A decorative border of intricate black floral and vine patterns surrounds the central text. The border is symmetrical and features a central medallion at the top and bottom.

A Renaissance Roundtable

Shakespeare and the Law

In the mid-1800's two English barristers each wrote a book remarking on Shakespeare's knowledge of the law. Since that time a number of books have been published, most recently Daniel Kornstein's Kill All the Lawyers? Shakespeare's Legal Appeal in 1994. The Roundtable this evening is believed to be the first public discussion of Shakespeare's knowledge of the law and from whence he might have obtained his precise knowledge.

A Renaissance Roundtable

Shakespeare and the Law

sponsored by the Shakespeare Oxford Society,
Guilford College and the
North Carolina Shakespeare Festival

7:30 p.m. Thursday,
September 28, 1995

Dana Auditorium
Guilford College

Welcome

William Rogers, President
Guilford College

Introduction to the Roundtable

McNeill Smith, Attorney
Smith, Helms, Mulliss & Moore

Moderator

James Exum, Jr., Chief Justice (retired)
North Carolina Supreme Court

Panelists

Edward Bander
Dennis Kay
Russ McDonald

Leonard Deming
Daniel Kornstein
Charles Vere

Adjournment

Richard Whalen,
President, Shakespeare Oxford Society

The program will follow the format of roundtable discussions frequently seen on Public Television. Following an initial discussion, the audience is invited to submit written questions which will be collected by the ushers.

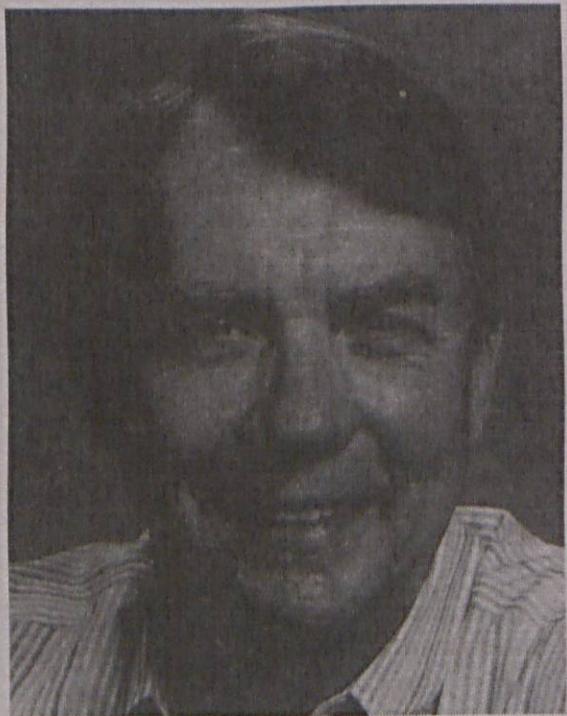
Copies of Mr. Kornstein's book *Kill All the Lawyers?* and paperback editions of Professor Kay's recent work, *William Shakespeare: His Life, Works and Era*, are available for purchase in the lobby. Professor Bander's forthcoming book, *Shakespeare and the Law*, and Russ McDonald's *The Bedford Companion*, soon to be published, may be ordered. Also available in the lobby are *The Mysterious William Shakespeare: The Myth and the Reality* by Charlton Ogburn and *Shakespeare: Who Was He?* by Richard Whalen

Financial support for the Renaissance Roundtable was provided through grants from the N.C. Humanities Council, the Greensboro United Arts Council and the N. C. Grassroots Program.

The floral decorations are courtesy of Lowe's Garden Shop, located at the intersection of Wendover and I-40.

Our ushers are students in the Renaissance Studies Program at Guilford College

MODERATOR



James G. Exum, Jr. - Greensboro

Born in Snow Hill, NC, Jim Exum was a Morehead Scholar at the University of North Carolina where he was president of Phi Beta Kappa and chaired the Men's Honor Council. He was Root-Tilden Scholar at New York University School of Law and later graduated from the National Judicial College in Reno, Nevada. After a clerkship for a NC Supreme Court Justice, he practiced law in Greensboro and was elected to the NC House of Representatives on his first try. He was appointed a Judge of the Superior Court, the youngest in its history, then was elected a Justice of the NC Supreme Court. He later ran for Chief

Justice and became the youngest Chief Justice in North Carolina history. He retired in January of this year as Chief Justice, after 19 years of outstanding service, to pursue other interests including motorcycling, photography, tennis, music and sailing. He is the author of numerous articles on various aspects of the law.

