Lewis and Lewis: The Life and Times of a Victorian Solicitor

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BOOK REVIEW


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Many Americans are attracted to English life and society. This is both easily understandable and explainable. Despite the United States’ great ethnic diversity, England will be forever looked upon as America’s “Mother Country.” From England, we inherited much of our language and social customs. But even more important for contemporary American life and government, England was where we obtained the foundations for much of our substantive law, legal traditions and basic legal institutions. Although American law in many ways has evolved greatly from the common law imported into the colonies after the revolution, the English procedural system’s effect on American law remains great. One only needs to think of such matters as the hearsay rule1 and the jury trial to confirm this.2

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1. Wigmore credits the English legal system with the gradual evolution of the hearsay rule and the right to jury trial. As to the hearsay rule, Wigmore describes it as “that most characteristic rule of the Anglo-American Law of Evidence—a rule which may be esteemed, next to jury trial, the greatest contribution of that eminently practical legal system to the world’s methods of procedure.” 5 WIGMORE, EVIDENCE § 1364 (Chadbourn Rev. 1974). Wigmore dates the development and evolution of this rule from the 1500’s until the early 1700’s. For brief discussions of the hearsay rule’s history, see 5 WIGMORE, EVIDENCE § 1364 (Chadbourn Rev. 1974); C. McCORMICK, EVIDENCE § 244 (Cleary Rev. 1984).

The American legal system is, and has been for a number of years, under attack. Trial court congestion, the proficiency of American trial lawyers, and the ethics of the American bar have all been assailed. Some of the attackers look upon aspects of the English legal system as preferable to our own. They argue that the great distinction between the American lawyer and his English cousin is the division of the English bar into two groups, the solicitors and barristers. American trial lawyers have been urged to read and study the lives and famous trials of British as well as American lawyers as a way of advancing their proficiency in trial skills.


Many judges in general jurisdiction trial courts have stated . . . that fewer than 25 percent of the lawyers appearing before them are genuinely qualified, other judges go as high as 75 percent. . . . It would be safer to pick a middle ground and accept . . . that from one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation.


4. For example, Chief Justice Warren Burger in a recent speech has questioned the propriety of contingency fee arrangements in multiple disaster cases where liability is clear and only damages are at issue. In the same speech the Chief Justice also criticized some lawyer advertising techniques, comparing them to those used to sell “automobiles, dog food, cosmetics and hair tonic.” See Burger Uneasy Over Some Fees, Los Angeles Times, Aug. 6, 1984, at 2.

5. For a contrary opinion, see generally M. Freedman, Lawyers’ Ethics in an Adversary System 105-12 (1973) (claiming “it is a myth that the English bar is superior to the American bar, either in professional skills or in professional ethics.” Id. at 111).

6. Evidence and trial advocacy lecturer Irving Younger claims that this reading represents “something [lawyers] can do to condense the process of acquiring the necessary experience . . .” to be an effective cross-examiner. See Younger, The Art of Cross-Examination, 1975 A.B.A. Sec. Litigation Rep. 32.

Until recently there was as much, if not more, literature on British trials as American ones. The most complete collection of English trial work is the seventy-five volume set, Notable British Trials (William Hodge & Company, Ltd., London, Edinburgh and Glasgow), each volume of which describes one case. Perhaps the best short works on British trials are E. Lustgarten, Verdict in Dispute (1950), describing five English and one American trial, [hereinafter cited as Verdict in Dispute] and E. Lustgarten, Defender’s Triumph (1968), [hereinafter cited as Defender’s Triumph] describing four seemingly hopeless English murder cases where superb defense advocacy resulted in not guilty verdicts.
Given this interest in the British legal profession and legal system, John Juxon's biography of Sir George Lewis, a Jewish solicitor whose success transported his family's firm into an eminent position during Victorian and Edwardian times, is timely indeed. While many excellent books have been written about barristers, legal biography has paid little attention to the solicitor's side of the profession. Instead the barrister's biographer, chronicling the progress of an important case, often reduces the solicitor's role to little more than a sentence in passing. Lewis and Lewis: The Life and Times of a Victorian Solicitor is an important work, because it begins to correct some of the neglect writers have shown towards the solicitor's side of the English bar.

