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Volume 5, Number 4

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FROM THE EDITOR'S DESK

The Library's CD-ROM Network is up and running. Three of the PC's located in the reference room are on the network and available for public access. The fourth computer is dedicated solely to LION (it's labeled LION) and is not networked.

Patrons should be aware that InfoTrac is only available on one computer (the one with the Infotrac sign). The Infotrac station, however, does allow access to all the CD-ROM's listed. Search manuals for each database are located near the stations.

CCH ACCESS Tax Research Series on CD-ROM. The library subscribes to the CCH ACCESS CD-ROM which contains information published in the 19 volume Standard Federal Tax Reporter. This current information includes "the Compilations, Current Developments, and Topical Indexes...as well as the complete text of the Current Internal Revenue Code, the CCH Topical Index of the Internal Revenue Code, and the CCH Internal Revenue Code History documents."

CIS Congressional Masterfile is an index to U.S. government Congressional materials. CIS Masterfile 1 covers the U.S. Serial Set (1789-

1969), Senate Executive Documents and Reports (1817-1969), Published Committee Hearings (1833-1969), Unpublished Senate Committee Hearings (1823-1968), Unpublished House Committee Hearings (1833-1954) and Committee Prints (1830 -1969). CIS Masterfile 2 covers Hearings, Committee Prints, House and Senate Reports, Senate Executive Reports, House and Senate Documents, Executive and Treaty Documents, and Public Laws and Legislative Histories from 1970 to present. The library subscribes to the CIS Microfiche Library of full-text documents from 1970 to present.

Index to Legal Periodicals provides bibliographic access to articles from more than 615 legal periodicals. "Coverage includes law reviews, bar association journals, university publications, yearbooks, institutes, and government publications...[in] all areas of jurisprudence, including recent court decisions, new legislation, and original scholarship."

LegalTrac provides bibliographic access to articles from over 800 legal periodicals published since 1980. "Sources include all major law reviews, seven legal newspapers, law specialty publications and bar association journals." A notice is provided with the citation to inform the user if the journal title is available in our library.

Matthew-Bender CD-ROM Libraries provides full-text information retrieval for Matthew-Bender publications included in their specialized libraries. The network contains the Collier's Bankruptcy Library, the Immigration Law Library and the Intellectual Property Library.

Social Science Index provides bibliographic access to "articles of at least one column in length from more than 350 English-language periodicals published in the United States and elsewhere. Coverage includes a wide range of interdisciplinary fields covered in a broad array of social sciences journals."

Virginia Law on Disc provides full-text access to Va. Supreme Court opinions from 1925, Va. Court of Appeals opinions from 1985, the Code of Virginia, Michie's Jurisprudence, Va. rules of court, ethics opinions and a table of cases.

Wilson Business Abstracts provides "indexing and abstracting for articles of at least one column in length from more than 345 English-language periodicals published in the United States and elsewhere." Abstracts "range from 50 to 150 words and describe the content and scope of the source articles....[C]overage includes the leading business magazines and a broad array of trade and research journals."

...MR

HUMOR IN JUDICIAL OPINIONS

As you skim and peruse your casebooks this semester, realize that all judges do not resort to droning pontification and endless legal jargon. Some judges have succeeded in their attempts at humor and a few judges have developed reputations as authors of clever and humorous opinions.

Rhyming Opinions

Several judges have managed to write entire opinions in rhyme. Among the best known was penned by Michigan Court of Appeals Judge John H. Gillis in an opinion in which the court denied damages to the owner of an oak tree into which an automobile crashed. The short opinion begins:

We thought that we would never see
A suit to compensate a tree.

Fisher v. Lowe, 122 Mich. App. 418, 333 N.W.2d 67 (1983). West Publishing Company added rhyming headnotes when it published this opinion.

The Eastern District of Pennsylvania also has a rhyming opinion to its credit. Again, West added a rhyming summary and headnotes. The opinion, by Judge Edward R. Becker, begins:

The motion now before us
has stirred up a terrible fuss.
And what is considerably worse,
it has spawned some preposterous
doggerel verse.

The plaintiff, a man of the sea,
after paying his lawyer a fee,
filed a complaint of several pages
to recover statutory wages.

Mackensworth v. American Trading Transp. Co., 367 F. Supp. 373, 374 (E.D. Pa. 1973).

