MOCK TRIAL
A HERO DEFAMED?
MUCH ADO ABOUT MARGARET

APRIL 11, 2022
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CONTENTS

In addition to scrolling through the content, you can use the ≡ icon in the upper right hand corner to jump to a section from the Table of Contents.

Title Page

The Bard Association

Mock Trial Scenario

About STC

Cast Biographies

STC Staff

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A HERO DEFAMED?
MUCH ADO ABOUT MARGARET

April 11, 2022
Sidney Harman Hall

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MOCK TRIAL SCENARIO

Hero v. Margaret, No. 1601–03
(Corte Suprema di Cassazione)

Hero, after discovering the plot to stain her reputation and subvert her marriage to Claudio, sue Don John, his follower Borachio, and Hero’s former attendant Margaret in the Superior Court of Messina.

Hero claims that Don John defamed her and that he and the other defendants were part of or otherwise assisted in this defamation scheme. Specifically, Hero asserts that on the night before her wedding to Claudio, Don John staged a tryst between Borachio
and Margaret, disguised as Hero, to trick Claudio and Don Pedro into believing Hero to be unfaithful.

Count I of the complaint alleges that Don John slandered Hero by asserting to Claudio (and Don Pedro) that Hero was “disloyal” to Claudio and was “every man’s Hero.” In Count II, Hero alleges that at her wedding ceremony, Don John further defamed her by stating—in the presence of the gathered congregation—that Claudio’s and Don Pedro’s accusations of Hero’s unchastity “are true.” Count III charges Don John, Borachio, and Margaret with conspiracy to commit the tort of defamation. Count IV alleges that Borachio and Margaret aided and abetted Don John’s defamation. For all counts, Hero alleges that Don John’s statements about Hero were brazen lies, destroyed her reputation, and caused Claudio to jilt her.

On Hero’s application with evidentiary support, the court entered default judgment against Don John. The court entered summary judgment against Borachio based on his
admission that Don John “incensed him to slander the Lady Hero,” and that he took actions “confirm[ing] any slander that Don John had made.” Expressing regret for his role in the scheme, Borachio did not appeal this judgment.

Margaret contested all claims against her, so the court conducted a non-jury trial (testimony at which William Shakespeare transcribed in *Much Ado About Nothing*). In support of her claims, Hero presented evidence that Borachio urged Don John to make false statements about Hero to Claudio, and, in furtherance of this conspiracy, arranged the assignation with Margaret. Additionally, Hero alleges that Borachio colluded with Margaret to appear at Hero’s window dressed in Hero’s clothes and that Borachio informed Margaret of the plot by telling her that, during the assignation, he would refer to Margaret as “Hero.” Margaret insisted that she was ignorant of any plot against Hero, to whom she was always loyal, and that she truly anticipated that Claudio would wed Hero and was grief-stricken when he refused. Nonetheless, after
trial, the court held Margaret liable for both conspiracy and aiding and abetting the scheme to defame Hero. The court refused to credit her protestations of innocence, and also found Borachio’s testimony that Margaret “knew not what she did when she spoke” to him at Hero’s window not credible.

In reaching its decision on the aiding and abetting count, the court also stated that one who aids and abets commission of a tort is liable when the following elements are proven: (1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his/her role as part of an overall illegal or tortious activity at the time that he/she provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation. The court held that Don John defamed Hero, as alleged, and that Margaret aided and abetted him by materially assisting Borachio in carrying out a plan to embarrass Hero. The court found that Margaret appeared to know about some such plan and held that she need not know
its scope or agree to join in the defamation to be liable for aiding it.

In Margaret’s appeal to Italy’s highest court, at issue are:

(1) Whether the trial court clearly erred in concluding that Margaret was a co-conspirator.

(2) Whether the evidence sufficiently supports the trial court’s conclusion that Margaret knew enough about Borachio and Don John’s plan to defame Hero to be liable for aiding and abetting that plan.

