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## Mark Twain: Doctoring the Laws

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[T]here is no display of human ingenuity, wit, and power so fascinating as that made by trained lawyers in the trial of an important case, nowhere else is exhibited such subtlety, acumen, address, eloquence.<sup>1</sup>

You were intended for a preacher, & lo! you would be a scheming, groveling, mud-cat of a *lawyer*. A man *never* is willing to do what his Creator intended him to do.<sup>2</sup>

## I. INTRODUCTION

On June 4, 1902, the University of Missouri completed the most suc-

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\* The pen-and-ink drawing of Mark Twain which appears on the facing page was done by Kim M. Roam, the author of this Comment.

1. M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* 484 (1873).

2. Feinstein, *Mark Twain and the Pirates*, 13 HARV. L. BULL. 6, 9 (1962) (quoting letter from Samuel Clemens to Orion Clemens).

successful year in its sixty-three year history.<sup>3</sup> During the commencement exercises that day, the University bestowed upon Samuel L. Clemens, better known to the world as Mark Twain, the highest gift at its disposal: the honorary Doctor of Laws degree.<sup>4</sup> Dr. Clemens led the procession of graduating students and awarded them their diplomas,<sup>5</sup> encouraging them to “[p]ick out a good one. Don’t take two, but be sure you get a good one.”<sup>6</sup> Later in the ceremony, Dr. Clemens addressed his audience:

Now that I am Doctor of Laws there will be more queries of . . . [my qualifications]. People will be saying now, “What does he know about doctoring laws?” But that’s all right. We won’t borrow trouble. It is perfectly right that I be made Doctor of Laws. People who doctor the laws and the people who make the laws do not have to obey them. Their share of the duties is in making them.<sup>7</sup>

Samuel Clemens gave Missouri an enduring place in the world of literature and consequently became one of the most distinguished sons of the state.<sup>8</sup> In his autobiography, he wrote, “[My parents’] first crop of children

3. Several factors contributed to the success of the academic year 1901-1902. The University’s enrollment was the largest to date, generous appropriations had been made for maintenance, new buildings were built on the Columbia campus, and, most importantly, the people of Missouri were showing greater interest in the improvement of their leading educational institution. *The Columbia [Mo.] Herald*, June 6, 1902, at 4, col. 1.

4. In April 1902, Clemens received the following letter from R.H. Jesse, President of the University of Missouri:

My Dear Mr. Clemens,—Although you received the degree of doctor of literature last fall from Yale, . . . we want to adopt you here as a son of the University of Missouri. In asking your permission to confer upon you the degree of LL.D. the University of Missouri does not aim to confer an honor upon you so much as to show her appreciation of you. The rules of the University forbid us to confer the degree upon any one *in absentia*. I hope very much that you can so arrange your plans as to be with us.

3 A. PAINE, *MARK TWAIN: A BIOGRAPHY* 1166 (1912). Clemens accepted the invitation and returned home to Missouri for the last time. He stopped first in St. Louis and then took a train to Hannibal, where he visited old friends and familiar places. A few days later he traveled to Columbia to receive his LL.D. degree. Other Missouri sons similarly honored that day were Secretary of the Interior Ethan Allen Hitchcock, Secretary of Agriculture James Wilson, Robert S. Brookings of Washington University, and B.T. Galloway. Clemens later returned to St. Louis to dedicate the World’s Fair grounds and to christen the harbor boat named in his honor, the *Mark Twain*. See M. MELTZER, *MARK TWAIN HIMSELF* 232-35 (1960); 3 A. PAINE, *supra*, at 1166-75; *The Columbia [Mo.] Herald*, June 6, 1902, at 4, col. 2; 54 *ST. LOUIS POST-DISPATCH* 282 (1902).

5. 3 A. PAINE, *supra* note 4, at 1172.

6. *Id.* at 1167.

7. *The Columbia [Mo.] Herald*, June 6, 1902, at 15, col. 1.

8. *Id.* at 4, col. 2.

was born . . . [in Tennessee], but I was of a later vintage . . . . I was . . . postponed to Missouri. Missouri was an unknown new state and needed attractions."<sup>9</sup> As perhaps America's most popular writer/humorist, he did become the infant state's needed attraction. It was appropriate that the state honor him. Moreover, it was "perfectly right" that the University of Missouri honor Samuel Clemens with the title Doctor of Laws, but for reasons different than those he gave.

As Mark Twain, he was not a stranger to the law. In *Roughing It*, he wrote, "I had studied law an entire week, and then given it up because it was so prosy and tiresome."<sup>10</sup> Nevertheless, Twain's relationship with the law continued and developed. This Comment will examine that relationship and explore the life, times, and writings of Mark Twain in search of his attitudes toward the law and those he called "the officers of the law."<sup>11</sup> For ease of discussion, this study is divided into two major parts. First, it will address the law in the life of Samuel Clemens. Second, it will focus on the law in the literature of Mark Twain. As these categories indicate, this Comment deals with two men: Samuel Clemens, the man, and Mark Twain, the writer. But the events in Clemens's life frequently found their way into Twain's literature,<sup>12</sup> so the discussion will, at times, involve aspects of both. This Comment will demonstrate why Samuel L. Clemens deserved to be recognized as a "doctor of laws."

## II. THE LAW IN THE LIFE OF SAMUEL CLEMENS

### A. Judge John Clemens

Samuel Clemens's first exposure to the law was provided through his father, lawyer John Marshall Clemens.<sup>13</sup> John Clemens had responsibility thrust upon him at age seven, when his father was killed in a freak accident.<sup>14</sup> The eldest of five children, and suddenly the male head of the household, John went to work in an iron manufactory in Lynchburg, Vir-

9. 1 M. TWAIN, MARK TWAIN'S AUTOBIOGRAPHY 87 (1924).

10. M. TWAIN, ROUGHING IT 292 (1872).

11. M. TWAIN & C. WARNER, THE GILDED AGE: A TALE OF TODAY 269 (1873).

12. In 1886, Twain wrote to an English admirer: "Yes, the truth is, my books are simply autobiographies. I do not know that there is an incident in them which . . . did not so occur. If the incidents were dated, they could be strung together in their due order, and the result would be an autobiography." Letter from Samuel Clemens to Kate Staples (Oct. 8, 1886). See also D. WECTER, SAM CLEMENS OF HANNIBAL 65 (1952).

13. John Marshall Clemens, the first child of Samuel and Pamela Clemens, was born August 11, 1798. He was named for John Marshall, the prominent Virginia lawyer who within three years would become Chief Justice of the United States Supreme Court. See D. WECTER, *supra* note 12, at 6.

14. In the autumn of 1805, John's father, Samuel, participated in a house-raising. While pushing a log up a hill, he slipped and the log rolled back, fatally crush-

ginia. From this boyhood spent without time for play or humor, he developed a serious disposition, characterized by ambition, ingenuity, and hard work.<sup>15</sup>

At the age of twenty-three, John Clemens became apprenticed to study law under the guidance of an attorney named Cyrus Walker in Columbia, Kentucky.<sup>16</sup> He was granted a license to practice law in Kentucky on October 29, 1822.<sup>17</sup> Two years later, he married Jane Lampton. In 1825, shortly after the birth of their first child, Orion, the couple moved to Jackson County, Tennessee. The legal business there proved insufficient to support a growing family, so John moved his family and practice elsewhere. With each new residence, John Clemens was undone by profitless ideas, uncompensated legal work, and failing health.<sup>18</sup>

At the urging of John's brother-in-law, John Quarles, the Clemens

ing him against a stump. See R. HOLCOMBE, HISTORY OF MARION COUNTY, MISSOURI 914 (1884); D. WECTER, *supra* note 12, at 9.

15. See D. WECTER, *supra* note 12, at 12. In addition to supporting his family, John Clemens was appointed administrator of his father's estate and guardian of the minor children, Hannibal and Caroline, by order of the Adair County Court at its December 1820 term. See 1 A. PAINE, *supra* note 4, at 2; Mark Twain Papers, Bancroft Library, University of California at Berkeley, Documents File [hereinafter cited as Twain Papers].

16. See 1 A. PAINE, *supra* note 4, at 2; D. WECTER, *supra* note 12, at 14.

17. To obtain his license to practice law, John Clemens had to produce a certificate from the Adair County Court confirming that he was a man of "honesty, probity, and good demeanor." He was also required to pass a legal examination given by Judges Christopher Tompkins and Joseph Eve. See D. WECTER, *supra* note 12, at 14; see also R. HOLCOMBE, *supra* note 14, at 914; Twain Papers, *supra* note 15.

18. John Clemens first moved his family to the small backwoods community of Jamestown, Tennessee, and promptly became its leading citizen. As Fentress County Commissioner, he drafted plans for the county's first courthouse and jail. Clemens was also chosen the first circuit clerk of Fentress County and periodically served as attorney general in addition to his practice of law. See 1 A. PAINE, *supra* note 4, at 5-7; D. WECTER, *supra* note 12, at 30-31; see also A. HOGUE, ONE HUNDRED YEARS IN THE CUMBERLAND MOUNTAINS ALONG THE CONTINENTAL LINE 11-13 (1933) (citing Fentress County records, 1828-1835); A. HOGUE, HISTORY OF FENTRESS COUNTY, TENNESSEE 12-13 (1916). Clemens, despite his standing in the community, overextended himself in large land speculations, operated a profitless general store, and earned few fees through his law practice. About 1831, Clemens moved his family again, this time to Three Forks, Tennessee, a town on the Wolf River, where he established a store and post office at nearby Pall Mall. He served as postmaster from April 3, 1832, to May 28, 1835. See 12A Records of Appointment of Postmasters 127, National Archives. Clemens quit his law practice to devote more time to his store, but it eventually failed. See 1 A. PAINE, *supra* note 4, at 9; D. WECTER, *supra* note 12, at 34; see also M. TWAIN & C. WARNER, THE GILDED AGE: A TALE OF TODAY 1-12 (1873) (Twain's fictionalized account of his family's Tennessee plight and subsequent move to Missouri).

family eventually moved to Florida, Missouri, to assist Quarles in his general store there.<sup>19</sup> Florida is located on the banks of the Salt River, and Quarles believed the reports that the Salt could be made navigable. If true, the new avenue of commerce would transform Florida from a sleepy village into a port city, and the area's surplus produce could be shipped to the Mississippi River and beyond.<sup>20</sup> On November 30, 1835, after settling in Florida, Jane Clemens gave birth to her sixth child and named him Samuel.

While working as a partner in Quarles's store, John Clemens re-established his law practice.<sup>21</sup> Hope for navigation on the Salt River was renewed by an act of the state legislature in January, 1837.<sup>22</sup> Clemens was appointed one of sixteen commissioners to sell capital stock in the Salt River Navigation Company,<sup>23</sup> which was formed to dredge the river and build locks and dams. But, typical of Clemens's ventures, sufficient funds were never raised and the company was dissolved.<sup>24</sup> The venture's failure did not deter him from becoming involved in numerous other projects to enhance Florida's future.<sup>25</sup>

John Clemens started his own store in 1837, and his law practice began to prosper. On November 6, 1837, he reached the peak of his professional life when he took office as a judge of the Monroe County Court.<sup>26</sup> From that office he acquired the permanent title of "Judge."

The Judge appears in much of his son's literature. In *The Tragedy of Pudd'nhead Wilson*, he describes Judge Driscoll, who is based on John Clemens:

The chief citizen . . . about forty years old, judge of the county court. He was very proud of his old Virginia ancestry, and in his hospitalities and his rather formal and stately manners he kept up its traditions. He was fine and just and generous. To be a gentleman was his only religion . . . . [T]he judge was a free-

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19. 1 A. PAINE, *supra* note 4, at 9; D. WECTER, *supra* note 12, at 34. *See also* M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* 10-12 (1873).

20. Columbia Missouri Intelligencer, April 16, 1831.

21. *See* note 17 *supra*.

22. 1837 Mo. Laws 229-34.

23. *Id.* *See also* M. MELTZER, *supra* note 4, at 1; 1 A. PAINE, *supra* note 4, at 19-20; D. WECTER, *supra* note 12, at 47.

24. D. WECTER, *supra* note 12, at 47. The phrase "up the Salt River" was coined as a result of the Navigation Company's failure. It came generally to signify defeat. *See* M. BRASHEAR, *MARK TWAIN, SON OF MISSOURI* 44 n.34 (1934); 1 A. PAINE, *supra* note 4, at 20.

25. Clemens headed a six-member commission to promote a Florida & Paris Railroad. 1837 Mo. Laws 237. He also served as a member of a board which attempted to found an academy in Florida. 1837 Mo. Laws 146. *See also* D. WECTER, *supra* note 12, at 49.

26. Monroe County [Mo.] Records, Vol. A, at 142 (1837). His fellow judges were Samuel Curtright and Jonathan Gore. *See also* 1 A. PAINE, *supra* note 4, at 19.

thinker.<sup>27</sup>

At that time, Missouri county judges were elected for four-year terms, served primarily as administrators, worked with probate matters, and drew salaries of two dollars for each day they sat in their judicial capacity.<sup>28</sup>

Despite the prestige of the office, Judge Clemens found the small supplemental salary insufficient for his ever-growing family, and he sensed that his future in Florida, like Florida itself, was limited.<sup>29</sup> Following the death of his young daughter, Margaret,<sup>30</sup> he decided to make yet another start in 1839.

