



# Shakespeare Matters

"The Voice  
of the  
Shakespeare  
Fellowship"

## Special Issue: Teaching Shakespeare

### Teaching Shakespeare and the Law

By Thomas Regnier

In the spring of 2006 I taught, for the first time, a one-semester course on Shakespeare and the Law at the University of Miami School of Law. I highly recommend the experience. In the course, we studied seven Shakespeare plays – *Merchant of Venice*, *Measure for Measure*, *Hamlet*, *Merry Wives of Windsor*, *2 Henry VI*, *Richard III*, and *Othello*. In addition, the course included over forty articles about legal issues in Shakespeare by such writers as Edith Friedler, Daniel Kornstein, Anthony



### Shakespeare, Meet Robert Frost....

by Robert M. Barrett, Jr.

Something there is that doesn't love a wall," Robert Frost wrote in 1914, using iambic pentameter and inverted syntax that are nearly Shakespearean in his blunt but memorable line. The line speaks for me personally in a very particular way: When I finished reading *The Mysterious William Shakespeare*, by Charlton Ogburn, Jr., something there was within me that didn't love the wall that hid the true Shakespeare.

As a layman, newly introduced to a difficult subject, I responded to my reading in a way that was undoubtedly visceral—just in part, though, a small part. The larger part, I submit, was intellectual. I looked for reason, plausibility, evidence, coherence, and conviction in Ogburn's words, and I found those qualities much more often present in the book than absent. I finished reading not indoctrinated,

(*Shakespeare Meets Frost, cont. from p. 1*)

Flipping through the pages of *A Handbook to Literature* by Holman and Harmon, I stumbled on the entry for “Baconian Theory.” After a relatively restrained and straightforward definition of the term, which incidentally mentioned the Earl of Oxford, the writer concluded by saying, “The evidence for any of these theories is fragmentary and inconclusive at best and, at its worst, absurd; and our steadily growing scholarly knowledge of Shakespeare and his world increasingly discredits these theories without silencing their advocates.” Well! There was little danger I’d venture down that path less traveled by! And, for many years, I didn’t.

Then, on April 18, 1989, I saw and videotaped a PBS *Frontline* program, “The Shakespeare Mystery.” Actually I paid little attention to it at the time, merely cataloging and storing the tape for some possible future use in the classroom. With benefit of hindsight, I see this as a regrettable delay in my education.

A year later I found Ogburn on the shelf of Bloomsbury Books in Ashland, Oregon, while visiting my parents in nearby Medford. I began reading and became so enthralled, I ignored Mom and Dad for the rest of the visit. My first traversal of the 892-page tome was difficult and confusing. Ogburn assumed I knew much more about English history and Shakespeare than I actually did at that time, but I had an ineluctable sense that what I was reading was important. So, I immediately read the book again.

The effect was explosive. I launched a crusade against every major book store in the Pacific Northwest, especially targeting Powell’s Bookstore in Portland and Blue Dragon Bookshop in Ashland, and I carried off authorship booty that overflows my home and classroom libraries today. I contacted the Millers in Louisiana for their priceless offerings by mail, visited bookstores in Victoria, BC, and nearly lapsed into catatonia when I discovered a handsome copy of *This Star of England*, by Dorothy and Charlton Ogburn, on the bottom shelf of William James Bookseller in Port Townsend, Washington—for about \$8.00. I joined SOS and Shakespeare Authorship Roundtable, then flew to Los Angeles to hear Dr. Alan Nelson speak

about tin mines and tin ears.

It was all but impossible to talk in the classroom about what was fast becoming a consuming passion with me. If the “teachable moments” didn’t appear on their own volition, I conjured them up. (The prominent display of a large poster of the incredibly monstrous Droeshout portrait of Shakespeare is especially useful for this purpose.) Once their attention was captured, my ninth graders surprisingly asked question after question, often cutting each other off, scoffing, smiling, making strong eye contact with me, and from time to time penetrating straight to the heart of the authorship issue with questions and

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Yes, we’re all familiar with the classroom parlor game called Let’s Untrack the Teacher Until the Bell Rings. However, that isn’t what was happening. But what if it was? What English teacher wouldn’t want to pretend he was being had and play the game for 10, or 20, or even 40 minutes by fielding an unstoppable flow of questions from students, not about the Seattle Mariners or the decline of rock, but about Shakespeare?