**QUESTION FOR THE JURY:**

Should Margaret be held liable for Don John’s defamation of Hero?
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ABOUT SHAKESPEARE THEATRE COMPANY

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Shakespeare Theatre Company creates, preserves, and promotes classic theatre—ambitious, enduring plays with universal themes—for all audiences.

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We create theatre to ignite a dialogue that connects the universality of classic works to our shared human experience in the modern world.

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Shakespeare Theatre Company is honored to welcome everybody to our theatre, which sits on the unceded homeland of the Nacotchtank, Piscataway Conoy, and Pamunkey peoples and their descendants. It is our hope that in gathering together communities from near and far to engage in art and storytelling, we are doing so responsibly, with respect and recognition of Indigenous people and First Nation members and elders who are with us, and of all the Native peoples for whom D.C. is their ancestral home.
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RESTAURANT PARTNER:
Stephen Breyer, born in San Francisco in 1938, is a justice on the Supreme Court of the United States. He is a graduate of Stanford, Oxford, and Harvard Law School. He taught law for many years as a professor at Harvard Law School and at the Kennedy School of Government. He has also worked as a Supreme Court law clerk (for Justice Arthur Goldberg), a Justice Department lawyer (antitrust division), an Assistant Watergate Special Prosecutor, and Chief Counsel of the Senate Judiciary Committee (working closely with Senator Edward M. Kennedy to pass the Airline Deregulation Act). In 1980 he was appointed to the United States Court of Appeals for the First Circuit by President Carter, becoming Chief Judge in 1990. In 1994 he was appointed a Supreme Court Justice by President Clinton. He has written books and articles about administrative law, economic regulation, and constitutional law, including Regulation and Its Reform, Breaking the Vicious Circle: Toward Effective Risk Regulation, Active Liberty, Making Our Democracy Work: A Judge's View, The Court and the World, and The Authority of the Court and the Peril of Politics,
which was recently published. His wife, Joanna, was born in Great Britain and is a retired clinical psychologist. They have three children (Chloe, Nell, and Michael) and six grandchildren.

**JUDGE PATRICIA A. MILLETT**

*U.S. Court of Appeals for the District of Columbia Circuit*

Judge Millett was appointed to the United States Court of Appeals for the District of Columbia Circuit on December 10, 2013. She graduated from the University of Illinois at Urbana-Champaign, *summa cum laude*, in 1985 and from Harvard Law School, *magna cum laude*, in 1988. After working in a private law firm (Miller & Chevalier) for two years, she clerked for Judge Thomas Tang of the United States Court of Appeals for the Ninth Circuit. Following her clerkship, she worked for four years on the Appellate Staff of the Civil Division in the United States Department of Justice and for eleven years as an Assistant in the Office of the Solicitor General. In September 2007 she became a leading partner in the Supreme Court and appellate practices at Akin Gump Strauss Hauer & Feld LLP. She has argued 32 cases before the U.S. Supreme Court.
JUDGE AMY BERMAN JACKSON

U.S. District Court for the District of Columbia

Amy Berman Jackson was appointed as a United States District Judge in March of 2011. Prior to joining the Court, she was engaged in private practice in Washington, D.C., as a member of Trout Cacheris, where she specialized in complex criminal and civil trials and appeals. Earlier, she was a partner at Venable, Baetjer, Howard, and Civiletti. She began her career as a law clerk for the Hon. Harrison L. Winter on the United States Court of Appeals for the Fourth Circuit, and she served as an Assistant United States Attorney for the District of Columbia, where she received Department of Justice Special Achievement Awards for her work on murder and sexual assault cases. Judge Jackson received her JD *cum laude* from Harvard Law School and her AB *cum laude* from Harvard College.