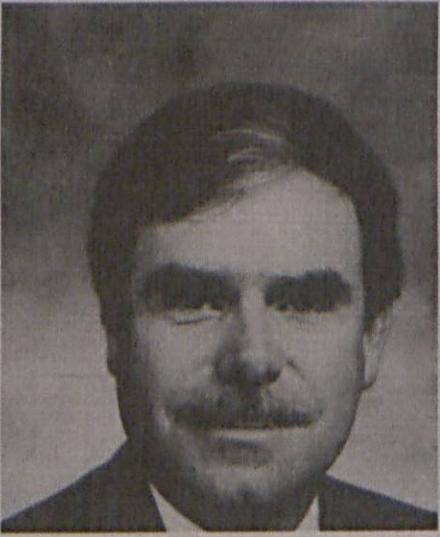
PANELISTS



Edward J. Bander - Concord, MA

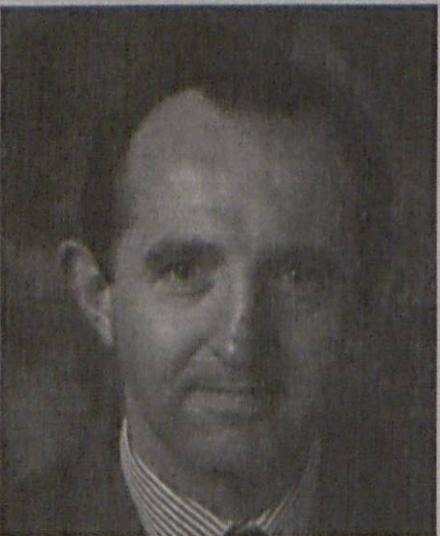
Ed Bander attended school in his native Boston and, following World War II Navy service, received a liberal arts degree, then a law degree from Boston University. His love of books led him to seek a degree in library science and to positions as reference librarian at Harvard Law School and as law librarian for the US Court of Appeals, New York University and Suffolk University Law School. He retired in 1990 from Suffolk as law professor and law librarian emeritus. His publications include *Mr. Dooley on the Choice of Law*, *Mr. Dooley and*

Mr. Dunne and articles in the *American Bar Association Journal*, *Commentary* and other publications. At present he co-edits the *Bi-Monthly Review of Law Books*, indexes material for law publishers, does legal research for his lawyer-son and teaches occasional classes (a favorite: Dickens and the Law). He golfs with passion, summers in Maine and winters in Florida. He has a "fairly complete" collection of judicial citations which will be published as "Shakespeare and the Law" later this year.



Leonard Deming - Nashua, NH

Len Deming majored in History with a minor in English at Michigan State University. He received his law degree from The Thomas M. Cooley Law School in Lansing, Michigan. A veteran of the United States Marine Corps, he is at present an attorney practicing in Nashua, New Hampshire, where he has received the New Hampshire Bar Association's "President's Award for Distinguished Service." He joined the Shakespeare Oxford Society in 1989 and currently is a member of the board of trustees and serves as treasurer and membership chairman. He is author of a paper entitled "Invalid Logic: The Use of Fallacies in the Shakespeare Authorship Question" which he presented at the Society's annual conference in Boston in 1993. He is a sometimes poet and a lover of English literature, golf and fishing. A former coach, he is a Little League umpire.



Dennis Kay - Oxford, England

Dennis Kay was born in Liverpool and earned his bachelor's, master's and doctor of philosophy degrees at Oxford University where he has taught for a number of years. He has served as deputy chair of the English Faculty Board and director of the Bread Loaf School of English at Oxford. As an undergraduate, he played a good deal of sports and was the youngest captain in the present century of Oxford's Rugby Football Club. In addition to many scholarly articles, he is the author of three books on Shakespeare as well as books on Sir Philip Sidney and the English funeral elegy. He has taught and lectured in England, the United States and Japan and has broadcast on Shakespeare as well as on other writers of the English Renaissance. He is currently Russell M. Robinson II Distinguished Professor of Shakespeare at UNC-Charlotte.



Daniel J. Kornstein - New York City

Dan Kornstein graduated Phi Beta Kappa from CCNY where he received the Felix Cohen Prize in Legal Philosophy. He served a three-year stint in the Army, helping to prosecute one of the My Lai Massacre court martials. Entering Yale Law School, he served as an editor of the *Yale Law Review*. He is a founding partner of Kornstein, Veisz and Wexler, a 22-lawyer firm in Manhattan. His clients have included Vanessa Redgrave, Joe McGinniss, Kirk Douglas, Tommy Tune, and Harvey Keitel. He nobly defended Shakespeare's Hamlet on appeal in the City Bar's October 1994 program. He is the author of three books, most recently, *Kill All the Lawyers? Shakespeare's Legal Appeal* (Princeton

University Press 1994). He has also written more than 200 essays, articles and book reviews for the *NY Law Journal*, the *Wall Street Journal*, the *Boston Globe* and the *New York Times*. His writings have been cited by the US Supreme Court and other judicial bodies. He is president of the Law and Humanities Institute.



