Depositions v. Trials:
Criminal Law: The Escape

Sard Fleeker of Dallas contributed not only a marvelous opinion — The State of Kansas v. George Lewis, 19 Kan. 266 (1877) — but also a fascinating story about how this rhymed "opinion," written by "Ironquill," was published in Volume 19 of the Kansas Reports as the result of a "leak" in the Kansas Supreme Court of 1877.

The Opinion:
The alleged offense:
This defendant while at large was arrested on a charge of burglarious intent and direct to jail he went.

The escape:
But he somehow felt misused and through the prison walls he oozed.

After recapture, the trial:
Then the court met, and they tried Lewis up and down each side, On the good old-fashioned plan; But the jury cleared the man.

Then the second trial: despite being found innocent of burglary, Lewis was tried again, this time for the escape. He was found guilty and sentenced to two years' imprisonment. On appeal: the Kansas Supreme Court rejected the argument that since Lewis was being wrongfully detained — as shown by the outcome of his burglary trial — it was not illegal for him to escape. And, the rhymed “opinion” does contain ... all the statements that remain:

Argument and Brief of Appellant:
As a matter, sir, of fact, Who was injured by our act, Any property, or man? — Point it out, sir, if you can.

Can you seize us while at large On a baseless, trumped up charge; And if we escape, then say It is crime to get away — When we rightfully regained What was wrongfully obtained?

Please-the-court-sir, what is crime? What is right, and what is wrong? Is our freedom but a song — Or the subject of a rhyme?

Let the judgment be sustained — All the justices concur.

“E.F.W.”3 ... and “Ironquill”
A more mundane opinion in this case, State of Kansas v. Lewis, 19 Kan. 260 (1877), preceded the rhymed version (19 Kan. 266), which began with this innocuous "Reporter’s Note": "The peculiar features of the foregoing case of The State v. Lewis seem to justify the printing here of the ‘poetical report’ thereof written by Eugene F. Ware, Esq., attorney at law, of Fort Scott, and which he published in the Fort Scott Daily Monitor of 10th March 1877.”

But Sard Flecker adds this intriguing background about Ironquill and how his poetic opinion came to be printed in the official Reports of the Kansas Supreme Court: "Eugene Ware was a lawyer and publisher of a newspaper in Fort Scott, KS in the mid-1800s. As the style of the [rhymed ‘opinion’] would indicate, he often wrote under the pen-name of Ironquill for fairly obvious reasons:

“In 1877, one George Lewis was arrested for burglary. Being unable to make bail, he languished in jail for a longer time than he felt was reasonable. So, he escaped. He was later apprehended and tried for the burglary offense and was acquitted. This apparently infuriated the county attorney and the sheriff to such an extent that they thereupon prosecuted him for jail-break — and he was convicted. Lewis appealed and the Kansas Supreme Court upheld the conviction.

“This decision so outraged Ware4 that he thereupon wrote his own lyrical version of the opinion and published it in his newspaper. Although the reported version would indicate otherwise, it was actually one of the lesser clerks in the Supreme Court that saw it, was amused and, without consulting anyone, worked it into the reports. Unfortunately, if the Kansas Supreme Court of that day had a sense of humor, it did not encompass barbs directed at the court. After the court fired him, the clerk disappeared into that obscurity which is reserved for


Vol. 58 No. 2 Texas Bar Journal 198
Court justices were former attorneys general for many years to come, most Kansas Supreme Court justices were former attorneys general who were county attorneys before that. The nature of the court is now considerably changed and even has a sense of humor.

Sard’s letter — with its historical but contemporary comments about justice, judicial humor, and supreme court leaks — concludes:

“I have read some of Ironquill’s other poetry and may safely assure you that he peaked in Volume 19 of the Kansas Reports. As for his prose, I can only say it is another great mystery that Ware lived to a fairly ripe age and died peacefully in bed.”

**Necessary Evils: Clients and Witnesses**

The “Sit-Down Lawyers” need not feel that their respective (but respectable) areas of specialization have been overlooked in Ironquill’s work. Legal prose in these areas — such as corporate and business law, wills, estates, and trusts — can certainly be as stilted, unintelligible, and redundant as that in other fields.

For those who practice corporate law, *The True’s of the Young Lawyer Who Spoke English,*

Once there was a Young Lawyer (“Y’g. L’r.”) who actually spoke English. While drafting his very first contract for his very first client (“F’st. Cl’t.”), it occurred to him that most lawyers were resplendent with the pride of correctness. “But,” gasped the astonished F’st. Cl’t., “even a child could understand this.”

“Of course,” said the Y’g. L’r. despondent with the pride of creativity. “That’s what you wanted, isn’t it?”

“Certainly not!” exploded the F’st. Cl’t. angrily. “That means McSchnitzelberger can understand it. If he doesn’t know what it means, he’ll take my word it means what I say it means, rather than pay a lawyer a fee to explain it to him. If you can’t draw a real contract, I’ll get a Notary Public to do it for a dollar.”

So the Young Lawyer prepared a new contract — using a form that had “stood the Acid Test of Time and the scrutiny of countless generations of screeners,” with much whereinbefore provided whereas — copied on legal-size parchment with a three-inch gilt seal in the corner.

The client was pleased: “I don’t know what it means, of course, but then neither does McSchnitzelberger. He’ll take my word that it means what I say it does, because he’s too tight to consult a lawyer.”

And the Young Lawyer never again drafted a contract that a client could understand.

1. The syllabus: “Law-Paw; Guilt-Wilt. When upon thy frame the law places its majestic paw th’o in innocence, or guilt thou art then required to wilt.”

2. “Lewis, tried for this last act, Makes a special plea of fact: Wrongly did they me arrest, As my trial did attest And while rightfully at large, Taken on a wrongful charge I took back from them what they From me wrongingly took away.”

3. The initials of Elgin F. Ware, the Kansas attorney-poet-newspaper publisher who wrote under the pen name “Ironquill.”

4. One can only speculate what Ware might have done with the “Catch-22” decision by the Supreme Court in United States v. Bailey, 444 U.S. 394 (Jan. 21, 1980) — which, in essence, holds that a prisoner who escapes because of inhuman and intolerable jail conditions cannot avoid punishment for the escape unless he immediately surrenders and returns to jail.

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7. And, according to Shore, “the Y’g. L’r. waxed wealthy and grew famous and eventually became a judge.”

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