JUDGE JAMES E. BOASBERG

U.S. District Court for the District of Columbia

Judge James E. “Jeb” Boasberg was appointed to the District Court in March 2011. Judge Boasberg is a native Washingtonian, having graduated from St. Albans School in 1981. He
received a BA, magna cum laude, in History in 1985 from Yale College, where he also played basketball. Judge Boasberg then received an MSt in Modern European History from Oxford University in 1986 and a JD from Yale Law School in 1990. Judge Boasberg next served as a law clerk to Judge Dorothy W. Nelson on the U.S. Court of Appeals for the Ninth Circuit. Following his clerkship, he was a litigation associate at Keker & Van Nest in San Francisco from 1991 to 1994 and at Kellogg, Huber, Hansen, Todd & Evans in Washington from 1995 to 1996. In 1996 Judge Boasberg joined the United States Attorney's Office for the District of Columbia as an Assistant United States Attorney, where he served for five years and specialized in homicide prosecutions. In September 2002 Judge Boasberg became an Associate Judge of the District of Columbia Superior Court, where he served in the Civil and Criminal Divisions and the Domestic Violence Branch until his appointment to the federal bench in 2011. Judge Boasberg also served a seven-year term on the United States Foreign Intelligence Surveillance Court beginning in May 2014. Appointed by Chief Justice John Roberts, he was the Court's Presiding Judge from January 2020 to May 2021. He is currently the President of the Edward Bennett Williams Inn of Court and the past Chair of the Governing Board of St. Albans School.
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JUDGE PATRICIA TOLLIVER GILES  
US District Court for the Eastern District of Virginia

Patricia Tolliver Giles was appointed to the United States District Court for the Eastern District of Virginia on November 1, 2021. She received her BA in English, with distinction, from the University of Virginia in 1995 and was an Echols Scholar. She received her JD from the University of Virginia School of Law in 1998. After law school, Judge Giles served as a law clerk to the Honorable Gerald Bruce Lee (retired) in the Eastern District of Virginia as well as in the Fairfax County Circuit Court. After clerking, she worked as a litigation associate at Cooley Godward LLP. From 2003 to 2021, she served in the U.S. Attorney’s Office for the Eastern District of Virginia as an attorney in the Major Crimes Unit, and then as the Managing Assistant United States Attorney for the Alexandria Division.

MARSHAL PAMELA TALKIN  
Former Marshal of the Supreme Court of the United States

Pamela Talkin was sworn in on July 16, 2001, as the tenth Marshal of the Supreme Court of the United States. Talkin is the first woman to hold the position. The Marshal is appointed by the Court and
oversees the security, operations, and maintenance of the Supreme Court building. The Marshal’s most visible responsibilities are to attend all sessions of the Court by “crying” the Court (announcing its arrival), ensure Courtroom security and decorum, and supervise Courtroom seating and recording of proceedings. The Marshal also supervises and controls all Court property, administers the Court’s contracting and procurement activities, and is the Treasury Disbursing Officer for the Court. Talkin came to the Court after six years as the first Deputy Executive Director of the Office of Compliance, the independent regulatory agency created by the Congressional Accountability Act of 1995, which applied many of the nation’s labor and employment laws to the legislative branch for the first time. She has also served as a Presidentially-appointed, Senate-confirmed member of the Federal Labor Relations Authority, Chief of Staff at the U.S. Equal Employment Opportunity Commission, and in various capacities at the National Labor Relations Board.

DOUGLAS EMHOFF
Second Gentleman

Douglas Emhoff is a devoted father, proud husband of Kamala Harris, and an experienced litigator. He is currently a Distinguished Visitor from Practice
at Georgetown Law and a Distinguished Fellow of Georgetown Law’s Institute for Technology Law and Policy. Prior to becoming Second Gentleman of the United States, Emhoff was a prominent entertainment lawyer for nearly 30 years with an emphasis on media, entertainment, and intellectual property matters.