Juxon claims that by the time of Lewis' death in 1911 "he was the most famous lawyer in England. Not only in England: throughout America and the whole English-speaking world his name was known, embodying the fascination and danger of the law." Given this claim, readers could expect an illuminating, detailed account of Lewis' life, legal methodology and victories, and the legal system he flourished in. While Juxon's book from time to time provides such, unfortunately his work in several ways will be disappointing—especially for American readers. For readers interested in examples of how solicitors go about their work and how they prepare their cases, Lewis and Lewis will provide little information. From Juxon's mention of the famous trials Lewis was in-

For a similar work on American trials, readers should consult the three volume set Notable American Trials. Unlike its British counterpart, this collection has one author. See F. BUSCH, PRISONERS AT THE BAR (1932); F. BUSCH, GUILTY OR NOT GUILTY (1932); F. BUSCH, THEY ESCAPED THE HANGMAN (1932). Each volume can be read separately from its counterparts.

7. Lewis' family was well established in the legal profession before he obtained his fame. Lewis' father and uncle specialized in criminal law and bankruptcy work, while developing strong theatre connections well before George Lewis joined the firm. Indeed, James Graham Lewis was supposedly known as the "Poor Man's Lawyer." However, it was Lewis' work which made the firm a household word in English society outside the legal profession.


10. Id. at 12.

11. For a good brief description of how modern solicitors function in the English legal system see M. GRAHAM, TIGHTENING THE REINS OF JUSTICE IN
volved in, one can easily see he was a most powerful and respected legal advisor. But how did he contribute to these celebrated cases? Unfortunately the reader is left in the dark on this many times. Indeed, the book often seems more like a description of a series of interesting vignettes of Victorian times, rather than a detailed biography of Lewis. Two examples suffice to illustrate this deficiency.

Lewis was involved in several major legal battles which brought fame to the barristers involved. Two were criminal cases where Sir Edward Clarke obtained his fame as the most successful and brilliant medical cross-examiner of Victorian times. The first of these two cases was the murder trial of the Stauntons, two brothers who were tried and convicted of starving to death one of their wives and her newborn child. According to the account of the trial, Harriet Staunton, after having signed all her money over to her husband, was locked in an attic and deprived of all food and water until both she and her baby were near death. Then they were whisked to a location where the brothers hoped their deaths would draw little attention. "The annals of crime show no clearer case of premeditated and cold-blooded murder than that of Harriet Staunton. There was no reason for any doubt about the facts—there was even an eye-witness available to testify to the imprisonment of Harriet and her baby..." Yet Juxon claims Lewis and Clarke saved the brothers from the gallows by playing on the English public's distrust of medical experts and somehow evoking

\textit{America} 52-66 (1983) [hereinafter cited as GRAHAM]. Unfortunately Graham's work does not describe in detail how the education and training of a solicitor differs from that of a barrister. For an historical account of the development of the branches of the English legal profession, see T.F.T. PLUNCKNETT, A CONCISE HISTORY OF THE COMMON LAW 215-30 (1956).

For a recent sociological study of the barrister's profession during Lewis' time, see D. DUMAN, \textit{The English and Colonial Bars in the Nineteenth Century} (1983).

12. This was Clarke's first major case and marked the beginning of a long association with Lewis. Juxon claims that "had Lewis been asked, at the end of fifty-five years in practice, to name the man who most deserved the title of hero, he would have replied, Edward Clarke." \textit{Lewis and Lewis, supra} note 9, at 146.

According to another writer, Clarke was a fortunate choice indeed, since along with his other qualities "he had a special flair for cross-examining doctors—a flair he reinforced by most industrious research." See E. LUSTGARTEN, \textit{The Murder and the Trial} 167 (1958). [hereinafter cited as \textit{The Murder and the Trial}]. Like some of Lustgarten's other works, this book contains brief accounts of famous British trials. \textit{See supra} note 6.

