From the SelectedWorks of Gerald Lebovits

September 2002

Poetic Justice: From Bad to Verse

Contact Author

Start Your Own SelectedWorks

Notify Me of New Work

Available at: http://works.bepress.com/gerald_lebovits/48

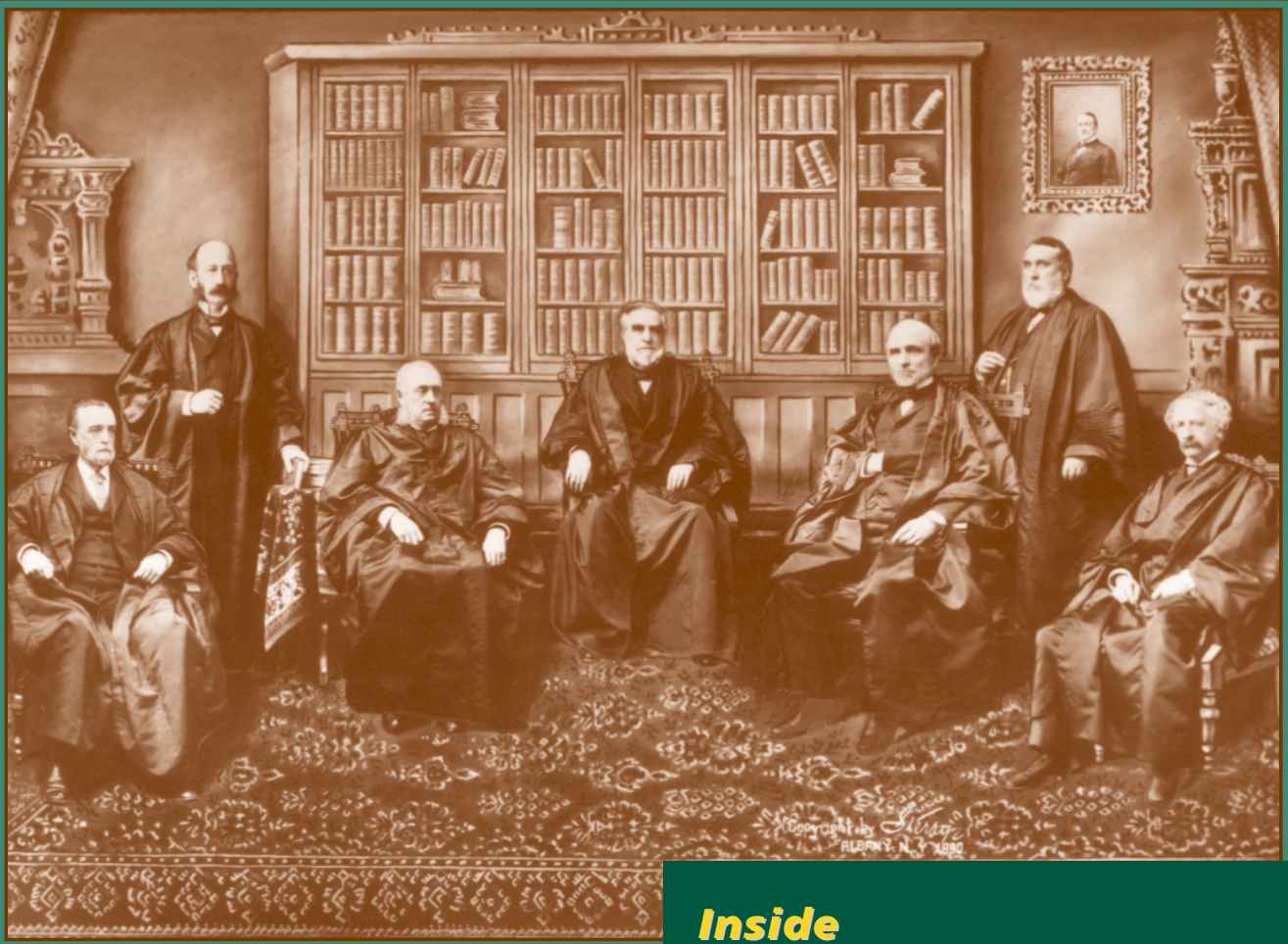
NYSBA 125 Years

NEW YORK STATE BAR ASSOCIATION

SEPTEMBER 2002 | VOL. 74 | NO. 7

Journal

FORMING A HISTORY SOCIETY FOR THE NEW YORK COURTS



Inside

Public Employees' Speech Rights
Mediation in Commercial Cases
Proof of Service by Mail

THE LEGAL WRITER

Poetic Justice: From Bad to Verse

BY GERALD LEBOVITS

Chief Judge Cardozo once wrote about a practice he erroneously believed was interred: "In days not far remote, judges were not unwilling to embellish their deliverances with quotations from the poets. I shall observe towards such a practice the tone of decent civility that is due to those departed."[1] But what about judges who fancy themselves as poets and write opinions in verse? That practice, still alive, should be buried without eulogy.

