

## WHEN A COURT RULED FOR BACON INSTEAD OF SHAKESPEARE – TEMPORARILY

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**ABSTRACT:** In 1916, motion picture producer William N. Selig sued to prevent George Fabyan from publishing solutions to ciphers in Shakespeare's works that proved that Francis Bacon was their true author. Selig asked the court to rule that Shakespeare was the author of the works attributed to him. Judge Richard S. Tuthill surprised the country when he decreed instead that Bacon was the author. Later, however, under pressure from his judicial colleagues, he recanted.

**KEYWORDS:** Francis Bacon, ciphers, collusion, decision, William Selig, George Fabyan, press agency, William Shakespeare, true author, recant, Judge Richard S. Tuthill.

For more than two centuries people have debated vigorously and sometimes acrimoniously over the authorship of the plays and sonnets commonly attributed to William Shakespeare.<sup>1</sup> By 1884, the authorship question had produced more than 250 books, pamphlets and articles.<sup>2</sup> At least 58 names have been suggested as the writer since the question first arose,<sup>3</sup> with Sir Francis Bacon the main contender for most of those years.<sup>4</sup> The Bacon Society was founded in England in 1885 to study Bacon's life and writings and to establish him as the Shakespeare author.<sup>5</sup> The following year it began publishing a journal, which after a name change became *Baconiana*, which still appears today.<sup>6</sup> In the 1940s, Professor Joseph S. Galland of Northwestern University, compiled a *Digesta Anti-Shakespeareana: An historical and analytical bibliography of the Shakespeare*

<sup>1</sup>"Looking for Shakespeare," *The Atlantic Monthly* (October 1991) 43.

<sup>2</sup>[Samuel] Schoenbaum, *Shakespeare's Lives* (New York: Oxford University Press, 1970), 554.

<sup>3</sup>Irvin Matus, "The Case for Shakespeare," *The Atlantic Monthly* (October 1991) 66.

<sup>4</sup>James Lardner, Onward And Upward With The Arts. "The Authorship Question," *The New Yorker* (April 11, 1988) 87; see also Schoenbaum, 431.

<sup>5</sup>Dora Jane Hamblin, "History's Biggest Literary Whodunit," *Life* (April 24, 1964) 70.

<sup>6</sup>William F. Friedman and Elizebeth S. Friedman, *The Shakespearean Ciphers Examined*, (New York: Cambridge University Press, 1957), 5.



George Fabyan

William F. Friedman Collection, George C. Marshall Research Library

*authorship and identity controversies*. Its more than 1,500 pages included 4,509 books, articles and other items on the authorship question.<sup>7</sup> Though it was never published, microfilm copies of the manuscript have been deposited in various libraries, among them the New York Public Library.<sup>8</sup>

Interest intensified around the turn of the century with publication of several books, such as *The Great Cryptogram: Francis Bacon's Cipher in the so-called Shakespeare Plays* by Ignatius Donnelly in 1888<sup>9</sup> and *The Bi-literal Cypher of Sir Francis Bacon discovered in his works and Deciphered by Mrs. Elizabeth Wells Gallup* in 1899, with an enlarged second edition in 1900 and a third edition in 1901.<sup>10</sup>

In 1905, Colonel George Fabyan (the title was an honorary one bestowed by an Illinois governor) and his wife, Nelle, came to Geneva, Illinois, about 40 miles from Chicago, where they purchased a large estate. Fabyan a somewhat eccentric

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<sup>7</sup>Schoenbaum, 554.

<sup>8</sup>Friedman and Friedman, 5.

<sup>9</sup>Chicago: R. S. Peale & Co.

<sup>10</sup>Detroit: Howard Publishing Co.

millionaire, soon established Riverbank Laboratories in Geneva to indulge in his hobbies.<sup>11</sup> His interests included the belief that Bacon was the author of the Shakespearean works and around 1912-13 Fabyan brought Mrs. Gallup and her sister, Kate Wells, to Riverbank<sup>12</sup> where he provided a staff to assist Mrs. Gallup in her search for ciphers in the plays and sonnets.<sup>13</sup> This probably was the beginning of the Department of Ciphers at Riverbank.