13. \textit{Lewis and Lewis, supra} note 9, at 152.
sympathy for the killers, rather than the victim. At trial, Clarke's examination of a defense witness raised such a suggestion of death by tubercular meningitis, rather than by starvation, that a public campaign for mercy ultimately proved successful. Without question, such a result could not have been achieved without true legal brilliance, but Juxon's account leaves doubts as to whose genius surfaced here—Lewis', Clarke's or both? Obviously, Lewis must be credited for choosing Clarke as lead counsel but beyond that his role is uncertain.\textsuperscript{14}

Juxon's description of the Adelaide Bartlett murder case likewise suffers from its lack of detail. The Bartlett case is one of the most famous of English murder trials, aptly described as a "classic Victorian murder mystery with every necessary ingredient—intrigue, jealousy, and questions that must remain for ever unanswered."\textsuperscript{15} All the evidence indicated Mrs. Bartlett poisoned her husband in order to marry a minister friend whom she and her husband had befriended. Yet Mrs. Bartlett fared even better than the Stauntions and was acquitted—again at least partially because of the forensic talent of Edward Clarke.\textsuperscript{16} Clarke's defense is probably one of the classics of the English bar. No witnesses were called for the defense. Clarke relied solely upon cross-examination and argument to secure the acquittal. His cross-examination technique was superb, so much so that his handling of the medical witnesses may represent the best example of effective impeachment by use of a learned treatise.\textsuperscript{17} Clarke's masterful closing argument

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\item \textsuperscript{14} Juxon's account of the Staunton brothers case differs from Lustgarten's. Juxon claims that the defense procured the chief defense medical witness who disputed the autopsy finding of starvation. Lustgarten claims that the chief defense doctor, an expert in medical anatomy, read newspaper accounts of the autopsy findings and believed them wrong. After this, the doctor supposedly sent Clarke a letter stating his medical conclusion that tuberculosis was the cause of death. For Lustgarten's full account, see \textit{The Murder and the Trial}, supra note 12, at 155-78.
\item \textsuperscript{15} \textit{Lewis and Lewis}, supra note 9, at 183.
\item \textsuperscript{16} Lustgarten suggests another reason, besides Edward Clarke's advocacy, for the verdict. Sir Charles Russell, then the Attorney General, prosecuted for the Crown. Though considered "the Bar's outstanding figure by acclaim," \textit{Defender's Triumph}, supra note 6, at 31, Russell's political career handicapped his handling of the Bartlett prosecution. He was a member of Commons and was forced to attend nightly proceedings on the Irish Home Rule Bill while the Bartlett case went on, thus drawing some of his attention and energy from the trial.
\item For Lustgarten's account of the Bartlett case, see \textit{The Murder and the Trial}, supra note 12, at 192-249 or \textit{Defender's Triumph}, supra note 6, at 9-80.
\item \textsuperscript{17} See \textit{Fed. R. Evid. 803(18)}, for how learned treatises can now be utilized
\end{itemize}
has justly been described as “a classic of forensic eloquence.” Yet
Juxon’s brief description of the Bartlett case fails to successfully
bring any of this home. Not one word of Clarke’s cross-examina-
tion nor of his five hour closing arguments is quoted. What of
Lewis’ part in this case? Unfortunately the reader learns only two
details: one, that Mrs. Bartlett consulted Lewis during the inquest
into her husband’s death, from which point he “took charge of the
case;” and two, that Lewis realized the medical evidence required
the genius and advocacy of Edward Clarke.

Fortunately, in other legal battles Juxon describes Lewis’ involve-
m ent better, illustrating the wisdom and meticulousness of the
famous solicitor. The best known of these involved his repre-
sentation of the Irish patriot, Charles Stewart Parnell. Parnell
headed the Irish Party in the House of Commons and was continu-
ally agitating for Home Rule. To discredit Parnell and the move-
ment, a man named Richard Pigott sold a London newspaper two
letters, allegedly written by Parnell, approving the recent murder
of an English representative in Ireland. Parnell claimed the letters
were false and demanded an inquiry which led to the establish-
ment of the Parnell Commission. Sir Charles Russell was briefed
for Parnell and through a cross-examination considered one of the
best ever, exposed Pigott as a forger and perjurer. Unlike his ac-
counts of the Bartlett and Staunton trials, Juxon fully explains
Lewis’ role in this affair. Luckily for him, Parnell consulted Lewis
who decided to brief Russell, who at that time was one of the “sta-
ble of brilliant barristers whose abilities were first spotted by

for both impeachment and substantive proof in federal courts. Besides Lust-
garten’s two accounts of the Bartlett case, see supra note 16, an edited version of
Lustgarten’s work illustrating the medical cross-examination can be found in G.

