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SHYLOCK, CORDELIA, AND THE MAINE DISTRICT COURT

*John C. Sheldon**

In Maine there are two different state trial courts. The superior court is the jury trial forum, to which most people refer valuable civil and weighty criminal issues. The district court, on the other hand, is the "peoples' court," where judges decide cases without juries in order to provide litigants with a fast track to the resolution of their simpler (or, at least, less consequential) civil and criminal cases. Maine District Court judges rarely grapple with grand constitutional issues like abortion or free speech, they hardly ever encounter flashy murder cases, and they never participate in headline products liability trials. Instead, they spend most of their time hearing misdemeanors, juvenile offenses, traffic violations, domestic violence and family law cases, and small claims.

A consequence of such a court structure is the perception that the district court is an inferior judicial branch. There are two straightforward reasons for this. First, the court that regularly handles cases that involve more money, or more prison time, looks more important. Second, the superior court has the authority to review many district court decisions on appeal—a fact that automatically indicates the courts' inequality.

A third reason, however, is more subtle. The district court is supposed to attract the litigants who want, or can only afford, to represent themselves. Few of these pro se parties have ever studied the law that applies to their cases. While that may be okay some of the time—for example, there isn't much law to figure out in a fishing-without-a-license case—it's frequently problematic; for much of the district court docket, especially in family law and many small claims, the law can be downright labyrinthine. Most pro se litigants don't anticipate these legal intricacies because they assume that the "people's court" is going to be user-friendly. To say that they suffer disappointment when they unexpectedly run afoul of refractory legal doctrines like the parole evidence rule or res judicata understates the truth. In fact, many of them view such complexity as lawyers' trickiness, and they distrust it.

To minimize such parties' suspicions and to help them understand his or her decision, a district court judge must avoid appearing to have rested the decision on any abstruse legal ground. From that perspective, a judge who wants to get technical with district court cases appears to be playing in the wrong league: You can't nibble at the corners with your breaking stuff, you've got to put it right down the middle of the plate every time. As a result, the Maine District Court has gotten the reputation as a place of unsophisticated litigants and rough justice where legal analysis merely slows people down and legal abstractions infuriate them. There is, it has been said, nothing superior about the law in the district court.

Because I used to agree with that assessment, I never liked my job. Judging in the district courts of western Maine seemed to require no intellectual sophistication of me whatsoever. Instead, all it seemed to take was stamina enough to maintain my headway against an unrelenting torrent of poorly educated, often surly and

* Judge, District Court.

occasionally fetid litigants. Even more discouraging was the redundancy of it all, the inability or unwillingness of these people to vary their misery. What I was supposed to judge, it seemed, was the same old themes repeated with numbing frequency: a creditor insisting that I miraculously collect the loan he extended to a debtor on welfare; the headstrong teenager expecting that emancipation from her equally obstinant parents will solve her problems; the eternally forgiving victim who forces dismissal of a domestic violence complaint because she refuses, yet again, to testify against her vicious boyfriend; the unreformed alcoholic who pays for his denial with regular installments of legal humiliation; teenage parents arguing about which of them is the less-unqualified custodian for their infant; feuding neighbors who think that a cease-harassment order will do any good. A cornucopia of petulance, a wasteland of ignorance, I thought.

I thought that for almost the entire seven years of my first judicial term. Then, suddenly, a change: they assigned me to hear the case of a fourteen-year-old girl who was accused of murdering her kindly aunt by stabbing her 106 times. In the strictest sense, all I had to do was decide whether to order the girl to stand trial as a juvenile or as an adult, and that wasn't hard. The mandatory minimum sentence for murder by one tried as an adult is twenty-five years in the Maine State Prison, and I didn't think that it was fair to expose a fourteen-year-old to that. Much more difficult was the task of convincing the public that my decision was reasonable, a problem born of the brutality of this crime and compounded by the retributive mood of our times. I knew I could expect tar and feathers if my position were not both persuasive and impregnable. So I supported the decision with citations to Lincoln and Churchill—to make it harder for my critics to call me a wimp—and I quoted Shakespeare—to make it harder to call me stupid.

I built the critical portion of the decision around Portia's famous speech about merciful justice from act 4, scene 1 of *The Merchant of Venice*: "The quality of mercy is not strain'd, It droppeth as the gentle rain from heaven . . . ." But I didn't want to risk quoting Portia out of context, so I read the play before I completed the decision. In the process, I encountered Shylock, futilely trying to convince a judge to help him collect a debt. A light went on: Another of my many frustrated creditors? Curious, I pulled out *King Lear*, and found this: Lear is so pig-headed that he won't acknowledge his daughter Cordelia's unvarnished devotion to him, and Cordelia is so stubborn that she refuses to express her devotion the way he wants to hear it. Disregarding their eminent, mutual affection, he throws her out (incidentally sealing their fate) because they can't *communicate*. Another light went on: That's every emancipation, and almost every divorce, I've ever heard. I pulled out *Othello*: Husband punching and then murdering his adoring wife. *The Taming of the Shrew*: The bibulous Christopher Sly drinks himself into well-deserved humiliation. *Romeo and Juliet*: Imagine the custody and harassment battle had the teenage lovers survived and produced a child.

