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Can Shakespeare Make You a Partner.

Michael L. Richmond

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CAN SHAKESPEARE MAKE YOU A PARTNER?

MICHAEL L. RICHMOND*

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I. INTRODUCTION

Imagine, if you will, a frustrated young lawyer, looking around the office one fine day, sizing up fellow associates. The partners have commented favorably on her work, although asking for several redrafts of briefs and memos. Although feeling reasonably secure in her position, she has noticed that the associate in the next office consistently receives excellent comments on her work for the senior partner. Two doors down sits another associate who rarely needs more than one or two redrafts. She starts wondering why these people have received more positive feedback, and twinges of concern run along her spine.

Other associates often produce better written work because their background includes an element lacking in hers — the study of literature. Without question, all lawyers studied basic grammar in high school, and might even have taken college courses in composition. Certainly, all lawyers had a course in legal research and writing, and remember well the birthing pains of that first-year brief. Now, all these experiences should put new lawyers on the same basis, shouldn't they? Unfortunately, the answer is no. The study of literature has

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much to offer an attorney,¹ and those who have read extensively in poetry and prose have a leg up on the rest of the profession.²

Law's interrelationship with literature has formed the focal point of a large body of recent writings. The law has rediscovered the relevance of literature.³ At the same time, many if not most lawyers have a weak grounding in basic literary concepts. Far too many attorneys have no training in the basic structure of a poem, in the subtle linguistic nuances of a short story, or in the use of sounds and language in drama. Some attorneys, accustomed to using literary examples, may also benefit from exploring the inner workings of literature.⁴ In this manner, you can strengthen your own writing skills and gain valuable insights into your practice as well. You can effectively compete with the people in your adjoining offices. You can make partner. All you have to do is read.

II. GOOD WRITING

Judges and senior partners have very little time to waste. Judges, after all, are overworked.⁵ Their dockets hang on their shoulders like Atlas' globe in Rockefeller Center. Senior partners charge hourly rates reaching well into the stratosphere. Both groups appreciate terse, compact prose.⁶ How many times, from how many people, in how many ways, have we all heard the advice to "tighten up" our writing? But nobody bothered to tell us what that simple phrase meant. Nobody told us because those people who wanted terse writing couldn't define what made writing terse — they simply knew it. They knew it not instinctively, but from years of reading good, tight prose.

Lawyers spend their lives in the pursuit of the right combination of

1. E.g., Kornstein, *The Success of the Word: The Literary Critic as Constitutional Theorist*, 4 CARDOZO ARTS & ENTERTAINMENT L.J. 277 (1985).

2. Cf. Sloane, *A Guide to Reading and Writing*, N.Y.L.J. July 19, 1988 at 4, col. 4.

3. See generally Weisberg, *Coming of Age Some More: 'Law and Literature' Beyond the Cradle*, 13 NOVA L. REV. 107 (1988).

4. This forms the central premise of James Boyd White's brilliant work, *The Legal Imagination: Studies in the Nature of Legal Thought and Expression* (1973).

5. See R. POSNER, *THE FEDERAL COURTS: CRISIS AND REFORM* (1985).

6. "Brevity, like love, 'Comforteth like Sunshine after Rain.'" Gerhart, *Forward to E.L. BISKIND, LEGAL WRITING SIMPLIFIED* (1971). "Most of us use far too many words to say what we mean." R. SMITH, *THE LITERATE LAWYER: LEGAL WRITING AND ORAL ADVOCACY v* (1986).

words to do the task at hand.⁷ We must describe, orally and in writing, events for juries and judges, attempting to instill in our audience a sympathy for our cause. The lawyer as communicator can learn much about conveying the proper impression from a study of literature.

A single word often serves the work of a paragraph in describing a scene. Herrick's brief poem, "Upon Julia's Clothes," shows how the proper word can paint such an image.

When as in silks my Julia goes,
Then, then, methinks, how sweetly flows
That liquefaction of her clothes.

Next, when I cast mine eyes and see
That brave vibration, each way free,
O, how that glittering taketh me!⁸

One can hardly express the soft interplay of delicate fabric and young figure with greater accuracy and succinctness than by Herrick's choice of "liquefaction." The terseness of the poem comes from the use of this single word. The poet has no need to write further when the one word has described the scene.