William N. Selig

Courtesy of the Academy of Motion Picture Arts and Pictures

In 1916, Colonel William N. Selig (his title came from his act in a minstrel show),<sup>14</sup> a wealthy Chicago motion picture producer, started a law suit in the

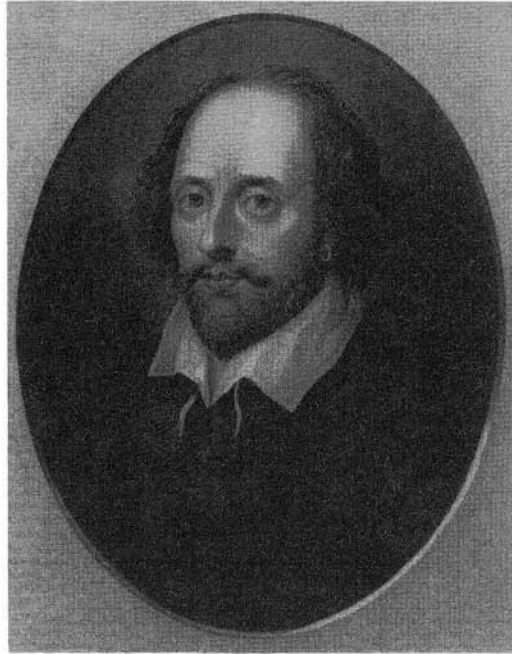
<sup>11</sup>Julia M. Ehresmann, ed., *Geneva, Illinois: A History of its Times and Places* (Geneva, Illinois: Geneva Public Library District, 1977), 155, 166, 176.

<sup>12</sup>Ibid., 178 says Mrs. Gallup was about 65 years old when she came to Riverbank while 311 gives her birth date as 1848, which would bring her to Riverbank in 1913. An anonymous, undated *Historical Account of the Riverbank Laboratories*, 2, suggests 1912 for the arrival date with the following comment: "The discovery of two forms of type in books printed in Bacon's time and the application of Bacon's method to the decipherment of the secret messages enfolded thereby employed a great part of the activities of the cryptographic department of the Riverbank Laboratories from about 1912 to the beginning of World War I."

<sup>13</sup>Friedman and Friedman, 205.

<sup>14</sup>Kalton C. Lahue, ed., *Motion Picture Pioneer: The Selig Polyscope Company* (Cranbury, NJ: A. S. Barnes and Co., Inc., 1973), 11.

Circuit Court of Cook County, Illinois, which includes Chicago, by filing a bill in chancery (court of equity)<sup>15</sup> against Fabyan, Riverbank Laboratories, Wells and Gallup. He charged they were planning to publish translations of works by William Shakespeare and Francis Bacon, using the biliteral cipher invented by Bacon, to prove that Bacon was the author of the Shakespearean plays.<sup>16</sup> Selig claimed he was preparing to exhibit motion pictures of the plays in connection with the tercentenary of the death of William Shakespeare on April 23, 1916, and, if the “alleged decipherings” were to be published, he declared, Shakespeare’s reputation as author of the plays “would be shattered.” As a result, he said, the public would generally not attend showings of his motion pictures, which would cause not only the loss of expected profits but also of the capital investment involved in the films’ production.<sup>17</sup>



William Shakespeare

Library of Congress

Selig asked the court for “an adjudication that William Shakespeare is the

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<sup>15</sup>Legal papers filed by both sides cannot be located according to Philip J. Costello, Assistant Archivist, Circuit Court of Cook County. Mr. Costello, most thoughtfully, extended his search to old chancery record books and was able to provide copies of the orders and decisions issued by the judges in the case.

<sup>16</sup>*Chicago Daily Tribune* (March 10, 1916), 11.