18. See Defender’s Triumph, supra note 6.
19. See Lewis and Lewis, supra note 9, at 183-93. Juxon devotes only eleven
pages to the Bartlett case. When compared with other more detailed accounts, the
lack of detail is startling.
20. Lewis and Lewis, supra note 9, at 189-90. Juxon may have underesti-
imated the importance of one of Lewis’ early decisions in the Bartlett case. Lust-
garten reports that Mrs. Bartlett on the advice of her lawyer did not testify at the
Coroner’s Court inquest over her husband’s death. Since Edward Clarke was not
retained until later, Lewis must have been the one who gave this advice. While it
may have put a bad light on Mrs. Bartlett then, this decision prevented the prose-
cution from ever having her cross-examined under oath and may have saved her
life.
The Parnell affair was certainly Lewis' greatest case, and Juxon gives him a larger role in it than other writers. Undoubtedly Lewis' role was overshadowed by Russell's cross-examination but Juxon claims "[i]t was Lewis' keen observation and bloodhound persistence that enabled Pigott's letters to be unmasked as the forgeries they were. Sir Charles Russell's cross-examination of Pigott is justly famous—but Lewis provided the basis for Russell's attack." What was this basis? Lewis noticed two misspellings in the forged letter, and Russell trapped Pigott into duplicating one of these in court. The cross-examination was so successful that Pigott fled before it was over and committed suicide while being pursued by the police.

This description of the Parnell affair illustrates two of the problems Juxon faced in writing *Lewis and Lewis*. Solicitors, unlike barristers, usually worked behind the scenes. Even when their work is thorough, their performance brilliant and their advice like Solomon's, it is not likely to be exposed to be public. Juxon could not draw on many transcripts of court proceedings for his writing. Lewis further complicated the biographer's task by destroying his papers before his death, forcing reliance on newspapers and other secondary works. Thus in many instances, Juxon could only summarily describe Lewis' role in many celebrated matters and sometimes was forced to give educated guesses.

II

Despite some other weaknesses, *Lewis and Lewis* succeeds in

21. *Lewis and Lewis*, supra note 9, at 228. Besides Clarke and Russell, Lewis was also instrumental in the early career of Rufus Isaacs who later became Lord Chief Justice. Ironically, Juxon does not mention the first dealing between Isaacs and Lewis, the Krause murder case. Isaacs succeeded with Lewis' help in having an incitement to murder indictment dropped to a minor charge. For an account of this case, see Reading, *Rufus Isaacs* 90-92 (1940). Both Reading and Juxon credit Lewis with arranging Isaacs' introduction to Edward VII, an occurrence which furthered Isaacs' career.

22. *Lewis and Lewis*, supra note 9, at 223.

23. Russell's cross-examination of Pigott is considered one of the two best in English legal history. For a detailed account of Russell's work, see *The Murder and the Trial*, supra note 12, at 145-54.

24. "[S]olicitors are the producers, the agents, the backers of our theatrical legal profession. Barristers are the stars; they face the footlights, the bouquets, or as often as not, the rotten tomatoes of a trial." Mortimer, *Foreward to Lewis and Lewis*, supra note 9, at 9.

25. Two other weaknesses require brief mention. First, Juxon uses many En-
several ways, including perhaps some not contemplated by its author. Lewis' career as a respected legal advisor brought him into contact with some of the notable figures of the Victorian period. Indeed, Lewis himself, and his father before him, were so well known for their legal work that they served as models for literary characters. When one adds to this the penchant Lewis' second wife, Elizabeth, had for the arts and entertaining, there is little wonder about how Lewis came into contact with some famous figures such as writer Oscar Wilde, artist James McNeil Whistler, and the actress, Lillie Langtry. While Lewis certainly did not become one of "the patricians" of his time, Juxon's description of his contact with many of them helps give a good picture of upper class Victorian life and illustrates some of the hypocrisies of the time.  

