

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,”¹ 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.² And, **the rhymed “opinion”** does contain ... all the statements that remain”:

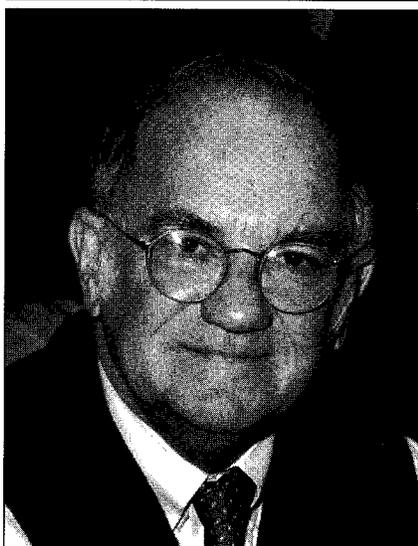
Argument and Brief of Appellant:

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?

By Jerry Buchmeyer



Argument and Brief Of Attorney for the State:

When the State, that is to say,
We take the liberty away —
When the padlock and the hasp
Leaves one helpless in our grasp,
It’s unlawful then that he
Even *dreams* of liberty —

Wicked dreams that may in time
Grow and ripen into *crime* —
Crime of dark and damning shape;
Then, if he perchance escape,
Evermore remorse will roll
O’er his shattered, sin-sick soul.

Please-the-court-sir, how can we
Manage people who get free?

Reply of Appellant:

Please the court-sir, if it’s sin,
Where does **turpitude** begin?

Opinion of the Court. Per Curiam:

We-Don’t-Make-Law.
We are bound
To interpret it as found.

The defendant broke away;
When arrested, he should stay.

This appeal can’t be maintained,
For the record does not show
Error in the court below.
And we nothing can infer.

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 (1977), 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 Fleeker 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

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less important, disgraced personages. Ware did not pursue the matter by taking up the clerk's cause, possibly sensing that for once he may have gone too far.

"History also fails to disclose whatever became of Lewis, or as to who or what he was prior to the burglary arrest. We also do not know if he really was guilty of the burglary and if there was actually some cause for the sheriff's outrage. In those days, I am advised, such extraneous circumstances were surreptitiously made known to the court and it did make a difference. Also, one must keep in mind that then, and 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 OTEQLHLW.⁵ Legal prose in these areas — such as corporate and business law, wills, estates, and trusts — can certainly be just as stilted, unintelligible, and redundant as that in other fields.

For those who practice corporate law, *The Fable of the Young Lawyer Who Spoke English*.⁶

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 people speak and write in the English language. "Why shouldn't lawyers?" he asked himself. "Why shouldn't they, indeed?" When the client returned to review the contract (the other party, of course, was Jehoshaphat McSchnitzleberger):

The Y'g. L'r. showed the F'st. Cl't. a contract written in the English language. Omitted and eliminated were the over-and-aboves, the wherefores, the due-and-owings, the aforesaid, the hereinafters, the provided-howevers, the and/ors, the therein, there-ofs, whereins, theretofores, the under-and-by-virtue-ofs, and the other quaint idioms that make legal

jargon so cryptic.

"But," gasped the astonished F'st. Cl't., "even a child could understand this."

"Of course," said the Y'g. L'r. resplendent with the pride of creativeness. "That's what you wanted, isn't it?"

"Certainly not!" exploded the F'st. Cl't. angrily. "That means McSchnitzleberger 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 scribes," with much hereinbefore 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 McSchnitzleberger. 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.⁷

1. **The syllabus:** "Law-Paw; Guilt-Wilt. When upon thy frame the law places its majestic paw tho' 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 wrongly 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.
5. Our Truly Epic Quest for Imaginative, Humorous Legal Writing.
6. "The Fable of the Young Lawyer Who Spoke English," by Irving Shore, first appeared in the humor magazine, *Judge*. Prosser, *The Judicial Humorist* (Little, Brown & Co. 1952).
7. And, according to Shore, "the Y'g. L'r. waxed wealthy and grew famous and eventually became a judge."

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