That beginning lay thirty miles overland in Hannibal, Missouri. Located on the banks of the Mississippi, Hannibal was an established port and a community with some manufacturing.<sup>31</sup> But it did not prove to be the new Eden for which Judge Clemens hoped. His merchandise store there produced little profit, and his few rental properties housed tenants who paid irregularly, if at all. He continued to be plagued by poor business judgment and economic mishaps. This time, however, recovery became impossible when a land investor named Ira Stout defaulted on a large loan from the Judge and then declared bankruptcy.<sup>32</sup> In October 1842, the Judge offered the family home for sale by public auction so that he could satisfy his creditors.<sup>33</sup> His Virginia code of honor required that he sell all his possessions to pay off his debts rather than escape those obligations through the bankruptcy laws. As one commentator noted, "The Clemenses . . . were not shrewd business folk, but they never forgot that they were

27. M. TWAIN, *THE TRAGEDY OF PUDD'NHEAD WILSON* 20-21 (1894).

28. MO. REV. STAT. §§ 9-16, at 155-57 (1835).

29. The collapse of the Navigation Company had ended hopes that Florida could become a major Mississippi port and signalled that the community was destined to remain a small town. See note 24 and accompanying text *supra*.

30. On August 19, 1839, Margaret Clemens died of a "bilious fever." Although her death hastened the family's departure from Florida, Judge Clemens's financial failure was a significant reason for the decision to move. Twain later wrote that his proud father was "not a person likely to abide among scenes of his vanished grandeur and be the target for public commiseration." 1 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 274 (1924). See also 1 A. PAINE, *supra* note 4, at 22; D. WECTER, *supra* note 12, at 51-53.

31. See M. MELTZER, *supra* note 4, at 2; 1 A. PAINE, *supra* note 4, at 26.

32. See 2 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 274 (1924); D. WECTER, *supra* note 12, at 69-70; see generally *Bray & Bailey v. Stout*, No. 2406 (Marion Cty., Mo. Cir. Ct., Jan. 12, 1842) (settled out of court).

33. Title to the Clemens home was transferred to James Kerr on October 13, 1841, but no one would buy the house, knowing that the Judge and his family had no other place to live. Two years later the family moved elsewhere, the property was divided into seven parcels, and the sale of the parcels satisfied his creditors. In addition to the house and lots, the Judge sold most of the family silverware and all of the furniture. D. WECTER, *supra* note 12, at 71.

gentry."<sup>34</sup> Judge Clemens's action had a profound effect on his son, Sam. Half a century later, when Mark Twain's financial empire crumbled, Sam Clemens took his father's course of action.<sup>35</sup>

Although that time was financially bleak for the Clemens household, the period and the locale provided Mark Twain with his richest inspirations.<sup>36</sup> There was a stark contrast, however, between the stern Judge and his free and adventurous son. Sam Clemens wrote later, "My father and I were always on the most distant terms when I was a boy—a sort of armed neutrality, so to speak."<sup>37</sup>

As a result of his financial difficulties, Judge Clemens put more emphasis into his law practice and was elected justice of the peace in Hannibal.<sup>38</sup> Mark Twain's description of the job appears in *Life on the Mississippi*: "My father was justice of the peace and I supposed he possessed the power of life and death over all men, and could hang anybody that offended him."<sup>39</sup> As justice of the peace, Judge Clemens belonged to the tradition of buckskin jurisprudence, for he commanded peace and, if necessary, obtained it in his court by wielding a mallet against any unruly participant.<sup>40</sup>

Several incidents that occurred during Judge Clemens's term as justice of the peace have been preserved in his son's writings. For instance, after a day's truancy from school in the fall of 1843, young Sam sneaked into his father's deserted law office to postpone his inevitable punishment. But he was not alone. The moonlight revealed the corpse of a man stabbed in the chest. Twain later told how, at the sight of the dead man, "I went out at the window, and I carried the sash along with me; I did not need the sash, but it was handier to take it than to leave it, so I took it."<sup>41</sup>

34. *Id.*

35. See notes 217-18 and accompanying text *infra*.

36. The people and places of Hannibal and its surrounding area are inescapable in Mark Twain's works, whether in his sketches ("*Jimmy Finn*," the town drunkard, and "*Cadets of Temperance*," written for the San Francisco *Alta California*), short stories (*The Man Who Corrupted Hadleyburg*), non-fiction (*Life on the Mississippi*), or novels (*Huckleberry Finn*, *Tom Sawyer*, and *Pudd'nhead Wilson*).

37. 10 GALAXY 286 (1869).

38. Twain's biographer, A.B. Paine, reported that John Clemens ran for justice of the peace in 1840. 1 A. PAINE, *supra* note 4, at 41. The August 8, 1840, issue of the *Palmyra Whig*, however, listed seven candidates for that office, and Clemens was not among them. D. WECTER, *supra* note 12, at 103, 291 n.5. Wecter estimates that Clemens won the office in 1840. *Id.* at 103.

39. M. TWAIN, *LIFE ON THE MISSISSIPPI* 65-66 (1874).

40. In the autumn of 1843, Judge Clemens proved that he was both the justice and the dispenser of the peace. While the Judge was holding court, a plaintiff fired a revolver at a witness who was provoking him. The Judge quelled the disturbance by hitting the plaintiff over the head with a hammer. D. WECTER, *supra* note 12, at 104-05 (citing an undated clipping from *St. Louis Republican*). See also R. HOLCOMBE, *supra* note 14, at 914; 1 A. PAINE, *supra* note 4, at 45.

41. M. TWAIN, *THE INNOCENTS ABROAD* 177 (1869). This incident resulted



Another scene, *Huckleberry Finn's* celebrated episode in which Colonel Sherburn shoots Old Boggs, was taken from an event which took place in Hannibal in 1845. Sam Smarr, a loose-tongued drunk (who became Boggs in the book), had a feud with a prosperous merchant named William Owsley (who became the Colonel). For weeks, Smarr had openly accused Owsley of stealing two thousand dollars from a friend of Smarr's. On the night of January 24, the drunken Smarr shouted the same accusations five times from the street in front of Owsley's store. Owsley came out of the store, drew a pistol, and fired two shots, killing Smarr.<sup>42</sup>

Such an open and deliberate murder caused an uproar in Hannibal, but no one knows whether the mob that assembled in *Huckleberry Finn* had a counterpart in Hannibal. Twain, however, may have been referring to that event when he rebuked the cowardice of lynch mobs, writing that "there are never ten men in . . . [a lynch mob] who would not prefer to be somewhere else—and would be, if they had but the courage to go. When I was a boy I saw a brave gentleman deride and insult a mob and drive it away."<sup>43</sup> If a mob gathered in Hannibal, nothing apparently came of it, for Owsley went to trial a year later and was acquitted on a defense of provocation.<sup>44</sup> Twenty-eight depositions concerning the event were taken by John M. Clemens, J.P.<sup>45</sup>

Besides deposing witnesses, Judge Clemens held inquests, issued subpoenas, assisted the court in criminal prosecutions, and supervised the building of Hannibal's roads.<sup>46</sup> He worked hard to improve Hannibal's future, as he had in Florida. Lacking capital and political influence, he nevertheless devised plans for community development. In the spring of 1846, he helped organize a group of businessmen interested in building a

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from Hannibal's first recorded homicide. On September 4, 1843, two farmers, Vincent Hudson and James McFarland, started a drunken quarrel over a plow. Hudson stabbed McFarland, who died within the hour. The body was taken to Judge Clemens's office, which perhaps served for the coroner's inquest, and young Sam literally stumbled onto the body. A jury later found Hudson guilty of manslaughter. *State v. Hudson*, No. 3516 (Marion Cty., Mo. Cir. Ct., Jan. 6, 1844). *See also* D. WECTER, *supra* note 12, at 103-04; Palmyra [Mo.] Whig, Sept. 9, 1843.

42. *See State v. Owsley*, No. 3873 (Marion Cty., Mo. Cir. Ct., Mar. 14, 1846) (recorded and signed by John Clemens and fellow justice Richard T. Holliday); M. TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* 186-88 (1885); *see also* 1 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 130-31 (1924).

43. M. TWAIN, *The United States of Lyncherdom*, in *EUROPE AND ELSEWHERE* 239, 245 (1923). *See also* H. HILL, *MARK TWAIN: GOD'S FOOL* 29-30 (1973); M. TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* 186-88 (1885).

44. *State v. Owsley* No. 3873 (Marion Cty., Mo. Cir. Ct., Mar. 14, 1846).

45. D. WECTER, *supra* note 12, at 106. Judge Clemens received \$13.50 for writing the 13,500 words contained in those depositions. He received an additional \$1.81 for administering oaths to 29 witnesses. *Id.* at 109.

46. MO. REV. STAT. ch. 151, §§ 28-53 (1845).

railroad from Hannibal to St. Joseph.<sup>47</sup> In November of that year, he published a report, as chairman of a citizens' committee, advocating construction of a planked road between the same cities.<sup>48</sup> That winter, he worked to have a Masonic college for Missouri located in Hannibal.<sup>49</sup> He was a founder and president of the Hannibal Library Institute, the town's first lending library.<sup>50</sup>

In late 1846, Judge Clemens announced his candidacy for Clerk of the Marion County Circuit Court.<sup>51</sup> Through the winter, he campaigned hard throughout the county, but bad luck stalked him again. While returning home on horseback from a campaign trip to Palmyra, Missouri, he was overtaken by a sleet storm. He developed pneumonia from the prolonged exposure. He died in Hannibal on March 24, 1847.<sup>52</sup>

After his father's death, the eleven-year old Sam felt remorse for his past wildness and disobedience. He stood beside his father's casket and promised his mother that he would be a faithful and industrious man, like his father, as long as he would not have to go back to school. His mother accepted the offer.<sup>53</sup>

This account of Judge Clemens's life is a major component of an analysis of Mark Twain's view of the law. Although his personality clashed with that of his father, Sam Clemens nevertheless learned from the Judge about law and human nature. As an officer of the law, the Judge instilled in Sam the thirst for justice that appears throughout Twain's writings. As a man, John Clemens provided his son with an example of honor and good citizenship, despite his financial ruin. He taught his son that the law should be respected and followed, or changed through careful consideration and debate. Sam stored up these lessons to be re-taught through the pen of Mark Twain.

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47. R. HOLCOMBE, *supra* note 14, at 901. In 1847, the Missouri legislature passed a bill that chartered the Hannibal & St. Joseph Railroad, but Judge Clemens did not live to see the start of its construction. The Hannibal & St. Joe was completed in 1859 and became the first rail route to link the Mississippi and Missouri Rivers. The railroad served as a vital part of the Pony Express and profited from the discovery of gold in Colorado. *Id.* See also M. TWAIN, *THE MAN WHO CORRUPTED HADLEYBURG AND OTHER STORIES* 1-83 (1900) (two men compete for benefits produced by railroad's construction).

48. Hannibal Gazette, Nov. 26, 1846; *id.*, Feb. 11, 1847; Hannibal Journal and Western Union, Dec. 18, 1851.

49. Hannibal Gazette, Jan. 21, 1847.

50. *Id.*, Dec. 31, 1846; *id.*, Feb. 4, 1847.

51. *Id.*, Nov. 5, 1846.

52. See 2 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 274-75 (1924); 1 A. PAINE, *supra* note 4, at 72-73; D. WECTER, *supra* note 12, at 114-16.

53. 1 A. PAINE, *supra* note 4, at 74-75.

### B. *Sam of All Trades*

At the age of twelve, Sam Clemens became a printer's apprentice. For the next six years he worked in the newspaper offices of Hannibal, first for the *Missouri Courier*,<sup>54</sup> and then for his brother, Orion, who owned the *Hannibal Journal*.<sup>55</sup> Sam left Hannibal in 1853 and became a compositor in New York City and Philadelphia.<sup>56</sup> After a brief visit to Washington, D.C., he returned in 1854 to work for newspapers in St. Louis. He joined Orion's printing company in Keokuk, Iowa, in 1855.<sup>57</sup> At twenty-one, he decided to be a coca hunter on the Amazon River,<sup>58</sup> but the steamboat ride to New Orleans, en route to Brazil, rekindled his boyhood ambitions about being a riverboat pilot. He borrowed the money necessary to become a cub-pilot and set about learning twelve hundred miles of shallows and snags on the constantly shifting Mississippi.<sup>59</sup> His life on the Mississippi ended at age twenty-five, when the Civil War began. Sam joined the Confederate Army but "resigned" two weeks later after he was "incapacitated by fatigue through persistent retreating."<sup>60</sup>

When Orion was appointed Secretary of Nevada Territory in 1861, Sam followed him as secretary to the Secretary.<sup>61</sup> Later, Sam turned prospector, then reporter. As "Mark Twain," he eventually became a feature writer for several newspapers in Nevada and San Francisco.<sup>62</sup> His popularity grew among local readers, but he became a true celebrity on the lecture circuit.<sup>63</sup> In a place and time that offered few forms of public entertain-

54. M. MELTZER, *supra* note 4, at 18; 1 A. PAINE, *supra* note 4, at 76.

55. M. MELTZER, *supra* note 4, at 19; 1 A. PAINE, *supra* note 4, at 84-88.

56. M. MELTZER, *supra* note 4, at 24-28; 1 A. PAINE, *supra* note 4, at 94-100. A compositor is one who sets type and arranges pages in the printing industry.