Good God. I discovered that that wasteland I'd been griping about actually teems with the elements of classic drama! The Maine District Court abounds with behaviors worthy of Shakespeare's imagination—and none of it inspired me? I dove back into his plays and discovered Casca, Brutus's co-conspirator in *Julius Caesar*. In act 1, scene 2, Casca has watched Mark Antony work Rome's plebeians into a frenzy by offering to crown Caesar as emperor. Amid this turmoil

Caesar collapses, probably a victim of epilepsy. Casca later sneers to Brutus about what looked to him like the plebeians' bovine pliability, and blames Caesar's black-out on the stench of the unwashed crowd.

I had to pause. That sure sounded a lot like me, affronted by the squalid litigants of the district court. And what sounded like me also bore the repelling tone of snobbery. I squirmed, uncomfortable with my bedfellow Casca. But discomfort, it turned out, yielded enlightenment. I came to realize that my urgent pursuit of intellectual challenge in the district court had given me a haughtiness that I didn't even recognize because my intellectualization had also blocked my self-awareness. Furthermore, my emphasis on intellect—deduction, logic, and inference—had blinded me to the district court's bouillabaisse of human behavior. To put it another way, I'd been confronting characters who would have appealed not only to Shakespeare but also to Dickens and Hardy and Victor Hugo and Breugel, and I didn't know it. Stressing reason, I'd missed the potential for art.

What was the matter with me? Art's good. So why not give it a chance: forget thinking, pry the legal carapace off the cases you're hearing and find the emotional issues fueling the litigation. Start *feeling* your way through cases. I first tried it in a speeding case. As in most speeding cases, here the officer had used radar, which is presumed accurate under Maine law. In other words, the analysis required of me would normally be minimal, the likelihood of conviction high, and the process boring. This time, however, instead of simply calculating the probative value of the evidence, I encouraged the defendant to tell me what was bothering her about the case, and after she did we talked about it. It turns out that she viewed the allegation that she had violated the law not as objectively untrue but rather as a humiliating attack on her self-respect. That, of course, was alien to her evidentiary burden, and I had to find her guilty. But I believe that by taking an interest in her personal distress I enabled her to leave the courtroom with the confidence that she'd been treated fairly. From my perspective, I reached the real issue within the legal one.

That experience was immensely satisfying. What I had done wasn't inferior to standard legal analysis at all. Finding out why people behave the way they do was at least as difficult and far more interesting. I tried it again, and found that it applies to all kinds of cases: how do I convince this creditor to stop throwing good time and money at a bad debt; why does a father expect *me* to get his daughter to listen to him if he can't; what can I do, besides jailing him, to discourage a defendant from getting drunk or battering his girlfriend again; if my repeated orders to cease harassment fail, is there something else *I* can do to diminish these neighbors' bickering?

And then, finally, I discovered this ultimate irony: my focus on the personal and emotional side of litigation turns out to be a useful tool for legal analysis. Nobody could have been more surprised than I to learn that what helps me iron out the problems of ordinary district court litigants also helps me analyze complicated legal problems, especially issues of modern family law. For example, the purpose of alimony in divorce is a problem that has been puzzling jurists for at least the past decade. One reason why nobody understands alimony these days, I believe, is because the statutes and case law about it don't reflect how people behave today. In Maine, at least, they reflect how people behaved a century ago. Another reason

is because many academic authorities, who sedulously research the legal literature in an effort to define the cutting edge of family law theory, fall short because they ignore sociology. They don't know how real families really act, so their ideas about family law remedies like alimony prove sterile. At least in family law, you can't work from theory down; to be realistic, you have to start by understanding current behavioral norms and then work up.

It's in the district courtroom that you encounter that real behavior and begin to identify those norms. The Maine District Court is a crucible for emerging law. Given the modern significance and interrelationship of common district court issues like divorce, family, domestic violence, gender equality, sexual choice, substance abuse, and the needs of the poor, I believe that my daily district court fare contains the fundamental ingredients of future social justice. The reason why the ordinary people who slug it out in district court fascinate an ardent intellectualizer like me is because they and I are forging the laws of the next generation.

I reflect on what propelled me to this conclusion. It's a long way from Shylock and Cordelia to alimony for husbands. Who was that sixteenth century guy with an imagination to enlighten a twenty-first century judge? Bill Shakespeare—whoever you were, however you did it—thanks. You showed me what a great job I've got.