I dusted off the PBS *Frontline* videotape and discovered that the absurd, fatuous, and self-revealing pontifications of A. L. Rowse struck a chord with the kids and opened up unanticipated opportunities for them to question and discuss important academic issues, as well as details of the authorship topic itself. As their interest grew, I produced handouts: the introductions to books by Whalen and Fowler, the de Vere entry in Michael Hart’s *The 100*, and articles from the SOS web site. I brought in videotapes: travelogues about Stratford-on-Avon and its favorite son, and the shameless A&E Biography of Shakespeare. I put up a laminated poster of Hedingham Castle. A student routed a plaque in wood shop for the classroom that reads “De Vere Lives.”

I built a classroom reference library of authorship texts that I had acquired on my buying spree—duplicate copies that were inferior to the ones I kept at home, of course—and that reflected a variety of positions, from orthodox, Stratfordian biographies to cases built for candidates other than Oxford. I encouraged my advanced kids, who were gathered together in a “challenge” section, to use this library to research project papers on authorship. We discussed elements of critical thinking and mutual respect. And as we read *Romeo and Juliet* in class, the search for authorship clues began to fascinate some students almost as much as their search for sexual innuendo.

It’s hard to keep this kind of activity quiet, as if there should be any need to. So, when some money was freed in the school district last year to fund a few after-school seminars for eager, generally bright students, I was urged by colleagues at my school and district officials to submit a proposal on Shakespeare. And I agreed to do so. However, my submission carried the proviso that the seminar be on Shakespeare authorship, not just Shakespeare.

Having picked up the gauntlet and now feeling bold and feisty—after all, the district had broadcast a need, and I was simply answering the call—I decided to push the glass ceiling. I requested thirty textbooks—fifteen Oxfordian (Richard Whalen’s *Shakespeare: Who Was He?*),

(*Cont. on p. 10*)

(*Shakespeare Meets Robert Frost, cont. from p. 9*)

and another fifteen ostensibly agnostic (John Michell's *Who Wrote Shakespeare?*). The district had expressed willingness to fund a field trip, so, still in a creative and expansive mood, I proposed an overnight field trip to Ashland, 475 miles away, to see a live

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performance of *King Lear*.

As Mr. Rogers might characterize this assault on conservative sensibilities, Can you say 'chutzpah,' boys and girls?" Incredibly, the proposal was approved *in toto*. Yes, my school district can be pretty daring and wonderful. So many kids were interested in the seminar, incidentally, I had to require them to submit written, fully justified requests, with grade resumes, in order to limit it

competitively to a manageable size of 15. One parent later put pressure on me through a school counselor to raise the class size to 16 in order to include her daughter. The seminar met for nearly three months and by any measure was a success.

But all was not well.

For several years, ominous clouds had been massing on the horizon. Students were returning to tell me that the high school took a dim view of their interest in authorship. When they tried to discuss it in class, they were quickly and firmly squelched. One student was informed that "that's already settled," and another was told it was "stupid." A colleague and friend at the high school said he tried to bring the subject up with a group of English teachers at a meeting and was rebuffed by thinly disguised hostility. One of the teachers told him I should be fired. The flyer and cover letter, over my name, that were mailed to every secondary school in the Pacific Northwest to invite teachers to this conference never reached my friend, presumably because they were neither distributed nor posted at the high school.

I took a wry amusement in all this. At my school, teachers were genuinely interested in what I was doing--except for one, I should note, a gym teacher who had recently been to Stratford-on-Avon and saw so many souvenir shops she thought it was ridiculous for anyone to think Shakespeare didn't write the plays. Other teachers, though, were borrowing my authorship books and asking for handouts. One teacher moved to San Diego with an armful of materials from me, and another took his materials to a school assignment in Zimbabwe. At the local high school, it might take more time, but the teachers there would come calling eventually, too, and I would lend them books and give them handouts, and then we could all teach authorship together. At least, that's what Queen Mab, the fairies' midwife, was telling me.

The storm broke during the first week of the 1994 school year. The details still are not clear, but supposedly I had said something in my classroom, and one of my former students repeated it to his mother, who repeated it to a family friend, a high school teacher, who repeated it to the English teacher of my former student. She e-mailed me, furious, and she elaborated her tirade with the charge that other teachers at the high school spoke of "horror stories" involving my former students and their "looking for a fight" attitude.

My wry amusement faded. In its place was deep embarrassment; a vague fear that my reputation was ruined in the school district, which would not cause me to lose my job, necessarily, but could affect my future professional opportunities, such as after-school seminars; and a knot in my stomach that lasted a week, despite the angry teacher's finally e-mailing me that she had made a mistake and apologizing. It was the thought, though, of "horror stories" and "looking for a fight" attitudes that plagued my thoughts. Had I really created a monster? Where everything seemed so right, what had I done wrong?