<sup>17</sup>H[enry] S[eymour], “Notes and Notices,” *Baconiana*, 3rd ser., (July 1927), 91-92.

author of the tragedies, comedies, plays and sonnets which heretofore have been attributed to him; that the publication of the secret story discovered in said works by the application of secret ciphers found in the works of Francis Bacon be declared illegal and improper, and that the doing of each and all said illegal and improper acts may be enjoined.”<sup>18</sup>

William F. Friedman, who had arrived at Riverbank in 1915, said that Fabyan arranged to have the legal action brought against himself and that it was “one of the most ingenious of his devices for publicizing Mrs. Gallup’s work.” He recalls that “At Riverbank Fabyan made no pretense of concealing that he had instigated the case for the sake of publicity.”<sup>19</sup>



Francis Bacon

Library of Congress

After listening to the arguments from both sides in a hearing on March 9, 1916, Judge Richard S. Tuthill said he had long wondered if Bacon really was the author of the works credited to Shakespeare. He felt that for the sake of the schoolchildren who are taught to revere Shakespeare and his works, and because his birthday is celebrated the world over and the world pays homage to him, it

<sup>18</sup> *Chicago Daily Tribune* (March 10, 1916), 11.

<sup>19</sup> Friedman and Friedman, pp. 206-207.

was time the question was legally settled.<sup>20</sup> And he granted Selig an injunction “restraining the defendants . . . from publishing and distributing the five histories, five tragedies, three comedies and divers other stories . . . until the further order of the court.”<sup>21</sup>



Richard S. Tuthill

Under the headline, “Rich Men In Court Over Shakespeare Film Magnate Enjoins Fabyan from Calling Avon’s Bard a Faker,” *The New York Times* called the suit “one of the most extraordinary legal actions in the history of literature.” It gave “The real – although empirical – defendant to this suit” as Francis Bacon, Baron Verulam, Viscount St. Albans, and Lord High Chancellor of England. The outcome of the suit, said the *Times*, would determine whether “Shakespeare will be branded as a ‘literary faker’ and driven from the memories of the world and Lord Bacon lifted to the lofty pedestal of fame in his stead and hailed as the true author of the Shakespearean works.”<sup>22</sup>

The use of a cipher to prove that Bacon wrote the Shakespearean plays was

<sup>20</sup> *The New York Times* (March 10, 1916), 7.

<sup>21</sup> Circuit Court of Cook County (Illinois) “Chancery Record Book,” p. 600, March 9, 1916.

<sup>22</sup> *The New York Times* (March 10, 1916), 7.

ridiculed by Professor C. R. Baskervill of the University of Chicago. He said these kinds of ciphers can be used to prove almost anything and revealed that his colleague at the university, Professor John Manly (who would later be Herbert O. Yardley's second-in-command in MI-8, the U. S. Army's codebreaking organization in World War I), had made up a similar cipher from Bacon's works that showed Shakespeare was the author of all of Bacon's work in addition to all of his own.<sup>23</sup>

Fabyan filed his answer to Selig's bill on March 25, 1916. He asked that the injunction be lifted so he can "give the world the results of \$100,000 worth of investigation" that proved that Francis Bacon wrote the works attributed to Shakespeare. Fabyan claimed he has translations of the cipher Bacon put in the plays that prove the Bacon authorship and no time should be lost in giving Bacon his due.<sup>24</sup>

Four weeks later, the case was argued before the court and on April 21, 1916, Judge Tuthill's decree said in part:

The court takes judicial notice of historical facts and facts generally known and finds that there has been for more than a century a controversy over the authorship of certain works which were published shortly after the death of William Shakespeare, the authorship of which was attributed to him; that the question of such authorship has always been an open question among scholars of equal authority and standing in the world of letters, literature and knowledge and a vast bibliography estimated, by those in a position to know, at 20,000 volumes have [sic] been written in discussion of this question.

The court further finds that in the published and acknowledged works of Francis Bacon there is given a cipher which Bacon devised in his early youth when in Paris called the "biliteral" cipher; that this cipher is found in Spedding's Edition of Laro [Lord] Bacon's works, Exhibit I of the deposition of Elizabeth Wells Gallup; that the witness Elizabeth Wells Gallup is a scholarly woman and an educator of high standing; that Elizabeth Wells Gallup has applied the cipher according to the directions left by Francis Bacon and has found that the name and character of Shakespeare was used as a mask by Francis Bacon to publish philosophical facts, stories and statements contributing to the literary renaissance in England which has been the glory of the world; that in said work Mrs. Gallup has spent most of her mature life and has

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<sup>23</sup> *The Daily News* [Chicago] (March 10, 1916), 3.

