Shakespeare and the Supreme Court

by Professor Emeritus Robert H. Skilton

A dissenting opinion by Justice O'Connor in a 1989 United States Supreme Court decision contained a quotation from Shakespeare, and the majority opinion in the same case by Justice Blackmun referred to the quotation and expressed doubts as to its usefulness.[1] That set me to wondering: how often has Shakespeare been quoted in Supreme Court opinions?[2] William Ebbott and Nancy Paul of the U.W. Law Library came to my aid. Having ordered Lexis and Westlaw to make lightning scans of all United States Supreme Court opinions from the beginning on, they produced a list of instances where passages from Shakespeare had been quoted.[3] Until the recent arrival of these services with their amazing technology, the task of preparing a list like this would have been overwhelming.

The list is surprisingly short—there are only 15 items.[4] During the entire nineteenth century, Shakespeare's work is quoted in only one case—Magone v. Heller (1893). (In fact, it is not until 1946 that the second Shakespearean quote is encountered.) In Magone, the question was whether the Tariff Act's exemption from customs duty of substances "expressly used for manure" applied to an article which when imported was invoiced as "manure salts." (I trust that readers with refined tastes will bear with me.) The opinion, written by Justice Gray (who was not one to play to the gallery) considered the meaning to be attached to the word "expressly" as used in the Tariff Act:

> In Webster's Dictionary, for instance, the definition of "expressly" is "in an express manner; in direct terms; with distinct purpose; particularly; as, a book written expressly for the young." And the further illustration is added from Shakespeare: "I am sent expressly to your lordship."

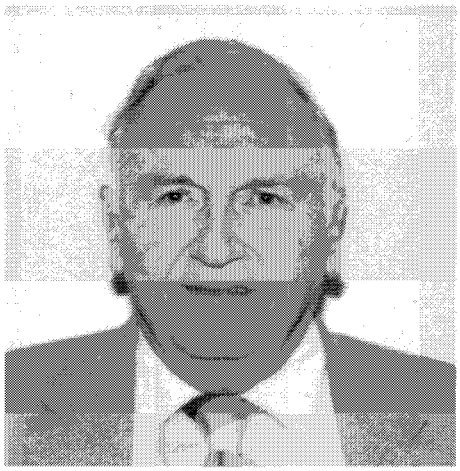
And so, your lordships and ladyships, this is the first instance of a Shakespearean quote—uncovered by Justice Gray digging into Webster's Dictionary. Extrapolating, it seems that the nineteenth century Justices were not in the habit of adorning their opinions with literary quotations.

Of the 15 items on the list, 13 are from 1976 to 1990. One gathers that a literary quotation, as from Shakespeare, has become, if not stylish, at least not cause for surprise.

While you may share my amazement at what modern technology can accomplish (of course, traditional methods of research are still of super importance—these highly specialized electronic services have fantastic recall ability but no brains) you may question what useful, non-frivolous purpose can be served by bothering with this list of Shakespeare quotes. In reply: it may be instructive to consider the possible reasons that may prompt a Justice to include a quotation from Shakespeare in a judicial opinion—since the corpus of such opinion should not be wagged by poetry. The inquiry leads to a larger topic—the uses of literary references in judicial opinions.

My concentration is upon instances of *quotations* from Shakespeare contained in Supreme Court opinions. If references to Shakespeare without quotations were included, the list would be somewhat, but not considerably, extended. For example, in Goesart v. Cleary[5], the opinion refers to "the alewife, sprightly and ribald, in Shakespeare," (with no quotation) in connection with the question whether women (except relatives of operators) may be constitutionally prohibited from working at bars dispensing liquor. The reference fits unobtrusively into the argument. With like effect is reference, inter alia, to Shakespeare's Venus and Adonis in discussing obscenity and the First Amendment[6], or to state that even Shakespeare "may have been motivated by the prospect of pecuniary gain" in discussing criteria for commercial free speech.[7] But why *quote* from Shakespeare in a judicial opinion? That, as Shakespeare would have said, is the question.