Poetic justice is always entertaining but rarely poetic or just. Rhyming verse in opinion writing is surprising because "humor in the form of doggerel verse . . . can undermine judicial opinions as sources of law."[2] Missing from verse is the key to a reasoned judicial opinion: a clearly articulated holding supported by precedent. Also typically absent from judicial poetry is equal metric footage. The chapter and verse of most poetic justice, in other words, is bad law and bad poetry. Arkansas Justice Smith agreed: "[I]f all the versifying justices were compelled to eat their words, the punishment would be poetic justice!"[3] Why are so many opinions in verse? Because some judges have too much time on their hands.

Several New York State opinions have been written in rhyme. *People v. Sergio*[4] mimicked Clement Clarke Moore's "A Visit from. St. Nicholas":

> 'Twas Game Six of the Series when out of the sky,
> Flew Sergio's parachute, a Met banner held high.
> His goal was to spur our home team to success,
> Burst Beantown's balloon claiming Sox were the best.
> The fans and the players cheered all they did see,
> But not everyone present reacted with glee.
> "Reckless endangerment!" the D.A. spoke stern.
> "I recommend jail—there a lesson he'd learn!"
> Though the act proved harmless, on the field he didn't belong,
> His trespass was sheer folly, and undeniably wrong.
> But jail's not the answer in a case of this sort,
> To balance the equities is the job of this court.
> So a week before Christmas, here in the court,
> I sentence defendant for interrupting a sport.
> Community service, and a fine you will pay.
> Happy holiday to all, and to all a good day.

One unreported New York opinion considered whether a pet donkey violated a residential zoning ordinance. The opinion concludes with the moral: "Though defendant is not guilty, there is a lesson to be learned by inconsiderate pet owners whose neighbors' tempers burn. When nothing else succeeds, and as a last resort, as in the case at hand, they'll drag your ~~ass~~ to Court. 'donkey'"[5]

A Manhattan small-claims opinion[6] was written in rap because "At a Party DJ Ed Lover was a 'No Show.'" The final stanzas: "The Court can award no money to the claimant/ Remy's and his posse's proof was insufficient/ So substantial justice requires judgment for defendant./ (Not to worry the court will keep its day job/ This rap will probably make true Hip/Hop artists take a sob.)"

To read seven national classics of poetic justice, six civil, the seventh and last criminal, see *In re Love*[7] (rhyming to Edgar Allan Poe's "The Raven": "The bird himself, my only maven, strongly looked to be a raven."); *Mackensworth v. American Trading Transportation Co.*[8] ("The motion now before us has stirred up a terrible fuss./ And what is considerably worse, it has spawned some preposterous doggerel verse."); *Fisher v. Lowe*[9] (barking up Joyce Kilmer's classic "Trees": "Flora lovers though we three,/ We must uphold the court's decree."); *Jenkins v. Commissioner*[10] ("Ode to Conway Twitty": "Twitty Burger went belly up/ But Conway remained true./ He repaid his investors, one and all/ It was the moral thing to do."); *Nelson v. State*[11] ("In petition for post-conviction relief,/ The petitioner herein expounds his grief."); *Wheat v. Fraker*[12] ("'Foul, foul play,' the defendant cried:/ 'That I by kinsman be not trammeled/ Let the issue again be tried/ Before another jury impanelled.'"); and my all-time favorite, *Brown v. State*[13] (explaining that a trial judge once told Georgia appellate Judge Evans at a "convivial" gathering that if Judge Evans were ever to reverse him again, the opinion should be in verse).

Missing from verse is . . . a clearly articulated holding supported by precedent.

Sometimes little reason exists to set an opinion in verse. The court in *Anderson Greenwood & Co. v. NLRB*[14] ("We hope this attempt at a rhyme, perhaps two,/ Has not left this audience feeling too blue."), used verse because two precedents—a case named "Tire" and another named "Wire"—rhymed. Two courts needed no reason at all to versify: *United States v. Batson*[15] ("Some farmers from Gaines had a plan./ It amounted to quite a big scam./ But the

CONTINUED ON PAGE 44

CONTINUED FROM PAGE 48

payments for cotton began to smell rotten/ Twas a mugging of poor Uncle Sam."); *United States v. Ven-Fuel, Inc.*[16] ("So while the Government will no doubt be annoyed,/ We declare the conviction null and void.").

A federal magistrate found a defendant guilty of "creating a physically offensive condition" for taking off his wet clothes in a nearly deserted parking lot at Lava Beds National Monument. District Judge McBride set aside the conviction because the magistrate did not record the proceedings.[17] In doing so, the judge quoted a limerick from defense counsel's brief. For defendant, the opinion represented good news and bad. The good news: The court set aside the conviction for the petty crime. The bad news: The opinion itself was small consolation. The opinion's short limerick:

There was a defendant named Rex
With a minuscule organ for sex.
When jailed for exposure
He said with composure,
De minimis non curat lex.

A Kansas judge sentenced a prostitute to probation with the following:

This is the saga of _____ ____ _____,
Whose ancient profession brings her before us.
On January 30th, 1974,
This lass agreed to work as a whore.
Her great mistake, as was to unfold,
Was the enticing of a cop named Harold.

* * *

From her ancient profession she'd been busted,
And to society's rules she must be adjusted.
If from all this a moral doth unfurl,
It is that Pimps do not protect the working girl!