57. 1 A. PAINE, *supra* note 4, at 103-13.

58. M. MELTZER, *supra* note 4, at 33; 1 A. PAINE, *supra* note 4, at 116. Coca is a South American shrub with leaves that resemble tea and contain alkaloids including cocaine. WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 159 (1972).

59. M. MELTZER, *supra* note 4, at 33-41; 1 A. PAINE, *supra* note 4, at 116-31. *See generally* M. TWAIN, *LIFE ON THE MISSISSIPPI* (1874).

60. M. MELTZER, *supra* note 4, at 43. *See also* 1 A. PAINE, *supra* note 4, at 163-69; *see generally* M. TWAIN, *The Private History of the Campaign that Failed*, in *MERRY TALES* 9-50 (1892).

61. M. MELTZER, *supra* note 4, at 44; 1 A. PAINE, *supra* note 4, at 170. Orion's appointment as Secretary of the Nevada Territory was signed by President Lincoln on March 27, 1861. *See* Twain Papers, *supra* note 15.

62. *See generally* M. TWAIN, *ROUGHING IT* (1872). While writing for the *Virginia City Enterprise*, Sam Clemens became a popular contributor for several west coast newspapers, but his articles were copied without reference to the author. He realized that to build a reputation he had to build a name. The *nom de plume* he chose, "Mark Twain," was an old river term meaning "two fathoms," which signified safe water. 1 A. PAINE, *supra* note 4, at 221-22.

63. *See* 1 A. PAINE, *supra* note 4, at 291-96; *see generally* F. LORCH, *THE TROUBLE BEGINS AT EIGHT: MARK TWAIN'S LECTURE TOURS* (1966); M. TWAIN,

ment, Twain's biting humor appealed to both intellectuals and ordinary folk. His gift for storytelling was easily adapted to the platform. As he put it, "In October, 1866, I broke out as a lecturer, and from that day to this I have always been able to gain my living without doing any work."<sup>64</sup>

In 1867, Clemens left California to seek his fame on the east coast. While in New York, he persuaded his San Francisco editors to send him as correspondent aboard the *Quaker City's* excursion voyage to Europe and the Holy Land. In the five months he spent abroad, Twain wrote sixty-two letters that appeared serially in the *Alta California* and other newspapers.<sup>65</sup> The voyage marked the beginning of Mark Twain's worldwide fame.

### C. Clemens Among the Lawmakers

Shortly after the *Quaker City's* return, Clemens accepted an invitation to go to Washington and become private secretary to Senator William M. Stewart of Nevada.<sup>66</sup> The position lasted only a few months, but Clemens's contacts quickly expanded and he became associated with influential Washington circles. He wrote his mother from Washington: "Am well known, now—intend to be better known. Am hob-nobbing with these old Generals & Senators for no good purpose."<sup>67</sup> With his knack for keen obser-

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ROUGHING IT 558-66 (1872); 4 A. Paine, *supra* note 4, at 1601-04; MARK TWAIN'S SPEECHES (A. Paine ed. 1923).

64. MARK TWAIN IN ERUPTION 304-05 (B. Devoto ed. 1940).

65. The *Alta California* paid the \$1,250 passage and promised \$20 apiece for his letters. Clemens spent five months abroad. His escapades were chronicled in 53 letters to the *Alta*, six to the *New York Tribune*, and three to the *New York Herald*. See M. MELTZER, *supra* note 4, at 92-93; 1 A. PAINE, *supra* note 4, at 309-11, 324-45. Almost two years later, the events were published as Mark Twain's first book. See M. TWAIN, THE INNOCENTS ABROAD (1869).

66. See L. BUDD, MARK TWAIN: SOCIAL PHILOSOPHER 28-29 (1962); M. MELTZER, *supra* note 4, at 104-05. Senator Stewart was an old friend who had become a powerful Republican. He had also amassed a considerable fortune as the legal representative for several Nevada mining companies. He hired Sam Clemens as his publicity advisor. L. BUDD, *supra*, at 29.

67. See L. BUDD, *supra* note 66, at 29. Clemens was attempting to have Orion appointed to some government job, preferably in the Patent Office, but his contacts were more interested in helping him than his brother. Sam was nominated for the position of postmaster of San Francisco, a job he described as having the "heaviest concentration of political power on the coast," but declined the position because the job, if "handled honestly," did not pay enough. 1 MARK TWAIN'S LETTERS 148-50 (A. Paine ed. 1917); THE LOVE LETTERS OF MARK TWAIN 60-62 (D. Wecter ed. 1949). See also 1 A. PAINE, *supra* note 4, at 359. Senator John Connors of California, who had suggested Clemens for the postmastership, offered instead to make him the United States Minister to China, as successor to Anson Burlingame. See THE LOVE LETTERS OF MARK TWAIN 62 (D. Wecter ed. 1949); see also C. CLEMENS, MARK TWAIN THE LETTER WRITER 18 (1932). Clemens became a good friend of United States Supreme Court Justice Stephen J. Field, who was being billed as the best Democratic presidential choice in 1868. Clemens publicly refuted

vation and his sharp wit, Clemens decided to make his stay in Washington profitable. He started a syndicated newsletter,<sup>68</sup> but dropped the venture because he received so many offers from leading daily newspapers for exclusive material.

Clemens contributed feature articles on life in Washington and, in 1868, he covered a session of Congress as a reporter.<sup>69</sup> The job suited him fine, for he wrote, "Mr. Bennett of the New York Herald tells me that if I will correspond twice a week from Washington, I may abuse & ridicule any body and *every* body I please."<sup>70</sup> Legislative reporting was not new to him. He had done similar work in Nevada,<sup>71</sup> where he developed his contempt for public representatives.<sup>72</sup> His attitude did not improve in the midst of the nation's lawmakers. In 1891 he wrote: "I . . . was [a] reporter in a [state] legislature two sessions and the same in Congress one session, and thus learned to know personally three sample bodies of the smallest minds and the selfishest souls and the cowardliest hearts that God makes."<sup>73</sup>

While reporting, Clemens found corruption that ran deep through Congress.<sup>74</sup> That discovery forever prejudiced his view of all lawmakers, which was expressed by his statement that "there is no distinctly native

rumors that Field was attempting to sway his fellow justices against the Reconstruction Acts, and when the House of Representative formed a committee to investigate charges of Field's pro-Southern bias, Clemens published arguments condemning the committee. See L. BUDD, *supra* note 66, at 29-31; S. WEBSTER, MARK TWAIN THE BUSINESS MAN 96-97 (1946); see generally M. TWAIN, *The Facts Concerning the late Senatorial Secretaryship*, in SKETCHES NEW AND OLD 149 (1875).

68. Clemens claimed it was "the first Newspaper Correspondence Syndicate that an unhappy world ever saw." 1 M. TWAIN, MARK TWAIN'S AUTOBIOGRAPHY 323 (1924). See also M. MELTZER, *supra* note 4, at 105.

69. L. BUDD, *supra* note 66, at 33. His articles appeared in so many sources that some of his copy has never been identified. As one commentator explained, the reports were "substantial in bulk and also in meaning." *Id.*

70. S. PETERSEN, MARK TWAIN AND THE GOVERNMENT 136 (1960) (quoting letter from Samuel Clemens to William Bowen (Jan. 25, 1868)). See also MARK TWAIN TO MRS. FAIRBANKS 14-15 (D. Wecter ed. 1949).

71. Clemens covered the legislature for the *Virginia City Enterprise*. 1 A. PAINE, *supra* note 4, at 205-19.

72. See M. MELTZER, *supra* note 4, at 61; 1 A. PAINE, *supra* note 4, at 219; see generally M. TWAIN, ROUGHING IT 186-92 (1872).

73. 2 MARK TWAIN'S LETTERS 542 (A. Paine ed. 1917). Washington, wrote Twain, was "the place to get a poor opinion of everybody in." Letter from Samuel Clemens to Orion Clemens (Feb. 21, 1868). See generally M. TWAIN, *Riley—Newspaper Correspondent*, in SKETCHES NEW AND OLD 154 (1875).

74. L. BUDD, *supra* note 66, at 34. See also M. MELTZER, *supra* note 4, at 104-09, 156-61; 1 A. PAINE, *supra* note 4, at 347. These sources imply that corruption flourished in Congress during this period, which was quite likely considering the turmoil in the nation following the Civil War and the private interests of the wealthy men in power during the Reconstruction era. Nevertheless, Clemens never made any specific charges as a correspondent. He later revealed his findings under

American criminal class except Congress.”<sup>75</sup> In fact, Clemens often went out of his way to criticize members of the legislature: “Those burglars that broke into my house recently . . . are in jail, and if they keep on they will go to Congress. When a person starts downhill you can never tell where he is going to stop . . . .”<sup>76</sup> Clemens also possessed the rare talent of condemnation with faint praise, as indicated by a letter to the *Alta California*:

Yesterday . . . while Judge Olin was sentencing a man . . . , the latter sprang at the principle witness . . . and made a savage lunge at his breast with a knife. . . . When people get to attempting murder in the Courts of law, it is time to quit abusing Congress. Congress is bad enough, but it has not arrived at such depravity as this. This man who attempted murder is not in any way connected with Congress. The fact is in every way creditable to that body. I do not deny that I am fond of abusing Congress, but when I get an opportunity like this to compliment them, I am only too happy to do it.<sup>77</sup>

Clemens continued his association with Washington lawmakers throughout his life,<sup>78</sup> but time would not dim the distrust he acquired as a

the guise of fiction. See generally M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* (1873).

75. M. TWAIN, *FOLLOWING THE EQUATOR* 99 (1897). Clemens expressed his views in Congress frequently. “Shall we ever have a Congress, a majority of whose members are not hopelessly insane? Probably not.” Letter from Samuel Clemens to Pamela Moffett, Clemens’s sister (Aug. 20, 1869). “All Congresses and Parliaments have a kindly feeling for idiots, and compassion for them, on account of personal experience and heredity.” MARK TWAIN IN *ERUPTION* 375 (B. Devoto ed. 1940). “Reader, suppose you were an idiot. And suppose you were a member of Congress. But I repeat myself.” 2 A. PAINE, *supra* note 4, at 724.

76. 4 A. PAINE, *supra* note 4, at 1472-73. “The lightning [in New England] . . . is so convincing, that when it strikes a thing it doesn’t leave enough of that thing behind for you to tell whether—Well, you’d think it was something valuable, and a Congressman had been there.” S. PETERSEN, *supra* note 70, at 30 (quoting Twain’s address at New England Society’s 71st annual dinner in New York). “A jay hasn’t got any more principle than a Congressman. A jay will lie, a jay will steal, a jay will deceive, a jay will betray; and four times out of five, a jay will go back on his solemnest promise.” 1 M. TWAIN, *A TRAMP ABROAD* 37 (1880). “To my mind, Judas Iscariot was nothing but a low, mean, premature Congressman.” S. PETERSEN, *supra* note 70, at 31 (quoting letter from Samuel Clemens to *New York Tribune* (Mar. 7, 1873)). “Fleas can be taught nearly anything that a Congressman can.” M. TWAIN, *WHAT IS MAN? AND OTHER ESSAYS* 82 (1917). Twain often wrote these strictures more for relief than for print. “Sometimes,” he wrote, “my feelings are so hot that I have to take the pen and put them out on paper to keep them from setting me afire inside; then all that ink and labor are wasted because I can’t print the result.” 2 A. PAINE, *supra* note 4, at 724.

77. S. PETERSEN, *supra* note 70, at 35 (quoting letter from Samuel Clemens to *San Francisco Alta California* (Jan. 12, 1868)).

78. In fact, he worked closely with many of them on significant copyright legislation. See Part II.D *infra*.

correspondent. While in Washington, he limited his satiric frustration to short articles and letters,<sup>79</sup> but in time he would apply his stored contempt to co-author *The Gilded Age*,<sup>80</sup> a work of fiction based on his personal observations in Washington. In that book, Clemens made his attitude clear through a statement by Philip Sterling, a character who contemplates a legal career:

[T]he chances are that a man cannot get into Congress now without resorting to acts and means that should render them unfit to go there; of course there are exceptions; but do you know that I could not go into politics if I were a lawyer without losing standing somewhat in my profession, and without raising at least a suspicion of my intentions and unselfishness? Why, it is telegraphed all over the country and commented on as something wonderful if a congressman votes honestly and unselfishly and refuses to take

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79. In one story, Twain purported to investigate an unpaid government contract, but he, like the debt, became lost in governmental red tape after dealing with the Mislaid Contract Department, the Dead Reckoning Department, and, finally, the Commissioner of Odds and Ends. M. TWAIN, *The Facts in the Case of the Great Beef Contract*, in SKETCHES NEW AND OLD 101 (1875). Another tale carried Congressional action to its absurd limits. Twain reported that during the Creek War in Florida in September 1813, George Fisher's crops were destroyed by government troops in pursuit of Indians. Fisher apparently believed that the Indians had destroyed the property, so he did not file a claim against the government. Fisher died, and his heirs petitioned the government for damages 20 years after the raid. Congress denied recovery in 1832. Thirty years and six petitions later, the heirs squeezed from Congress \$133,323 (including interest from 1813) for an original claim of \$600. M. TWAIN, *The Facts in the Case of George Fisher, Deceased*, in SKETCHES NEW AND OLD 109 (1875). Lest this seem too tall a tale even for Twain to spin, he directs the reader to H.R. EX. DOC. NO. 21, 36th Cong., 2d Sess. (1861), and S. EX. DOC. NO. 106, 41st Cong., 2d Sess. (1870). The documents bear out the facts as stated. The proceeding eventually wound up in the courts. *See Gordon v. United States*, 1 Ct. Cl. 1, 1-7 (1863) (court disallowed recovery on ground that statute of limitations had run). "Truth is stranger than fiction," wrote Twain, "but it is because fiction is obliged to stick to the possibilities; truth isn't." M. MELTZER, *supra* note 4, at 213.