Finally, by way of caveat: Perhaps in almost numberless instances, some phrase, originally found in Shakespeare, may have been used in judicial opinions without attribution of authorship, often because the writer is unaware that it was Shakespeare who coined it—so much has the phrase become part of the English



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language. I refer you to Act I of Hamlet—one is almost inclined to accuse Shakespeare of lack of originality in writing, considering all those time-worn familiar phrases.[8] Such matters are beyond us here. A humbler topic is chosen: Shakespearean quotes so denominated in Supreme Court opinions.

Traditionally (legal reasoning being given to large amounts of making analogies and drawing distinctions, with healthy lip service at least to the principle of stare decisis) judicial opinions may be expected to include much citation and discussion of cases, statutes and law treatises. In this country judicial opinions, if published, are meant to be read not just by the litigants, and to stand the test of educated analysis assaying their correctness. Of fairly recent date, an occasional supplement has been added—citation of non-legal materials, such as sociological studies, for the purpose of showing that the decision in a case has sound factual underpinning and is consonant with a conceived "public policy." A court's uninvited use of such materials without giving a litigant the opportunity to challenge their authority can be controversial. Nevertheless, such citations share with the traditional citations a utilitarian purpose. But what can be the purpose of a literary quotation, as from Shakespeare, in a judicial opinion?

Utilitarian Purposes

Browning-Ferris v. Kelco Disposal was concerned with the question whether the "excessive fines" clause of the Eighth Amendment to the Constitution of the United States ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted") applied to punitive damages assessed by a jury in a civil suit in favor of a private party. It was held that it did not; the clause applied to criminal cases, and not to civil suits, except perhaps suits in which the government is the plaintiff and receives the benefit of the award. (Whether the due process clauses of the Fifth and Fourteenth Amendments have bearing on punitive damages procedures and awards is a separate question.)[9]

In quest of the meaning to be attached to the word "fines" as used in the late eighteenth century, Browning-Ferris evoked opinions from the Justices that were remarkable explorations into English legal history. Was the word when used in the Eighth Amendment intended to apply only to criminal cases?

The majority of the Court concluded that the word "fines" was so limited. Dissenting in a many-step opinion, Justice O'Connor was of a contrary view. The Eighth Amendment was derived verbatim from the English Bill of Rights of 1689. That English law, she contended, applied to punitive damages in civil suits as well as fines in criminal cases. Historically, the argument ran, punitive damages in civil suits were a form of "amercement," and the word "fines" as a generic term included "amercements." The words were used interchangeably. In witness thereof, the opinion quoted from the speech of Prince Escalus in Shakespeare's Romeo and Juliet (1597):

> I have an interest in your hate's proceeding,
> My blood for your rude brawls doth lie a-bleeding;
> But I'll amerce you with so strong a fine,
> That you shall all repent the loss of mine.

As used in the opinion, this quotation from Shakespeare is not intended merely for adornment. (Even devoted admirers of Shakespeare should concede that the quoted lines are not Shakespeare at his best.) Rather, the quotation is intended to contribute to ascertainment of the meaning of a word found in the Constitution. That is a utilitarian purpose.

This kind of questing into the meaning of words in a bygone age is not without its perils. Justice Marshall made that point in his dissenting opinion in United States v. Watson. Watson involved the

question of the constitutionality of an arrest without a warrant for a felony not committed in the presence of the arresting officer. Upholding the arrest, the majority decided that the Fourth Amendment (". . . no warrants shall issue, but upon probable cause . . . ") accepts "the ancient common law rule that a peace officer was permitted to arrest without a warrant . . . for a felony not committed in his presence if there was reasonable ground for making the arrest."

Justice Marshall dissented:

> To apply this rule blindly today, however, makes as much sense as attempting to interpret Hamlet's admonition to Ophelia, "Get thee to a nunnery, go,"[8] without understanding the meaning of Hamlet's words in the context of the age.[9] For the fact is that a felony at common law and a felony today bear only slight resemblance, with the result that the relevance of the common-law rule of arrest to the modern interpretation of our Constitution is minimal.