Russ McDonald-Greensboro NC

Russ McDonald graduated magna cum laude from Duke University and received master's and doctor of philosophy degrees from the University of Pennsylvania where he was a teaching fellow. He taught at Mississippi State University, the University of Hawaii, and the University of Rochester. His present appointment is at UNC-Greensboro where he currently chairs the Programs Committee and is faculty adviser for undergraduate English majors. He has written numerous articles for scholarly and professional journals. His bibliography includes three books: *Shakespeare and Jonson/ Jonson and Shakespeare*; *Shakespeare Reread: The Texts in New Contexts*; and *The Bedford Companion to Shakespeare: Introduction with Documents*, to be published in December. He has served on various boards including the Shakespeare Association of America and in various other honorary positions.



Charles Vere, the Earl of Burford - Boston, MA

Lord Burford is a descendant of Edward de Vere, the 17th Earl of Oxford, believed by many to be the man behind the name Shakespeare. He is a graduate of Oxford University's Hereford College where he majored in Russian Studies. He is founder and a director of the de Vere Society in England, an organization to advance knowledge of Edward de Vere and his involvement in the events and literature of his time, and is a trustee of the Shakespearean Authorship Trust. In 1991 he was invited to present the case for the Earl of Oxford at the Folger Shakespeare Library in Washington. The enthusiastic response by the capacity audience to his presentation persuaded the Shakespeare Oxford Society to sponsor him on a speaking tour of colleges and universities in the United States. To date he has spoken at more than 200 educational institutions, including Harvard, Yale, Boston University, and the Smithsonian.

Inside the program... Shakespeare's plays and sonnets display such polish and cultivation that some readers have found it difficult to attribute them to their reputed author, the man born in Stratford-on-Avon. The problem is not merely a legal one but also one of evidence and therefore within the province of lawyers. United States Supreme Court Justice John Paul Stevens gives consideration to the evidence in an essay, *The Shakespeare Canon of Statutory Construction*, reprinted in its entirety inside this program.

New Approaches to Teaching Shakespeare

A workshop for English teachers in Guilford County and Forsyth County/Winston-Salem Public Schools.

Thursday, September 28 - Friday, September 29, 1995

All sessions with the exception of the Renaissance Roundtable will be held at the Airport Marriott in Greensboro.

Thursday, September 28

730 p.m. Renaissance Roundtable: Shakespeare and the Law,
Dana Auditorium, Guilford College.

Friday, September 29

8 a.m.- 8:45 a.m. Registration, Hospitality Suite 210, Airport Marriott.

8:45 a.m. Welcome - Trudy Atkins,
Conference Chair

8:45 - 9:45 a.m. Mystery - The Shakespeare Question,
Charles Vere, the Earl of Burford.

10 - 11 a.m. Turning Students "on" to Shakespeare -
Rollan de Vere, faculty,
University School, Cleveland, Ohio.

11 - 11:50 a.m. Aides to Teaching Shakespeare: A Guide
Richard Whalen, author of
Shakespeare: Who Was He?

12 noon Luncheon: Speaker - Sue Ellen Bridgers,
author of Keeping Christina.

1:30 p.m. Speaking the Oxfordian Text:
Through the Sonnets and into the Self -
Anne Pluto, Associate Professor of Literature and
Theatre, Lesley College, Cambridge, MA

2:30 p.m. Roundtable: Questions and Answers
Rollan de Vere, Betty Sears, Charles Vere and
Richard Whalen

3:30 p.m. PBS Frontline: The Shakespeare Mystery
Judy Woodruff explores the mystery
surrounding the authorship of the Shakespeare
Canon with interviews with Charles Vere,
Charlton Ogburn, A.L. Rowse and others in
England and the United States.

Teachers have a choice of attending the North Carolina Shakespeare Festival's performance of A Midsummer Night's Dream on Saturday, September 30, or Macbeth on Sunday, October 1, at the High Point Theatre. Tickets will be distributed with books and other materials in the Hospitality Suite. The workshop is part of the 19th annual conference of the Shakespeare Oxford Society. Teachers are invited to attend any of the sessions which are listed on the conference schedule included in their materials packet.

The Faculty

Charles Vere, the Earl of Burford (see Roundtable panelists)

Rollin de Vere is a native of the Cleveland area, living with his wife, son and daughter in the village of Chagrin Falls, Tim Conway's hometown. He received a BA in Modern Languages from Oberlin College where his Spanish Lit teacher one day mentioned Charlton Ogburn, Sr.'s monumental This Star of England (Edward de Vere). "The rest was history," he explains. He teaches Spanish at the University School, an independent school for boys, in Cleveland. When not teaching or gardening, he is often acting, having appeared in some 65 roles on the local stage.

Richard Whalen, president of the Shakespeare Oxford Society, is editor of the Teacher's Guide which he developed with the assistance of teachers and consultants. A graduate of Yale University(MA), he is author of Shakespeare: Who Was He? The Oxford Challenge to the Bard of Avon. He lives in Truro, MA.