80. M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* (1873). Twain collaborated with Charles Dudley Warner, the editor of the Hartford Courant, and referred to the book as "a partnership novel." The two authors worked closely together, and although records exist to link each chapter to the man who supposedly wrote it, their harmonized process of initial plot suggestions and constant rewritings makes it impossible to attribute any chapter to one author. *See* L. BUDD, *supra* note 66, at 50; 2 A. PAINE, *supra* note 4, at 477 n.1; S. PETERSEN, *supra* note 70, at 142. The references to actual Washington affairs was obvious at the time. *The Gilded Age* fictionalized the graft that Twain had discovered as a correspondent, including corrupt lobbyists and congressmen who could be bought for anything from a railroad pass to corporate stock. One editor criticized Twain and Warner for "washing the country's dirty linen in public." M. MELTZER, *supra* note 4, at 156-61.

advantage of his position to steal from the government.<sup>81</sup>

In Washington, Clemens made himself independent of party patronage and followed the maxim of carrying "water on both shoulders."<sup>82</sup> Throughout his life, he considered himself a mugwump, or one who was politically active but without any party affiliation.<sup>83</sup> In his autobiography he wrote:

We, the mugwumps . . . [have] principles . . . [that are] high and very definite . . . . By our rule we could not ask for office; we could not accept office. When voting, it was our duty to vote for the best man, regardless of his party name. We had no other creed. Vote for the best man—that was creed enough.<sup>84</sup>

Clemens's political independence provided an unbiased vantage from which he could criticize all issues, all parties, and all politicians in Washington with equal vigor. The subjects of his commentary ranged from obscure federal clerks<sup>85</sup> to Justices of the United States Supreme Court,<sup>86</sup> and although his readers expected him to be amusing, he nevertheless was developing a style of expressing serious opinions on how to govern the country.

81. M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* 457-58 (1873).

82. 2 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 14 (1924).

83. *Id.* at 25-26, 83. "Politics," he said, "are rather out of my line, yet not outside of my interest. I am not much of a party man, but I have opinions." Interview with Samuel Clemens at Elmira, N.Y. (Aug. 26, 1876), *printed in* New York Herald (Aug. 28, 1876).

84. 2 M. TWAIN, *MARK TWAIN'S AUTOBIOGRAPHY* 160-61 (1924).

85. In a letter to the *Territorial Enterprise* on March 7, 1868, Twain praised a clerk who had "no rule of action for his guidance except some effete maxims of integrity picked up in Sunday School," and who refused to live by the rules of a city "polluted with speculation and all other forms of rascality—debauched and demoralized by the wholesale dishonesty that prevails in every single department of the Washington Government, great and small." L. BUDD, *supra* note 66, at 35.

86. In response to the charges made against his friend Justice Field, *see* note 67 *supra*, Twain wrote:

It is disgraceful, in Congress, or anybody at all, to question the honor and virtue of the highest tribunal in our country. If we cannot believe in the utter and spotless purity of the Judges of so sacred a tribunal, we ought at least to have the Pride to keep such a belief unexpressed. I cannot conceive it possible that a man could occupy so royal a position as a Supreme Judge, and be base enough to let his decisions be tainted by any stain of his political predilections. . . . The Judges have the Constitution for their guidance; they have no right to any politics save the politics of rigid right and justice when they are sitting in judgment upon the great measures that come before them. . . .

*San Francisco Alta California* (Jan. 12, 1868) (letter from Samuel Clemens). *See also* M. MELTZER, *supra* note 4, at 108. *But see generally* S. ARMSTRONG & B. WOODWARD, *THE BROTHERS* (1979) (view of internal workings of Supreme Court).



#### D. *The Infernal Copyright Problems*

During Clemens's stay in Washington in 1867, Elisha Bliss, Jr., suggested that Clemens write a book that Bliss's publishing house, The American Publishing Company, could give an "immense circulation."<sup>87</sup> It was the only nudge Clemens needed. He had the idea of reworking the *Quaker City* excursion letters into one narrative volume, but the San Francisco newspaper that published the bulk of his letters had copyrighted them and was preparing its own book. Fortunately, an agreement was reached, and Clemens wrote *The Innocents Abroad*.<sup>88</sup> The book was an immediate success. The publication marked not only the beginning of Twain's literary success but the beginning of his battle to reform the laws governing domestic and international copyright.

In 1870, an international copyright did not exist. Any infringement that occurred outside the United States was not actionable under the domestic Copyright Act.<sup>89</sup> If any writer wanted to guarantee an income from the foreign sale of his books or protect his work from being pirated and copied in other countries, he had to beat the book to that country and apply for a separate copyright. Pirating was so widespread that from 1873 until 1886, Clemens initiated eight lawsuits.<sup>90</sup> Although James Fenimore

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87. 1 A. PAINE, *supra* note 4, at 350-51.

88. M. TWAIN, *THE INNOCENTS ABROAD* (1869). See 1 A. PAINE, *supra* note 4, at 350-51.

89. The first federal copyright statute was adopted in 1790, but the works of nonresident foreign authors were ineligible for copyright protection. Copyright Act of 1790, ch. 15, 1 Stat. 124 (repealed 1802). Many American authors believed that their works were rejected in favor of the royalty-free works of leading British authors, like Charles Dickens. The first attempt at an international copyright was through a law passed in England on July 31, 1838, entitled "An Act for Securing to Authors, in Certain Cases, the Benefit of International Copyright." The act provided that by order of Council any author of books "shall have the sole liberty of printing and reprinting such books within the United Kingdom of Great Britain and Ireland . . ." Six years later, the act was amended by the International Copyright Act, which limited British copyright protection only to those foreign authors whose country provided reciprocal protection to British authors whose works were first published in England. The United States failed to provide reciprocal protection. See B. BUGBEE, *GENESIS OF AMERICAN PATENT AND COPYRIGHT LAW* 146 (1967); CAMBRIDGE RESEARCH INSTITUTE, *OMNIBUS COPYRIGHT REVISION, COMPARATIVE ANALYSIS OF THE ISSUES* 7 (1973); P. WITTENBERG, *THE PROTECTION OF LITERARY PROPERTY* 93-94 (1968).

90. "Mark Twain was the lawyer's best friend and severest critic . . . About once a week he wanted a lawsuit against somebody, or if he didn't he wanted an advertisement put in somewhere that would have started several against him." S. WEBSTER, *supra* note 67, at 197. See, e.g., *Clemens v. Estes & Lauriat*, 22 F. 899 (C.C.D. Mass. 1885); *Clemens v. Belford*, 14 F. 728 (C.C.N.D. Ill. 1883); *Clemens v. New York News Co.*, No. 126 C.P. (N.Y. Feb. 17, 1883); *Clemens v. Ogilvie*, No. 141 C.P. (N.Y. Feb. 17, 1883); *Clemens v. Such*, Nos. 146 & 146A Sup. Ct. (N.Y.

Cooper is the only American author to initiate more suits,<sup>91</sup> Clemens spent more time, money, and energy in his litigations.<sup>92</sup> His active participation in these actions prompted him to campaign publicly for an international copyright law.<sup>93</sup>

In 1880, Clemens wrote a petition to Congress advocating that the United States grant to foreign authors

a full and effective copyright in America *without marring the grace of the act by stopping to inquire whether a similar justice will be done our own authors by foreign governments.* If it were even known that those governments would not extend this justice to us it would still not justify us in withholding this manifest right from their authors. If a thing is right *it ought to be done . . .*<sup>94</sup>

Explaining this petition to a friend, Clemens wrote, "I will ask the President to recommend the thing . . . And *then* if Europe chooses to go on stealing from us we would say, with noble enthusiasm, 'American lawmakers *do steal*, but not from foreign authors—*not from foreign authors!*'"<sup>95</sup>

Although it was signed by several influential literary figures,<sup>96</sup> that "do unto others" petition never reached Congress. But Clemens became so prominently identified with the international copyright crusade that, on January 28, 1886, he was invited to testify before a Senate committee studying a proposed international copyright bill.<sup>97</sup> In 1891, his efforts were rewarded when Congress passed the Chace Act,<sup>98</sup> which authorized copyright protection for works of foreign authors in the United States.<sup>99</sup>

July 9, 1873); *see generally* H. FEINSTEIN, MARK TWAIN'S LAWSUITS (1969); Feinstein, *supra* note 2.

91. *See* J. GROSSMAN, JAMES FENIMORE COOPER 243-44 (1949); E. OUTLAND, THE "EFFINGHAM" LIBELS ON COOPER *passim* (1929); S. WAPLES, THE WHIG MYTH OF JAMES FENIMORE COOPER *passim* (1938).

92. *See* Feinstein, *supra* note 2, at 7-8.

93. Mark Twain was not the first famous author to publicly advocate an international copyright. Charles Dickens, during his first visit to America in February 1842, told his dinner audience, "I would beg leave to whisper in your ear two words: International Copyright." 1 E. JOHNSON, CHARLES DICKENS HIS TRAGEDY AND TRIUMPH 382 (1952). Dickens once wrote of his surprise that an American publisher sent him a royalty check: "What a fine, what a generous, what an un-American thing for him to do!" Lacy, *The © Quagmire*, SATURDAY REVIEW, Nov. 27, 1971, at 24.

94. 4 A. PAINE, *supra* note 4, at 1637-40.

95. 2 *id.* at 553.

96. Among those who signed the petition were Henry W. Longfellow, Oliver Wendell Holmes, Sr., Ralph Waldo Emerson, James Field, John Greenleaf Whittier, William Dean Howells, and Charles Dudley Warner. *Id.*

97. *Establishment of an International Copyright, 1886: Hearings on S. 191 Before the Senate Committee on Patents*, 50th Cong., 1st Sess. 25 (1886); S. REP. NO. 622, 50th Cong., 1st Sess. 15-16, 23-25, 48, 60, 129 (1886).

98. Ch. 565, 26 Stat. 1106 (1891).

99. *See* P. WITTENBERG, *supra* note 89, at 93.

Clemens also led a thirty-four year crusade to reform the domestic copyright laws. The Constitution permits Congress to grant to an author, for a limited time, the exclusive right to his writings,<sup>100</sup> which means that the author can get a royalty on his published works. At the time *The Innocents Abroad* was published, the law protected authors for twenty-eight years, with a fourteen year renewal.<sup>101</sup> Consequently, a work passed into the public domain no later than forty-two years after its creation. Any person could then copy and market it without payment to the author. Clemens thought the protection period was unreasonably short: "Only one thing, is impossible for God: to find any sense in any copyright law . . . ."<sup>102</sup>

As in his battle for international copyright, Clemens publicly objected to the domestic copyright law. In another petition to Congress, he illustrated the injustice of discriminating against literary ownership by proposing a law that, in effect, limited *all* property ownership to the same term:

Whereas, the Constitution grants equal rights to all . . . ;  
Therefore, your petitioner, having the good of his country solely at heart, humbly prays that "equal rights" and a fair and equal treatment may be meted out to all citizens, by the restriction of rights in *all* property, real estate included, to the beneficial term of forty-two years.<sup>103</sup>

The petition was regarded as a joke, but, typical of Clemens, the joke was founded on his sense of justice.

Clemens advocated copyright reform for the next thirty years. He predicted that "a day will come when in the eyes of the law, literary property will be as sacred as whiskey, or any other of the necessaries of life."<sup>104</sup> In 1905, he published another address to Congress, in which he recognized the purpose of allowing a work to pass into the public domain: to ensure inexpensive editions for the public.<sup>105</sup> But he added that "the Government does not give the book to the public, it gives it to the publisher . . . . It is very simple: the publisher *goes on publishing* . . . and he takes *all* the profit."<sup>106</sup> On December 7, 1906, Clemens made his second appearance before a joint Congressional committee, urging an extension of copyright protection to a period consisting of the author's life plus fifty years. He testified, "I think that would satisfy any reasonable author, because it would take care of his children. Let the grandchildren take care of themselves."<sup>107</sup> But the legis-

100. U.S. CONST. art. I, § 8, cl. 8.

101. Copyright Act of February 3, 1831, ch. 16, 4 Stat. 436 (1831). See B. BUGBEE, *supra* note 89, at 155.

102. MARK TWAIN'S NOTEBOOK 381 (A. Paine ed. 1935).

103. M. TWAIN, SKETCHES NEW AND OLD 233 (1875).

104. New York Times, Dec. 10, 1881, at 2, col. 7.

105. Twain, *Concerning Copyright: An Open Letter to the Register of Copyrights*, 180 N. AM. REV. 3, 3-6 (1905).

106. *Id.* at 3.