Footnote 8 above cites "W. Shakespeare, Hamlet, Act III, Sc. I, line 142." Footnote 9 above states "Nunnery was Elizabethan slang for house of prostitution. 7 Oxford English Dictionary, 264 (1933)." Checking my own copy of O E D, I see that it quotes this passage from Hamlet as illustrating the primary meaning of the word nunnery—a kind of religious institution—rather than citing it as an example of Elizabethan slang. But perhaps this proves Justice Marshall's basic point—who can say?

A second, somewhat different, use of a quotation from Shakespeare is to show that time-honored standards and principles of moral conduct support a certain interpretation or application of law, as, for example, a Constitutional provision. This use is in keeping with a view that law and great literature have a symbiotic relationship; that great works of literature can contribute to the quest for justice.[10] Justice Scalia's opinion in Coy v. Iowa may serve as illustration. The question was whether the confrontation clause of the Sixth Amendment ("In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him") could be interpreted, in a prosecution for alleged child abuse, to permit the complaining witnesses to testify at trial behind a screen that prevented face-to-face eye contact with the accused. Justice Scalia, speaking for the majority, held that the Iowa procedure was unconstitutional.[11] The opinion quoted from Shakespeare, with Richard II saying:

> Then call them to our presence—face to face, and frowning brow to brow, ourselves will hear the accuser and the accused freely speak . . .

The Shakespearean quote shared honors with a quotation from remarks by President Eisenhower, also expressing the thought that adversaries in a dispute should face each other and settle their dispute man-to-man or woman-to-woman. To explain, in the words of Justice Scalia, "We have cited the latter two merely to illustrate the meaning of 'confrontation' and both the antiquity and currency of the human feeling that a criminal trial is not just unless one can confront his accusers."

As the above demonstrates, sometimes quotations from literature, for example from Shakespeare, are intended to contribute directly to the argument in a judicial opinion. On the other hand, sometimes quotations from Shakespeare seem to have no more serious purpose than to adorn an opinion with memorable words that can hardly fail to impress the reader—the writer is quoting Shakespeare! I leave each reader to judge for himself or herself (should I, to be up to the minute, instead say "for themselves?") whether a particular quote in a judicial opinion helps in some way or other.

"As Shakespeare Said—"

When lines from one of Shakespeare's plays are quoted, should it matter what character of a play utters the words, and what is the scene in which the words are spoken? Quoting some fine sounding words from Shakespeare, or from some other great author, to embellish a point, without giving recognition to the context, is perhaps not improper. A diamond is still a diamond, no matter what the set-

ting. But to introduce a quotation with words like "as Shakespeare said" may be misleading. Richard III (in the play of that name) and Iago (in Othello) speak some eloquently malevolent lines that surely Shakespeare did not subscribe to in his personal credo. Even so, out-of-context quotes are frequent enough. If one is looking for great out-of-context quotes, there's Bartlett's Familiar Quotations.

Three examples of quotes out of context may suffice. In Levy v. State of Louisiana, it was held (with three Justices dissenting) that a statute giving legitimate, but not illegitimate, children of a deceased parent the right to sue for wrongful death unconstitutionally discriminated against an illegitimate child dependent on the deceased parent for support. In writing the majority opinion, Justice Douglas footnotes these lines of Edmund in King Lear:

> We can say with Shakespeare, "Why bastard, wherefore base? When my dimensions are as well compact, my mind as generous, and my shape as true, as honest madam's issue? Why brand they us as base? with baseness? Bastardy? base, base?"

Justice Harlan, writing the dissenting opinion, was not overwhelmed. The state had discretion in drawing lines in a case like this, he asserted.

> He may even, like Shakespeare's Edmund, have spent his life contriving treachery against his family. Supposing that the Bard had any views on the law of legitimacy, they might more easily be discerned from Edmund's character than from the words he utters in defense of the only thing he cares for, himself.

