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In the Honorable Committee Considering Senate Bill No. 14 in the Senate of the General Assembly of Kentucky

John J. Howe

IN THE HONORABLE COMMITTEE CONSIDERING SENATE BILL NO. 14. IN THE SENATE OF THE GENERAL ASSEMBLY OF KENTUCKY.

Brief of **Amicus Curiae** John J. Howe, disapproving the proposed transcending of the ancient landmark, and consequently protesting against said bill.

THE HONORABLE AND MUCH OVERWORKED
COURT OF APPEALS OF KENTUCKY..... Plaintiff.
vs.
THE "CACOETHES SCRIBENDI"..... Defendant

STATEMENT OF THE CASE.

The Honorable Court of Appeals of Kentucky during 1914 wrote more opinions **per judicem** than any other State Court of last resort in the United States—except one criminal court—writing twice as many as nearly all of them, and three times more than about half of them. To relieve this situation and lessen the burdens of the several judges comprising that Honorable Court, Senate Bill No. 14 (regulating the writing and publishing of the opinions of the Court of Appeals, providing that in cases where the Court deems the opinion of not sufficient importance to justify the publication thereof they may mark it "not to be published" and it shall not be published by anyone thereafter), was introduced and is now before your Honorable Committee for consideration.

INTRODUCTION.

The writer appreciates fully the enormous amount of work done by each member of the Court of Appeals. He is, however, in sympathy with reducing the number of opinions by jurisdictional barriers rather than by apparently arbitrary rules authorizing no written opinion, or, if written, precluding official publication or attempting to prohibit any publication whatever.

ARGUMENT.

1. "Reading maketh a full man; conference a ready man and WRITING AN EXACT MAN."—Bacon.

An ideal condition would be a court so constituted and with docket so well in hand that every member of a court of last resort could read the complete record together with briefs of counsel. Then, indeed, would the court and each member thereof be "full" of the facts of the case and as "iron sharpeneth iron," by talking over the case together, conferring thoroughly and discussing in detail, each member would be truly "ready." Ready for what? Fo delivering the opinion of the composite intelligence of the court. It would be an extraordinary man indeed who could speak or dictate such a composite opinion **impromptu.** He must necessarily dictate and redictate, write and re-write until he would state exactly the law of the case, for writing maketh an "exact man."

Many times it is difficult for even a learned lawyer to state the proposition involved in his case unti lhe has, with pencil in hand, thought over it, brooded over it, written it and revised it. Until then it does not embrace with exactness the point involved. So must the "rough" corners be smoothed off opinions. Language is only the expression of the idea. With language unintelligible, ambiguous, obscure, the idea cannot in mind be clear, cogent and concise.

The fact that some opinions are so hastily drawn as conspicuously to lack literary merit (as has been suggested by the Honorable Sponsor of the Bill), is to a mind, legal in its training and steeped in the logic of the bar, the strongest refutation of the proposal in the bill. And then to prohibit—or to attempt to refuse to allow—these "rough opinions" (public records, nevertheless) to be printed—**horribile dictu**—in the language of Chief Justice White: "To state the proposition repudiates it."

2. "A little learning is a dangerous thing;
Drink deep, or taste not the Pierian spring;
There shallow draughts intoxicate the brain;
And drinking largely sobers us again."—Pope.

If a child on being advised by a parent of a certain rule of discipline asks "why?" the child rightfully receives a reprimand. But when in the unfolding of its intelligence the child inquires "why?" as to the existence or non-existence of certain facts and truths, such child is usually encouraged at the ultimate risk of precocity.

It is axiomatic that no one can ask as many questions as a "fool" lawyer. It is natural for them to desire to know "why?" especially if a case is decided against them. Every selfish lawyer might well say, I care not whether there are written opinions in all the cases in the court but I do wish written opinions in cases decided against me. But lawyers are in fact, altruistic and wish their brethren at the bar to have the benefit of these opinions to cite themselves as precedents.

How is the bar to know that there is no new or novel question to be determined in a given case unless the facts and the law applicable are recited in an opinion in the case?

3. "Of making many books there is no end; and much study is a weariness of the flesh."—Ecclesiastes.

Thus lamented the Preacher one thousand years before Christ, twenty-five hundred years even before the invention of the printing press—there was no end in sight to the numerous volumes or scrolls of recorded language. Millions of volumes have appeared since, and the world continues to move.

Ours is a profession of learning, ours is a science. None is there so capable of exactness and nicety as the Law. None so apt to cause "weariness of the flesh," to the brain as well as to the brown. Yet that is wherein the lawyer glorieth!

Not like the physician, it is impossible for the lawyer to bury his mistakes, unless, forsooth, they be "nicely laid away" by spreading the mantle of charity (and might it not be said, velocity?) over them in the form of an unwritten opinion.

If a lawyer appeals a case involving a question so well settled a few lines of opinion printed might suffice to "settle" him and break him of attempting to carry up elementary questions.

If some "unfinished" opinions have crept into our reports, isn't it possible to be suspicious that "unconvincing reasoning" or "half-baked" consideration might be behind an unwritten opinion?

Conclusion.

While the reasons set out herein may not be emphatically conclusive, yet the inexorable fact remains that the suggestion is not popular with the bar, and, if enacted into law, would deprive many a "briefless barrister" of some "mighty good" reading.

With profound respect for those who take the other view but with abiding faith in your concurring with the amicus curiae, this brief is now

Respectfully submitted,
JOHN J. HOWE.

DOES COLLEGE EDUCATION PAY?

Newspaper and magazine discussions have developed differences of opinion as to whether or not college education pays. Those who take a negative view of the question point to many successful Americans who have not had the advantage of training in the higher institutions of learning, but the Indianapolis News, as a result of careful study of the congressional directory, concludes that the question must be answered affirmatively so far as it applies to composition of the national legislative body.

Three hundred and eighty members of the present House and Senate are graduates of colleges or universities. The University of Michigan is represented by twenty-seven alumni, the University of Virginia by twenty, Harvard by nineteen, Yale by thirteen, Wisconsin by ten, Alabama, Mississippi, Missouri, Minnesota, Iowa and Georgia following in the order named. Only 28 per cent of the members do not report having attended a college or university. It will be seen that in comparison with the ratio of college men to the general population the percentage in Congress in very large.

No doubt the tendency of the people to select successful lawyers and other professional men as their representatives in the House and Senate accounts for the large proportion of Congressmen with college degrees. The figures do not prove that all college men are successful, or that college training is essential to success.—Louisville Tmies, March 4, 1916.