<sup>24</sup> *Chicago Daily Tribune* (March 26, 1916), Section II, p. 3.

been ably assisted by her sister Miss Kate Wells a scholarly woman.

The court further finds that the claim made that Francis Bacon is the author of the works published under the name of William Shakespeare and the facts and circumstances in the vast bibliography of the controversy over the question of said authorship convinces the court that Francis Bacon is the author of the works so erroneously attributed to William Shakespeare.

The court further finds that the defendant George Fabyan has been damaged in the sum of Five Thousand Dollars (\$5,000.00) by the improvident suing [*sic*] out of the injunction.

It is therefore ordered and adjudged and decreed that the injunction heretofore issued in this case be and the same is hereby dissolved and that the complainant, William N. Selig pay the defendant George Fabyan the sum of Five Thousand Dollars (\$5,000.00) and the defendant George Fabyan have execution therefor and that the bill be dismissed at complainant's costs.<sup>25</sup>

The court's decision became a front page story in the *Chicago Daily Tribune*; this was continued in a seven-column spread on page 5. The three-deck headline announced, "Bard of Avon Loses in Clash of Colonels - Judge Tuthill Decides for Bacon Over Playwright Shakespeare" and "Where's Press Agent." The story, written somewhat tongue in cheek, reported that "William Shakespeare, familiarly known as 'Bill' to his fellow roustabouts at the Globe theater, London, was adjudged a literary bankrupt yesterday by Judge Richard S. Tuthill in the Circuit Court of Cook county."<sup>26</sup>

The *Tribune's* description of the unexpected Bacon victory featured at least seven perspectives.

First was the decision, which "stirred a tumult among literary and other people."<sup>27</sup>

Second, the witnesses. Star witness for Selig was the Rt. Rev. Samuel Fallows, Episcopal bishop of Chicago,<sup>28</sup> whose testimony, as described by Judge Tuthill, "was a statement summing up the arguments in favor of Shakespeare."<sup>29</sup> Fabyan countered with eminent authorities such as "James Phinney Baxter, for-

<sup>25</sup> Circuit Court of Cooke County (Illinois), "Chancery Record Book," 115-116, April 21, 1916. (Some punctuation added for clarity.)

<sup>26</sup> *Chicago Daily Tribune* (April 22, 1916), 1.

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Chicago Daily Tribune* (May 1, 1916), Section II, p. 15.



mer member of congress, president of the Maine Historical Society and a Bacon-Shakespeare scholar of international repute; Wilbur L. Stone of Philadelphia, an authoritative litterateur, and Charles Loughbridge of Denver, who claims to have inspired the great work of Ignatius Donnelly, who in 1888 produced 'The Great Cryptogram; or Francis Bacon's Cipher in the Shakespeare Plays.'<sup>30</sup> Other witnesses for Fabyan were Miss Wells and Mrs. Gallup. Mrs. Gallup, who claimed to have deciphered what she said was the cryptogram of Bacon for Fabyan, was "given the highest credit for her part in translating the cipher."<sup>31</sup>

Third, Judge Tuthill's explanation of his findings. He claimed that Shakespeare was an ignorant man who could not have written the works credited to him. He stated that Bacon was a friend of Shakespeare and, wanting to try his hand at playwriting, something he could not consider in his own name, he used Shakespeare's name as a cover. But Bacon protected his work with a cipher "which, in future centuries, would enable those who sought the truth to prove he was the author of the plays and verse."<sup>32</sup>

Fourth, press agentry. The skeptical editor's subheadline "Where's Press Agent" was followed by a sidebar with its own headline, "An Anniversary, Too" that reported:

Coincident with the finding of Judge Tuthill that Shakespeare was not a playwright and that Bacon write the plays, it is to be noted that tomorrow, April 23, is the three hundredth anniversary of Shakespeare's death, a day that is, (or was) to be celebrated throughout the English speaking world.<sup>33</sup>