Here's another example of quoting words out of context: in Tison v. Arizona, a divided Court upheld Arizona's felony-murder statute (whose provisions were more drastic than the statutes of most states) and held that "a major participation in the felony committed, combined with reckless indifference to human life" will entitle a state to impose the death penalty. Justice Brennan wrote a dissenting opinion. He noted that the actual murderers of a family who had been kidnapped in events ensuing after a prison breakout had died before capture; that the two defendants sentenced to death were the sons of one of the actual murderers (They helped engineer the jailbreak, actively participated in the kidnapping but had not fired the death-dealing guns.) In Justice Brennan's view, notions of retributive justice, "deeply rooted in our consciousness," may have motivated the state to seek the death penalty against the sons, "although punishment that conforms more closely to such retributive instincts than to the Eighth Amendment is tragically anachronistic in a society governed by our Constitution." A footnote tells us

> The prophets warned Israel that theirs was "a jealous God, visiting the iniquity of the fathers upon their children unto the third and fourth generation of them that hate [Him]" Exodus 20:5 (King James Version).

Justice Brennan accumulates citations by quoting from Horace, and citing Ibsen's Ghosts. However, he may unintentionally have detracted from the impact of the footnote by further referencing "W. Shakespeare, The Merchant of Venice, Act III, scene 5, line 1 ('Yes, truly, for look you, the sins of the father are to be laid upon the children.' " These are the words of a jokester (Launcelot) teasing Jessica, spoken in a scene intended to be amusing.

Finally, there is Milkovich v. Lorain Journal Co., a defamation suit brought by a high school coach against a newspaper publisher, in which Chief Justice Rehnquist observed:

> Since the latter half of the 16th century, the common law has afforded a cause of action for damage to a person's reputation by the publication of false and defamatory statements. See, L. Eldredge, Law of Defamation 5 (1978).
>
> In Shakespeare's Othello, Iago says,
>
> "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. Act III, scene 3."

This, from Iago, who from the outset had malevolently plotted revenge because Othello had preferred Cassio over him in military honors. Now, in one of Shakespeare's greatest scenes, Iago is planting the poison of suspicion in Othello's mind that the fair Desdemona, Othello's wife, is having an affair with Cassio. But no! He should say no more to Othello. Let no shadow be cast upon the good name of Desdemona, for, you see,

> Good name in man and woman, dear my lord
> Is the immediate jewel of their souls.
> . . .

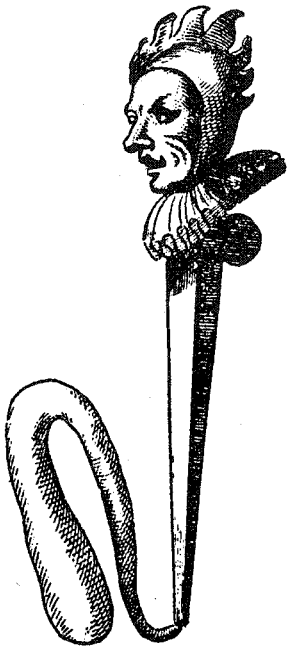
The deviltry of Iago! And yet, coming from such scheming, to serve his own purposes, is the truth, and a memorable quotation. A diamond is still a diamond, no matter what the setting.

Some quotations are, to paraphrase, their own excuse for being. In Johnson v. Transportation Agency, Justice Scalia, in dissenting from the Court's decision that an affirmative action statute applicable to road dispatchers was constitutional and constitutionally applied, observed:

> The majority emphasizes, as though it is meaningful, that 'No persons are automatically excluded from consideration; all are able to have their qualifications weighed against those of other applicants.' One is reminded of the exchange from Shakespeare's King Henry the Fourth, Part I: 'Glendower: I can call Spirits from the vasty deep. 'Hotspur: Why, so can I, or so can any man. But will they come when you do call for them?' Act III, Scene I, lines 53-55.