The legal profession never has won acclaim for its economy of phrasing.⁹ Imagine an attorney attempting to describe Julia's clothing. "The aforesaid garment, composed of 98% Chinese silk and 2% rayon, resembling a Grecian *chiton*, Size 6" Yet attorneys live by the strength of their words, words which can set a scene and evoke strong emotions. Lawyers can cause the emotions of jurors to rise and fall simply by their skillful use of literary devices. The lawyer who abandons sterile descriptions in favor of accurate statements using evocative words and phrases will find a jury more responsive and sympathetic.

In order to play on the emotions of jurors and judges, however, lawyers must have studied the use of the language through literature.¹⁰ Descriptions should paint moods as well as pictures, convey-

7. See Levanthal, *Law & Literature: A Preface*, 32 RUTGERS L. REV. 603, 605 (1979).

8. Herrick, "Upon Julia's Clothes" (1648).

9. A fine criticism of legal writing, with excellent suggestions for its improvement, is R. WYDICK, *PLAIN ENGLISH FOR LAWYERS* (1985).

10. "Discourse is not *only* a matter of words. It is (or may also be) a method of control, a device for exercising power." Ayer, *Law, Literature and the Conversation of Mankind*, 4 CARDOZO ARTS & ENTERTAINMENT L.J. 261, 269 (1985).

ing not merely the sensory perception but the emotional one as well. The appellate advocate who "contends" a point does so in an adversary position to the court;¹¹ one who "maintains" a point adopts a position deferential yet positive.¹² Too many lawyers ignore the emotional charge carried by a word with the same root as "contentious," and unwittingly set themselves at odds with the very court they seek to convince.

Lawyers should seek to convey positive and persuasive images through the words they use in argument. The wrong word will do little more than jar the ear of the reader or listener, and detract from the effect the lawyer wishes to achieve.¹³ Lawyers must maintain a keen sensitivity to the emotional undertones connected with both the words they use and how those words sound. Lessons learned from the study of good literature can do much to strengthen an attorney's written and oral presentations.

III. LITERATURE AND CLIENTS

Lawyers must respond to the needs of their clients, and accordingly must know their needs and emotions.¹⁴ Even lawyers without years of experience in dealing with people can sense the attitudes of their clients if they have a solid background in literature. By reading about the cares and desires of others, lawyers sense similar reactions in their own clients.¹⁵ Good authors will hold a mirror up to life and permit their readers to understand the character and motivations of the people about whom they write.¹⁶

Clients wanting their wills and other testamentary documents often confront their mortality for the first time as they sit across the desk from their attorney. The lawyer's interaction with them may well

11. M. FREEMAN, *THE GRAMMATICAL LAWYER* 291 (1979).

12. *Id.* at 290.

13. "If words are not right, judgments are not clear, works do not prosper, punishments do not strike the right man, and people do not know where to set hand or foot." *Attributed to Confucius.*

14. J. FREUND, *LAWYERING: A REALISTIC APPROACH TO LEGAL PRACTICE* 151 (1979).

15. Lawyers also gain invaluable insights into themselves through reading fine literature. See T. EAGLETON, *LITERARY THEORY: AN INTRODUCTION* 79 (1983); Kornstein, *The Success of the Word: The Literary Critic as Constitutional Theorist*, 4 *CARDOZO ARTS & ENTERTAINMENT L.J.* 277, 277 (1985).

16. See J. WHITE, *WHEN WORDS LOSE THEIR MEANING* 280-282 (1984).

mean further business for the firm.¹⁷ Lawyers must sense the client's mood, and vary their approach accordingly. Some clients resign themselves to the fact of death, and accept its coming with equanimity; some clients resist death and only reluctantly prepare for it. Literature will help clarify these conflicting attitudes.

CROSSING THE BAR

Alfred, Lord Tennyson

Sunset and evening star,

And one clear call for me!

And may there be no moaning of the bar,

When I put out to sea.

But such a tide as moving seems asleep,

Too full for sound and foam,

When that which drew from out the boundless deep

Turns again home.

Twilight and evening bell,

And after that the dark!

