

Let's Make Things Simple

By Alan Nelson

The U.S. Supreme Court came out with *Hertz v. Friend* on February 23, 2010. Justice Breyer defined for all 50 states what the "principal place of business" means. Instead of the more complex multi-factor test, he picks, not surprisingly, the "nerve-center" test. He even quotes the *Oxford English Dictionary* in his analysis. All other principal place of definitions are declared legally void. Breyer and the OED now say no consideration is given to decades of decisions on analyzing the amount of business done in another state versus executives lounging in their office the width of a continent away. Thus, corporations can "relocate," or create phantom command centers in other states to discourage lawsuits from injured parties in another state. And if it's just a small ripoff, the economics discourage any meaningful remedy.

The next day, the slip opinion on *Maryland v. Shatzner* was released. The Supremes were to decide whether the *Edwards's* prohibition against further interrogation once a suspect invokes his right to counsel expires two weeks after two and a half years in custody. Yes, but Scalia goes much further. He writes the court is creating a bright-line, simple-to-follow 14-day rule. After that, it's up to the citizen to reinvoke his *Miranda* rights. Such heady stuff, creating basic Fifth Amendment Law, or lack thereof.

This disturbs Clarence Thomas enough from his usual surf in Scalia's wake to complain about the simplicity of the bright line rule. He joins in the judgment, but harshly criticizes his friend's opinion for stating 14 days is reasonable to assume that a break in custody is not coercive.

The thing that should strike you about these two disparate cases in civil and criminal law is the current policy decision made by the court to simplify and make bright lines in certain areas of the law. It takes the pressure off. You don't need to think. No need to ponder. In the words of Nike, "just do it."

We all like the ease of knowing multiplication tables. A rote answer cuts time and energy. Using a simple bright line test, like a simple slogan, gives you that same satisfactory feeling of certainty without spending the energy of analytical thought and reflection.

And now as we watch economic domino hit another economic domino in a long line of dominos, I'm a bit scared. Simplifying things so we don't have to think is tempting. Making bright lines in the law to protect one's ox from being gored, always gores somebody's ox. Sometimes, entire herds are slaughtered.

Let's make it simple. Corporations are people too. They aren't just conglomerate protection for spreading economic risks. The Court says they can speak, and I guess, preach. They certainly can buy. Why bother with juries? It's complicated to pick and choose and guess jurors for different cases. Why have complexity? Why do analytical thinking? Why not make the sloganeering middle management slogan, Keep It Simple Stupid (KISS) as the rule of judicial decision-making?

The reasons, I think, are easily dismissed in this climate. But I'll state them anyway: I suspect it's because none of us want to be treated as a mere ox. I suspect it's because we have, or had, rights that we value as much as our lives. The truth: legal remedies sometimes must be complex to match the complexity of the problem.

Yes, all know the problems of excessive complexity. I see the same forces that simplify the laws in areas that erode your rights in one area as the same forces that push complexity to bar your rights in other areas. Consider *Daubert* and its special Texas progeny. Try to help a friend navigate ERISA in an insurance claim, or crawl through the layers of an administrative agency's appeal. Yes, when there are bureaucrats and agencies and no courts involved, complexity is excessive, usually leading to desperation, madness and collapse. There is a continual push by corporate entities to make systems

complex as snarled wire and barricades on a mine field. Just read a typical contract that's printed on the back of your next purchase receipt.

But just as you begin to analyze what's happening to our world, the paid advertisements crowd in to a simple drumbeat. Make it simple like a recipe. Make it simple like a slogan. Make it a catchy acronym, like KISS. Give us a bright line. Give us a king.