Certainly Lewis' most powerful client was the Prince of Wales, later Edward VII. Unfortunately for Edward, few readers will find his dealings with Lewis appealing. Like in other times, the rich and politically powerful believed they were in many respects above the English terms, e.g., "macers," "shofulmen" and "cracksmen", that Americans will not be familiar with.  

Second and more important, Juxon does nothing to explain several peculiarities of English legal proceedings to American readers. For example, in one murder case, Lewis used the device of bringing a private criminal prosecution to secure the defendants release following an unjust conviction. Modern American criminal procedure has no equivalent to this and the device has now died out in England. See C. Rembar, The Law of the Land 18-35 (1980), for a further discussion of the private criminal prosecution. Rembar claims that the device died out in 1819, long before Lewis supposedly used it.  

26. Lewis' father was supposedly the model for the Charles Dickens' character Mr. Jaggers in Great Expectations. Juxon also claims that on the opening night of Gilbert and Sullivan's play, Trial by Jury, the actor who portrayed the solicitor was dressed up as Lewis. At this character's appearance, the audience, including Lewis who was in attendance, burst into applause.  

27. Lewis supposedly assisted Wilde's early career and later withdrew from representing his opponent, the Marquess of Queensbury, in the famous trial which led to Wilde's downfall and imprisonment. See Lewis and Lewis, supra note 9, at 180-82, 272-75, for a description of Lewis' dealings with Wilde. See D.G. Browne, Sir Travers Humphreys: A Biography 29-44 (1960), for another, more complete account of the Wilde case.  

28. Lewis was not only friendly with Whistler but also represented him in Whistler's bankruptcy proceedings. See Lewis and Lewis, supra note 9, at 168-71.  

29. This term comes from B. Tuchman, The Proud Tower (1966). Chapter One of this book describes upper English society during the late Victorian and Edwardian periods and is recommended as background material for American readers unfamiliar with this time.
law and the Prince was no different. To those who remember the Executive Privilege debate about the Nixon tapes during Watergate, the Prince's attempts to avoid giving evidence during the trials of celebrated divorce and libel cases will sound familiar. Juxon describes how Lewis' advice brought the Prince through some scrapes, and in one case even made him more popular.

This case, the Mordaunt divorce trial, illustrates Victorian England's legal system and society at its very worst. Sir Charles Mordaunt sued his wife for divorce on the grounds of adultery with several men, one possibly the Prince of Wales. In those days, all a man had to prove for divorce was adultery, whereas, a woman needed to show this and some other misdeed against the marriage relationship. On Lewis' advice, the Prince testified, rather than standing on royal prerogative, and denied any adulterous acts. The public agreed with Lewis' advice and the Prince's actions, even if his testimony might have constituted perjury. Both this public feeling and the inequitable burdens put on women suing for divorce show the unfortunate sexism of the Victorian Age:

If he had been guilty of adultery, and had perjured himself denying it, what else could a gentleman have done? As a man of honour he could not blacken a lady's name. Even if he had lied in the witness box—and that was by no means certain—he had acted like a gentleman.

Finally, Juxon's biography of Lewis gives the reader some chance to compare the English legal profession and legal system with the American ones. Is the English divided bar better? Does specialization make the English better advocates? Are English lawyers more ethical? And is the English criminal trial jury a fairer way of arriving at justice? Insights into all these questions are offered by Juxon's work.

30. In one case, when Queen Victoria became upset at the thought of the Prince's testifying in a divorce case, she appealed to the Lord Chancellor for legal advice. Like Lewis, the Chancellor advised that Edward would have to testify. In the Baccarat Scandal, Edward tried to interfere with a military inquiry and later suggested that another investigation be conducted by the plaintiff's club. When both attempts were unsuccessful, "[t]he Prince was infuriated." LEWIS AND LEWIS, supra note 9, at 253. See text accompanying note 48, for further discussion of the Baccarat Scandal.

31. LEWIS AND LEWIS, supra note 9, at 99.
Lewis himself probably did not think much of the division between solicitor and barrister. Contrary to popular American belief, solicitors are allowed to practice in many law courts. Therefore, the image of a solicitor as only an "office lawyer" is incorrect. Certainly this was so with Lewis. The book describes several of Lewis' cases in the police courts, where minor criminal matters and committal proceedings were held. Lewis himself gained a reputation as a cross-examiner and sometimes succeeded where barristers failed. If English barristers are better trial advocates because of the bar's division, Juxon's work does not help explain why. On the contrary, it points to the opposite conclusion.