The Fifth Circuit

Judge Irving Goldberg

Judge Irving Goldberg has served as a judge for the Fifth Circuit since being appointed in 1966. He incorporates many different literary devices into his opinions, ranging from metaphors and analogies and rhyme to humorous descriptive headings. Attorneys describe him as a judge who "writes witty, articulate opinions" and who "engage[s] in a colorful language style all his own." Almanac of the Federal Judiciary, vol. 2, 1993-2, 5th Cir. at 17. (REF/KF/8700/A19/A4)

In Schenk v. Commissioner of the Internal Revenue, 686 F.2d 315, 316 (5th Cir. 1982), Judge Goldberg invoked the Biblical language of Ecclesiastes 3:1-2 to introduce his opinion of a tax case.

"To every thing there is a season, and a time to every purpose under the heaven: A time to be born, and a time to die; a time to plant, and a time to pluck up that which is planted:" a time to purchase fertilizer, and a time to take a deduction for that which is purchased.

He also has used metaphors quite effectively. For example, in his dissent in Thompson v. Johns-Manville Sales Corp., 714 F.2d 581, 585 (5th Cir. 1983), Judge Goldberg concludes:

As the majority opinion clickety-clacks down the Erie tracks, I fear I hear the sound of the cross-ties splintering. Were I the switchman I would sidetrack this case to the Louisiana switching yards where a locomotive of sufficient power to pull the freight of the majority opinion might be attached. As it is, I remain alone in the caboose, dissenting.

In Reynolds v. Allstate Insurance Co., 629 F.2d 1111, 1112 (5th Cir. 1980), Judge Goldberg writes:

Dissatisfied with the dousing it received at the trial level, Allstate now heatedly contests the finding that the Reynolds had an insurable interest in the former structure, by crying that something was ablaze within the records of the title office. We, the appellate firemen, must respond to all calls and have approached the question of title with caution, combing both the record of the proceedings below and the mortgage laws of Texas for a hidden spark. Finding appellant Allstate's pleas for help to be nothing more than a false alarm, we affirm the judgment below awarding recovery under the policy.

And Judge Goldberg did resort to poetry in United States v. Batson, 782 F.2d 1307, 1309 (5th Cir. 1986), when he composed the following introductory verse:

Some farmers from Gaines had a plan.
It amounted to quite a big scam.
But the payments for cotton
began to smell rotten.
Twas a mugging of poor Uncle Sam.
The ASCS and its crew
uncovered this fraudulent stew.
After quite a few hearings,
the end is now nearing--
It awaits our judicial review.

Judge Goldberg has assigned humorous headings to sections in a number of his opinions. For example, in City of Marshall, Texas v. Bryant Air Conditioning Co., 650 F.2d 724 (5th Cir. Unit A 1981), he used titles of popular songs to divide his opinion into four parts: I. "Summer in the City," II. "We Can Work It Out": The Deceptive Trade Practices Act Claim, III. "Promises, Promises": The Breach of Warranty Issues, and IV. Conclusion: "The Second Time Around."

Milk-related headings appear in Miley v. Oppenheimer & Co., 637 F.2d 318 (5th Cir. Unit A 1981), a case discussing "churning" or excessive trading.

The Ingredients of a Churning Case:

Skimmed vs. Evaporated Milk

Compensatory Damages:

Crying Over Spilt Milk

Punitive Damages for Soured Milk:

The High Cost of Churning

The Court's Charge:

A Tasty Dairy Recipe

Refusal to Order Arbitration:

Preserving the Homogenized Milk

Conclusion:

Grade A Pasteurized and Homogenized

Judge John Brown

Judge Brown, who died last January, also issued his share of memorable and humorous opinions from the Fifth Circuit. His two major devices were the use of humorously descriptive headings

and the implantation of hidden words within the text of the opinions.

For example, headings dealing with the beef industry appear in Productos Carnic, S.A. v. Central American Beef & Seafood Trading Co., 621 F.2d 683 (5th Cir. 1980). He labeled portions of the opinion with "No Bones About It," "Appellant's Beef," and "What's at Steak." In Jackson v. Chevron Chemical Co., 679 F.2d 463 (5th Cir. 1982), where a cotton farmer sued an insecticide manufacturer for breach of contract, Judge Brown inserted the section headings: "Getting the Bugs Out" and "See, Hear and Speak No Weevil."

