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Mysterious letter forewarned Eastland's demise

July 24 marks the 100th anniversary of the sinking of the S.S. Eastland, one of the deadliest maritime disasters on U.S. waters.

The ship was chartered to take laborers from Western Electric Co. to a picnic in Michigan City, Ind.

As passengers packed the ship on the Chicago River at the Clark Street bridge, the Eastland rolled onto its side. Efforts to steady the ship by filling its ballast tanks with water failed.

Although the Eastland capsized just 20 feet from the wharf, 844 passengers and crew drowned.

After the Eastland disaster, reports emerged that the owners were aware of the ship's suspect condition. Years before, inspectors discovered flaws that caused the Eastland to list, or lean to one side. Moreover, the ship had recently been dry-docked to repair a broken starboard shaft.

Perhaps the most damning evidence was a letter from John Devereux York, a Chicago architect. In his missive, York wrote: "You are aware of the condition of the S.S. Eastland and unless structural defects are remedied to prevent listing — there may be a serious accident."

While York's letter offered powerful evidence of the owners' notice of potential defects, its foundations remain a mystery. York was not, by all accounts, an expert in ship construction. According to city directives in the Illinois State Archives, York was an "artist" and an "architect." His draft card describes him as military engineer during World War I.

After his death in 1935, York's obituary noted that he was a member of the Illinois state art commission and was "honored by the emperor of Japan" for his rendering of a Japanese temple. Otherwise, a group of York's remaining sketches reflect his interest in ornate memorials and buildings.

In September 1915, a grand jury indicted the owner of the ship and three other officers for conspiracy and "criminal carelessness." As the central acts of the alleged conspiracy occurred in Michigan, the case was assigned to a district court in Grand Rapids. In February 1916, a judge acquitted all of the defendants. Efforts to extradite the group to Illinois proved unsuccessful, closing the criminal chapter.

Last month, the Eastland Historical Society presented "The Chicago Trial That Never Was," a retrial of the defendants using the contemporary Illinois involuntary manslaughter statute and rules of court. The reimagined trial presented an

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interesting question: Under a contemporary legal interpretation, is York's letter admissible as evidence of the defendants' awareness of the Eastland's condition?

In this context, the letter presents both confrontation clause and hearsay issues,

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questions that overlap.

Since the 2004 U.S. Supreme Court decision in *Crawford v. Washington*, a spoken or written statement made by an unavailable declarant in a criminal case is inadmissible at trial if the statement contains "testimonial" hearsay and the opposing party has had no prior opportunity to cross-examine the declarant. Illinois law follows suit.

The Eastland indictment, of course, involved a criminal charge. York never testified as to the contents of the letter. *Crawford* defines "testimonial" as a substitute for live testimony, such as an affidavit or other "solemn declaration" — as opposed to a "casual, overheard remark," a co-conspirator's statement, and certain other exceptions.

York's letter fits the bill for "testimonial" — it appeared on his office letterhead, it was signed by him and it mirrored his probable in-court testimony.

But is the letter hearsay?

Federal and state case law establishes that a statement providing "notice or knowledge" to the listener is not offered for its truth. In fact, York's letter presents a classic instance of a statement giving notice.

In sum, the prosecutor would argue that the statements are not offered for their truth — that "there may be a serious accident" unless structural

defects are remedied.

Rather, the letter puts the owner on notice that the ship required inspection. For the prosecutor's case, notice is relevant. If the letter is not hearsay, its admission does not violate the Sixth Amendment's confrontation clause. Likewise, it also comports with the rules of evidence. Thus, the letter is admissible.

Still, is the letter in its entirety relevant to establish notice or knowledge?

A defense lawyer might persuasively argue that York's statements "You are aware of the condition of the S.S. Eastland" and "there may be a serious accident" are inadmissible hearsay. In that case, these statements would run afoul of the confrontation clause. Also, Illinois Rule of Evidence 403 bars unfairly prejudicial or misleading evidence. In light of York's lack of documented knowledge of shipbuilding, the letter may fall short of this bar.

A court today might reach a sort of compromise, allowing a jury to hear testimony that the owners received a letter about the need to inspect the ship while prohibiting evidence about the letter in its entirety. To this end, a court would likely issue a limiting instruction explaining the letter's permitted use during deliberations.

Though the story behind York's letter and its potential trial value is lost to history, the question of admissibility remains an interesting evidentiary one. More broadly, in the absence of a trial and verdict, York's letter offers a chance to shed new light on one of America's most significant — if least remembered — nautical tragedies.