As to the proposition that the English bar is more ethical, any reader of Juxon's work would find good reason to dispute this. Lewis' conduct on several occasions was contrary to the idea that English lawyers are foremost interested in truth and only secondarily interested in a verdict for their clients. Certainly in the Staunton brothers' trial, Lewis and Clarke were partisan advocates. Likewise on at least two other occasions Lewis was content to stand by and see the reputation of innocent parties ruined. In the Baccarat Scandal he let this happen to protect the Prince of Wales. On the other occasion, he reportedly boasted of preventing the exposure of false adulterous allegations against a prominent politician.

32. An English committal proceeding is roughly the equivalent of the American preliminary hearing held to see if there is sufficient evidence of guilt to justify binding a defendant over to a higher court for trial. See Graham, supra note 11, at 38-42, for a brief description of the modern committal proceeding.

33. For example, Lewis' cross-examination of barrister Charles Bravo's wife during the inquest proceedings into his death earned him the temporary nickname "The Torturer." See Lewis and Lewis, supra note 9, at 115-39, for a discussion of this case.

34. See, e.g., Juxon's description of the Overend Gurney stock fraud case. Lewis and Lewis, supra note 9, at 80-87.

35. "For both of them there would be occasions when a passion for justice would transcend their zeal as players of the legal game; but this time they simply played to win—and played brilliantly: justice had nothing to do with it." Lewis and Lewis, supra note 9, at 154.

36. For a discussion of this affair, see note 30 and text accompanying note 48.

37. This was the Crawford divorce case which ruined the reputation and political career of Sir Charles Dilke, who had been mentioned as a possible successor to Gladstone as Liberal party leader. Juxon's account hints that Joseph Chamberlain may have arranged the whole affair to discredit Dilke. Lewis represented Dilke's opponents, Mrs. Crawford and several other of her alleged par--
American readers will find that in many aspects the nineteenth century English criminal trial had no connection with fairness. While argument can be made that the nineteenth century American trial also was not a completely fair institution, it fares very well when compared to its English counterpart. The English defendant could not testify on his behalf until the Criminal Evidence Act of 1898 and not until the 1900’s could an appeal be taken in felony cases. To Lewis’ credit, he recognized the wrong in both restrictions and worked to change them. However, before this occurred, Juxon’s work describes several miscarriages of justice which almost went uncorrected.

The celebrated case of Adolf Beck, which was one of these miscarriages of justice, has attracted much attention in both England and America. Beck was wrongfully convicted of swindling numerous female victims through sort of a “confidence game” in which the swindler posed as royalty and induced his victims to lend him money and jewelry. Beck was identified by several victims, convicted, and sentenced to jail. The prosecutor’s case at first rested on the theory that Beck and one John Smith, who had been convicted of a similar crime some eighteen years previously were one and the same man. However, when Beck offered to produce proof that he had been in South America at the time of the earlier fraud, this evidence was excluded at trial. Although an earlier writer places the blame for Beck’s wrongful conviction on “complacent if not negligent police and a mistaken judge,” Juxon describes how Lewis believed the fault lay squarely with one man, Horace Avory, Beck’s prosecutor. Lewis believed Avory purposefully amended the original indictment against Beck, knowing that unless this was done, Beck could not be convicted.

Amours, in the divorce suit. When Dilke tried to obtain exculpatory statements from several witnesses, Lewis supposedly reached them first and obtained their silence through threat of a criminal prosecution. According to Juxon, Lewis repeatedly later bragged about this: “I have plugged that hole with a hundred pounds.” Lewis and Lewis, supra note 9, at 214.

38. See E. Borchard, Convicting the Innocent 7-13 (1932), for another description of the Beck case.

39. Id. at 13.

40. Avory attempted to explain this by claiming the amendment was done in fairness to Beck. Juxon strongly disagrees with this claim: “It comes to this: Avory knew all the time he was prosecuting an innocent man and yet he let the case go forward.” Lewis and Lewis, supra note 9, at 293.

