LESSONS FROM THE MERCHANT OF VENICE

William Shakespeare: the First Proponent of Collaborative Practices

by Gretchen Mary Walther, New Mexico

William Shakespeare is renowned for his brilliant writing and his literary irony. Shakespeare speaks to modern readers with his timeless themes and universal stories. As a Collaborative attorney and critic of the family court system, my frustrations were confirmed upon a recent viewing of The Merchant of Venice. Good old William, in his reliable fashion, provided yet another timeless theme applicable to my daily life as a divorce attorney.

The Merchant of Venice contains one of the most poignant and concise parables for the conventional, non-collaborative legal system as it exists in America today. This theme is embodied in the story about Shylock's loan to Antonio.

Antonio, a gentile merchant, seeks out a wealthy Jewish businessman named Shylock to loan him 3,000 ducats. This transaction is preceded by imagery of the anti-Semitism that existed in Venice in 1529. This included laws prohibiting Jews from owning property and laws that required Jews to live in a Ghetto which was locked at curfew and guarded by Christian guards. Jews had to wear red hats in public and experienced physical and verbal abuse in their daily public interactions. Giving into the mania of the crowd, Antonio himself spat upon Shylock.

When Antonio seeks out this loan, Shylock remarks upon the irony of Antonio requesting assistance from a person he apparently reviles. The stage is set for Shylock's rage and indignation which becomes his downfall at the end of the play.

Shylock agrees to give Antonio the loan, but instead of charging interest, he demands a pound of Antonio's flesh. Antonio, incredulous, agrees. Later, Antonio's investments fail him and he defaults on the 3,000 ducat note. Shylock seeks enforcement of the note and wants his pound of flesh. Although by the time of the court hearing Antonio is able to come up with three times the 3,000 ducat obligation, Shylock insists on court enforcement of the bond, which can only be one pound of Antonio's flesh.

The reader's empathy for Shylock shifts as his rage and desire for revenge dictates his insistence on enforcement of the law. There is a wonderful courtroom scene where Portia, disguised as a doctor of the law, tells Shylock and Antonio that the law of Venice requires Shylock's bond to be enforced regardless of the outcome. Portia asks Shylock to show mercy on Antonio and accept the offer of three times the ducats.

Shylock asks: *"On what compulsion must I? Tell me that."*

Portia responds:

The quality of mercy is not strain'd.
It droppeth as the gentle rain from heaven
Upon the place beneath. It is twice blest:
It blesseth him that gives, and him that takes.
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown.
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings.
But mercy is above this sceptered sway;
It is enthroned in the hearts of kings;
It is an attribute to God himself;
And earthly power doth then show like God's
When mercy seasons justice. Therefore, Jew,
Though Justice be thy plea, consider this:
That, in the course of justice, none of us
Should see salvation; we do pray for mercy.
And that same prayer doth teach us all to render
The deeds of mercy. I have spoken thus much
to mitigate the justice of thy plea.

Despite Portia's eloquent request, Shylock still wants his bond enforced. In his eyes, the law is rigid and must be enforced.

In particular Shylock says:

Proceed to judgment: by my soul I swear
There is no power in the tongue of man
To alter me: I stay here on my bond.

Even when Portia asks Shylock to get a surgeon to help Antonio with the inevitable pain, Shylock will not consider this because it is not stated in the bond.

Then, with Shakespearian irony, just as Shylock is about to exact his pound of flesh from Antonio, the doctor of law tells Shylock that the bond states he can only get one pound of flesh, no more and no less. In addition, he can only get one pound of flesh without causing one drop of Christian blood to spill. If any Christian blood is spilled, the law of Venice requires that all of his assets be forfeited and that his life be at the mercy of the Duke of Venice. In addition, the law of Venice prohibits any direct or indirect action designed to cause death to another citizen. When Shylock asks the doctor of the law if this is really the law of Venice, her earlier statement is brought to light,

For, as thou urgest justice, be assured
Thou shalt have justice, more than thou desirest.