Sue Ellen Bridgers, an award-winning adult juvenile author, lives in Sylva, North Carolina with her husband, a lawyer, and three daughters. Her first book, Home Before Dark, received the ALA Best Books for Young Adults, ALA Notable Book and New York Times Outstanding Book of the Year awards. Other honors her works have received include Library of Congress Book of the Year, Christopher Medal, Boston Globe - Horn Book Honor Book and the Gold Award by Parents' Choice. She is a member of the North Carolina Humanities Council.

Anne Pluto, Ph.D. is an Associate Professor of Literature and Theatre at Lesley College in Cambridge, MA. She is also Artistic Director and one of the founding members of the Oxford Street Players at Lesley College. She has trained with Shakespeare and Company in Lenox, MA and at the Linklater Studio in Boston where she also worked with the Ever Theatre and the Playwrights Platform. "Shakespeare's sonnets are only 14 lines long yet they are very potent and are filled with powerful language that reveals as much about the writer as the speaker," Anne explains. "In order to explore these poems that often baffle students of any age, we must listen to our own voices."

Elizabeth Sears, a teacher, musician and author, is a former president of the Shakespeare Oxford Society. Born in Wayland, MA, she attended New England schools and colleges. She received an MA from Breadloaf School at Middlebury College and continued her graduate studies at Lincoln College in Oxford, England. The mother of eight and grandmother of 16, she still has found time to publish three books on the 17th Earl of Oxford and his linkages to Shakespeare's works. She divides her time between Princeton and Killington, Vt.

Some Notes on Shakespeare and the Law

In the mid-1800's two English barristers each wrote a book remarking on Shakespeare's knowledge of the law: William Lowes Rushton published *Shakespeare a Lawyer* in 1858 and John Lord Campbell published *Shakespeare's Legal Acquirements* in 1859, the year he became Lord Chancellor. In the following century other volumes have been published all attesting to Shakespeare's legal attainments. Charles and Mary Cowden Clarke wrote of the "marvelous intimacy which he displays with legal terms, his frequent adoption of these in illustration and his curious technical knowledge of their form and force."

In *Henry IV, Part I* Mortimer says "And our indentures tripartite are drawn which being sealed interchangeably." In *Othello*, Iago speaks of "non suiting" his mediators. In *The Merchant of Venice* Antonio was arrested on *mesne process*

Many sonnets use the analogy of legal terms. Almost every line of Sonnet 46 draws on expressions used in 16th century legal procedure, especially connected with land-holding and real estate.

Shakespeare's knowledge goes beyond the use of legal terms. Charlton Ogburn Sr. in an article in the American Bar Association Journal's *Shakespeare Cross-Examination* cites the gravediggers' discussion in *Hamlet* as to whether Ophelia was a suicide or not as proof that Shakespeare had studied Plowden's Report of the case of Hales v. Pettit, tried in the reign of Mary Tudor.

Sir James Hales had drowned himself by walking into a river. Under a finding of *felo de se*, his body was to be buried at a crossroad and his goods forfeited to the Crown, including a large estate he had held jointly with his wife, the Lady Margaret. When the Crown gave the estate to one Cyriac Petit, Dame Margaret brought action to recover it. The only question was whether forfeiture could be considered as taking place in the lifetime of Sir James Hales; if not, the plaintiff took the estate by survivorship.

Her counsel argued that the offense of suicide being the killing of a man's self, it could not be completed in his lifetime for as long as he was alive he had not killed himself, and the moment he died, the estate vested in the plaintiff.

However, the whole court gave judgment for the defendant. Said they: "Sir James Hales was dead, and how came he to his death? by drowning; and who drowned him? Sir James Hales; and when did he drown him? in his lifetime. So that Sir James Hales, being alive, caused Sir James Hales to die; and the act of the living man was the death of the dead man. He therefore committed felony in his lifetime, although there was no possibility of forfeiture found in his lifetime for until his death there was no cause for forfeiture."

The argument of the grave-diggers upon Ophelia's demise is almost in the same words reported by Plowden in 1571, written in the legal verbiage of Law French, unintelligible to one who had not studied law.

The Shakespeare Canon of Statutory Construction

This essay is based on a Max Rosenn Lecture given by John Paul Stevens, Associate Justice of the Supreme Court of the United States, at Wilkes University in Wilkes-Barre, Pa., on April 30, 1991.

The Duke of Gloucester, later King Richard the Third, begins his opening soliloquy with the famous line: "Now is the winter of our discontent." The listener, who at first assumes that the word "now" refers to an unhappy winter, soon learns that war-torn England has been "made glorious by this son of York." It is now summer, not winter, and "grim-visag'd war hath smooth'd his wrinkled" forehead. Words, even a simple "now", may have a meaning that is not immediately apparent.

Like the seasons, periods of war and peace come and go. As tides change, there is also a fluctuation in perceptions about the importance of studying humanistic values and their relation to rules of law. Nevertheless, a society that is determined and destined to remain free, must find time to nourish those values.