41. When Beck tried to offer the exculpatory evidence at trial, the prosecutor’s objection was sustained. As a special Parliamentary Committee of Inquiry
After Beck's pardon and release from prison, Lewis joined others who successfully petitioned for an official inquiry into the proceedings but was unsuccessful into having Avory investigated. One important result of the inquiry was the establishment of the Court of Criminal Appeal. Hopefully in America such prosecution conduct would not have been permitted. Evidence of Smith's prior crime and its similarity to the claims against Beck would be allowed to establish mistaken identity. Likewise, Avory's conduct in helping exculpatory evidence be excluded hopefully would be considered a Due Process violation.

Another illustration from Lewis' life demonstrates that English justice may not approach the aurora with which it has been endowed. In English criminal jury trials, judges are expected to summarize and comment on the evidence following final argument of counsel. Part of this summarization consists of instructing the jurors on the law. The other part consists of reciting the evidence presented and possibly expressing a viewpoint on its strengths or weakness. Some American writers have praised this practice and recommended its adoption in America. While American judges retain the common law power to do so, many judges do not either summarize or comment. Efforts to adopt a Federal Rule of Evidence on this procedure have been unsuccessful.

found, Beck "'was convicted on evidence from which everything that told, or might be thought to tell in his favor was excluded. His case was never tested.'" E. Borchard, supra note 38, at 9.

42. See Holt v. United States, 342 F.2d 163, 166 (5th Cir. 1965) (defendant should be allowed to offer evidence of "other crimes of a similar nature have been committed at or about the same time by some person other than himself.")

43. See Chambers v. Mississippi, 410 U.S. 284 (1973) (reversing state murder conviction where effect of state hearsay rule and rule against impeachment of a party's own witness prevented the defendant from presenting exculpatory defense).

44. See Graham, supra note 11, at 94-95, 272-73; Wyzanski, A Trial Judge's Freedom and Responsibility, 65 Harv. L. Rev. 1281, 1288-90 (1952) (recommending that summary and comment be encouraged in commercial litigation). For a contrary viewpoint, see Saltzburg, The Unnecessarily Expanding Role of the American Trial Judge, 64 Va. L. Rev. 1, 22-52 (1978) (arguing that a judge's traditional powers under the rules of evidence and procedure already afford much unused opportunities and suggesting eight other ways in which judges can assist attorneys in clarifying the presentation of evidence without uninvited summary or comment).

45. Proposed Federal Rule of Evidence 105, Summing Up and Comments by Judge, reads as follows:

After the close of the evidence and arguments of counsel, the judge
Juxon describes two cases in Lewis' career which illustrates how the power to summarize and comment can cause injustice. Both involved the barrister John Duke Coleridge. In the first case, Coleridge represented directors of an investment house who had defrauded shareholders by misrepresenting the financial condition of an insolvent company. Coleridge's defense was based on an appeal to one of the worst of human instincts, class prejudice. Unfortunately this line of defense appealed to the Lord Chief Justice who repeated this theme in his summation. "Like Coleridge, he emphasized again and again the wealth and importance of the accused and huffed and puffed at the audacity of the shareholders in bringing this prosecution at all." Not surprisingly a not guilty verdict was returned.

The second case involved the Baccarat Scandal where Lewis and Sir Charles Russell defended a libel action brought by Sir William Gordon-Cumming. The case concerned an allegation that Gordon-Cumming had cheated at a card game in which the Prince of Wales had played. Although the plaintiff's case was strong enough to force defense counsel to consider a settlement proposal during trial, they decided against it. By this time Coleridge was Lord Chief Justice and determined to see that the Prince's name was protected. After Edward Clarke's final closing argument for the plaintiff, Coleridge adjourned court until the next day when he

may fairly and impartially sum up the evidence and comment to the jury upon the weight of the evidence and the credibility of the witnesses, if he also instructs the jury that they are to determine for themselves the weight of the evidence and the credit to be given to the witnesses and that they are not bound by the judge's summation or comment.

Although Congress deleted this rule, the Senate Committee Judiciary Report expressed the belief that federal judges still retain the common law right to summarize and comment.