And may there be no sadness of farewell,

When I embark;

For though from out our bourne of Time and Place

The flood may bear me far,

I hope to see my Pilot face to face

When I have crost the bar.¹⁸

Tennyson accepts that he must die, and the restful tones of the poem reflect this attitude. Others, however, rebel against death as Dylan Thomas advocates:

Do not go gentle into that good night,

Old age should burn and rave at close of day;

Rage, rage against the dying of the light¹⁹

Your clients' satisfaction with your services depends on your sensing their feelings. Unless you can recognize their emotional bent, you cannot respond to their needs, and unless you have experienced the emotion they are feeling, you cannot recognize it. Too often we func-

17. J. FREUND, *LAWYERING: A REALISTIC APPROACH TO LEGAL PRACTICE* 155-156 (1979).

18. Tennyson, "Crossing the Bar" (1889).

19. Thomas, "Do Not Go Gentle into That Good Night" (1952).

tion on inaccurate assumptions, as Ogden Nash points out in *Old Men*.

People expect old men to die,
They do not really mourn old men.
Old men are different. People look
At them with eyes that wonder when . . .
People watch with unshocked eyes . . .
But the old men know when an old man dies.²⁰

Lawyers displaying the attitude noted in the third and fourth lines of the poem would most likely lose the client.

The well-read lawyer has gained exposure to a host of emotions and experiences well beyond those gained through first hand knowledge.²¹

20. Nash, "Old Men" (1945).

21. See Smith, *Law & the Humanities: A Preface*, 29 RUTGERS L. REV. 223, 224 (1976).

Many lawyers who have not confronted sudden and intense grief in their own lives will have great difficulty relating to the newly-widowed client sitting across the desk from them. In all probability, they will retreat into a shell of professional detachment, coping with what they do not understand by remaining aloof from it. Unfortunately, this does not serve the needs of a client who needs more than a problem-solver in her life. This person needs someone who will slowly and carefully guide her through the emotionally-charged legal problems she will confront with an understanding of how difficult she finds making any decision. But, suppose her lawyer had read the following poem:

LAMENT

Edna St. Vincent Millay

Listen, children:
Your father is dead.
From his old coats
I'll make you little jackets;
I'll make you little trousers
from his old pants.
There'll be in his pockets
Things he used to put there,
Keys and pennies
Covered with tobacco;
Dan shall have the pennies
To save in his bank;
Anne shall have the keys
To make a pretty noise with.
Life must go on,
And the dead be forgotten;
Life must go on,
Though good men die;
Anne, eat your breakfast;
Dan, take your medicine;
Life must go on;
I forget just why.

This increased experience will in turn permit lawyers to have increased sensitivity to the needs of the clients and accordingly deliver legal services to the increased satisfaction of their clients. "Literature helps us understand others. Literature helps us sympathize with their pain, it helps us share their sorrow, and it helps us celebrate their joy."²² Clients will turn to the firm more often, and bring in friends as well. Nothing sells a practice like satisfied clients,²³ and lawyers enhance their ability to satisfy clients through reading good literature.

IV. THE LAW AS SIMILE

Two of the basic devices of literature, simile and metaphor, carry with them the ability to understand the workings of the law and the system of stare decisis. By understanding how similes and metaphors operate, you can write more clearly, and think more clearly as well. Conceptually, the common law functions through analogies, and the lawyer who draws the complete analogy seen in the literary device of the simile will present a case more clearly.

A simile is an analogy — an equation — proving to the reader that Item A closely resembles Item B.²⁴ Through comparing the two, the reader gains a deeper understanding of Item A and the author's feelings regarding it. In contrast, a metaphor presents the reader with a description of an object or event.²⁵ From the author's skill in describing the object, readers should draw their own analogies and attempt to ascertain the underlying significance of the object described. In other words, a metaphor is at heart an incomplete analogy — a syllogism with neither minor premise nor conclusion voiced.

Poems tend to elaborate on basic similes, and even use the simile to describe by contrasting Item A with Item B. Shakespeare adopted this approach in Sonnet XVIII.

Shall I compare thee to a summer's day?
 Thou art more lovely and more temperate:
 Rough winds do shake the darling buds of May,

Grief forces us to dwell on minutiae, while larger issues leave us helpless. Having read "Lament," a lawyer will begin to understand his client's emotional state and accordingly deal with her as a person.