107. *Amend and Consolidate the Acts Respecting Copyright, 1906: Hearings on S. 6330 and H.R. 19853 Before the Joint Senate and House Committee on Patents*, 59th Cong., 1st

lators were apparently more interested in issues valuable at the polls, and the copyright bill was again ignored.<sup>108</sup>

Despite his lack of success, Clemens formed an important alliance through his 1906 trip to Washington. Congressman James Beauchamp ("Champ") Clark of Missouri, the Democratic minority leader of the House,<sup>109</sup> joined in the quest for copyright reform. In fact, Clark asked Clemens to draft a sample bill that Clark would try to have passed.<sup>110</sup> Clemens did so.<sup>111</sup> A similar bill actually was proposed, and the Copyright

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Sess. 116-21 (1906) (statement of author Samuel L. Clemens). Clemens testified further:

My copyrights produce to me annually a good deal more money than I have any use for. But those children of mine have use for that. I can take care of myself as long as I live. I know half a dozen trades, and I can invent a half dozen more. I can get along. But I like the fifty years' extension [beyond the life of the author], because that benefits my two daughters, who are not as competent to earn a living as I am, because I have carefully raised them as young ladies, who don't know anything and can't do anything. So I hope Congress will extend to them that charity which they have failed to get from me.

*Id.* See also Feinstein, *supra* note 2, at 15. The turn-of-the-century legislators did not deem Clemens's suggested term a credible alternative. Yet the Copyright Act of 1976 proved that Clemens's innovation was merely beyond the grasp of his contemporaries; what was incredible in 1906 is now the law. The 1976 Act states that, "[i]n general, Copyright in a work created on or after January 1, 1978, subsists from its creation and . . . endures for a term consisting of *the life of the author and fifty years after the author's death.*" 17 U.S.C. § 302(A) (Supp. V 1981) (emphasis added).

108. Clemens believed that "idiots assemble" every time a copyright bill is made or altered. MARK TWAIN'S NOTEBOOK 382 (A. Paine ed. 1935). Clemens's active participation in the legislative process, however, proved to be a learning experience. In 1906, he admitted:

I have found out several things since I have been in Washington. . . . I have learned among other things that legislation is a much more complicated proposition than I ever dreamed it to be. It looked very simple and easy at a distance, but a closer view has given me quite a different impression.

S. PETERSEN, *supra* note 70, at 58 (quoting interview printed in Washington Post (Dec. 12, 1906)).

109. Clark (1850-1921) was the House Minority Leader in the 60th and 61st Congresses (1907-1911). He then served as Speaker of the House in the 62d through 65th Congresses (1911-1919).

110. 4 A. PAINE, *supra* note 4, at 1493.

111. *Id.* at 1640-42. Clemens believed that the purpose of the contemporary copyright legislation was to reduce the price of the book by removing the author's royalty, thereby making the book affordable for the masses. He attempted to accomplish that goal in his proposed draft. His bill would allow an author to renew his copyright for an additional thirty years any time between the beginning of a book's forty-first year and the end of its forty-second, *provided* that an edition of the book was issued for sale at one-tenth the price of the cheapest edition previously

Act of 1909<sup>112</sup> finally was approved. The law extended the maximum period of copyright protection for an author and his heirs from forty-two to fifty-six years.<sup>113</sup> Clark wrote Clemens, informing him of the amendment and asking if the bill was acceptable to him. "I believe," he wrote, "that your ideas and wishes in the matter constitute the best guide we have as to what should be done in the case."<sup>114</sup> Clemens replied, "[I]t is the only sane & clearly defined & just & righteous copyright law that has ever existed in the United States."<sup>115</sup>

Clemens was perhaps America's most persistent and influential advocate for the rights of literary property owners. The 1909 Act, his most important victory, came only months before his death in 1910. At a memorial service, Champ Clark remembered him as "not only a lobbyist but a very prince of lobbyists."<sup>116</sup>

### III. THE LAW IN THE LITERATURE OF MARK TWAIN

#### A. Twain's Interest in Crime

Samuel Clemens's association with the law is evident not only in his personal life, but also in the writings of Mark Twain. Although Clemens quit his study of the law after only two weeks,<sup>117</sup> he remained a student of court trials. He was especially interested in sensational trials, and he followed newspaper accounts of them. His private library contained volumes detailing both current and historical prosecutions.<sup>118</sup> At one point, he admitted, "I like murder,"<sup>119</sup> but the best evidence of his continued interest in courts and crimes can be found in his literature.

In *A Whisper to the Reader*, the foreword to his novel *Pudd'nhead Wilson*, Twain wrote that "a person who is ignorant of legal matters is always liable

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offered. To Clemens, the bill offered the best of both worlds: it provided cheap copies for the public and allowed authors to extend their copyrights. *Id.* at 1641.

112. Ch. 320, 35 Stat. 1075 (codified at 17 U.S.C. §§ 1-216 (1976)) (repealed 1976).

113. 17 U.S.C. § 24 (1976) (repealed 1976).

114. 4 A. PAINE, *supra* note 4, at 1494.

115. *Id.*; 2 MARK TWAIN'S LETTERS 831-32 (A. Paine ed. 1917).

116. Address by James Beauchamp Clark, American Academy and National Institute of Arts and Letters Memorial Service for Samuel L. Clemens, at Carnegie Hall, New York City (Nov. 30, 1910).

117. M. TWAIN, *ROUGHING IT* 292 (1872).

118. Clemens's library included such works as *Noted French Trials—Impostors and Adventurers* (1882); *Early Tryals; The History of the Most Remarkable Tryals in Great Britain and Ireland in Capital Cases* (1715); and *Gallick Reports: of a Historical Collection of Criminal Cases, Adjudged in Supreme Courts of Judicature in France* (1737). See R. ROWLETTE, TWAIN'S PUDD'NHEAD WILSON: THE DEVELOPMENT AND DESIGN 130-31 n.45 (1971); W. HOWELLS, MY MARK TWAIN REMINISCENCES AND CRITICISMS 15 (1910).

119. See S. WEBSTER, *supra* note 67, at 101.

to make mistakes when he tries to photograph a court scene with his pen."<sup>120</sup> Twain's "ignorance" is questionable. He had observed many trials as a working reporter, a simple spectator,<sup>121</sup> and even a litigant. He had acquired sufficient knowledge to describe a trial accurately.<sup>122</sup> There are more than twenty trials or scenes that resemble court trials in Mark Twain's literature.<sup>123</sup> The courtroom and the circumstances leading to it served as dramatic vehicles for Twain's storytelling. Moreover, the trials provided Twain with the ideal setting to emphasize his major theme: justice.

### B. *Targets of Satire*

Two aspects of the American legal system have borne the brunt of Twain's satire. First, he disagreed with the traditional method of jury selection. The Constitution provides that "[t]he trial of all crimes . . . shall be by jury,"<sup>124</sup> and the sixth amendment requires that the jury be an impartial panel representing a cross-section of the community.<sup>125</sup> But those persons who are most qualified to reach an intelligent decision are often excluded from jury duty. In Twain's time, almost every jurisdiction exempted professionals and women by statute.<sup>126</sup> Moreover, the voir dire process enabled an attorney to exclude any juror who might have read about or discussed the events concerning the case.<sup>127</sup> As a journalist, Twain did not believe that an intelligent person would become so biased by reading a newspaper

120. M. TWAIN, *THE TRAGEDY OF PUDD'NHEAD WILSON* 15 (1894).

121. *See* 2 A. PAINE, *supra* note 4, at 544.

122. One commentator has remarked that "Clemens' knowledge of law, and legal procedures, was huge—surely beyond what an education to the age of fourteen in the frontier town of Hannibal, Missouri, justifies." Feinstein, *supra* note 2, at 8.

123. *See generally* D. MCKEITHAN, *COURT TRIALS IN MARK TWAIN AND OTHER ESSAYS* (1958).

124. U.S. CONST. art. III, § 2, cl. 3.

125. U.S. CONST. amend. VI. *See* S. SALTZBURG, *AMERICAN CRIMINAL PROCEDURE CASES AND COMMENTARY* 947 (1980); *see generally* *Duncan v. Louisiana*, 391 U.S. 145 (1967); H. KALVEN & H. ZEISEL, *THE AMERICAN JURY* (1966).

126. R. SIMON, *THE JURY AND THE DEFENSE OF INSANITY* 7 (1967). *See also* Broeder, *The Functions of the Jury*, 21 U. CHI. L. REV. 390 (1954).

127. Voir dire means "to speak the truth." Prospective jurors are subjected to two kinds of voir dire challenges: an attorney has an unlimited number of challenges based on "specific, provable partiality," and a limited number of peremptory challenges, to be exercised without stated reasons and beyond the court's control. *See Swain v. Alabama*, 380 U.S. 202, 220 (1964).

Twain recalled a Virginia murder case in which a prominent banker was voir dired,

report that he would be unable to render a fair verdict.<sup>128</sup> Nevertheless, the typical jury was illiterate and uninformed.<sup>129</sup> In a lecture, Twain remarked that the American criminal jury system "is superior to any in the world; and its efficiency is only marred by the difficulty of finding twelve men every day who don't know anything and can't read."<sup>130</sup>

In *Roughing It*, Twain talked about changing the jury system:

The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury. It is a shame that we must continue to use a worthless system because it *was* good a thousand years ago . . . I desire to tamper with the jury law. I wish to so alter it as to put a premium on intelligence and character, and close the jury box against idiots, blacklegs, and people who do not read newspapers. But no doubt I shall be defeated—every effort I make to save the country "misses fire."<sup>131</sup>

In *The Gilded Age*, Twain went further: "Our admirable jury system enabled the persecuted ex-officials [who had robbed the City of New York of several million dollars] to secure a jury of gentlemen from a neighboring asylum and three graduates of Sing Sing, and [they] presently walked forth with characters vindicated."<sup>132</sup>

Twain's second objection to the legal system was the insanity plea in murder trials. The insanity defense historically has been viewed as a means of absolving these persons whose conduct would otherwise subject them to

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precisely as he would have been . . . in any court in America:

"Have you heard of this homicide?"

"Yes."

"Have you held conversations upon the subject?"

"Yes."

"Have you read the newspaper accounts of it?"

"Yes."

"We do not want you."

M. TWAIN, *ROUGHING IT* 341-42 (1872). Twain, in the same discussion, explained the results of the voir dire process:

When the peremptory challenges were all exhausted, a jury of twelve men were empaneled—a jury who swore that they had neither heard, read, talked about, nor expressed an opinion concerning a murder which the very cattle in the corrals, the Indians in the sagebrush, and the stones in the street were cognizant of!

*Id.* at 342. Twain's use of the term "peremptory challenges," incidentally, likely would be beyond the knowledge of an ordinary layman.

128. M. TWAIN, *ROUGHING IT* 342 (1872).

129. For an analysis of the strengths and weaknesses of the jury system, see H. KALVEN & H. ZEISEL, *supra* note 125; Broeder, *supra* note 126; Kalven, *The Dignity of the Civil Jury*, 50 VA. L. REV. 1055 (1964).

130. MARK TWAIN'S SPEECHES 35 (A. Paine ed. 1923).

131. M. TWAIN, *ROUGHING IT* 343 (1872).

132. M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* 303-04 (1873).

criminal sanctions, but whose mental condition at the time of the conduct was such that society elects to forego the punishment.<sup>133</sup> The foundation of the defense as it existed in America in the late nineteenth century was *M'Naghten's Case*,<sup>134</sup> which developed the "right-wrong" test. Insanity would excuse conduct if the defendant did not know what he was doing or did not understand that what he was doing was wrong.<sup>135</sup> Despite the theory, Twain believed that the defense was abused in practice by attorneys preying on the sympathetic minds of the jurors. In *Unburlesquable Things*, he wrote:

[N]ow that the lawyers have got to cutting every gallows rope and cutting every prison lock with . . . [the insanity plea], it is become a sneaking villainy that ought to hang . . . its sudden possessors until evil doers should conclude that the safest plan was never to claim to have . . . insanity unless they came by it legitimately. The very calibre of the people the lawyers most frequently try to save by the insanity subterfuge ought to laugh the plea out of the courts . . . .<sup>136</sup>

In *A New Crime*,<sup>137</sup> Twain gave examples of the plea's absurdity. Concerning an Ohio killing, Twain reported that "at half-past ten in the morning on the day of the murder, . . . [the defendant] became insane, and remained so for eleven hours and a half exactly."<sup>138</sup> Unfortunately, a man the defendant had been threatening to kill for twelve years had the ill fortune to "come along a dark alley at the very moment . . . the defendant's insanity came upon him, and so he was shot in the back of the head."<sup>139</sup> Twain also discussed a Pennsylvania case in which the defendant's momentary insanity was proved hereditary.<sup>140</sup> In both cases, the defendant was wealthy and his family powerful. Twain concluded that insanity was on the increase but crime was dying out, for "now, if you, having friends and money, kill a man, it is *evidence* that you are a lunatic . . . . [W]hat we want now, is not laws against crime, but laws against insanity."<sup>141</sup>

Twain often attacked both the jury system and the insanity plea at the same time. For example, he wrote that if medieval knights were to perform

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133. See generally Smith, *Limiting the Insanity Defense: A Rational Approach to Irrational Crimes*, 47 MO. L. REV. 605 (1982).