Apparently, a lot, both by commission and omission. I tried to rectify the mess by writing a four-page letter to the English department head at the high school, through my principal, explaining and rationalizing what I had been doing. It took two weeks for the letter to make its way to my friend in the English

department, and today, three weeks later, I still have not received a reply of any sort—by phone, e-mail, or letter. My friend still talks to me, though.

And so I come to the close of my cautionary tale. “A sadder and a wiser man, He rose the morrow morn,” Samuel Taylor Coleridge wrote. But many of you are ahead of me. In the quiet of this room, you see what I couldn’t, or wouldn’t, caught up in the fun of discovery. I did learn a few things, though, that I will quickly

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mention now:

1. Authorship is a wonderful adjunct to Shakespearean curricula in the secondary school classroom. It quickly grabs even the most reluctant students and holds them through the reading and discussion of Shakespearean works. It effectively addresses both cognitive and affective domains, and I am committed to using it.

2. And it gets better: Authorship slides open a window into such contiguous fields as Elizabethan history, academic integrity, critical thinking, other major writers, publishing, textual analysis, and so on.

3. The teacher must strive constantly and mightily to remain fair and objective. To think well and gain an appreciation of a glorious literature are the learning objectives, not indoctrination of kids into the teacher’s private mental world.

4. I believe the furious teacher I alluded to earlier was called a “Stratfordian” to her face by my former student, and not being attuned to the affectionate connotation Oxfordians attach to that epithet, she took offense. And with good reason: It ignores the complexity of intellectual endeavor, wherein there will always be great diversity of opinion, factions, and factions within factions. We need to resist labeling and creating artificial dichotomies

when talking to kids. Young people can work very nicely in the gray area if we don’t underestimate them.

5. Authorship is a difficult topic, though, both as a research problem and, for the layman, as a conceptual problem. My kids easily follow authorship arguments while I present and explain them, but on the way home after school, some of the arguments, even basic ones, sometimes become confounded and fleeting. I focus on a few, clear-cut points, such as the Gad’s Hill parallel in *Henry IV-Part 1*, one of my favorites, the one that first hooked me!

6. I constantly remind my kids that the vast majority of scholars support the historic image of Shakespeare. At this age, I want clear thinkers, not warriors or missionaries. I believe mutual respect is seriously lacking in the authorship debate, and it not only diminishes the participants, it hampers the search for truth.

7. Communicate. I obviously did a poor job of that, and it’s the root of the strained relations I now have with the high school English teachers. I should have been talking to them from the very beginning, certainly at the first signs of trouble. Actually, I always intended to, but I always had more pressing matters to handle. At least, that’s what I thought.

I began my involvement in authorship studies because of a wall I thought was unfairly erected between me and Shakespeare. For the next few weeks, perhaps months or even longer, I will be directing my thoughts and energy towards a second wall, a wall that stands quite in contradistinction from that of Robert Frost’s poem. This wall is strong enough as it is between me at the junior high school and my neighbors at the high school, and this wall certainly does not need to be mended, but torn down.

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*Robert M. Barrett Jr. recently retired from many years teaching English and Honors English at Central Kitsap Junior High School.*

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### ***(Teaching Shakespeare and the Law, cont. from p. 1)***

often read scenes from the plays aloud. The students were encouraged to voice their opinions on the plays and the legal issues, and we had many lively debates. Some of the most animated occurred when we discussed the validity (or lack thereof) of Shylock’s bond, whether Ophelia was “insane” by modern legal definitions, and the “real meaning” of “let’s kill all the lawyers” in *2 Henry VI*. As part of the course, each student had to write a 30-page research paper on a topic related to Shakespeare and the law.

### **Legal Issues in the Plays**

Because this is a law school course, my first priority is to teach law and legal reasoning. These are some of the legal topics we studied in each play:

*Merchant of Venice*: law courts and equity courts, justice and mercy, law of debt and contract, Roman Twelve Tables, the legal propriety of Portia’s actions in the trial scene, common law versus civil law.

*(Continued on page 12)*

*(Shakespeare and the Law, cont. from p. 11)*

*Measure for Measure*: law and equity, justice and mercy, crime and punishment, marriage “pre-contracts,” “dead letter” laws, legislating morality, monarch versus parliament.

*Hamlet*: law of homicide, insanity, benefit of clergy, revenge versus rule of law, property and inheritance law, Magna Carta, English statutes (De Donis, Uses, Wills), *Hales v. Pettit*, fine and recovery, dower, jointure, quarantine, ecclesiastical law on suicide.