When Justice Stevens quotes from Shakespeare, his references are apt to be in context and in depth,—in a way, scene citations—not quotations disemboweled from the setting. For example, in Colorado v. Connelly, Justice Stevens in his separate opinion drew a distinction between precustodial and postcustodial involuntary statements of the accused, and explained:

> . . . in my opinion, the use of these involuntary precustodial statements does not violate the Fifth Amendment because they are not the product of



state compulsion. Although they might well be so unreliable that they would not support a conviction, at this state of the proceeding I could not say that they have no probative value whatever. The fact that the statements were involuntary—just as the product of Lady Macbeth's nightmare was involuntary—does not mean that their use for whatever evidentiary value they may have is fundamentally unfair or a denial of due process.

A footnote is appended: "What, will these hands ne'er be clean? Here's the smell of blood still; all the perfumes of Arabia will not sweeten this little hand." W. Shakespeare, Macbeth, Act V, Scene I, lines 41, 47. Lady Macbeth's "eyes are open," "but their sense is shut." id. at line 23.

And in Walters v. National Association of Radiation Survivors, in dissenting from the decision upholding the constitutionality of the limit of $10 for attorney's fee in veterans benefit cases, Justice Stevens argued that this provision in effect deprived a veteran of his right to counsel, and de-emphasized the function of an attorney. Footnote 24 remarked:

> That function was, however, well understood by Jack Cade and his followers, characters who are often forgotten and whose most famous line is often misunderstood. Dick's statement ("The first thing we do, let's kill all the lawyers") was spoken by a rebel, and not a friend of liberty. See W. Shakespeare, King Henry VI, Pt. II, Act IV, Scene 2, line 72. As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.

Shakespeare's Knowledge of the Law

"The law according to William Shakespeare" has received the endorsement of the Supreme Court of the United States.

"William Shakespeare, an astute observer of English law and politics"—so wrote Justice O'Connor, in her dissenting opinion in Browning-Ferris v. Kelco Disposal. The majority opinion by Justice Blackmun does not disagree with this appraisal; it concedes the point, but is not convinced that Shakespeare's apparently interchangeable use of the words "fine" and "amercement" should be made much of. A footnote in the majority opinion observes:

> Though Shakespeare, of course,
> Knew the law of his time,
> He was foremost a poet
> In search of a rhyme.

(At the risk of being charged with pettiness, I must say I don't take to the last line. Shakespeare was a great dramatist and a great poet, but he was only occasionally "in search of a rhyme." For the most part, the plays are either in prose or blank verse. Perhaps, to express the probable intent, the last two lines of the quatrain should read:

> "He was, in this instance
> in search of a rhyme."

Thus focusing on the particular passage quoted by Justice O'Connor, where Shakespeare *was* in a rhyming mood—("fine"—"mine"). Another way to put it would be:

> Though Shakespeare, of course,
> Knew the law of his time,
> He was foremost a poet
> In search of a rhyme.

Chief Justice Rehnquist, writing the opinion of the Court in United States v. Apfelbaum, joined the fashion parade in commending Shakespeare for his knowledge of the law. In a footnote, whose relationship to the text of the opinion is problematical, he cited Shakespeare for the basic principle that intent alone unaccompanied by act should not be held a crime:

> As recognized by one commentator, Shakespeare's lines here express sound legal doctrine:
>
> "His acts did not o'ertake his bad intent,
> And must be buried but as an intent
> That perish'd by the way; thoughts are not subjects
> Intents are merely thoughts."
> Measure for Measure, Act V, Scene 1.—G. Williams,
> Criminal Law, The General part (2d ed. 1961).

