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REFERENCES TO ROBERT FROST'S POETRY IN ADVOCACY AND JUDICIAL OPINIONS

DOUGLAS E. ABRAMS¹

POET ROBERT FROST (1874-1963) WAS AN AMERICAN GEM, THE ONLY FOUR-TIME RECIPIENT OF THE PULITZER PRIZE FOR POETRY. IN 1962, HE RECEIVED YET ANOTHER COVETED HONOR, THE CONGRESSIONAL GOLD MEDAL BY UNANIMOUS VOTE OF U.S. CONGRESS. WHEN PRESIDENT JOHN F. KENNEDY PRESENTED THE MEDAL, HE PRAISED FROST'S LITERARY "INTERPRETATIONS OF WHAT ... IS THE BEST OF AMERICA."²



Douglas E. Abrams

A two-way street

This article concerns courts whose written opinions have recently cited and quoted Frost and his poetry. By profiling Frost's enduring influence, the article fortifies a theme I have presented in earlier "Writing It Right" articles. The theme begins in the courts, which in recent years often accent their opinions' substantive or procedural rulings by quoting or citing well-known cultural markers from literature, sports, or popular entertainment.³

At its best, the judicial process paves a two-way street, a focused dialogue between the advocates who seek to persuade and the court which decides. The theme of my earlier "Writing It Right" articles is that the courts' frequent use of references to cultural makers in their opinions invites advocates to enhance their briefs and other submissions with references to similar well-known cultural markers. As I wrote in 2019, "advocates should feel comfortable following the courts' lead by carefully referencing [cultural markers] to help sharpen substantive and procedural arguments in the filings they submit."⁴

To help encourage advocates, I have called attention to statements of leading judges. "Think of the poor judge who is reading ... hundreds and hundreds of these briefs," says Chief Justice John G. Roberts Jr. "Liven up their life just a bit

... with something interesting."⁵

Justice Antonin Scalia similarly urged brief writers to "[m]ake it interesting."⁶ "I don't think the law has to be dull." "Legal briefs are necessarily filled with abstract concepts that are difficult to explain," Scalia continued.⁷ "Nothing clarifies their meaning as well as examples" that "cause the serious legal points you're making to be more vivid, more lively, and hence more memorable."⁸

Robert Frost in the courts: A poetic sampler

Frost's poetry remains vintage Americana, ripe for citation and quotation by the courts, and thus by advocates who seek to "liven up" their briefs with "something interesting," and to make their legal points "more vivid, more lively, and hence more memorable."

Even after the passage of decades, Frost's influence on American culture continues to hold judges' respect. Courts continue to cite and quote from two of Frost's best-known, best-loved poems – "Mending Wall" (1914) and "The Road

Not Taken" (1915).

"Mending Wall"

"Mending Wall" tells the story of two New England farmers whose adjoining farms are separated by a wall of rock. When it comes time for the pair to cooperate to repair the wall in the spring after the harsh winter, one farmer questions the need for a wall. The neighbor responds tartly: "Good fences make good neighbors."⁹

As its storyline suggests, "Mending Wall" lends itself well to citation and quotation by courts that decide boundary disputes and similar controversies between adjoining landowners, such the Florida District Court of Appeal's 2020 ruling in *Ives v. Gettinger*.¹⁰ *Ives* began as a homeowner's trespass action against an adjoining neighbor. The claim was that the neighbor hired a construction company that removed and destroyed the sedimentary rock formation underneath the homeowner's fence.¹¹ The neighbor filed a counterclaim and a third-party claim for injunctive relief and damages.

The appellate court affirmed the \$600 judgment for the homeowner. Citing and quoting Frost's poem, the panel instructed, "This is a cautionary tale that reaffirms the adage: 'Good fences make good neighbors.'"¹²

“The Road Not Taken”

In “The Road Not Taken,” the poem’s narrator comes upon “[t]wo roads [that] diverged in a yellow wood.” One road “bent in the undergrowth”; “the other, as just as fair, ... was grassy and wanted wear.” The narrator reports that he “took the one less traveled by, [a]nd that has made all the difference.”¹³

In *Boone v. Youngbar*,¹⁴ the Maryland Court of Special Appeals affirmed dismissal of the unwed mother’s petition to disestablish the paternity of the young daughter’s legal father. The legal father had executed an affidavit of parentage that complied with all legal requirements, but the mother alleged that there had been a mistake concerning biological paternity.