DEBRA KATZ
D.C. Litigator; Founding Partner of Katz, Marshall & Banks

Recognized as "Civil Rights Lawyer of the Year" for Washington, D.C., by The Best Lawyers In America© for 2018, as one of the “toughest” employment lawyers in Washington, D.C., by Washingtonian magazine, and as an expert in sexual harassment, employment, and whistleblower law by The New York Times, The Washington Post, TIME magazine, and others, Debra S. Katz has been successfully litigating employment discrimination, civil rights, and whistleblower protection cases for over 35 years. Ms. Katz is a founding partner of Katz, Marshall & Banks, LLP, where she concentrates her practice on employment discrimination, sexual harassment, wrongful discharge, Sarbanes-Oxley, corporate, environmental and other whistleblower retaliation claims, SEC whistleblower tips, and contractual employment disputes. She has developed
extensive litigation experience in federal and local courts and has achieved significant courtroom successes in a number of high-profile cases.

ABBE DAVID LOWELL
STC Board of Trustees Vice Chair, Chair of the Bard Association, Moderator

Abbe D. Lowell is co-chair of the White Collar and Regulatory and Investigations, Practice Group at the international law firm of Winston & Strawn LLP. His practice focuses on the investigation, trial, and appeals of complex and often high-profile criminal and civil cases throughout the United States as well as counseling clients with respect to their dealings with federal, state, and local government agencies, Congress, and state legislatures. He has successfully tried criminal and civil cases ranging from public corruption, securities fraud, bank fraud, conspiracy, and even the Espionage Act before juries in more than 15 different federal and state courts and has argued appeals in various federal circuits, the highest courts of four different states, and before the U.S. Supreme Court. He has also represented clients in numerous congressional oversight and other hearings as well as enforcement actions brought by various federal agencies and state attorneys general. In addition to his private practice, he has served as Chief Minority Counsel
to Congress during the impeachment proceedings of President Clinton and as Special Counsellor to the United Nations High Commissioner for Human Rights in Geneva. Lowell has authored numerous articles on the law and teaches criminal procedure, evidence, and trial practice at Georgetown Law Center and Columbia Law School. Numerous legal and nonlegal newspapers and various attorney rating organizations have recognized Lowell as one of the most successful white collar defense and trial attorneys and one of the most influential attorneys in the United States. He serves as Vice Chair of the Board of Trustees and Chair of the Bard Association of Shakespeare Theatre Company, Vice President and General Counsel of the Jewish Community Center of Greater Washington, General Counsel of his synagogue, Columbia College Advisory Admissions Committee, and other community organizations.

**SIMON GODWIN**  
*Artistic Director, Shakespeare Theatre Company*

Simon Godwin joined Shakespeare Theatre Company as Artistic Director in September 2019. He has served as Associate Director of the National Theatre of London, the Royal Court Theatre, the Bristol Old Vic, and the Royal and Derngate Theatres (Northampton). While at the
Royal Court, Simon directed seven world premieres, including *Routes, If You Don’t Let Us Dream, We Won’t Let You Sleep, NSFW, The Witness, Goodbye to All That, The Acid Test*, and *Wanderlust*. He made his debut at the National Theatre with *Strange Interlude* followed by *Man and Superman*, and went on to direct *The Beaux’ Stratagem, Twelfth Night*, a celebrated production of *Antony and Cleopatra* with Ralph Fiennes and Sophie Okonedo, and the world premiere of Simon Wood’s *Hansard*. Most recently, he returned to the National Theatre to direct *Romeo & Juliet*, an original film for television (Sky Arts in UK/PBS in US) starring Josh O’Connor and Jessie Buckley. Simon has also directed at the Royal Shakespeare Company, including productions of *Timon of Athens* with Kathryn Hunter in the titular role, which was reimagined in early 2020 for Theatre for a New Audience in New York City and Shakespeare Theatre Company, an acclaimed *Hamlet*, which toured to the Kennedy Center, and *The Two Gentlemen of Verona*. In 2019, Simon made his Tokyo debut, directing a Japanese cast in *Hamlet* for Theatre Cocoon. Other productions include *The Little Mermaid, Krapp’s Last Tape/A Kind of Alaska, Faith Healer, Far Away, Everyman, Habeas Corpus*, and *Relatively Speaking*. In 2012 Simon was awarded the inaugural Evening Standard/Burberry Award for an Emerging Director.
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