The plays and poems of William Shakespeare, sometimes collectively described as the "Shakespeare Canon," are perhaps the most stimulating and exciting works in the English language. Canons of statutory construction, in contrast, are probably the dullest materials that law students study. For these reasons, this essay includes a mixture of comment on two apparently unrelated subjects: first, the unorthodox view that Edward de Vere, the 17th Earl of Oxford, is the true author of the Shakespeare Canon, and second, the utility of certain canons of statutory construction in the search for truth and justice. Because Shakespeare's plays are typically divided into five acts, I must, of course, discuss five canons of statutory construction.

ACT I

The first canon of statutory construction is obvious: "Read the statute." The Supreme Court has reminded us over and over again that when federal judges are required to interpret acts of Congress, they must begin by reading the text of the statute. As one rather weary opinion writer has repeatedly explained, "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." Although this proposition is universally accepted, debate often arises over the question whether there is ambiguity in the text, and if so, how far behind that text the judge may go in his quest for the author's intended meaning.

The text of the First Folio, published in 1623, seven years after William Shakespeare's death, unambiguously identifies him as the author of the Shakespeare Canon. Moreover, respected scholars are virtually unanimous in their conviction that the man from Stratford-on-Avon is the author of the masterpieces that are attributed to him. Nevertheless, questions that were raised by such skeptics as Mark Twain, Walt Whitman, Henry James, John Galsworthy and Sigmund Freud still intrigue those mavericks who are persuaded that William Shakespeare is a pseudonym for an excep-

tionally well-educated person of noble birth who was close to the English throne. Edward de Vere, the Seventeenth Earl of Oxford, was such a person.

If we were to find an original draft of one of Shakespeare's plays or an excerpt in his own handwriting or even a signed statement identifying himself as the author, we would have the kind of unambiguous evidence of authorship that would put an end to the matter. But the evidence of Shakespeare's handwriting that we do have is of an entirely different character. It consists of six signatures on legal documents, each suggesting that merely writing his name was a difficult task and, remarkably, that his name was Shaksper rather than Shakespeare. Indeed the references to the man from Stratford in legal documents usually spell the first syllable of his name with only four letters, SHAK - or sometimes SHAG, or SHAX -whereas the dramatist's name is consistently rendered with a long "a". For that reason the protagonists of the Earl of Oxford's cause make it a point of distinguishing between Shaksper and Shakespeare. In this respect, they are, in effect, relying on the first canon of statutory construction. In response, the Stratfordians point out that signatures, like statutes, should be read in their contemporary context, that incorrect spelling was common in Elizabethan England, and that we should always be conscious of the possibility of the scrivener's error. This response, like the Oxfordian response to the text of the First Folio, indicates that this is a case in which we must go beyond the first canon.

ACT II

The second canon of statutory construction is much like the first: "Read the entire statute." Courts often tell us that the meaning of a particular statutory provision cannot be divined without reading the entire statute. Similarly, the more of Shakespeare's writing that we read, the more we learn about him. At least, that is the position that the Oxfordians advocate.

As evidence of the authors' probable high birth, they point out that all but one of his plays - *The Merry Wives of Windsor* - are about members of the nobility. The contrast between Shakespeare's characters and the commoners, such as the alchemist or the miser, about whom his contemporary Ben Jonson wrote, is striking. Even more striking is Shakespeare's repeated reference to nobility as the highest standard of excellence. The question that a lonely Hamlet asks himself was "whether 'tis nobler in the mind to suffer the slings and errors of outrageous fortune, or take up arms against a sea of troubles, and by opposing end them." In the first act of *Macbeth* when Duncan proclaimed his succession, he noted that "signs of nobleness like stars, shall shine on all deservers." When Mark Antony wanted to explain to Julius Caesar why there was no reason to fear Cassius, it was enough to state: "He is a noble Roman and well given." And after the conspirators had been defeated, Antony gave Brutus the highest probable praise by referring to him as "the noblest Roman of them all."

Shakespeare's account of the events that took place on the Ides of March may also shed light on his views about the common man. When Julius Caesar walked through the streets of Rome, the crowds greeted him with unmixed enthusiasm - obviously in favor of offering him the crown. But when he was brutally murdered in full view of countless witnesses, a few well-chosen words from Brutus, the leader of the murderous gang, were sufficient to satisfy the crowd and earn their unquestion-

ing support. Then a few minutes later, Mark Antony's marvelous address to his "Friends, Romans, countrymen" had the mob, once again, convinced that Caesar was their hero. Admittedly, it was a great speech, but how much respect for the common man does this sort of flip-flop reveal? Perhaps the answer is found in Casca's description of the crowd's reaction when Caesar refused the crown for the third time:

"As he refused it, the rabblement howted, and clapp'd their chopp'd hands, and threw up their sweaty night-caps, and uttered such a deal of stinking breath because Caesar refus'd the Crown, that it had, almost, chok'd Caesar, for he swooned, and fell down at it; and for mine own part, I durst not laugh for fear of opening my lips and receiving the bad air."