*Merry Wives of Windsor*: property law, law of fraudulent conveyance, *Twyne’s Case*.

*Henry the Sixth, Part 2*: freedom versus anarchy, role of lawyers in society, law of witchcraft, peasant uprisings.

*Richard III*: law of succession, law of treason, libel-in-fiction.

*Othello*: law of defamation, *Davies v. Gardiner*, evidence and standards of proof.

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**I explained how the authorship debate seems to be an unspoken subtext to much recent orthodox scholarship, such as Stephen Greenblatt’s *Will in the World*....I also found the authorship controversy fruitful territory for teaching reasoning and argument. I gave the class a list of examples of logical fallacies and evasions as described in Robert J. Fogelin’s book on informal logic. Then I read the students some passages from a Stratfordian article. The students were quickly able to spot the fallacies and evasions.**

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Shakespeare’s plays are a wonderful entry point into English common law topics, and some also give insight into the civil law that dominated most of continental Europe.<sup>2</sup> Conversely, many of the plays are better understood if one approaches them by way of their legal issues. Shakespeare’s plays are helpful in teaching not just the technical side of the law, but also jurisprudential matters such as the Aristotelian concept of “equity,” as seen especially in *Merchant of Venice* and *Measure for Measure*.

**Authorship Question**

I mentioned the authorship controversy briefly in the first class and told the students that I am skeptical of the Stratford theory, that I believe that the authorship of the works is an open question, and that I believe that the Oxfordians have a strong case. I did not bring up the subject again until we had finished studying all seven plays and the legal issues in them. As a kind of “summing up” class, we discussed (1) the accuracy of Shakespeare’s legal knowledge, (2) whether Shakespeare had legal training, and (3) the authorship question. I assigned the students some readings, pro<sup>3</sup> and con,<sup>4</sup> on Shakespeare’s legal accuracy. The students admitted that, based on what they had studied, it was difficult, if not impossible, to find any serious legal errors in Shakespeare. I encouraged them to look for legal issues as they continued to study Shakespeare and the law.

I also assigned my own article on the authorship question,<sup>5</sup> which I think is a good short introduction to the authorship debate, especially for law students and lawyers. The students were open-minded about the issue, and several made Oxfordian-sounding noises while discussing it. At least a few seemed to be gravitating toward the Oxfordian position. I told the students about some of my experiences since joining the authorship debate, including attending the University of Tennessee symposium (“Who Wrote Shakespeare? — An Evidentiary Puzzle”) in 2004 and speaking at Shakespeare Fellowship/Shakespeare Oxford Society gatherings. I explained how the authorship debate seems to be an unspoken subtext to much recent orthodox scholarship, such as Stephen Greenblatt’s *Will in the World*.<sup>6</sup> Many students said that discussing the authorship question was an excellent way to wrap up the course.

I also found the authorship controversy fruitful territory for teaching reasoning and argument. I gave the class a list of examples of logical fallacies and evasions as described in Robert J. Fogelin’s book on informal logic.<sup>7</sup> Then I read the students some passages from a Stratfordian article. The students were quickly able to spot the fallacies and evasions, such as (to name a few) “*ad hominem* attack,” “appeal to authority,” “setting up a straw man,” “assurance,” and “slanting.”

**Student Papers**

Students chose a variety of topics for their research papers — for example, the law of witchcraft in the plays, law of marriage, and natural law versus positive law. The most interesting and original paper I received was about the law of debt in one of Shakespeare’s most obscure plays, *Timon of Athens*. The play is seldom performed, and there is comparatively little criticism on it. As far as the student who wrote the paper could find (and as far as I am aware), there is only one legal analysis of the play, and this consists of slightly more than three pages in one of George W. Keeton’s books.<sup>8</sup> Keeton, a brilliant legal scholar, found the play unsatisfactory and considered that it had many legal loose ends that the author never tied up. After researching the legal issues further, my student convincingly argued that the play *is* legally coherent and accurate. I won’t go into details here because the

student plans to publish the paper. This conclusion has implications for the authorship question because the more accurate and sophisticated Shakespeare's law is shown to be, the less likely it becomes that the author was a person with no legal training. This is especially significant in a play such as *Timon* where the plot — big spender squanders most of his wealth buying lavish gifts for his friends — has so many parallels to Edward de Vere's life.<sup>9</sup>

A few students chose to do Shakespeare-based moot court problems for their final projects. A moot court is a teaching device used in law schools in which students write appellate briefs and make oral arguments based on a hypothetical appeals court case. Inspired by the case of *People v. Hamlet*, in which the Danish prince appealed his convictions for the murders of, among others, Polonius, Claudius, Rosencrantz and Guildenstern,<sup>10</sup> the students created legal situations based on Shakespeare plays and wrote appellate briefs advocating their clients' causes. One student represented Lady Macbeth in the appeal of her murder conviction. He argued that (1) Lady Macbeth should have been tried separately from her husband because the jury was unfairly prejudiced towards her after hearing evidence of Macbeth's crimes; (2) self-incriminating statements she made while sleepwalking should not have been admitted into evidence; and (3) she was unjustly denied the right to argue an insanity defense.