134. 8 Eng. Rep. 718 (H.L. 1843).

135. *Id.* at 722. This test, often called the "M'Naghten Rule," was adhered to by the Missouri Supreme Court. See *State v. Palmer*, 161 Mo. 152, 61 S.W. 651 (1901); R. SIMON, *supra* note 126, at 27.

136. Twain, *Unburlesquable Things*, GALAXY, July 1870, at 137, quoted in MARK TWAIN AT YOUR FINGERTIPS 204-05 (C. Harnsberger ed. 1948).

137. M. TWAIN, SKETCHES NEW AND OLD 244 (1875).

138. *Id.* at 245.

139. *Id.* at 245-46.

140. *Id.*

141. *Id.* at 249-50. See also Smith, *supra* note 133, at 606-15 (Justice Department proposals to reform insanity defense in federal courts).



their celebrated deeds today, "nothing but a New York jury and the insanity plea could save them from hanging."<sup>142</sup> Despite the satire, Twain's remarks were based on sound reasoning. He believed that illiterate, uninformed jurors, and the money and power behind the insanity plea, allowed guilty defendants to go unpunished.

Moreover, many legal commentators would agree that Twain's criticisms were justified.<sup>143</sup> The most common criticisms of the jury system are that the jury does not render its verdict based on the evidence and that jurors do not possess the knowledge necessary to render a rational decision on a particular dispute.<sup>144</sup> The court's instructions to the jury regarding rules of law, expert testimony, and weighted evidence arguably are beyond their understanding. Twain was convinced that those most capable of rendering an informed, rational decision should serve as jurors. Similarly, commentators are still concerned about the abuses involved in the insanity defense.<sup>145</sup> The defense frequently attempts to torture vague psychiatric opinions into a legal framework. In essence, Twain would agree with those who believe that the insanity defense provokes public cynicism and erodes the respect our law demands.<sup>146</sup>

### C. *Twain's Minor Trials*

The trials in Mark Twain's literature can be separated into two categories: (1) those trials merely incidental to the main plot and (2) those trials central to the plot. Several significant minor trials will be analyzed first, followed by a discussion of important major trials.

#### 1. *State (Among Others) v. Noakes*<sup>147</sup>

In *Roughing It*, Twain retold the story of the legendary Californian, Captain Ned Blakely, a veteran sailor who would fight at the drop of a handkerchief. When Blakely arrived in the Hawaiian Islands, his fighting reputation had preceded him, and Bill Noakes, a bully, wanted to test that reputation. Noakes boarded the Captain's ship, where the Captain soundly beat him and threw him overboard. The next night the routine was repeated. To avenge his beatings, Noakes killed the Captain's mate in front of several witnesses. The Captain was "furious for justice."<sup>148</sup> He loaded a double-barreled shotgun and took Noakes prisoner.

142. M. TWAIN, *Tournament in A.D. 1870*, in *THE CURIOUS REPUBLIC OF GONDOUR AND OTHER WHIMSICAL SKETCHES* 36, 41 (1919).

143. See R. SIMON, *supra* note 126, at 5; see generally J. FRANK, *COURTS ON TRIAL* (1963); Hoffman & Brodley, *Jurors on Trial*, 17 *MO. L. REV.* 235 (1952).

144. See R. SIMON, *supra* note 126, at 6; Hoffman & Brodley, *supra* note 143, at 250-51.

145. See Smith, *supra* note 133, at 618.

146. See, e.g., *id.* at 619.

147. This case is found in M. TWAIN, *ROUGHING IT* 352-59 (1872).

148. *Id.* at 354.

The next morning the Captain called all the sea captains in the harbor to witness the hanging of Noakes at the yardarm. The fellow captains thought it best to have a trial. This was much to Blakely's displeasure, for he "believed the first and last aim of the law and lawyers was to defeat justice."<sup>149</sup> He agreed to a trial, as long as it took place after the hanging. The other captains eventually convinced him to hold the trial first. Nevertheless, the Captain gave special jury instructions of his own: "Now you vote right, do you hear?—or else there'll be a double-barreled inquest here when this trial's off . . ." <sup>150</sup> Not surprisingly, a verdict of guilty was returned. The Captain selected a tree, read a chapter of the Bible (selected at random), and hanged Noakes.

The Noakes trial is a sham. Yet the tale demonstrates that there are persons who not only distrust juries but see no need for them. The Captain and Twain share a sense of justice. Twain might concede that even the most debased criminal has the right to a trial before execution, but he would perhaps agree with the Captain that the formality of a trial should not allow a jury to set the criminal free. The Captain believed that if a jury was necessary for tradition's sake, it was his duty to make sure the verdict was just. Twain apparently approved of the Captain's actions, for he included the episode for those who "love simple, straightforward justice unencumbered with nonsense."<sup>151</sup>

## 2. Hyde v. Morgan<sup>152</sup>

Also in *Roughing It*, Twain reports an elaborate practical joke designed by a group of Nevada citizens to snub an eastern lawyer, General Buncombe, who had been "shipped out" to the Territory as United States Attorney.<sup>153</sup> A farmer named Hyde rushed into the General's law office, wanting to sue Morgan, who owned a mountainside ranch immediately above Hyde's farm. It seemed that melting snow had caused a landslide. Hyde told the General that the slide had brought Morgan's ranch—including cabins, barns, cattle, and fences—down the mountainside and deposited it on top of Hyde's farm, covering every inch to a depth of thirty-eight feet. Morgan was in possession and refused to vacate. So Hyde was "a-going to law,"<sup>154</sup> and the General, confident of victory, agreed without inspecting the ranch to bring a trespass action against Morgan.

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149. *Id.* at 352.

150. *Id.* at 357.

151. *Id.* at 352.

152. *Hyde v. Morgan*, the "Great Landslide Case" has appeared in print in three versions. Twain's first version of the tale appeared on the front page of the *San Francisco Morning Call* on Sunday, August 30, 1863. The second version appeared in the *Buffalo Express* on April 2, 1870. The third and final version—which is the one discussed in this Comment—is recorded in M. TWAIN, *ROUGHING IT* 241-47 (1872).

153. M. TWAIN, *ROUGHING IT* 240 (1872).

154. *Id.* at 243.

The trial date arrived. With the court in vacation, the case was tried before a referee, who was aware of the joke but remained solemn throughout. General Buncombe arrived, his arms full of law books, and the court was called to order. The witnesses all gave testimony in favor of the plaintiff, Hyde. Finally, the General stood to make his closing argument:

[H]e pounded the table, he banged the law books, he shouted, and roared, and howled, he quoted from everything and everybody, poetry, sarcasm, statistics, history, pathos, bathos, blasphemy, and wound up with a grand war whoop for free speech, freedom of the press, free schools, the Glorious Bird of America, and the principles of eternal justice! [Applause.]<sup>155</sup>

The referee thought long and hard, then stood to render his decision. He explained that the weight of the evidence was in the plaintiff's favor. He concluded, however, that "it ill becomes us . . . to question the legality of the act [of God] or inquire into the reasons that prompted it. No—Heaven created the ranches, and it is Heaven's prerogative to rearrange them."<sup>156</sup> The General left the courtroom filled with indignation. It was two months before he realized that the suit had been a hoax.<sup>157</sup>

In the trial scene, Twain once again poked fun at the legal profession, but the target was more specific than in the case of Noakes. He criticized in this story the overzealous lawyer who is too busy with the law to verify the facts. The case of *Hyde v. Morgan* demonstrates Twain's early ambivalence toward the law, for although he used the courtroom as the setting for a joke, he respected the process enough to remove the proceedings from a formal court of law.

### 3. Science v. Luck<sup>158</sup>

In 1867, there were strict laws against games of chance in Kentucky. Several defendants were charged with violations of the law when they were caught playing a card game called "old sledge."<sup>159</sup> The defendants retained Jim Sturgis as their attorney, and he argued as the sole defense that "old sledge" was not a game of chance, but rather a game of science. Both sides called expert witnesses, who gave conflicting testimony. To resolve the issue, the defense counsel suggested that a jury of experts be impaneled: six "chance" jurymen, comprised primarily of church deacons, and six "science" jurymen, comprised of old sledge "professors."<sup>160</sup> The jurors retired

155. *Id.* at 245.

156. *Id.* at 246. *But see* Wells v. State Highway Comm'n, 503 S.W.2d 689, 693 (Mo. 1973) (drainage discharge containing enormous amount of mud eroded over large area ceases to constitute surface water but rather becomes "flow of mud" to which law of trespass applies).

157. M. TWAIN, ROUGHING IT 246 (1872).

158. This case is found in M. TWAIN, SKETCHES NEW AND OLD 159-61 (1875).

159. *Id.* at 159.

160. *Id.* at 160.

to the jury room with two decks of cards. One by one, the deacons returned to the courtroom to borrow money from friends. At daylight, the jury came in, and the foreman read the verdict. Having tested the theories advanced, they unanimously decided that "old sledge" was a game of science, for the "chance" men never won a game. Therefore, "old sledge" was set aside as a game not punishable under Kentucky law.<sup>161</sup>

The case was Twain's first presentation of a lawyer representing a client who apparently has no defense, a narrative device that he employed again in later fiction. Jim Sturgis bears no resemblance to the buffoon-like attorney in *Hyde*. Sturgis is a resourceful lawyer, who creates a defense and a means of proving that defense. Yet even though the legal profession is presented more favorably, the court and the jury system bear the brunt of the comic tale. It is doubtful that this type of experiment would be permitted in court,<sup>162</sup> nor would a competent judge entertain the basis of the defense. The tale also illustrates Twain's dislike for those politicians who attempt to legislate morals by outlawing such things as gambling. As a result, the "trial" permits the "guilty" to outsmart the Kentucky lawmakers.

#### 4. *In re Spirited Woman*<sup>163</sup>

A judge of a frontier community once told Twain the story of a Spanish desperado on trial for killing the husband of a pretty Mexican woman. The judge presided over the case but was uninterested because this desperado had always been found not guilty of all his previous murders. All the evidence implicated the desperado, but the jury returned a verdict of not guilty, as expected. The widow asked the judge if this was all that justice and the law could do. When he replied that the law could do no more, she turned on the "smirking Spanish fool . . . and shot him dead in open court."<sup>164</sup> The judge admitted that he would not have missed the event for anything. He promptly adjourned the court, took up a collection for the woman and her children, and sent them over the mountains.<sup>165</sup>

This anecdote is a reprise of several of Twain's satiric views of the law. First, the jury was not an instrument of justice. Every juror was as lawless as the defendant, and each voted "not guilty," expecting the defendant to do the same for him when their roles were reversed.<sup>166</sup> Second, the judge did not properly oversee the administration of justice. Although he could

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161. *Id.* at 161.

162. Courts do not generally allow jurors to conduct tests and experiments on their own, but they will permit such relevant experiments if performed by others in the presence of the jury. See 29 AM. JUR. 2D *Evidence* § 818 (1967).

163. This anecdote is found in M. TWAIN, *SKETCHES NEW AND OLD* 121-22 (1875).

164. *Id.* at 121.

165. *Id.*

166. *Id.* at 122.

not grant a judgment notwithstanding the clearly erroneous verdict in a criminal case, he could have granted a change of venue to ensure an impartial jury.<sup>167</sup> Since the officers of the law could not do justice, Twain empowered a common person to achieve it: the widow takes the law into her own hands. The judge then administers the law improperly again by helping the woman to escape. His only human actions come not as an officer of the law but as a sympathetic citizen, and then only after court had adjourned.

These examples of Twain's minor trials,<sup>168</sup> written early in his career, indicate his attitude toward frontier courts, moral laws, overzealous lawyers, and carefree judges. Each episode was a vehicle for his sarcasm, wit, and satire. He poked fun at the participants and the legal process because he believed that both interfered with the administration of justice. In his later writings, however, Twain used the legal process as a means of discovering the truth, thereby obtaining justice. The courtroom, in his major trials, became a vehicle of drama, not satire.

#### D. *Twain's Major Trials*

##### 1. *People v. Hawkins*<sup>169</sup>

In *The Gilded Age*, written in 1874, a Washington lobbyist named Laura Hawkins was tricked into marriage with Colonel Selby, who was already married.<sup>170</sup> Shortly after the wedding, the Colonel deserted her. They later met again, and the Colonel persuaded Laura that he still loved her. He deserted her again. But Laura followed him to New York City, where she shot him to death in front of several witnesses. The newspaper accounts turned public opinion against Laura and she was indicted for first degree murder.<sup>171</sup> Her friends stood by her and retained the most distinguished criminal defense attorney in New York. The attorney, Braham, secured two trial postponements and manipulated the newspapers to gain public sympathy for Laura.