Of course, the author of such a comment need not be of noble birth, but it seems appropriate to pause and take note of the fact that Edward de Vere was not an ordinary nobleman. In her biography of Queen Elizabeth, Carolly Erickson, after relating contemporary gossip about the Queen's relationship with the Earl of Leicester, had this to say about de Vere:

" But it was not only Leicester who was widening his circle of conquests. Elizabeth too, it was said, was seducing handsome young men and keeping them under surveillance by her well-paid spies when they were not in amorous attendance on her. Prominent among these favorites was Edward de Vere, Earl of Oxford, a boyish, hazel-eyed young courtier whose expression combined poetic languor and aristocratic superciliousness. Oxford excelled at those courtly graces Elizabeth admired. He was athletic and acquitted himself brilliantly in the tiltyard, dashing fearless, lance lowered, against any and all comers, and retiring the victor despite his youth and slight build. He was an agile and energetic dancer, the ideal partner for the queen, and he had a refined ear for music and was a dextrous performer on the virginals. His poetry was unusually accomplished, and his education had given him a cultivated mind, at home with the antique authors Elizabeth knew so well."

When Edward de Vere was 12 years old, his father died and he became a royal ward in Sir William Cecil's household. Cecil, also known as Lord Burghley, was the queen's principal adviser and a master of intrigue who controlled an elaborate network of spies. In Hamlet, the character of Polonius is unquestionably a caricature of Burghley. His position as advisor to the king, his physical appearance, his crafty use of Rosencrantz and Guildenstern, to try to ascertain the cause of Hamlet's antic disposition, and his employment of Reynaldo to spy on his own son, Laertes, while away at school, are all characteristic of Burghley. One who had lived in his house as de Vere did, and therefore had firsthand knowledge of Burghley's use of a spy to report on the activities of his oldest son, could well be responsible for the scene including Reynaldo - a scene that seems to have no purpose except to illuminate Polonius's or Burghley's character. The suspicion that there is an autobiographical element in Hamlet increases when one recognizes the parallel between Hamlet's relationship with Ophelia, the daughter of Polonius, and the fact that at the age of 21 de Vere married Anne Cecil, the daughter of Lord Burghley.

These are, of course, only fragments from the text of the Shakespeare Canon. They are sufficient, however, to lead us to the third canon of statutory construction.

ACT III

This canon is much like the first and second, but it adds the requirement that the text be read in its contemporary context. In *Cannon vs University of Chicago*, the Supreme Court wrote that it "is always appropriate to assume that our elected representatives, like other citizens, know the law...and that an evaluation of congressional action taken at a particular time must take into account its contemporary legal context." The third canon therefore tells us that we should direct our attention to the sixteenth century context that produced the genius who created the Shakespeare Canon.

In those days relatively few people could read and write the English language, and those who were familiar with the leading works of Latin and Greek literature were even more scarce. Edward de Vere was such a person. In Lord Burghley's home he received instruction from the most accomplished tutors in England and later received degrees at both Cambridge and Oxford and became a member of Gray's Inn. As a young man he gained a reputation as a gifted writer. To the extent that literary skill is a product of education and training, de Vere's academic credentials attest to his unique qualifications.

On the other hand, we know little about the education of William Shaksper, the man from Stratford-on-Avon. His father and two daughters, one of whom was married to a physician, were apparently illiterate. William did not attend Oxford or Cambridge and indeed, there is no record of his attendance at any school. Perhaps it was the assumption that Shaksper's formal education was much too limited for him to have acquired the largest vocabulary of any author who ever lived that led other authors like Mark Twain and John Galsworthy to doubt his authorship of the Shakespeare Canon.

Knowledge of the contemporary context provides these possible answers to this concern. The illiteracy of his daughters is merely the reflection of the universal gender discrimination that permeated sixteenth century England; except for persons of noble birth, education was for males, not females. Even though his father may have been uneducated, he achieved success in business in Stratford and occupied an important public office. Moreover, the secondary education that was available to the sons of leading citizens in towns like Stratford-on-Avon was of a high quality. It is not unreasonable to assume that a good high school education is all that was needed to nurture the genius of Shakespeare to full flower.

The most telling contemporary argument, however, is found in Ben Jonson's tribute to Shakespeare in the introduction to the First Folio. Because Jonson must have been well acquainted with his leading competitor as a successful dramatist, these words take on special significance:

" And though thou hadst small Latin and less Greek From thence to honour thee, I would not seek For names; but call forth thundering Aeschylus, Euripides and Sophocles... "To life again, to hear thy buskin tread, And shake a stage..."

The emphasis is, of course, on the words, "though thou hadst small Latin and less Greek" as evidence that the author of the Shakespeare Canon was a man of limited formal education.