22. West, *Economic Man and Literary Woman: One Contrast*, 39 *MERCER L. REV.* 867, 877-78 (1988).

23. J. FOONBERG, *HOW TO START & BUILD A LAW PRACTICE* 85 (1984).

24. E. CORBETT, *CLASSIC RHETORIC FOR THE MODERN STUDENT* 479 (1971).

25. W. BENET, *THE READERS ENCYCLOPEDIA* 717 (1955).

And summer's lease hath all too short a date:
 Sometime too hot the eye of heaven shines
 And often is his gold complexion dimmed;
 And every fair from fair sometimes declines,
 By chance, or nature's changing course untrimmed;
 But thy eternal summer shall not fade,
 Nor lose possession of that fair thou ow'st;
 Nor shall death brag thou wander'st in his shade,
 When in eternal lines to time thou grow'st:
 So long as men can breathe, or eyes can see,
 So long lives this, and this gives life to thee.²⁶

Here, the poet rejects the analogy of lover to summer's day as inaccurate. Readers struck with the first impression of a pleasant day in summer soon learn that Shakespeare's lover is even better. The weather may not cooperate — the winds may strengthen, the heat become intolerable, or the clouds roll in. Summer soon passes, and all things must age. Ultimately, Shakespeare notes that his lover is finer than a day in summer because she will remain eternally beautiful, due to the immortality granted by the sonnet itself ("So long lives this, and this gives life to thee."). Shakespeare patiently breaks down each secondary allusion contained in the basic simile, and conveys his underlying message through the dissimilarity of the two items under comparison.

In contrast to this simile, the metaphor presents the reader with a deliberate vagueness — an impression which forces the reader to interpret and delve to find the poet's meaning.²⁷ Metaphors operate much like those wonderful Russian wooden dolls, where children open layer after layer, only to disclose a smaller and more intricate doll with each successive revelation. Unlike the dolls, however, the reader must envision each layer without any precise guidance from the poet.

Robert Burns used a rose as a simile ("O My Luve's like a red, red rose, . . .").²⁸ William Blake also wrote about a rose, yet as a metaphor. His eight lines, however, convey a message anything but self-evident.

26. Shakespeare, *Sonnet XVIII* (1609).

27. Using metaphors can be dangerous. See, e.g., G. BLOCK, *EFFECTIVE LEGAL WRITING* 22-23 (1981).

28. Burns, "A Red, Red Rose" (1796).

THE SICK ROSE

O Rose, thou art sick,
 The invisible worm
 That flies in the night
 In the howling storm
 Has found out thy bed
 Of crimson joy,
 And his dark secret love
 Does thy life destroy.²⁹

From the obvious level of dying flower, we can read a message of deep sensuality, of religious fervor, or even of political turmoil. So many other messages abound in these few words that volumes have considered their interpretation.³⁰ Readers should savor the poem, coming to independent conclusions regarding the meanings conveyed in this combination of words. Archibald MacLeish, in *Ars Poetica*, wrote “A poem should not mean/ But be.”³¹

The metaphor, in its open-ended state, allows readers to explore their own imaginations and develop their independent skills at reading and interpreting. As a result, it cannot convey a precise conclusion to readers. Those who speak in metaphors rely in part on chance, in part on the intellectual abilities of their auditors to comprehend their message.

The common law, by the rule of *stare decisis*, requires that courts reach the same conclusion in two cases presenting the same facts.³² Consistency in judicial decision-making permits people to gear their conduct to societal norms, without which society would be little more than an anarchic state.³³ As a result, lawyers and judges constantly seek out precedential cases decided by earlier courts. Attorneys come before judges to argue that the facts of earlier cases are so like their own that the judges should reach the same result in each.

To argue effectively, then, you must point out the similarities in the cases supporting your position and the differences in those put forward by your opponents. For an attorney, the best argument is the

29. W. BLAKE, *SONGS OF EXPERIENCE* (“The Sick Rose”) (1794).

30. See, e.g., A. OSTRIKER, *VISION & VERSE IN WILLIAM BLAKE* (1965); G. SABRI-TABRIZI, *THE ‘HEAVEN’ AND ‘HELL’ OF WILLIAM BLAKE* (1973); H. ADAMS, *WILLIAM BLAKE: A READING OF THE SHORTER POEMS* (1963).

31. MacLeish, “*Ars Poetica*” (1926).

32. B. GARNER, *A DICTIONARY OF MODERN LEGAL USAGE* 515 (1987).

33. G. GOPEN, *WRITING FROM A LEGAL PERSPECTIVE* 181 (1981).

most complete, examining all ramifications of the cases. In other words, the attorney must use cases as similes and guide judges through the various ramifications of each factual variant presented by the cases. An attorney who fails to bring similarities to the attention of judges will have done little more than present a metaphor — a description of a set of facts from which judges can draw their own conclusions. Failing to draw the complete simile — the complete syllogism — might mean the judge has drawn a conclusion from the facts which the lawyer did not intend. This can mean losing the case.