The assertion that "thoughts are not subjects" (of the criminal law) and that "intents" (without accompanying act) "are merely thoughts" can be permitted to stand by itself, as a tribute to Shakespeare's perspicacity, evidence that he had sound perceptions of justice. However, in the play's context, as applied to the facts, the words are mere casuistry. These are the words of Isabella, yielding to the entreaties of her friend Mariana, and pleading with the Duke to spare the life of Angelo, who had been acting as the Duke's deputy during the Duke's absence. Angelo had sentenced Isabella's brother, Claudio, to death—a lawful, although a harsh decree—and Isabella believed that the sentence had been carried out (and so did Angelo, although it hadn't been) despite Angelo's promise to spare her brother's life if she, the chaste Isabella, would sleep with him—Angelo thought she had, but in fact she hadn't. (Is this sentence too involved?) Having accomplished his purpose (so he thought) Angelo reneged on his promise, and ordered the execution to proceed. Thus, "his act did not o'er take his bad intent." Rather,

> Look, if it please you, on this man condemn'd
> As if my brother liv'd. I partly think
> A due sincerity govern'd his deeds,
> Till he did look on me: since it is so,
> Let him not die. My brother had but justice,
> In that he did the thing for which he died.

But Isabella did not know that the reason Angelo broke his promise to spare Claudio's life was not to let justice take its course, but rather because he feared that if Claudio was permitted to live he would become an implacable enemy. Under the circumstances, Isabella's fine words sound hollow. Angelo had been doubly guilty of gross abuse of power: "in double violation of sacred chastity, and of promise breach."

Parenthetically, reference to Measure for Measure brings to mind that, in his U.W. Law School address in honor of Judge Fairchild, Justice Stevens referred briefly to the relationship of law and literature, and cited by way of illustration Melville's Billy Budd and Shakespeare's Measure for Measure.

More recently law and literature seems to be capturing the attention of scholarly writers on legal subjects. They remind us that many of the arguments on both sides of issues of current concern, such as the value of the death penalty or the wisdom of strict and literal interpretation of unambiguous statutory language, have been cogently stated in works such as Billy Budd and Measure for Measure. Reference to literary masterpieces also demonstrates that legislators are not the only wise authors who delegate to the reader the task of filling in some of the details of a well-written story.[12]

In Billy Budd, a young seaman, innocent, guileless, reacts with quick outrage to a petty officer's false accusation that he has been conspiring to commit mutiny, and strikes the officer a death-causing blow with his fist. The young seaman is tried and convicted by a hasty court martial and hanged in front of the entire crew. In Measure for Measure, a Duke, convinced that a pattern of disobedience to law has afflicted his subjects because he had been too lenient with offenders, takes temporary leave, and entrusts his deputy with the reins of power. The Duke's expectation that Angelo will take corrective action is fulfilled "in spades." Claudio is condemned to death for having committed the offense of fornication and bastardy. There had been too much mercy; now, too much rigor.

These two works are both concerned with great themes of jurisprudence—justice and morality; mercy versus rigor; and mercy to an offender that may be lack of mercy to society as a whole. In Billy Budd, the implicit question is when, if at all, harsh punishment of an individual, in disregard of circumstances crying for compassion, is justified in the interest of the general good—in the story, to warn off and dissuade potential mutineers on a warship at sea detached from the fleet. In Measure for Measure, again the theme is the tension between mercy and rigor in the administration of justice—thus, Angelo's harsh treatment of one culprit (Claudio) serves to set an example—to warn people to mend their ways, for society's good and their own good (excepting Claudio who is to have his head chopped off.) Now it's Angelo's turn to be judged. What shall it be? An eye for an eye? A life for a life? That's one kind of measure for measure. Or, the kind of merciful justice taught in the Sermon on the Mount, from which the title of the play, Measure for Measure, is taken?

And so, returning to the subject of this section, it seems there is a consensus on the Supreme Court of the United States that "Shakespeare knew the law of his time." This consensus jibes with the opinions of many other law-trained analysts who have noted that Shakespeare's plays and sonnets are sprinkled with law terms and law concepts, accurately employed.[12] There has been speculation as to the source of this knowledge—was Shakespeare a clerk in a law office in Stratford-on-Avon before setting out for London and a theatrical career? When in London, did he hobnob with law students and lawyers in the Inns of Court? Or did he absorb a lot of law by being frequently involved in litigation and real property transactions? There have been even extravagant assertions that someone other than Shakespeare—a real lawyer—wrote the plays. But let's not get carried away. To paraphrase Gertrude Stein, a genius is a genius is a genius.