His particular specialty was incorporating relevant words into opinions. For example, in Croft & Scully Co. v. M/V Skulptor Vuchetich, 664 F.2d 1277, 1279 (5th Cir. 1982), Judge Brown wrote:

In the Crush, the cans were damaged.
The stevedore, no doubt, was in no mood to have a Coke and a smile.

...

Things Go Better on appeal, and we reverse and remand.

His concurrence in an opinion concerning a challenge by manufacturers of detergents to environmental regulations is chock full of detergent and soap names, all of which are italicized.

Clearly, the decision represents a *Gamble* since we risk a *Cascade* of criticism from an increasing *Tide* of ecology-minded citizens....

Congress, of course, has the *Cold Power* to preempt.

Chemical Specialties Ass'n v. Clark, 482 F.2d 325, 328 (5th Cir. 1973).

Judge Brown also used metaphors to convey his judicial thoughts. In City of Houston v. Federal Aviation Administration, 679 F.2d 1184, 1186

(5th Cir. 1982), in discussing a case about airlines and airports, Judge Brown begins:

This flight from Houston, Texas to our Nation's Capital takes us to both Dulles International and Washington National Airports. The Administrative Procedure Act ... will serve as our flight plan, and the Supreme Court as air traffic control. ... [T]hus, as we disembark, we shall deny the petitions for review.

Others

The Fifth Circuit is not the only source of judicial humor and entertaining opinions. Judge Alex Kozinski of the Ninth Circuit wrote an opinion in an antitrust case against a movie theater owner in which he embedded over 200 movie titles. See United States v. Syufy Enters., 903 F.2d 659 (9th Cir. 1990). See also Don J. DeBenedictis, "Movie, Movie." 76 ABA Journal 20 (Aug. 1990).

A lower court case from New York that discusses whether or not a girdle is a "burglar's tool" contains plays on words relating to girdles. In re Charlotte K., 102 Misc. 2d 848, 427 N.Y.S.2d 370 (1980). Typical phrases include "[t]his elastic issue of first impression," "[c]ounsel's argument plainly sags," and "whether such a contrary decision would not create a spate of unreasonable bulges." A full reading of this case is necessary to really appreciate the overall effect.

Conclusion

Although most of the opinions included in casebooks are dry and boring reading, it is heartening to realize that some judges do attempt humor. The above examples are just a sampling of the more unique judicial opinions that have been published.

As you continue reading and analyzing cases throughout law school, be encouraged that there are some clever opinions. And as you consider your legal career, you may want to pursue a clerkship with a judge with a sense of humor.
...ST

HAPPY BIRTHDAY, FEDERAL REPORTER THIRD!

A new series of the Federal Reporter joined the library shelves at the beginning of this year. Federal Reporter, Third Series is now in print.

In 1880, West Publishing began publishing the Federal Reporter, which contained both federal district court and appellate court decisions. This publication, known simply as F., ceased after 300 volumes. No records indicate why West started a new series after that number of volumes.

Federal Reporter, Second Series began in 1925 and until 1932 included both District and Circuit court opinions. The second series also introduced the now familiar dual-column format of West reported cases. The bound volumes of F.2d used to be issued at the rate of once a month. Now, however, a new volume is released almost once a week.

With the Federal Reporter, Third Series, West evidently decided to begin a new series to avoid possible confusion that might arise from a four-digit case volume citation. Chief Judge Abner Mikva holds the distinction of authoring the first opinion in the third series, Sweet Home Chapter of Communities for a Great Oregon v. Babbitt, 1 F.3d 1 (D.C. Cir. 1993). He has been quoted as saying "I wince at there being the need already for an F.3d," and added that he stopped including footnotes in his opinions several years ago in an effort to shorten his opinions.

So, welcome the new addition to legal publishing. And be aware, if the publication of federal appellate cases continues at its current clip, F.4th should make its appearance around 2021.
...ST

IN BRIEF

New Arrival. On Friday, February 4, the Library will celebrate the arrival of volume one of the Federal Reporter 3d. Please join us in the Lobby at 1:00 p.m. for a slice of cake to recognize this significant occasion.
...MR

CD-ROM Network. The reference librarians would like to demonstrate databases available on the CD-ROM network to interested students. A sign up book is available at the circulation desk for students to list their interest in a particular database. Please sign your name and list two times you are available for a demonstration. Evening hours from 5:30 - 8:30 p.m. Monday through Thursday are available. Notices of demonstration times will be dropped in interested students' hanging files.
...MR

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