Laura pleaded not guilty. When the case came to trial, it took four days to impanel the jury, for "no one knew better than this great criminal

167. See FED. R. CIV. P. 50; 32 AM. JUR. 2D *Civil Procedure* § 422 (1982).

168. For other examples of Twain's minor trials, see G. BELLAMY, MARK TWAIN AS LITERARY ARTIST 143-44 (1950) (case of *Smith v. Jones*); M. TWAIN, THE PRINCE AND THE PAUPER 282-85 (1881) (the trial of Miles Hendon); M. TWAIN, SKETCHES NEW AND OLD 171 (1875) (medieval romance and murder). See generally M. TWAIN, A CONNECTICUT YANKEE IN KING ARTHUR'S COURT (1889) (several brief and unjust trials). For an interesting case arising from the "facts" of *Tom Sawyer*, see the opinion of the "court" in Million, *Sawyer et al. v. Adm'r of Injun Joe*, 16 MO. L. REV. 27 (1951) (fictional opinion designed to aid students of personal property law).

169. M. TWAIN & C. WARNER, THE GILDED AGE: A TALE OF TODAY 484-529 (1873).

170. *Id.* at 175-75.

171. *Id.* at 417-25.

lawyer that the battle was fought on the selection of the jury."<sup>172</sup> The district attorney outlined his case. He explained that after long premeditation and many threats, Laura had deliberately killed the colonel in cold blood. The State then called its witnesses and established the shooting. Braham impeached the witnesses and attempted to show that Laura was temporarily insane. The prosecution rested.<sup>173</sup>

Braham began his defense by flattering the jury. He called them "men of rare intelligence, whose acute minds would unravel all the sophistries of the prosecution, men with a sense of honor, . . . men with hearts to feel for the wrongs of which she was a victim."<sup>174</sup> He said he did want to attribute base motives to the State's lawyers, because their business was to convict. His business, and that of the jury, on the other hand, was to see that justice was done. He outlined the hardships of Laura's life and how she had been deceived not once, but twice. When he sat down, the courtroom audience applauded. Some wept.<sup>175</sup>

The defense called its medical experts, who testified about temporary insanity. After more than two weeks, the defense gave its closing arguments, appealing for justice, not mercy.<sup>176</sup> The State's attorney concluded his argument, and the jury retired. After a day's deliberation, the jury returned a verdict of not guilty.<sup>177</sup> The people cheered and congratulated Laura, while the women kissed the hero, Braham.

When order was restored, the judge spoiled the celebration by announcing that the verdict left no doubt that Laura was dangerously insane. He committed her to the state hospital for the criminally insane.<sup>178</sup> After that announcement, however, Twain informs the reader that her commitment was merely what *should* have been done. Instead, he wrote, the trial ended and Laura drove away amid congratulations.<sup>179</sup>

The surprise reverse ending is a perfect example of Twain's doctoring of the law. Rather than disregarding the ramifications of the insanity defense, Twain ended the trial with Laura's commitment, as required by law. He then side-stepped the law to achieve the justice he thought Laura was due. The trial's result does not appear consistent with Twain's disapproval of the insanity defense. Yet perhaps the trial is Twain's example of how the defense routinely allows a murderer to go unpunished. On the other hand, Twain may have thought that the defense should only be successful when the defendant is truly insane *or* when the victim deserved to be shot.

The entire trial continues Twain's satirical attack on the judicial pro-

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172. *Id.* at 492.

173. *Id.* at 498.

174. *Id.* at 498-99.

175. *Id.* at 501.

176. *Id.* at 511.

177. *Id.* at 522.

178. *Id.* at 523.

179. *Id.* at 524-25.

cess. It took four days to find twelve men who could not read, and Twain has the defense attorney praise them for their intelligence. In fact, the defense attorney was later embarrassed to discover the one juror *could* read.<sup>180</sup> Judge O'Shaunnessy is of questionable character, and Twain implied that he was dishonest.<sup>181</sup> (The judge, for example, had sold the city the spittoon he was using for one thousand dollars.)<sup>182</sup> The defense counsel, Braham, was more a great actor than a great lawyer. Braham was a parody of John Graham, who represented the infamous Boss Tweed of New York's Tammany Hall.<sup>183</sup> The insanity plea arguably allowed a miscarriage of justice, for while Colonel Selby perhaps deserved his fate, he was nonetheless murdered. The trial's detailed procedure, however, illustrates Twain's thorough understanding of the trial process and his flair for using the trial as a dramatic tool to articulate his sense of justice.

## 2. State v. Potter<sup>184</sup>

The best-known trial in Twain's literature occurs in *The Adventures of Tom Sawyer*. Muff Potter was on trial for the murder of Dr. Robinson, and it appeared that the only eye witness was Injun Joe, who testified that Muff had stabbed the doctor.<sup>185</sup> On the third day of the trial, the prosecution called witnesses who further implicated Muff, and the defense attorney made no attempt to impeach their testimony. The townspeople believed the case hopeless. Muff was drunk at the time of the murder and actually

180. *Id.* at 512.

181. As an errand boy for a law firm, O'Shaunnessy learned enough to get admitted to the bar. He then went into politics, which is always enough in Twain's eyes to suggest dishonesty, and was elected to the bench. He never had a lucrative practice, yet he had valuable property. He helped build and furnish the courthouse in which he presided, and Twain implied that his office was payment for that help. *Id.* at 486-87.

182. *Id.* at 487.

183. L. BUDD, *supra* note 66, at 51. William "Boss" Tweed built and masterminded a political organization, known as the Tweed Ring, which became a phenomenon of its time. From 1866 to 1871, the Ring plundered the City of New York to such a degree that it became the standard against which all other municipal corruption is measured. *See generally* W. BALES, *TIGER IN THE STREETS* (1962); A. CALLOW, JR., *THE TWEED RING* (1966); L. HERSHKOWITZ, *TWEED'S NEW YORK* (1978). Twain believed that the ring had achieved its power because it had but one principle, one policy . . . —money-lust. . . . It was always ready to lie, forge, betray, steal, swindle, cheat, rob; and no promise, no engagement, no contract, no treaty made by its Boss was worth the paper it was written on or the polluted breath that uttered it.

Address of Samuel Clemens before the Organization Committee of the Acorns (entitled "Edmund Burke on Croker and Tammany"), New York City (Oct. 17, 1901).

184. The trial is found in M. TWAIN, *THE ADVENTURES OF TOM SAWYER* 181-88 (1876).

185. *Id.* at 90-92, 184.

believed he was guilty. But the doctor had, in fact, knocked Muff unconscious, and Injun Joe had killed the doctor.

Finally, after the prosecution rested, Muff's lawyer requested the clerk to call Thomas Sawyer to the stand. Gradually, under the lawyer's assurances and encouragement, young Tom told the audience his story. He and Huck Finn had gone to the graveyard at midnight to cure their warts by burying a dead cat.<sup>186</sup> When they got close to Hoss Williams's newly dug grave, they heard the doctor, Muff, and Injun Joe coming. It soon became evident that Muff and Injun Joe had been hired to steal Hoss's corpse. When Injun Joe asked for more money, he and the doctor began to fight. Muff dropped the knife he had used to cut a rope and ran to help Injun Joe, who had been knocked to the ground. As the doctor and Muff grappled, Injun Joe found Muff's knife. The doctor freed himself and seized the heavy headboard of Hoss Williams's grave. As Tom reached the climax of his story, those in the courtroom, including Injun Joe, sat astonished. Tom continued:

"—and as the doctor fetched the board around and Muff Potter fell, Injun Joe jumped up with the knife and—"

Crash! Quick as lightning the half-breed sprang for a window, tore his way through all opposers, and was gone.<sup>187</sup>

The Muff Potter trial established a pattern that Twain later followed, with slight variations.<sup>188</sup> First, an innocent man is falsely accused of a crime. Next, all evidence introduced seemingly proves his guilt. Finally, the late discovery of new evidence or a surprise witness saves the innocent defendant and identifies the unsuspecting criminal.

The trial illustrates a change in Twain's view of the legal process. The trial contains no satire, no attacks on the jury system, and no theatrical lawyers. The defense attorney is presented as a skilled practitioner, an officer of the law whose objective is to see that justice is done. He is understanding in his handling of his scared young witness and is totally prepared to prove each point. He even produces the carcass of the dead cat Tom and Huck took to the graveyard.<sup>189</sup>

The most notable change occurs in Twain's use of the courtroom. For the first time, he gave it a sense of dignity. The court in Twain's literature had evolved from a setting for practical jokes to a place where truth is discovered and justice is rendered. Twain staged the scene perfectly, building an insurmountable barrier while holding the sensational evidence in reserve, then presenting that evidence in dramatic fashion. Twain disclosed

186. *Id.* at 187.

187. *Id.* at 187-88.

188. See M. TWAIN, *THE MYSTERIOUS STRANGER* 131-37 (1916) (trial of Father Peter); M. TWAIN, *THE TRAGEDY OF PUDD'NHEAD WILSON* 263-99 (1894) (trial of Luigi Capello); M. TWAIN, *TOM SAWYER, DETECTIVE* 171-90 (1896) (trial of Silas Phelps).

189. M. TWAIN, *THE ADVENTURES OF TOM SAWYER* 187 (1876).



the information to the reader with the same flourish that a lawyer would present it to the jury. Nevertheless, he would later improve his presentation.

### 3. Church v. Joan of Arc<sup>190</sup>

The trial of Joan of Arc is different from the other trials in Mark Twain's literature.<sup>191</sup> Most of Twain's other trials are works of fiction—stories told to achieve dramatic effects. In the trial of Joan, however, he strove for historical accuracy and followed all the records of her trial with remarkable fidelity.<sup>192</sup> Consequently, Joan's trial is different from Twain's other trials in another way: it is the only trial in Twain's literature where a miscarriage of justice occurs.

Joan of Arc was an uneducated peasant girl who became the brilliant commander of the French army while still in her teens. She won several battles and nearly broke the power of the English in France. As she prepared to capture Paris and finally drive the English from French soil, a weak king Charles VII withdrew his support, and Joan was taken prisoner on May 24, 1430.<sup>193</sup>

She was turned over to the English-controlled Church in France, to be tried as an idolater in the hope of reducing her influence over the French. Bishop Pierre Cauchon of Beauvois, an English sympathizer, was sent to preside at her trial. As a minor, Joan had the right to counsel by the law of the Church,<sup>194</sup> but Cauchon refused to provide it. She pleaded her youth and her ignorance of the complexities of law and legal procedure. Cauchon again refused. During the trial, she was denied the right to call witnesses. The charges against her were seldom stated in advance and were changed frequently during the trial. She was tried without a jury, by a panel of judges who acted more as prosecuting attorneys determined to convict her at all costs.

Three trials failed to convict her.<sup>195</sup> She was tortured in a prison dungeon. Finally, exhausted and confused, Joan was persuaded to sign a confession with the understanding that she would go free.<sup>196</sup> Instead, Cauchon

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190. M. TWAIN, *THE PERSONAL RECOLLECTIONS OF JOAN OF ARC* 358-457 (1896).

191. D. MCKEITHAN, *supra* note 123, at 9.

192. *Id.* See generally *THE TRIAL OF JEANNE D'ARC* (W. Barrett trans. 1932) (English translation of original Latin and French trial documents). But see B. SHAW, *The Maid in Literature*, in *SAINT JOAN, A CHRONICLE PLAY IN SIX SCENES AND AN EPILOGUE* 23-25 (1977).

193. M. TWAIN, *THE PERSONAL RECOLLECTION OF JOAN OF ARC* 310-15 (1896).

194. *Id.* at 331.

195. *Id.* at 397.

196. *Id.* at 433.

sentenced her as a sorceress to burn at the stake.<sup>197</sup> Joan responded that on that night, "by His grace I shall be in Paradise."<sup>198</sup>

The trial of Joan occurred in France in the fifteenth century. Joan was denied rights considered fundamental by nineteenth-century American standards. Twain's story illustrates the importance of those rights. The trial was presented strictly on a dramatic level, with no satire. It is perhaps Twain's most effective appeal for humanity, simply because her execution was so clearly unjustified. In essence, the tragedy was a perpetuation of his idealism, his love of truth and justice.

#### 4. State v. Capello<sup>199</sup>

Twain's best courtroom presentation appears in *Pudd'nhead Wilson*. The trial is the dramatic climax of the novel. The action is set in the slavery days of Dawson's Landing, a small Missouri town on the Mississippi. On the day that David Wilson, a graduate of an eastern law school, arrived in town, he earned the name "Pudd'nhead," and ruined all chance of practicing law in the community.<sup>200</sup> He worked as a surveyor and an accountant and made a hobby of collecting and analyzing fingerprints.

One day, two boys were born within the same household, one, Tom, to the master of the house,<sup>201</sup> and the other, Chambers, to the master's mulatto slave girl, whose fair skin made her appear to be Caucasian.<sup>202</sup> Her baby, likewise, was fair-complected and resembled the master's son. Pudd'nhead fingerprinted both infants several times, as he did all of the town's inhabitants.

When the boys were seven months old, the slave switched the infants in their cradles.<sup>203</sup> The real Tom became "Chambers," and Chambers became "Tom." "Tom" grew to be a spoiled young man and became the heir to his uncle's fortune, but he risked that inheritance by compiling large gaming debts. To pay those debts and remain in his uncle's good graces, "Tom" resorted to burglarizing houses in the community.<sup>204</sup>

197. *Id.* at 449.

198. *Id.* at 450.