The story further reported that "Simultaneously with the court decision came press agent stories of the Shakespeare films. And, singularly enough – a mere coincidence – the first showing will be on Monday, under the auspices of the Drama League!"<sup>34</sup>

A reporter reached Jack Wheeler, an official of the Selig Company (Selig was out of town) and informed him that Selig had lost the case. " 'Isn't that sad?' wept Mr. Wheeler laughing ... 'That will be about 9,000,000 columns of publicity, won't it?' " Among experts in free advertising, some believe the case "the greatest publicity 'stunt' ever attempted."<sup>35</sup> Fifth, man in the street

<sup>30</sup> *Chicago Daily Tribune* (April 22, 1916), 1, 5.

<sup>31</sup> *Ibid.*, p. 5.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, p. 1.

<sup>35</sup> *Ibid.*, p. 5.

reactions. These ranged from no comment, and “Who’s Bacon?” to against the ruling.<sup>36</sup>

Sixth, opinions of Shakespeare experts at the University of Chicago favored Shakespeare over Bacon. One professor said, “The decision is not serious enough to warrant a public statement.”<sup>37</sup>

And seventh, the relationships. “Cols. Selig and Fabyan are not the enemies one might expect in such an extreme litigation. In fact, they are great cronies.” Selig’s main scenario writer had been a guest of Mrs. Fabyan and “it is said that Col. Selig was the guest of Col. Fabyan on the day before the famous Shakespeare-Bacon suit was filed.”<sup>38</sup> (Three letters from Fabyan to Selig confirm the cooperative nature of the lawsuit.)<sup>39</sup>

Three days later, fallout from the decision put Shakespeare and Bacon on the *Tribune*’s front page again. “To relieve the Shakespeare Avenue police station of the ignominy of remaining in contempt of court, and its officers and patrolmen of the literary disgrace into which they have fallen by being housed in a misnomer,” the *Tribune* reported, an enterprising city alderman proposed an ordinance to change the name of Shakespeare Avenue to Bacon Avenue and, accordingly, to the Bacon Avenue police station. “I don’t pretend to be a Shakespearean scholar,” the alderman said, “But according to Judge Tuthill, Shakespeare has ‘put one over’ for 300 years.”<sup>40</sup>

In New York, the *Times* reported that Judge Tuthill, one of the best known judges in Illinois, known for his literary attainments and his study of Shakespeare, ruled that William Shakespeare was an impostor and expressed his belief that “Bacon and not Shakespeare wrote the plays which for nearly 300 years have been generally associated by the world at large as the work of the Bard of Avon.”<sup>41</sup> In London, the Bacon Society said that “The decision set a good many people, on both sides of the Atlantic, to think furiously, and they issued a propagandist leaflet putting forth the particulars.”<sup>42</sup>

Unfortunately for the Baconians, Bacon’s reign as the true author of Shakespeare’s works in the Cook County Circuit Court lasted only 11 days.

According to one account, the other Cook County judges, presumably subject to ridicule and unflattering remarks, put so much pressure on Judge Tuthill

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Copies of letters are in this writer’s possession.

<sup>40</sup> *Chicago Daily Tribune* (April 25, 1916), 1.

<sup>41</sup> *The New York Times* (April 22, 1916), 11.

<sup>42</sup> “Notes and Notices,” *Baconiana*, 3rd ser. (December 1927) 163.

that he was forced to recant his decision.<sup>43</sup> The official version from the Circuit Court clerk, in response to an inquiry many years later, was that “the Executive Committee [of the court], at the time of the entry of the decree in question . . . were of the opinion . . . that the question of the authorship of the writings attributed to William Shakespeare was not properly before the court.”<sup>44</sup>

Circuit Court Judge Jesse Baldwin had instigated the meeting of the Executive Committee, which consisted of the members of the Circuit Court bench, because he felt the dignity of the court was at stake and he did not wish to have the courts made “the butt of the civilized world’s laughter.”<sup>45</sup> Judge Tuthill attended the meeting despite not being invited. The 75-year-old jurist did not understand the fuss about his decision, saying “this has been a matter of personal belief for the last century.” He said Fabyan had been a friend for years and knew his beliefs on this matter but he denied having discussed the case with him. Though Selig and his attorneys also were aware he favored the Baconian theory, he said, “they knew they’d get a fair hearing from me. But the idea was that it was to go [be appealed] to the Supreme Court.”<sup>46</sup>

