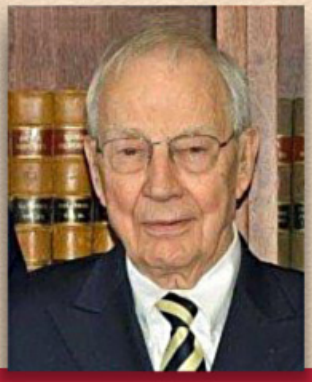
COVERAGE OPINIONS
Judicial Opinions Today - Impact On Counsel's Opinions Tomorrow



Declarations: The *Coverage Opinions* Interview With Garold Heslinga: Lawyer For The Thief In The Legendary "Spring Gun" Case

Twelve Angry Women

Who's The Villain?
Have Attitudes Changed?

"Damn, This Will Be Fun."

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If you were even half paying attention in your Torts class – and those in law school prior to the internet couldn't have been distracted by cat videos on their phones – then you are familiar with the tale of Edward and Bertha Briney and Marvin Katko.

The Brineys were fed up with several break-ins of their dilapidated and abandoned farmhouse in Mahaska County, Iowa. In June 1967, Mr. Briney secured a 20-gauge shotgun to an iron bed. He rigged a wire from a bedroom door to the gun's trigger. His "spring gun" was designed to fire when the door was opened. One month later Marvin Katko, hoping to steal some bottles in the farm house, removed a board from a porch window and entered. He opened the bedroom door and boom, the shotgun went off, striking him in the leg. He was fortunate that it didn't need to be amputated.

Katko sued the Brineys. A jury awarded him $20,000 in actual damages and $10,000 in punitive damages. The awards were upheld by the Iowa Supreme Court in 1971. The Brineys were forced to sell farmland to satisfy the judgment.

Marvin Katko

It is nearly 50 years since the spring gun shot heard 'round the world. On the occasion of this golden anniversary I reached out to Garold Heslinga, attorney for Marvin Katko at both trial and before the Iowa high court. Mr. Heslinga, now 93, retired from Heslinga, Dixon & Hite, in Oskaloosa, Iowa, at the end of 2014. But even after 66 years of practice he still hangs out at the office a couple of days a week. It was from there that he shared with me some wonderful stories about the so-called "spring gun" case, which has now become part of law school lore. Mr. Heslinga told me that he and his wife Mary once dressed as the Brineys at a Halloween party amongst friends. That's not in your Torts book.

Two Kinds Of Justice

Katko and the Brineys both sought justice. They both got their wish. But was one of them not deserving of it? The Iowa Supreme Court concluded that, no matter that Mr. Katko was committing a criminal act, the Brineys were not entitled to take the action that they did. The court explained that "the law has always placed a higher

value upon human safety than upon mere rights in property, it is the accepted rule that there is no privilege to use any force calculated to cause death or serious bodily injury to repel the threat to land or chattels, unless there is also such a threat to the defendant's personal safety as to justify self-defense." Katko v. Briney, 183 N.W.2d 657, 660 (Iowa 1971) (quoting Prosser on Torts, Third Edition). Mr. Heslinga shared with me that Mr. Katko was referred to as plaintiff-thief by the Brineys' counsel before the Supreme Court. Apparently that reminder did not influence enough justices.

Edward and Bertha Briney

So while the Brineys got their justice, it was their own and not a type permitted by the law. Katko got the sanctioned kind. But, some might say, it was perverse, since he admitted that he was committing a crime when he entered the farmhouse. This is the fundamental debate at the heart of Katko v. Briney. And it has raged among law students across America for 40 years -- the case first appearing in Prosser's esteemed Torts case book in 1976.

Despite the fierce battle lines drawn in law school classrooms, the Iowa Supreme Court didn't seem to struggle to reach its decision. As the court saw it, the law was clear. And Mr. Heslinga shared that view, which is why he did not ask for a jury when he filed his complaint. He told me that he saw it as a "legal" case and believed that the judge, following the law, would find in his favor. It was the Brineys, he explained, who demanded a jury.