The distinction between comment and summarization is not clear. As indicated in 1 J. Weinstein & M. Berger, Weinstein's Evidence ¶ 107[02] (1982):

The distinction between the court's power to summarize and its right to comment on the evidence should not be over-emphasized; some courts, in fact, use the terms interchangeably. To the extent that a summary given by the court falls short of a recitation of the entire transcript, the very process of choosing which testimony to review and which to leave out is in itself a comment on the evidence. . . .

For further discussion, see id. at ¶ 107[01] - [07].

46. Coleridge's strategy is succinctly described as "[h]ow dare these shareholders, men of straw as they were, bring a prosecution against gentlemen of wealth and position." Lewis and Lewis, supra note 9, at 86.

47. Id.
delivered a summarization beneficial to the defense.\footnote{48} Within minutes, a defense verdict was returned and received with public denunciation. Even Lewis believed Coleridge's conduct was wrong.

Any reader of the account of these two cases will pause before urging summary and comment by judges. It would be wrong to believe that only Coleridge was capable of such conduct.\footnote{49} What is discouraging is that these cases involved two different Lord Chief Justices who should have known better than anyone the wrong being done by their actions. Even when this type of conduct was not intentional, the mental or physical condition of an English judge sometimes produced unfair summarization.\footnote{50} Yet this is the system some suggest promoting in American courtrooms.\footnote{51}

\footnote{48.} Juxon described the summarization as follows:
By any criterion, Coleridge's summing-up was extraordinary—extraordinary both in the dialectical skill he displayed and in the fact that he was a judge addressing a jury and thus owed at least lip-service to the ideal of impartiality. No advocate could have been more partisan than Coleridge in his charge to the jury in this case. Point by point, he answered Clarke's speech. Suave, mellifluous, he lulled the jury into accepting the arguments for the defence while at the same time quietly demolishing those advanced by Clarke. He read aloud those portions of [a witness's] testimony most inimical to Gordon-Cumming. He even suggested that Clarke, as a law officer of the crown, should not have accepted a brief in a case involving the Prince.

\textit{Id.} at 257.

Judge Wyzanski while urging comment in some cases, argues against them in libel suits. See Wyzanski, \textit{supra} note 44, at 1284. ("In a political libel suit the judge is not the commander but merely the umpire.")

\footnote{49.} For example, Edward Clarke protested the death penalty in the Staunton brothers' case, because he believed the court ignored the defense medical evidence in his summation. See \textit{The Murder and the Trial}, \textit{supra} note 12, at 174, quoting Clarke as claiming that "of the judicial fairness that should characterize a summing-up, especially in so grave a case, there was not the slightest trace." Ironically, Juxon ignores this aspect of the Staunton case.

See also the description of the Edith Thompson murder case in \textit{Verdict in Dispute}, \textit{supra} note 6, at 127-62, which blames the judge's summary and comment for the wrongful verdict and ultimate execution of the defendant.

\footnote{50.} See the account of the Florence Maybrick murder trial in \textit{Verdict in Dispute}, \textit{supra} note 6, at 9-42, partially blaming an unfair verdict on a defective summary from a physically declining judge.

\footnote{51.} Graham argues that the use of summary and comment would have to be "accompanied by a more restrained attitude toward the function of appellate review," and that "any error which is injected into the trial by-action of the court beyond its wide berth of discretion must be judged by a realistic and unapologetic harmless error test." \textit{Graham, supra} note 11, at 273.

Besides such wide sweeping statements, Graham does not comment on ex-
Final evaluation of *Lewis and Lewis* must largely depend upon what the reader wants. If it is a glimpse of late Victorian times and a description of some of its sordid crimes and scandals, this book will serve well. If it is any kind of in-depth examination of the actual practice methods of a solicitor, Juxon's work will fall short. If it is a detailed description of Lewis' role in the famous trials of his time, *Lewis and Lewis* will be disappointing.

Indeed, Juxon's work sometimes seems as much to focus on barristers like Clarke and Russell as it does on George Lewis. Based on his contacts with many famous Victorian personages, there can be little doubt George Lewis was indeed a powerful figure. Unfortunately the reader will not learn as much about him as one would like. In the final analysis, Juxon's book is worthwhile, but readers should not expect too much from it. What *Lewis and Lewis* demonstrates more than anything is the need for other, more detailed biographical works about English solicitors.