When Judge Tuthill emerged from the special meeting at which he yielded to pressure from the other jurists and agreed to recant his decree, he commented that “the mountains labored and brought forth a ridiculous mouse.”<sup>47</sup> When asked if he had changed his personal opinion he fervently iterated his conviction that “Mr. Bacon wrote the beautiful words ascribed to Shakespeare.”<sup>48</sup>

Judge Baldwin called Judge Tuthill’s decision to vacate his ruling commendable. He emphasized that he never suggested collusion between Judge Tuthill and either of the attorneys. He did put the record of the case before the Circuit Court’s chief justice, William F. A. Smith, and the committee “and said it appeared as if there might have been collusion between the attorneys.”<sup>49</sup>

On May 2, 1916, the Circuit Court won its fight for dignity as Judge Tuthill “ordered that the decree heretofore entered in the above cause be and the same is hereby set aside and the said cause is placed upon the calendar of Wm. Frederick

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<sup>43</sup> Jayne Miller, “Key to Shakespeare Author Believed in Fabyan Books,” unidentified newspaper article, August 1939, in Geneva (Illinois) Public Library; see also Letters - And - Art, “Shakespeare Jeopardized By The Courts,” *The Literary Digest* (May 13, 1916), 1368.

<sup>44</sup> H[enry] S[eymour], “A Belated Publication,” *Baconiana*, 3rd ser., (January 1935) 33-34.

<sup>45</sup> *Chicago Daily Tribune* (May 2, 1916), Section II, p. 1.

<sup>46</sup> *Ibid.*, (May 1, 1916), Section II, p. 15.

<sup>47</sup> *Ibid.*, (May 2, 1916), Section II, p. 1.

<sup>48</sup> *The Daily New* [Chicago] (May 1, 1916), 1.

<sup>49</sup> *Chicago Daily Tribune* (May 2, 1916), Section II, p. 1.

A. Smith for hearing.”<sup>50</sup>

The recall of the decision relieved the minds of 20 jurists, one of them said, as the majority felt popular respect of the court was being hurt. “What the d—l [devil] difference does it make who wrote the works? We can’t afford to be laughed at by the whole world! Not only in Chicago but in all America and the rest of the civilized world this decision has caused ridicule.”<sup>51</sup>

Fabyan was infuriated at the interference with the decision. “Judge Baldwin can go to the devil!” he exploded. “What business have the other judges to practically force the withdrawal of a decision rendered by one. That case cost me a lot of money.”<sup>52</sup>

On July 21, 1916, Judge Smith reconvened the court to hear the case. After some legal arguments, Judge Smith, on Fabyan’s lawyer’s motion to withdraw all answers submitted by Fabyan and to dismiss Selig’s complaint, ruled “said Bill of Complaint dismissed for want of equity . . . [and] injunction heretofore entered herein on March 9, 1916, be and the same hereby is vacated and said injunction dissolved.”<sup>53</sup>

After his rulings Judge Smith suggested, “Let the literary and debating societies thrash it out now.”<sup>54</sup>

This unusual sequence of events resulted from the Executive Committee of the court deciding that the law suit was collusively instituted for the sole purpose of promoting a motion picture involving the BaconShakespeare controversy.<sup>55</sup> As a result, the authorship question was not properly before the court and “courts should not be literary forums,” Judge Smith explained.<sup>56</sup>

Fabyan’s rejoinder to the court’s reversal of its decision was to publish a 30-page brochure in the form of a legal brief. It was entitled: “William N. Selig vs George Fabyan *et al.* (In which the existence and use of the Bilingual Cipher were passed on by Judge Tuthill.) THE EVIDENCE IN THE CASE.”<sup>57</sup> The introduction by Fabyan’s attorney, Charles O’Connor, reviewed the case and contended that the trial “was presided over by one of the oldest, most experienced and capable of jurists in the State of Illinois who, after carefully examining the

<sup>50</sup> Circuit Court of Cooke County (Illinois), “Chancery Record Book,” 66, May 2, 1916.