Two other students teamed up to create a *Measure for Measure* moot court in which Isabella, Juliet, and Claudio's child sued Angelo for, among other things, the wrongful death of Claudio. Of course, creating these moot courts requires a bit of tampering with the plot (e.g., having the Macbeths live to be tried for murder, having Claudio really be executed), but they are loads of fun and good starting points for legal research and analysis. In the last two class sessions of the semester, the students who did moot court projects argued their cases before their fellow students, with me as the judge, just as they would have done before an appeals court. The students who wrote more traditional papers each gave talks to the class on the results of their research.

## Conclusion

The course received excellent evaluations from the students, some of whom said it was their best course in law school. A faculty member who sat in on the course also rated it very highly, reporting that the professor "expected the class to engage at a high level." I will be teaching the course again in the spring of 2007. I will probably change the lineup of plays slightly each year in order to explore different plays; but *Merchant of Venice*, *Measure for Measure*, and *Hamlet* will always be part of the course. In 2007, we will study *Henry V* because it will give us a chance to study Theodor Meron's works on the law of war and the rules of chivalry.<sup>11</sup>

Shakespeare is an exciting vehicle for teaching law, and understanding the law enhances one's understanding of the plays. I think that, with some adjustment, such a course could be taught at the undergraduate level. If anyone is interested in teaching a similar course, feel free to contact me at Thomas.Regnier@gmail.com or TRegnier@aol.com.

## NOTES

<sup>1</sup> Baker, J.H. *An Introduction to English Legal History*. London: Butterworths, 4th ed., 2002.

<sup>2</sup> See Friedler, Edith Z. "Essay: Shakespeare's Contribution to the Teaching of Comparative Law – Some Reflections on *The Merchant of Venice*," *Louisiana Law Review* 60 (2000): 1087-1102.

<sup>3</sup> Alexander, Mark. "Shakespeare's 'Bad Law,'" *Shakespeare Oxford Newsletter*, 35:4 (2000): 1, 9-13.

<sup>4</sup> "Some of Shakespeare's Errors in Legal Terminology" in Devecmon, William C. *In Re Shakespeare's "Legal Acquirements": Notes by an Unbeliever Therein*. New York: Shakespeare Society, 1899, 32-51.

<sup>5</sup> Regnier, Thomas. "Could Shakespeare Think Like a Lawyer? How Inheritance Law Issues in *Hamlet* May Shed Light on the Authorship Question," *University of Miami Law Review*, 57 (2003): 377-428. This article is available on the Shakespeare Fellowship website at [www.shakespearefellowship.org/virtualclassroom/Law/regnier.htm](http://www.shakespearefellowship.org/virtualclassroom/Law/regnier.htm).

<sup>6</sup> Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: Norton, 2004.

<sup>7</sup> Fogelin, Robert J. *Understanding Argument: An Introduction to Informal Logic*. New York: Harcourt Brace Jovanovich, 1978.

<sup>8</sup> Keeton, George W. *Shakespeare and His Legal Problems*. London: A. & C. Black, 1930, 81-84.

<sup>9</sup> See Anderson, Mark. *"Shakespeare" by Another Name*. New York: Gotham Books, 2005, 184-85, 323-24.

<sup>10</sup> See Assoc. of Bar of New York City, *The Elsinore Appeal*. New York: St. Martin's Press, 1996. Daniel J. Kornstein, author of *Kill All the Lawyers? Shakespeare's Legal Appeal* (Princeton, N.J.: Princeton Univ. Press, 1994), represented Prince Hamlet; Stephen Gillers, an authority on legal ethics, represented the State of Denmark. The attorneys argued their cases to a panel consisting of two federal judges and one Shakespeare professor.

<sup>11</sup> Meron, Theodor. *Henry's Wars and Shakespeare's Laws*. Oxford: Clarendon Press, 1994; Meron, Theodor. *Bloody Constraint: War and Chivalry in Shakespeare*. Oxford: Oxford Univ. Press, 1998.