The Oxfordians, however, are not without a contemporary reply. They argue that the words "though thou hadst small Latin and less Greek" were ambiguous because the word "though" sometimes conveyed the meaning "even if." Thus, the use of this ambiguous term may have been a conspiratorial ploy to preserve the anonymity of the true author of the Canon. If you find this rejoinder a little hard to swallow, perhaps you should reflect on the ambiguity in another equally famous line by Jonson: "Drink to me, only, with thine eyes." Is this a plea for his lover's abstinence asking her not to drink to him with anything but her eyes? Or, more probably, is it a subtle invitation to drink only to Jonson to save her inviting glances for him alone? Does the word "only" modify the noun "eyes" or the pronoun "me"?

ACT IV

Since ambiguity persists, we must turn to the fourth canon of statutory construction. If you are desperate, or even if you just believe it may shed some light on the issue, consult the legislative history.

The study of legislative history is itself a debatable and complex subject, including subtopics such as the respective importance of committee reports, debates on the floor of Congress, and the fact that Congress failed to enact a proposed bill that would have unambiguously resolved the point at issue. It also requires an ability to discount comments manufactured by staff members to appease lobbyists who were unable to persuade legislators to conform the statutory texts to their clients' interests. As then-Justice Rehnquist observed in a dissenting opinion a few years ago:

"The effort to determine congressional intent here might better be entrusted to a detective than to a judge.... While I agree with the Court that the phrase 'any other final action' may not by itself be ambiguous, I think that what we know of the matter makes Congress' additions to #307(b)(1) in the Clean Air Act Technical and Conforming Amendments of 1977 no less curious than the incident in the Silver Blaze of the dog that did nothing in the nighttime."

For present purposes, I shall confine my analysis of the fourth canon to the Sherlock Holmes principle that sometimes the fact that a watchdog did not bark may provide a significant clue about the identity of a murderous intruder. The Court is sometimes skeptical about the meaning of a statute that appears to make a major change in the law when the legislative history reveals a deafening silence about any such intent.

This concern directs our attention to three items of legislative history that arguably constitute significant silence. First, where is Shakespeare's library? He must have been a voracious reader and, at least after he achieved success, could certainly have afforded to have his own library. Of course, he may have had a large library that disappeared centuries ago, but it is nevertheless of interest that there is no mention of any library, or of any books at all, in his will and no evidence that his house in Stratford ever contained a library. Second, his son-in-law's detailed medical journals describing his treatment of numerous patients can be examined today at one of the museums in Stratford-on-Avon. Those journals contain no mention of the doctor's illustrious

father-in-law. Finally — and this is the fact most puzzling to me although it is discounted by historians far more learned than I — there is the seven-year period of silence that followed Shakespeare's death in 1616. Until the First Folio was published in 1623, there seems to be no public comment in any part of England on the passing of the greatest literary genius in the country's history. Perhaps he did not merit a crypt in Westminster Abbey, or a eulogy penned by King James, but it does seem odd that not even a cocker spaniel or a dachshund made any noise at all when he passed from the scene.

ACT V

The fifth canon of statutory construction requires judges to use a little common sense. This canon is expressed in various ways. For example: An interpretation that would produce an absurd result is to be avoided because it is unreasonable to believe that a legislature intended such a result. Both the Oxfordian and the Stratfordians believe this canon provides the answer to the authorship question. The traditional scholars consider it absurd to assume that William Shakespeare, who is known to have made a fortune as an investor in the Elizabethan theater, if not also as an actor and playwright, was just a front for a gifted author who, for reasons unknown, elected to conceal his true identity from posterity. They point out that at least one of Shakespeare's plays, *The Tempest*, is generally considered to have been written several years after de Vere's death in 1604, and that the explanations for his use of a pseudonym depend on highly improbable theories of conspiracy, for at least Ben Jonson and Lord Burghley would surely have known the true identity of the author of the Shakespeare Canon. Nothing short of a royal command could have induced the author to remain anonymous.

The Oxfordians respond to the argument that it is absurd to claim that de Vere authored a play that was first published several years after his death by pointing out that there is great uncertainty about the dates when the plays were actually written. They also suggest that the possibility of a royal command may not be so absurd after all because Queen Elizabeth made an extraordinary grant to de Vere. Using a formula that was characteristic of special payments to members of the Secret Service, on June 26, 1586, she signed a privy seal warrant granting de Vere an annuity of one thousand pounds per year for which no accounting was to be required. This was an unusually large amount at the time and the grant continued for the remaining eighteen years of de Vere's life, it having been renewed by King James. The Queen, it appears, may have been a member of the imaginative conspiracy and for reasons of her own may have decided to patronize a gifted dramatist who agreed to remain anonymous while he loyally rewrote much of the early history of Great Britain.

Whatever one may think of the fifth canon as a method of analyzing the authorship question, before I leave the subject I want to refer to three cases that suggest that the fifth canon should tell us something about justice. Two of them are cases decided by William Shakespeare, whoever he may be, and the third was decided by the Supreme Court of the United States.