<sup>51</sup> *Chicago Daily Tribune* (May 2, 1916), Section II, p.

<sup>52</sup> *Ibid.*

<sup>53</sup> Circuit Court of Cooke County (Illinois), “Chancery Record Book,” 500, July 21, 1916.

<sup>54</sup> *Daily News* [Chicago] (July 21, 1916), 1.

<sup>55</sup> Seymour, *Baconiana*, 3rd ser., (January 1935) 34.

<sup>56</sup> *Chicago Daily Tribune* (July 22, 1916), Section II, P. 13.

<sup>57</sup> Bacon Cipher Collection, Box 14, New York Public Library, Rare Book Room.

Gen. No. B. 19054

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**CIRCUIT COURT**  
In Chancery

STATE OF ILLINOIS }  
COUNTY OF COOK } ss

**WILLIAM N. SELIG**

vs

**GEORGE FABYAN**  
Et al.

(In which the existence and use of the Biliteral Cipher  
were passed on by Judge Tuthill)

Fabyan's Brochure in the  
Form of a Legal Brief

**THE EVIDENCE IN THE CASE**

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**CHARLES J. O'CONNOR**  
1730 Tribune Building  
Solicitor for Defendants

evidence, ruled in favor of Bacon.” He emphasized that “The facts stand legally adjudicated, even though the decree, for other reasons, was set aside.”

O’Connor urged the legal fraternity to study the following 28 pages, which were introduced as evidence in the case. They consisted of an exact copy of two booklets published by Fabyan under his Riverbank Press imprint in 1916; *The Greatest Work of Sir Francis Bacon, Baron of Verulam, Viscount St. Alban* by J. A. Powell and an anonymous work, *Hints to the Decipherer of The Greatest Work of Sir Francis Bacon, Baron of Verulam, Viscount St. Alban*.

Typical of Fabyan’s brassy style, his 30-page pseudo-legal brief ignored the reversal of the court’s decision except for eight words buried in O’Connor’s review of the case.

In contrast, the London Bacon Society made the following announcement upon learning of the court’s action.

Under these extraordinary circumstances, the Bacon Society takes the earliest opportunity of withdrawing its propaganda leaflet, No. I, from circulation, in the common interest of truth and fair play.<sup>58</sup>

Unfortunately the papers filed by the parties in this unusual case have been lost and a transcript of the proceedings was not made. As a result, it is impossible to make an independent judgement on which side had the most convincing arguments and evidence. From a legal perspective, however, both sides could draw solace from the proceedings. As O’Connor pointed out, the decision was set aside on procedural grounds but that does not change the fact that an experienced judge in a court of law, after hearing all the evidence from both sides, ruled in favor of Bacon. Still, as Judge Smith noted, the “literary and debating societies” are the proper forum for this issue and not a court of law.

An important point overlooked by the Circuit Court’s Executive Committee, perhaps deliberately to avoid embarrassing its senior jurist, was that Judge Tuttle was a Baconian, his views were known to both parties and he was a friend of Fabyan. Ethically he should have recused himself from presiding over the court proceedings. A motion citing the obvious conflict by Selig’s attorney probably would have had the same effect. But, because of the collusion between Fabyan and Selig the motion was not made.

Finally, though Fabyan’s conniving ways make him difficult to admire, he was a larger-than-life character who proved himself a master at self-promotion. “It was a maxim of his that anything could be sold by a well-planned campaign – especially if he took it up.”<sup>59</sup> This imaginative law suit confirmed Fabyan’s

<sup>58</sup>S[eymour], *Baconiana*, 3rd ser., (January 1935) 34.

<sup>59</sup>Friedman and Friedman, 205.

immodest view of his ability, even though his victory only lasted for 11 days.

### **BIOGRAPHICAL SKETCH**

Louis Kruh is an attorney who has been interested in cryptology for more than forty years. He has written numerous articles, hundreds of book reviews, and is co-author of *Machine Cryptography and Modern Cryptanalysis*.