So now, Shylock, who so badly wanted the law enforced, is in a position where it must be enforced against him also. He knows there is no way he can exact his pound of flesh without causing Christian blood to spill. In addition, he has violated the law by taking direct action designed to cause the death of another citizen. Hence, the moral of the story which confirms my feelings as a divorce lawyer: Rigid insistence on enforcement of the laws, without consideration of all of the other moral or social factors which allow for creative problem solving- in this case mercy- may result in that same rigidity being inflicted on you.

Shakespeare's story reminds me of a recent situation here in New Mexico. There is an organization of disgruntled parents, embroiled in child custody cases, who complain that family court judges improperly deny them their fundamental rights as parents and as litigants. Their complaints are focused on the judge's delegation of custody decisions to guardians ad litem and a denial of full evidentiary hearings. These litigants, who tend to appear pro se, end up losing in court just like the litigants who have attorneys representing them. As a result of the "unfair" rulings, the divorce litigants feel that the justice system itself is unfair.

Rigid insistence on the enforcement of the laws, without consideration of all the other moral or social factors which allow for creative problem-solving --in this case mercy-- may result in that same rigidity being inflicted on you.

This group of disgruntled parents has been associated with death threats against judges, law suits against lawyers, and media-based "fights" for justice in the name of their poor, unheard, justice-deprived children. I am on a New Mexico Supreme Court Committee appointed to address these issues. In my discussions with lawyers, judges and litigants regarding the need for reform, I continually arrive at the same personal conclusion, "Why, then, if you are so dissatisfied with the system, are you voluntarily placing your-

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self in the system?" One response I get to this question is, "It is not me subjecting myself to the legal system....it is the other side dragging me through it." This is a difficult paradox, because most divorce lawyers have been in this situation with an unreasonable litigant on the other side. That, however, is the focus of another article.

My lesson for today relates to those who voluntarily place themselves in litigation or lead their clients into the family court system in the name of "justice." As Shylock learned, blind insistence on enforcement of the laws, without consideration of other options, may result in that very same system putting your assets at risk and your life "at the mercy of the Duke."

As Portia said:

And earthly power doth then show like God's
When mercy seasons justice.

Lawyers can become closest to spiritual existence in their law practices when they season justice with mercy. In Collaborative cases, we do this when we look beyond the rule of the law to come up with other solutions to resolve a dispute. Mercy in this context is a synonym for creative problem solving.

My lesson for today relates to those who voluntarily place themselves in litigation or lead their clients into the family court system in the name of "justice."

Portia also identified another irony when she stated,

Though Justice be thy plea, consider this:
That, in the course of justice, none of us
Should see salvation; we do pray for mercy.
And that same prayer doth teach us all to render
The deeds of mercy.

When lawyers and clients seek out justice, we rarely see salvation. As a result, we pray for mercy also. I can name innumerable court appearances where after hours of diligent preparation, I have looked inward and hoped that, despite all of the evidence presented to the judge, he or she will do the "right thing" in the case. I remember one client, a devout catholic, who tenderly fingered her rosary beads as the judge issued her ruling. As Portia reminds us, these prayers for mercy also teach us to impart mercy.

Gretchen Walther *is a partner in the law firm of Walther Family Law, P.A., which has offices in Albuquerque and Santa Fe. She is a New Mexico Board Certified Family Law Specialist. Ms. Walther received her B.A. degree, cum laude, from New York University and her J.D. degree from Pace University School of Law. She is former chair of the State Bar of New Mexico Family Law Section and wrote "Power Imbalances in Divorce Mediation" for the American Journal of Family Law. Ms. Walther is a frequent speaker for the New Mexico State Bar and the American Bar Association on Family Law-related topics. Ms. Walther is the President of the New Mexico Collaborative Practice Group. Ms. Walther is also a member of the Domestic Relations Task Force, created by the Supreme Court of New Mexico. Ms. Walther has been recently named in the Best Lawyers of America.*

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