In *The Merchant of Venice*, as security for a loan of three thousand ducats, Antonio promised that if he should default, Shylock could have "a pound of his fair flesh to be

taken and cut off from whatever part of his body" might please Shylock. As might have been predicted, Antonio did default and Shylock demanded literal performance of the terms of the bargain. In the end, however, justice was served by Portia's even more literal interpretation of the bond:

"Tarry a little, here is something else. This bond doth give thee here no jot of blood; The words expressly are "a pound of flesh." Take then thy bond, take thou thy pound of flesh, But in the cutting it, if thou dost shed One drop of Christian blood, thy lands and goods Are by the law of Venice confiscate Unto the State of Venice."

Although Portia's ruling may seem somewhat technical, she was actually making a just application of the fifth canon of statutory construction. In *Measure for Measure*, Claudio was sentenced to death for the crime of fornication. Since Julietta was pregnant and there was no question about Claudio's guilt, and since the text of the law was perfectly clear, Angelo (who had been left in charge of law enforcement by the Duke) had no choice but to insist on literal application of the statute. Otherwise, he would "Make a scarecrow of the law, Setting it up to frighten the birds of prey, And let it keep one shape, till custom make it Their perch and not their terror."

Nothing, of course, could be more damaging to the fabric of society than the law against fornication to deteriorate into a mere scarecrow. Accordingly, it was imperative that the death penalty be administered without delay.

Fortunately, for Claudio, however, three Acts later, the all-powerful Duke reappeared and pardoned him in the nick of time. Unlike Portia in *The Merchant of Venice*, who served justice by using one literal reading of the bond to trump another, the Duke in *Measure for Measure* simply enforced the fifth canon, barely pausing to explain why any other result would have been unjust and absurd.

My final words are about a little known decision of the Supreme Court that averted the danger that a federal statute would turn into a toothless scarecrow. For a century and a half, the United States enjoyed the same sovereign immunity that Queen Elizabeth and King James possessed during Shakespeare's time. It was not until 1946, when Congress passed the Federal Tort Claims Act, waiving the defense of sovereign immunity, that the United States could be sued for damages caused by the negligence of government employees. Eighteen years earlier, Congress had enacted the Mississippi River Flood Control Act of 1926 to authorize a major land acquisition and construction project to control overflow and damage along the banks of the Mississippi River where it was impracticable to construct levies. A section of that Act - I shall call it the "pound of flesh" provision - states that "no liability of any kind shall attach to or rest upon the United States for any damage from or by floods or flood waters at any place."

In the ensuing decades Congress has authorized the expenditure of countless millions of dollars to construct additional flood control projects, many of which produce produce artificial lakes and recreational facilities. Unfortunately, a number of people have been killed or seriously injured in those facilities. The case of the United States v. James arose out of a tragic accident in the reservoir behind the Millwood Dam in Arkansas. As the result of what the district court found to be worse than gross negligence, enormous underwater portals were opened without adequate warning and

water-skiers were caught in the unforeseen swift current and hurled against the dam's tainter gates. Some drowned and others suffered permanent injuries. As other innocent victims of the negligence of federal employees had done in the past, representatives of the injured parties brought suit against the federal government under the Federal Tort Claims Act. The lower federal courts were divided on the question whether the pound-of-flesh provision enacted in 1928 in connection with the Mississippi River project should protect the United States from liability in such cases.

As you can see, the issue is much like the ones that confronted Portia and the Italian Duke. The government based its defense on the plain language found in the text of the 1928 statute. The plaintiffs responded by arguing that the pound-of-flesh provision applied only to the Mississippi River project, that it had been impliedly repealed by the Federal Tort Claim Act which contained its own set of special defenses for the government, and that in any event, the use of the word "damage" rather than "damages" indicated that the statute did not apply to personal injury cases.

Although three dissenters, including the Portia that now graces our Court, would have applied a modern version of the Portia's jot-of-blood argument - using a narrow interpretation of the word "damage" to trump the majority's reliance on the first canon of statutory construction - the majority ruled in the government's favor. It relied, of course, on the first canon of statutory construction, buttressed by the principles espoused by Angelo and Shylock. Sadly, there was no Italian Duke to arrive on the scene in the nick of time and apply the fifth canon of statutory construction. Even more sadly, this is the kind of case - involving the average citizen rather than a nobleman who can command legions of well-armed lobbyists - that is not apt to interest a busy Congress.

It is cases of this kind - and they appear in a variety of forms - that sometimes make me feel that now is a season of discontent. Judge Rosenn and I have lived long enough to learn, however, that like the seasons, judicial opinions about canons of statutory construction and the relation between the law and justice tend to come and go. The fear that a particular law may become a toothless scarecrow, and that if judges are allowed to extract a single tooth from any part of a venerable code of laws, the entire code may disintegrate, is a fear that experience teaches wise judges to discount in appropriate cases. Accordingly, no matter how unhappy a particular winter may be, in due course, it is sure to be followed by other seasons that will be "made glorious by the son of York."