199. The Capello trial is found in M. TWAIN, *THE TRAGEDY OF PUDD'NHEAD WILSON* 263-99 (1894).

200. *Id.* at 23-26. A barking dog disrupted the tranquility of Dawson's Landing, and young Wilson one day remarked that he wished he owned half of the dog. When asked why, he replied, "Because I would kill my half." The group around him thought such an idea absurd, wondering what would become of the other half. Wilson was permanently labeled a "puddinghead."

201. *Id.* at 23. Tom's mother died after childbirth.

202. The slave's name was Roxy, and she was only 1/16 Negro. Her child was 31/32 Caucasian, but was, as Twain wrote, "by a fiction of law and custom" a slave. *Id.*

203. *Id.* at 43-45.

204. *Id.* at 127.

A feud developed between "Tom's" uncle and Luigi Capello, who had previously killed a man in Indiana. On one of his raids, "Tom" stole a knife from Capello. When "Tom" amassed more debts, he decided to rob his uncle.<sup>205</sup>

He established an alibi in St. Louis and then secretly returned to Dawson's Landing. He entered his uncle's house to rob the safe, carrying Capello's knife, but found his uncle asleep on the sofa beside a pile of bank notes. As he reached for the notes, his uncle awoke and shouted for help. "Tom" killed his uncle, leaving the knife behind but taking the bank notes.<sup>206</sup>

Capello was taking a walk when he heard the cry for help. He entered the uncle's house and found the body. Shortly thereafter, the neighbors appeared. They found Capello stooped over the dead man with the knife, covered with bloody fingerprints, at his feet. Capello was accused of the murder.<sup>207</sup>

Pudd'nhead was a friend of Capello and agreed to defend him. Comparing Capello's fingerprints to those found on the knife, he knew Capello was innocent. But the circumstantial evidence seemed insurmountable.

The trial began, and the State established that the knife was the murder weapon, and it belonged to Capello, and that Capello and "Tom's" uncle were enemies. The State rested its case, and the court adjourned for the day.<sup>208</sup>

Pudd'nhead had no evidence. He went home and searched his collection of prints to find a match for those on the knife.<sup>209</sup> "Tom" was feeling confident, and he paid a visit to Pudd'nhead to goad him. When he arrived, Pudd'nhead was examining a print on a glass strip. "Tom" took the strip and studied it, mocking such "child's play." After retrieving the strip, Pudd'nhead noticed that the prints unintentionally left on the glass matched those on the handle of Capello's knife. Pudd'nhead was puzzled why the prints of "Tom," the man, did not match those of Tom, the infant. On a hunch, examined his collection of Chambers's prints.<sup>210</sup>

When the trial continued the next day, Pudd'nhead astonished the courtroom by conceding the prosecution's claim that the person who left the bloody fingerprints on the knife handle was the murderer. He explained his theory of the crime, filling in the gaps between the known facts with shrewd guesses. He surmised that robbery, not revenge, was the mo-

205. *Id.* at 249-53.

206. *Id.* at 252.

207. *Id.* at 257.

208. *Id.* at 269.

209. *Id.* at 271-72. When "Tom" left the murder scene he was disguised as a woman. Eyewitnesses said that a strange woman had left the house shortly after the uncle's cries were heard. Pudd'nhead, therefore, originally made the mistake of searching only those female prints in his collection.

210. *Id.* at 273-76.

tive, and that the thief had been caught in the act and had killed in order to escape.<sup>211</sup>

To demonstrate his theory, Pudd'nhead introduced his evidence. He explained that fingerprints were physiological autographs, for no prints are ever the same and no print could ever be disguised.<sup>212</sup> He demonstrated his expertise by unhesitatingly identifying four members of the court by their fingerprints. He then proved Capello's innocence by establishing that Capello's prints did "not even resemble" those on the knife handle. The audience sprang to its feet, applauding the discovery.<sup>213</sup>

Then Pudd'nhead proceeded to identify the murder. He used his print collection to prove that the two infants were switched between the ages of seven and eight months. He showed that one had mistakenly been raised as master and the other as slave. He concluded that the master's fingerprints matched those on the murder weapon. Pudd'nhead turned to "Tom" and demanded that he make his print on the windowpane. "Tom" fainted.<sup>214</sup>

The trial of Luigi Capello unquestionably is Twain's most dramatic courtroom scene. Almost the entire book is spent building the complex factual situation that Pudd'nhead finally unravels at the novel's climax. Pudd'nhead is presented not only as a conscientious lawyer, but as a detective; he discovers the truth through his relentless preparation, creative deduction, and clever guesses.<sup>215</sup> Pudd'nhead methodically proves or disproves one point after another, until it is clear to everyone in the courtroom that his client is innocent and that "Tom" is guilty. This creative presentation is successful for Pudd'nhead, as well as for Twain, for it contains the logic, pacing, and drama that are the marks both of experienced trial lawyers and skilled storytellers.

The trial contains none of the satire found in Twain's earlier literature. The lawyers, judges, and jury all serve an intelligent, efficient function in the trial. Even the courtroom spectators are not satirized. They do forget themselves sometimes and have to be called to order, but they serve primarily to reflect the jury's reaction to developments in the trial.

The trial in *Pudd'nhead Wilson* illustrates the complete change in Twain's use of the courtroom and its participants. The legal process is as much a hero as Pudd'nhead, for it provides a formal, fair demonstration of innocence. The trial also evidences a change in Twain's attitude toward lawyers and the law. His prior satire indicated that he believed that the legal process interfered with the administration of justice,<sup>216</sup> but in

211. *Id.* at 282.

212. *Id.* at 286-87.

213. *Id.* at 295.

214. *Id.* at 299.

215. See R. ROWLETTE, *supra* note 118, at 38-61.

216. One commentator has noted that, "[i]n his work, Mark Twain portrayed lawyers as ringleaders of the official culture, two-faced pilgrims, as vested interests,

*Pudd'nhead Wilson*, Twain used the legal process as the best means of obtaining justice.

#### IV. TWAIN'S LAW: JUSTICE

Throughout his career, Mark Twain advocated justice, but justice to him was founded more on moral duty than on law. He not only preached justice, he lived it. As a result of poor investments and bad advice, his financial empire collapsed in 1894, leaving him deeply in debt.<sup>217</sup> Rather than declare bankruptcy, Clemens, like his father, faced up to his obligations. He embarked on a year-long lecture tour around the world, paid every creditor, and was heralded by the newspapers as a hero.<sup>218</sup> To Clemens, however, the payment was merely the right and honorable thing to do.

In Twain's literature, as in Clemens's life, justice and law did not always coincide. Twain best illustrated the injustice of a law by forcing a character to make a decision based upon that law. In *Huckleberry Finn*, Huck had to decide whether to abide by the law and turn Jim, a runaway slave, over to his owner or to "steal Jim out of slavery," an action that Huck believed would subject him to eternal damnation.<sup>219</sup> Despite his ironic reasoning, Huck makes the right decision and disobeys the law. Twain viewed the situation as one "where a sound heart and deformed conscience come into collision and conscience suffers defeat."<sup>220</sup>

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the naysayers and tyrannical 'they' who dominate community opinion." Feinstein, *supra* note 2, at 10.

217. Clemens made an initial investment of \$5,000 in a typesetting machine invented by James Paige. Its promoters predicted that the machine, once perfected, would revolutionize the printing industry. Clemens perceived the value of the invention: "This typesetter does not get drunk. . . . [It] does not join the printer's union. A woman can operate [it] . . . ." "M. MELTZER, *supra* note 4, at 197-99. By 1891, however, Clemens had poured \$190,000 into the machine, and still there was no promise of it ever becoming operational. *Id.* During that same period, Clemens's publishing company folded. He closed his home in Hartford, Connecticut, because it was too costly to operate, and he and his family went abroad, where they could live less expensively. By 1894, Clemens had lost \$300,000 to the Paige typesetter, and the family had completely exhausted Mrs. Clemens's inheritance. *Id.* See generally H. HILL, *supra* note 43; S. WEBSTER, *supra* note 67.

Clemens also invested a large amount in a steam generator, \$32,000 in 16 months on a steam pulley, and \$25,000 in marine telegraphy, only to lose every cent. He bought a block of shares in a watch company that quickly dissolved. As Twain's biographer wrote, "He had no moral right to be connected with business at all. He had a large perception of business opportunity, but no vision of its requirements—its difficulty and details." 2 A. PAINE, *supra* note 4, at 724-28.

218. 3 A. PAINE, *supra* note 4, at 1056.

219. M. TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* 270-72 (1885).

220. Feinstein, *supra* note 2, at 15. Henry Nash Smith called *Huck Finn* a "great book, not only because it worked a revolution in American literary prose, but because of what it says—against stupid conformity and for the autonomy of the indi-

Twain employed a similar approach in *The Prince and the Pauper*.<sup>221</sup> His premise for the novel was to “afford a realizing sense of the exceeding severity of the laws of that day by inflicting some of their penalties upon the king himself and allowing him a chance to see the rest of them applied to others.”<sup>222</sup> As a result, the prince receives a pauper’s-eye view of his realm which frees him from his conditioned attitudes and reveals the injustice of his laws.<sup>223</sup> Twain teaches the prince and the reader that “[t]he world is made wrong, kings should go to school to their own laws at times, and so learn mercy.”<sup>224</sup>

Twain allowed King Arthur to learn the same lesson in *A Connecticut Yankee in King Arthur’s Court*. The king and the Yankee toured the kingdom disguised as peasants. The king, subjected to his own laws, concluded that laws “take a meaning, and get very vivid, when you come to apply them to yourself.”<sup>225</sup>

Twain may appear to have taken an unfair advantage in criticizing the laws of medieval, Renaissance, or antebellum American society. But the author was not criticizing the laws; he was examining the attitudes that create law. Though the laws eventually changed to extend rights to the serf, the poor, and the black, man’s attitude toward these groups did not change to conform with the spirit of the law. In that regard, Twain was an important civil rights leader.<sup>226</sup> In light of the world’s ever-present inhumanity, Twain’s insights are as relevant today as they were when he wrote them almost a century ago.

Twain also believed that it is the responsibility of all citizens, not just the courts of law, to see that justice is done. In *The Gilded Age*, Twain explained that every citizen has a duty to put aside his business and see that a violation of the law is punished. He concluded that “no country can be well governed unless its citizens as a body keep religiously before their minds that they are the guardians of the law, and that the law officers are only the machinery for its execution, nothing more.”<sup>227</sup> Although we as

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vidual.” Smith, *Introduction* to M. TWAIN, *THE ADVENTURES OF HUCKLEBERRY FINN* at xxix (1958).

221. M. TWAIN, *THE PRINCE AND THE PAUPER* (1881).

222. Letter from Samuel Clemens to W.D. Howells (Mar. 11, 1880).

223. M. TWAIN, *THE PRINCE AND THE PAUPER* 317-30 (1881).

224. *Id.* at 330.

225. M. TWAIN, *A CONNECTICUT YANKEE IN KING ARTHUR’S COURT* 448 (1889).

226. *Huck Finn* has been viewed by one lawyer as a parody of white attitudes regarding slavery. See A. HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR* 7 (1978).

227. M. TWAIN & C. WARNER, *THE GILDED AGE: A TALE OF TODAY* (1873). Twain also stated:

The servants of the government’s officers ought to be, for simple decency’s sake, among the last to break its laws. . . . I should be unfaithful to my citizenship if I did not . . . feel something of a pang to see a law of the

lawyers and students of the law might not consider ourselves mere "machinery," the statement of our duty as citizens remains true today.

## V. CONCLUSION

In an after-dinner speech, Samuel Clemens once said, "I am a border-ruffian from the State of Missouri. I am a Connecticut Yankee by adoption. In me, you have Missouri morals, Connecticut culture; this, gentlemen, is the combination which makes the perfect man."<sup>228</sup>

This "perfect man" had a gift for making our world think while he made it laugh. For that gift, the University of Missouri presented him with an honorary Doctor of Laws degree. Ironically, when Clemens was a riverboat pilot a New Orleans fortune teller told him, "[Y]ou gain your livelihood on the water; but you should have been a lawyer—there is where your talents lie . . . . [T]ry the law [and] you will certainly succeed."<sup>229</sup>

Clemens indeed possessed the qualities often characteristic of successful trial lawyers: a logical mind, knowledge of human nature, and skill in the art of public speaking.<sup>230</sup> Clemens combined those qualities with his Missouri morals to become a writer. Nevertheless, through his doctoring of the laws, Mark Twain became one of the world's great advocates for justice.<sup>231</sup>

KIM M. ROAM

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land so coolly ignored and degraded by one of the very highest officers of the government.

Letter from Samuel Clemens to Thomas Kirby (Dec. 9, 1879). Such official lawlessness was not confined to Twain's day. See generally C. BERNSTEIN & B. WOODWARD, ALL THE PRESIDENT'S MEN (1974).

228. MARK TWAIN'S SPEECHES 88 (A. Paine ed. 1923).

229. 1 A. PAINE, *supra* note 4, at 156-57.

230. See D. MCKEITHAN, *supra* note 123, at 3.

231. Clemens's friend, William Dean Howells, suggested how Clemens should be remembered:

What we all should wish to do is to keep Mark Twain what he always has been: a comic force unique in the power of charming us out of our cares and troubles, united with as potent an ethic sense of the duties, public and private, which no man denies in himself without being false to other men.

W. HOWELLS, *supra* note 118, at 185.