The *Boone* court noted role reversal:

It is frequently the unwed mother who seeks to establish the paternity of the biological father in order to ensure child support. It is the unwed mother herein, however, who seeks to disenfranchise the legally established paternity of the appellee, John Youngbar. Conversely, it is frequently the putative father who shrinks from a designation as the father. It is the unwed father herein, however, who is fighting to retain his legally established paternal status.¹⁵

Boone held that the law did not permit the mother to disestablish the father’s legal paternity by a petition that he opposed.¹⁶ Citing and quoting from “The Road Not Taken,” the court held that the parties’ role reversal “made all the difference.”¹⁷

Conclusion: A “granite figure”

A few months after Frost’s death in 1963, Kennedy called the legendary poet “one of the granite figures of our time in America.”¹⁸ Well into the 21st century, judges honor the cultural bequest that Frost left the nation.🇺🇸

Endnotes

1 Douglas E. Abrams, a University of Missouri law professor, has written or co-written six books, which have appeared in a total of 22 editions. Four U.S. Supreme Court decisions have cited his law review articles. His writings have been downloaded more than 45,000 times worldwide (in 153 countries). His latest book is EFFECTIVE LEGAL WRITING: A GUIDE FOR STUDENTS AND PRACTITIONERS (West Academic 2d ed. 2021).

2 John F. Kennedy, *Remarks Upon Presenting a Congressional Award to Robert Frost, 26 March 1962*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM (March 26, 1962), <https://www.jfklibrary.org/asset-viewer/archives/JFKWHA/1962/JFKWHA-082-003/JFKWHA-082-003>. See generally ROBERT FROST, COLLECTED POEMS, PROSE, & PLAYS (1995 ed.).

3 See, e.g., Douglas E. Abrams, *Charles Dickens’ Novels In the Courts*, 78 J. MO. BAR 29, 29 & n. 2-7 (Jan.-Feb. 2022).

4 Douglas E. Abrams, *References to Television Shows In Judicial Opinions and Written Advocacy (Part 1)*, 75 J. MO. BAR 25, 25 (Jan.-Feb. 2019).

5 Bryan A. Garner, *Interviews with Supreme Court Justices: Chief Justice John G. Roberts, Jr.*, 13 SCRIBES J. LEGAL WRITING 5, 18 (2010).

6 ANTONIN SCALIA & BRYAN A. GARNER, MAKING YOUR CASE: THE ART OF PERSUADING JUDGES 112 (2018).

7 *Id.* at 111 and 122.

8 *Id.*

9 Kennedy, *supra* note 2 at 39-40.

10 307 So.3d 827 (Fla. Dist. Ct. App. 2020). Other recent decisions whose opinions cite and quote from “Mending Wall” include *Golodner v. City of New London*, 2010 WL 3522489 (D. Conn. Sept. 1, 2010); *Hejazi v. Sears*, C-02-CV-17-001567 (Md. Ct. Spec. App. Sept. 14, 2020) (unreported); *Arnold v. Arnold*, 187 A.3d 299 (R.I. 2018); *Pendergrast v. Matichuk*, 355 P.3d 1210 (Wash. Ct. App. 2015);

Gilliland v. Acquafredda Enterprises, LLC, 936 N.Y.S.2d 125 (App. Div. 2011); *Van Den Heuvel v. Krutz*, 2009 WL 3447380 (Wis. Ct. App. 2009); *Young v. Harnage*, 2007 WL 4358274 (Conn. Super. Ct. Nov. 15, 2007).

11 *Ives*, 307 So.3d at 827.

12 *Id.* at 828.

13 Kennedy, *supra* note 2 at 103. Other recent decisions whose opinions cite and quote from “The Road Not Taken” include *King v. Shulkin*, 29 Vet.App. 174 (U.S. Ct. App. Vet. Cl. 2017); *U.S. v. Santiago*, 413 F. Supp.2d 307 (S.D.N.Y. 2006); *United BizJet Holdings, Inc., v. Gulfstream Aerospace Corp.*, 318 F. Supp.2d 680 (N.D. Ill. 2004). See also Nicole Roberts, *The Road Less Traveled: Current, Former Missouri Lawyers Apply Their Law Degrees Outside the Courtroom*, 77 J. MO. BAR 112 (May-June 2021).

14 170 A.3d 912 (Md. Ct. Spec. App. 2017).

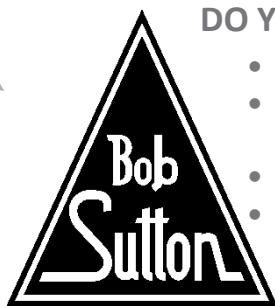
15 *Id.* at 913.

16 *Id.* at 918.

17 *Id.* at 915.

18 John F. Kennedy, *Remarks at Amherst College, October 26, 1963: In Praise of Robert Frost*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY AND MUSEUM (Oct. 26, 1963), http://ezto-cf-media.mheducation.com/Media/Connect_Production/hssl/english/connect_writing_3_0/Culture_4.pdf.

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