But while Mr. Heslinga did not want jurors, he was very pleased with the twelve he got – all women. As he saw it, this was essential to the verdict. Mr. Katko connected with the all-female jury, Mr. Heslinga explained to me. He was good looking, likeable, pleasant, had a religious background, his wounds were still evident and he readily admitted his wrong and made no attempt to justify his actions. And the Brineys didn't score any points with the jury when their lawyer, wanting to demonstrate that nobody likes to have their belongings stolen, reached into the jury box and snatched a woman's purse.

The Iowa Supreme Court's decision was still not the end of this saga. On account of some complex post-verdict collection issues, Mr. Heslinga told me that he ended up representing the Brineys against an individual who had pledged to assist them but, instead, acted against their interests. In addition, Mrs. Briney sued Mr. Katko for the damages he allegedly caused by his trespass. Once again Mr. Heslinga represented Mr. Katko. The jury awarded her $150 and $1,000 in punitive damages.

Public Reaction To The Case

As the law goes, a court in Iowa got the last word on who was right. But in a different Iowa court -- that of public opinion -- the jury was still out on Katko v. Briney. Just weeks after the decision The Des Moines Register published letters to the editor that supported both sides. One reader defended the Brineys: "I believe it is time to rewrite our laws and to somehow change our courts if this is the protection the law-abiding citizen is to receive." Another called the decision the "most nefarious thing that has happened in the annals of jurisprudence." But Katko had plenty of defenders too. One described the decision as "the only sane reaction possible to what I consider a despicably cowardly act." See Geoffrey W.R. Palmer, "The Iowa Spring Gun Case: A Study In American Gothic," 56 Iowa Law Review 1219, 1248, n.140 (1971) for an in-depth look at the case and the reader reactions in the Des Moines newspaper.

And it wasn't just the editor of the Des Moines newspaper who received letters about the court's decision. A massive amount arrived in Mr. Heslinga's mailbox too. Some of them were so vulgar, he told me, that he couldn't have his secretary open them. Mr. Heslinga also paid a price for his role in the case by losing some clients over it. But, he told me, the notoriety that he gained – the case was reported in newspapers around the world -- brought him clients too.

Who's The Villain? Have Attitudes Changed?

Clearly Katko v. Briney stirs up such an emotional debate because, at its core, it is about the value of life and role of individual responsibility. You don't get those things in secured transactions. Andrew McClurg has witnessed these two competing sides for a long time. The University of Memphis Law School professor – and creator of the wonderful website lawhaha.com, which takes a look at the lighter side of the law -- has been teaching the case for 30 years. He told me that "few cases generate such intense reactions in students. Many students simply can't wrap their heads around the fact that a 'criminal' could recover damages after breaking into someone's dwelling. The fact that the Brineys had to sell eighty acres of their farm to pay the judgment seems to particularly stick in their craw."

But Professor McClurg pointed out that the Brineys' supporters are sometimes slower to the table: "Students have always been initially reluctant to come down on the side of the Brineys until a brave student gives them 'permission' by saying something like, 'I think the SOB got what he deserved.' Then all heck breaks loose. It's always a fun discussion."

The competing values in Katko v. Briney are of a nature that can change with the times. So I asked Professor McClurg if the scoreboard has moved over these many years. For sure it has. "In the past," he told me, "I'd estimate students broke down about 50-50 on whether they thought the verdict was just. Today, it's much more difficult to find students who side with the Brineys, although there are surely still students who are simply reluctant to say it in class."

Incidentally, in addition to teaching the doctrinal lessons of Katko v. Briney, Professor McClurg has also looked at the case in a more, well, unique manner. He once had his students write poems about it, with some published in a 1995 Oregon Law Review article. But don't be fooled. The exercise was part of a serious (and highly entertaining) article examining the lack of creativity in students that McClurg said is a consequence of the law school environment and its teaching methods. A curiosity, he noted, because "good lawyers must be creative thinkers." Andrew McClurg, "Poetry In Commotion: Katko v. Briney and the Bards of First-Year Torts," 74 Or. L. Rev. 823, 829 (1995).

I asked Mr. Heslinga if he could remember his initial reaction when Marvin Katko first presented himself as a prospective client. He did, very clearly: "Damn, this will be fun."

[The author expresses his appreciation to David Dixon, of Heslinga, Dixon & Hite, for his kind assistance in providing background information and setting up the interview with Mr. Heslinga.]