Footnotes

(1) Browning-Ferris Industries v. Kelco Disposal, footnote 4 infra. Justice O'Connor concurred with parts I, III and IV of the majority opinion—agreeing that due process questions had not been properly presented and that the award of punitive damages should not be overturned as being in conflict with any federal common law. My attention was called to these Shakespearean quotes by Robert Lutz, Esq., in his segment of the presentation on Tort Damages given in Madison, WI, on October 18, 1989, under the auspices of Professional Education Systems, Inc.

(2) When I was not long into my project, William Ebbott sent me an excerpt from the Law Library Journal (Vol. 78, 365-370, (1986)) prepared by the Reference Desk of the Biddle Law Library, that showed I was not the first to raise the question "How many times has the Supreme Court of the United States cited Shakespeare?" Their Lexis-Westlaw search reported "twenty-four cases that mention Shakespeare the author by name." The discussion makes interesting reading. The present discussion is more restricted in scope, being concerned primarily with instances where Shakespeare has been quoted.

(3) The Lexis and Westlaw searches used variations on the spelling of Shakespeare's name to find references to Shakespeare in the opinions. No attempt was made to search for references to Shakespeare's works absent his name because of the obvious magnitude of such a task. The references were then examined individually to determine where actual quotations were used. (Footnote by William Ebbott)

(4) Milkovich v. Lorain Journal Co., 110 S.Ct. 2695 (1990) at 2702.
Browning-Ferris Industries v. Kelco Disposal, 109 S.Ct. 2909 (1989) at 2928
Coy v. Iowa, 487 US 1012 (1988) at 1016
Basic Inc. v. Levinson, 485 US 224 (1987) at 262
Tison v. Arizona, 481 US 137 (1987) at 184
Johnson v. Transportation Agency 480 US 616 (1987) at 674
Colorado v. Connelly, 479 US 157 (1986) at 172
Walters v. National Assoc., 473 US 305 (1985) at 371
Dames & Moore v. Regan, 453 US 654 (1981) at 675
US v. Apfelbaum, 445 US 115 (1980) at 131
Brown v. Felsen, 442 US 127 (1979) at 138
Lakeside v. Oregon, 435 US 333 (1978) at 346
US v. Watson, 423 US 411 (1976) at 438
Levy v. Louisiana, 391 US 68 (1968) at 72-73
Magone v. Heller, 150 US 70 (1893) at 74
The reader should refer to this footnote at all appropriate places in the text.

(5) 335 US 464 (1964)

(6) Hannegan v. Esquire, 327 US 146 (1946)

(7) Central Hudson Gas & Electric v. Public Service Comm., 447 US 557 ( ) at 580

(8) An enlightening presentation of Shakespeare's contribution to our language is in "The Story of English" (McCrum, Cran, MacNeil. Viking, 1986. at 98-105).

(9) See Pacific Mutual Life Ins. Co. v. Haslip, US Sup. Ct. 89-1279, argued 10-3-90, decision announced 3/4/91.

(10) See, for example, Posner, Law and Literature: A Misunderstood Relation (1988, Harvard U. Press)

(11) For follow-up cases, see State v. Thomas, 150 Wis. 2d 374 (1989) and Maryland v. Craig, 110S.Ct. 3157 (1990).

(12) "A Judge's Use of History" by Justice John Paul Stevens, the First Thomas E. Fairchild Lecture, published as an occasional paper by the UW Law School, 1988, at pp. 4-5.

(13) To economize, let me reference only one book on the subject—Philips, Shakespeare and the Lawyers, Methuen, 1972; that book takes into account much that had been previously observed by others.