

The Wrath of Khan and Footnote 21

by Alan Nelson

When I read a recent Texas Supreme Court ruling I chuffed.

I coughed, I gasped, huffed, whiffed and heaved and panted in disbelief.

The cause number? No. 06-0714.

The style? *Barbara Robinson, Individually and as Representative of the Estate of John Robinson, Deceased, Petitioner v. Crown Cork & Seal Co., Inc., Individually and as Successor to Mundet Cork Corporation, Respondent.*

The odds for the plaintiff? Not good when you consider the court's track record over the last decade.

The surprise? Three surprises in fact.

One, the court ruled on the basis of the Texas Constitution.

Two, the court lifts a major corporation back on the hook for asbestos claims despite the mighty efforts of the Texas Civil Justice League, the Product Liability Advisory Council, and the Texas Attorney General's office.

Three, and the item that made me chuff, was that the Texas Supreme Court quotes *Star Trek*. Not the majority opinion, but the concurrence by Justice Willett, who is joined by Justice Lehrmann.

In footnote 21 of Justice Willett's concurrence to *Barbara Williams v. Crown Cork & Seal Co, Cause*, he (or some uncredited law clerk) writes:

See STAR TREK II: THE WRATH OF KHAN (Paramount Pictures 1982). The film references several works of classic literature, none more prominently than A Tale of Two Cities. Spock gives Admiral Kirk an antique copy as a birthday present, and the film itself is bookended with the book's opening and closing passages. Most memorable, of course, is Spock's famous line from his moment of sacrifice: "Don't grieve, Admiral. It is logical. The needs of the many outweigh ..." to which Kirk replies, "the needs of the few."

At this point, I must say I'm surprised the Supremes didn't request Michael C. Smith of Siebman, Reynolds, Burg, Phillips & Smith, LLP to supply an amicus curiae brief on the application of *Star Trek*, or for that matter, any sci-fi show and its application to Texas

law. Any law/Star Trek nerd worth his or her quantum salt knows that Smith is the ultimate authority on this matter.

Footnote 21 is placed to lend support to the Willett's statement:

"First, we recognize that police power draws from the credo that "the needs of the many outweigh the needs of the few." Second, while this maxim rings utilitarian and Dickensian (not to mention Vulcan)..."

And that's Vulcan as the planet Vulcan in Gene Rodenberry's universe, not the universe at hand, or the Roman mythological god of the smelter and volcanoes, or vulcanized rubber.

In addition, I'm not sure that Dickens actually could be credited with this statement other than in some broad thematic statement from a literary grad student's perspective. While Sidney Carton sometimes is credited with this statement in a *Tale of Two Cities*, I never have found that statement, and again with modern text search, still don't find it. And in fact, Sidney Carton sacrificed his life for the life of the wife of Charles Darnay, not for the many.

Thank goodness Willett didn't quote Star Trek III: The Search For Spock where Kirk said: "... the needs of the one ... outweigh the needs of the many."

Thank goodness he didn't go to the most recent Star Trek movie of 2009, where there are alternate universes. Theoretically, in an alternate universe, Crown Cork & Seal Company win, and the majority opinion is written by Justice Wainwright.

But we're in this universe in which you read these words. And yes, I have a chip on my shoulder regarding Star Trek and the law. My practice court professor put it there back in law school when I made a cultural reference in argument.

In a closing argument, I said that the technical language on a warning might as well have been Greek or Klingon for all the warning it communicated.

The professor immediately interrupted my closing argument.

"Klingon?" he rasped. "Klingon? Ineffective argument!"

After that confrontation, a classmate who collected comic books stopped me to inform me that he spoke Klingon, and any warning in Klingon would have been an effective communication, thus contradicting my argument.

After years and years and years that feel as long as traveling through a singularity, I am vindicated. Long live Footnote 21. Live long and prosper, Justice Willett.