Lawyers who have studied simile and metaphor know why a poet uses each device, and what advantages each offers. They know the dangers inherent in the metaphor, and use it — if at all — only in those situations calling for clouding of the issues. The sensitivity to the use of these devices in literature will carry over to the use of cases in the law.

Lawyers who have studied poetry better appreciate the need to go beyond mere statements of black letter law. The very act of wrestling with the meaning of a poem drives home the need to clarify a legal argument. The attorney who simply quotes the language of a statute or legal treatise has done little more than present a court with an unresolved metaphor. Attorneys who have had the pleasantly frustrating experience of interpreting poetry know the negative potential inherent in imprecise use of language or allusion.

Struggling with the text of an obscure poem will teach the lawyer much about using the structure of words in understanding an obscure statute. Dylan Thomas, for example, separated adverb and verb of the first sentence of "A Refusal to Mourn . . ." by two verses, nine lines, and 53 words.

A REFUSAL TO MOURN THE DEATH, BY FIRE, OF A
CHILD IN LONDON

Never until the mankind making
Bird beast and flower
Fathering and all humbling darkness
Tells with silence the last light breaking
And the still hour
Is come of the sea tumbling in harness

And I must enter again the round
Zion of the water bead
And the synagogue of the ear of corn
Shall I let pray the shadow of a sound

Or sow my salt seed
In the least valley of sackcloth to mourn

The majesty and burning of the child's death³⁴ The separation of "Never . . . Shall I let pray" emphasizes both the duration of Thomas' refusal to mourn and its final resolution. However, that same separation makes the meaning of the poem obscure and difficult to grasp without careful attention to syntax and detail.

The lawyer who struggles with a lengthy and convoluted statute (the Internal Revenue Code contains a sentence of over 350 words)³⁵ knows only too well the need to parse a sentence. Study of difficult pieces of literature can provide the attorney with the training needed to wrestle with even more prolix statutes and decisions.

V. CONCLUSION

All lawyers have some passing familiarity with the use of literary allusion in practice, even though they might never have dropped a single line of poetry to a jury themselves. No lawyer who has seen *Inherit the Wind* can forget the transfixing cross-examination in which pseudo-Darrow hoists pseudo-Bryan on his own Biblical petard. Some lawyers also know that the scene closely tracks the actual transcript of the Scopes trial, and that Darrow would have not broken Bryan without an intimate knowledge of the Bible as literature.³⁶ References to *Perry Mason* have become less commonplace in trials, but only to relinquish their position to references to *L.A. Law*. In short, you may benefit greatly from using literary or artistic works — great or common, sacred or profane — as examples to make your point. Judges and partners who have most likely studied literature will respond with favor and increased interest if you can relate your argument to a piece of literature they might know.

Sadly, many attorneys need extrinsic reasons to read and enjoy good literature. In a profession so intensely oriented to specific goals, and which consumes so selfishly the time of those who follow its calling, practitioners find it difficult to take the time to pursue any activity not directly related to the practice of law. Accordingly, lawyers have had little apparent reason to turn or return to a study of fine

34. Thomas, "A Refusal to Mourn the Death, by Fire, of a Child in London" (1936).

35. 26 U.S.C. § 341(e) (1987).

36. Clarence Darrow's Cross Examination of William Jennings Bryan in Tennessee v. John Thomas Scopes, 3 CLASSICS OF THE COURTROOM (1987).

literature. However, the professional benefits of reading and studying literature in many ways equal the esthetic benefits.³⁷ Attorneys seeking reasons to read, other than the pleasures which reading intrinsically contains, will find ample justification for the time they spend.³⁸ And, after all, there is no vice in following a profitable pursuit simply because it carries within itself independent pleasure.

37. See Weisberg, *How Judges Speak: Some Lessons on Adjudication in Billy Budd, Sailor with an Application to Justice Rehnquist*, 57 N.Y.U. L. REV. 1, 3 (1982).

38. See generally White, *Law & Literature: "No Manifesto,"* 39 MERCER L. REV. 739 (1988).