The judge who wrote this doggerel was censured for exposing defendant to public ridicule and scorn.[18] Make that the *former* judge who wrote this doggerel.[19]

In *Limerick Auto Body Inc. v. Limerick Collision Center Inc.*,[20] a concurring limerick played on the litigants' names: "'Limerick Auto' and 'Limerick Collision'/ Are so close one may clearly envision/ That the two were the same,/ So a limerick I frame,/ And join in my colleagues' decision."

Some judicial verse is more infamous than famous. *Joyner v. Guccione*[21] falls into the former category:

T'was the night before Christmas and all through the prison,
inmates were planning their new porno mission.
While the December issue of *Penthouse* was hitting the stands,
the Minister of the Mandingo Warriors was warming his hands.
For you see, the publishers had promised a pleasurable view
of the woman who sued the President too.
The minute his *Penthouse* issue arrived
the minister ripped it open to see what was inside.
But what to his wondering eyes should appear
not Paula Jones' promised privates but only her rear.
Life has its disappointments. Some come out of the blue.
But that doesn't mean a prisoner should sue.

Those who find *Joyner* funny laugh only because the judge was so outrageous. But even when poetry in motion is clever and harmless, the losing sides will believe that the court treated them and their arguments frivolously. And readers will conclude that the court spent more time scripting the verse than deciding the case correctly.

---

1. Benjamin N. Cardozo, *Law and Literature*, 39 Colum. L. Rev. 119, 132, 52 Harv. L. Rev. 471, 484, 48 Yale L.J. 489, 502 (1939) (simultaneously published), *reprinted from* 14 Yale Rev. [N.S.] 699 (July 1925).
2. Susan K. Rushing, *Is Judicial Humor Judicious?*, 1 Scribes J. Legal Writing 125, 129 (1990).
3. George Rose Smith, *A Critique of Judicial Humor*, 43 Ark. L. Rev. 1, 14 (1990).
4. (Crim. Ct., Queens Co.) (Flug, J.), *reprinted in And to All a 'Play Ball!'*, N.Y. Times, Dec. 20, 1986, at 1, col. 2.
5. *See People v. Rothfuss*, No. 359-0-83-4 (Yorktown Town Ct. July 27, 1983), *reprinted in* Joyce J. George, Judicial Opinion Writing Handbook 337 (4th ed. 2000).
6. *Remy v. Emmis Broadcasting*, N.Y.L.J., Sept. 22, 1999, p. 28, col. 5 (Civ. Ct., N.Y. Co.) (James, J.).
7. 61 Bankr. 558, 558 (Bankr. S.D. Fla. 1986) (Cristol, J.) (including headnote and syllabus in rhyme).
8. 367 F. Supp. 373, 374 (E.D. Pa. 1973) (Becker, J.) (including headnote and syllabus in rhyme).
9. 122 Mich. App. 418, 419, 333 N.W.2d 67, 67 (1983) (Gillis, J.).
10. 47 T.C.M. (CCH) 238, n.14 (1983) (Irwin, J.).
11. 465 N.E.2d 1391, 1391 (Ind. 1984) (Hunter, J.).
12. 107 Ga. App. 318, 318, 130 S.E.2d 251, 252 (1963) (Eberhardt, J.).
13. 134 Ga. App. 771, 216 S.E.2d 356 (1975) (Evans, J.).
14. 604 F.2d 322, 323 (5th Cir. 1979) (Goldberg, J.).
15. 782 F.2d 1307, 1309 (5th Cir.) (Goldberg, J.), *cert denied*, 477 U.S. 906 (1986).
16. 602 F.2d 747, 749 (5th Cir. 1979) (Brown, J.), *cert. denied sub nom. Ven-Fuel, Inc. v. Duncan*, 447 U.S. 905 (1980).
17. *See United States v. David Irving*, No. 76-151 (E.D. Cal. 1977) (Thomas J. McBride, J.) (unpublished opinion quoted in Smith, *supra* note 3, at 14).
18. *See In re Rome*, 218 Kan. 198, 200–201, 542 P.2d 676 (1975) (per curiam) (reciting Judge Rome's poem).
19. *See State ex rel. Comm'n on Judicial Qualifications v. Rome*, 229 Kan 195, 623 P.2d 1307 (per curiam), *cert. denied sub nom. Rome v. Kansas*, 454 U.S. 830 (1981).
20. 769 A.2d 1175, 1182 (Pa. Super. Ct.) (Eakin, J., concurring), *appeal denied*, 567 Pa. 751, 788 A.2d 381 (2001).
21. A-00-CA-799-SS, 2000 U.S. Dist. LEXIS 18772 (W.D. Tex. Dec. 14, 2000) (Sparks, J.).

GERALD LEBOVITS is a judge of the New York City Civil Court, Housing Part, in Brooklyn and Staten Island. An adjunct professor and the Moot Court advisor at New York Law School, he is the author of numerous articles and *Advanced Judicial Opinion Writing*, a handbook for New York State trial and appellate courts, from which this column is adapted. His e-mail address is Gerald.Lebovits@law.com.