pardoned by Ford and Bush.<sup>27</sup>

Kornstein finds in Shakespeare's other plays such diverse legal subjects as contract law, the insanity defense, slander, and the “living document” theory of consti-

tutional interpretation.<sup>28</sup> He then explores Shakespeare's own legal knowledge and the theory that he may have been a lawyer or a law clerk, a theory that Kornstein finds interesting but unproven.<sup>29</sup>

Kornstein never quite takes a stand on the meaning of Dick the Butcher's injunction. Instead, at the book's close, he concludes that Shakespeare's attitude toward lawyers was ambivalent, pointing out that Shakespeare included both favorable and unfavorable portraits of lawyers in his plays.<sup>30</sup>

The book includes some unproductive fancies, as when Kornstein speculates what claims *might* have arisen out of the facts of *Othello*: Othello suing for slander? for invasion of privacy? for intentional infliction of emotional distress?<sup>31</sup> Since these points are not developed, they might well have been omitted from the book. But enduring a few excesses is the price the reader pays for a book brimming with imaginative reflections about Shakespeare and the law.

In places, Kornstein's writing is pitched more to the lay person than to the lawyer, as when he explains the meaning of such terms as *special damages* and *slander per se*.<sup>32</sup> But with its extensive footnoting and its lengthy list of works cited, the book is scholarly enough to also be of interest to law professors, especially those who teach

law-and-literature courses. For other lawyers, the book is simply a good read, one that provides a full response to those who glibly quote "kill all the lawyers" out of context.

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1. THE SECOND PART OF KING HENRY THE SIXTH act 4, sc. 2.
2. DANIEL J. KORNSTEIN, *KILL ALL THE LAWYERS? SHAKESPEARE'S LEGAL APPEAL* 22 (1994) (hereinafter cited by page number only).
3. See, e.g., *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting); *Williams v. First Fed. Sav. & Loan Ass'n*, 651 F.2d 910, 926 (4th Cir. 1981); *In re Marriage of Wagner*, 222 Cal. Rptr. 479, 484 (Ct. App. 1986); *Greene v. Greene*, 436 N.E.2d 496, 502 (N.Y. 1982); *Spence v. Flynt*, 816 P.2d 771, 787 (Wyo. 1991).
4. See, e.g., *Williams*, 651 F.2d at 926; A.W.B. Simpson, *Legal Iconoclasts and Legal Ideals*, 58 U. CIN. L. REV. 819, 826 (1990).
5. See, e.g., *Glenbrook Road Ass'n v. Board of Zoning Adjustment*, 605 A.2d 22, 32 n.5 (D.C. Ct. App. 1992); *Spence*, 816 P.2d at 787; William Domnanski, *Shakespeare in the Law*, 67 CONN. B.J. 317, 330 & n.119 (1993).
6. See *Walters*, 473 U.S. at 371 n.24; Saul Boyarsky, "Let's Kill All the Lawyers": What Did Shakespeare Mean?, 12 J. LEGAL MED. 571 (1991); Howard Nations, *Tribute to Lawyers*, TRIAL, July 1992, at 67, 70; Thomas

- W. Overton, Comment, *Lawyers, Light Bulbs, and Dead Snakes: The Lawyer Joke as Societal Text*, 42 UCLA L. REV. 1069, 1093-94 (1995).
7. HAROLD C. GODDARD, THE MEANING OF SHAKESPEARE 30 (1951).
  8. VICTOR L. CAHN, SHAKESPEARE THE PLAYWRIGHT 322 (1991).
  9. See Overton, *supra* note 6, at 1094-96 (quoting Elizabethan lawyer jokes).
  10. See *id.* at 1076-78.
  11. See generally EDWARD J. WHITE, COMMENTARIES ON THE LAW IN SHAKESPEARE (2d ed. 1913).
  12. Pp. 15-21.
  13. P. 15.
  14. P. 14.
  15. P. 20.
  16. P. 176.
  17. P. xii.
  18. P. 187.
  19. P. 181.
  20. OTHELLO, act 3, sc. 3.
  21. P. 156.
  22. P. 157.
  23. P. 198.
  24. 418 U.S. 683 (1974).
  25. KING RICHARD THE SECOND, act 5, sc. 3.
  26. *Id.*
  27. P. 202.
  28. Pp. 68-71, 106, 157-62, 129.
  29. Pp. 237-38.
  30. Pp. 240-41.
  31. P. 161.
  32. P. 167.

## Confessions of a Computer Note-Taker

If you're like me, the realization may have dawned as early as grade school. Then again, it may have come as late as the beginning of your legal career. Either way, the realization has probably been reinforced when secretaries have muttered that you should consider taking penmanship lessons from a doctor. At some point in your life, you may have been forced to face an ugly truth: you have terrible, truly awful, indecipherable handwriting. Furthermore, you have had, and always will have, terrible, truly awful, indecipherable handwriting. You are, in short, one of the cursively impaired, an apostate of Palmer Penmanship. You may also have discovered that, in a profession built largely on the written word, this can be something of a handicap.

But the difficulties in communicating with others can pale beside the headaches that bad handwriting can cause in communicating with yourself. Of all the tasks that bedevil members of the Order of the Scrawling Chicken Scratch, none is more consistently infuriating than trying to decipher our own handwritten notes. They are often scribbled in the heat of legal battle and tucked into odd corners of documents, or spread across multiple