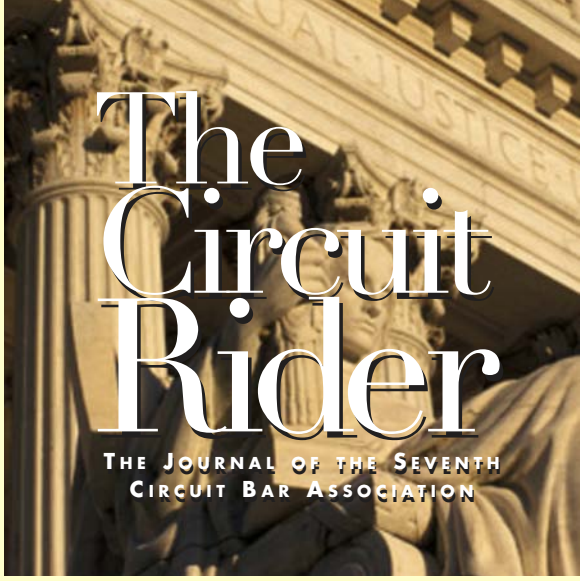
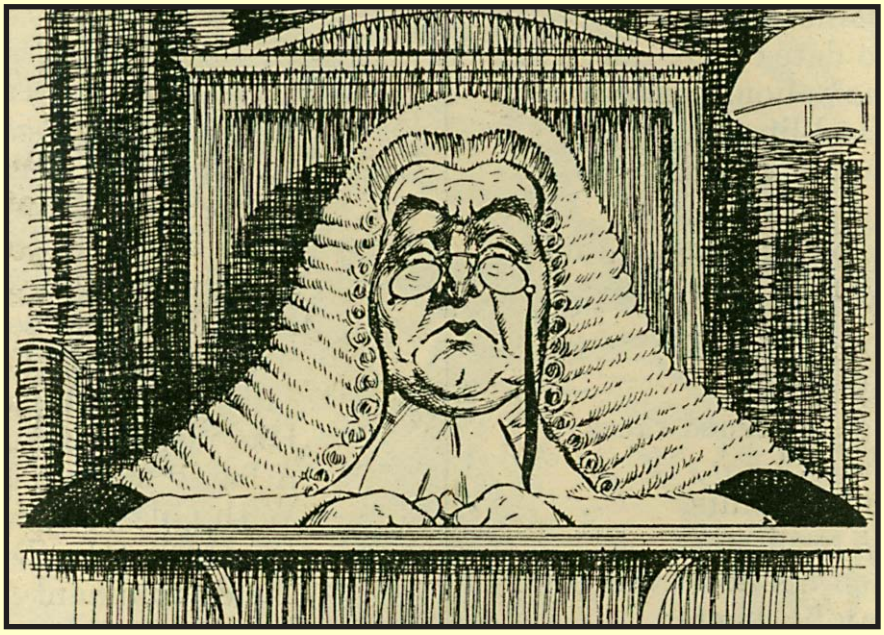
December 2019

Featured In This Issue



Judges



In This Issue

Letter *from the* President

President Michael A. Scodro
Mayer Brown, LLC

We begin this edition of *The Circuit Rider* with a tribute by Magistrate Judge Jeffrey Cole to our friend and colleague, Randall D. Crocker, immediate past president of the Seventh Circuit Bar Association. Sadly, we lost Randy in late September of this year, and he will be deeply missed by all who had the great privilege to know him.

Thanks also to Judge Cole, *The Circuit Rider's* Editorial Board, and the several contributing authors, for their work on yet another superb issue. In addition to Judge Cole's memorial to Randy, this edition offers a host of excellent pieces, including a series of engaging interviews with distinguished jurists — reprinted interviews of Justice Ruth Bader Ginsberg (by Judge Bucklo), and Justice John Paul Stevens (by Judge Bucklo and Judge Cole), and a recent, inspiring interview of Judge Kocoras by his son, John. The issue also includes "Appeals: The Classic Guide" by William Pannill, and charming recollections of Justice Stevens recently exchanged at the Chicago Inn of Court as recounted by Rachael Wilson, as well as comments by Chief Judge Diane Wood on Judge Barbara Crabb. These and other Articles make this Edition, like those before it, a tremendous resource for bench and bar alike.

As those who attended well know, the Association's annual meeting in Milwaukee this past May was a great success. Randy Crocker and the entire planning committee put together a trove of phenomenal programming. We were treated to a conversation with retired Supreme Court Justice Anthony Kennedy, joined by Justice Brett Kavanaugh, Chief Judge Diane Wood, and Judge Gary Feinerman. Other programs included panels on the importance of the rule of law, artificial intelligence, and cybersecurity and the "dark web." From start to finish, Milwaukee played host to a terrific gathering.

And while the annual meeting is the showcase of the Association's calendar, we offer wide ranging programming throughout the year. Just since the last edition of *The Circuit Rider,* the Association has sponsored and cosponsored several events. On June 4, 2019, we hosted a program called "Lighting the Way: Practical Mentoring Strategies," a panel discussion offering advice on providing and receiving mentorship in the practice of law. On September 5, we cosponsored a program on "Unequal Pay in the Legal Profession," and on October 15 we cosponsored a panel dedicated to "Remembering Justice John Paul Stevens." Most recently, on October 24, the Association cosponsored a program in Chicago following, and building on, a live video presentation from Washington, D.C., entitled "Roadways to the Federal Bench: Who, Me, A Bankruptcy Judge?"

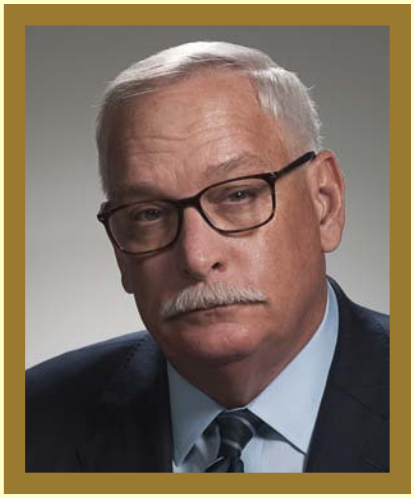
For those who cannot attend our events in person, the Association website (www.7thcircuitbar.org) offers video links to many of our past programs, with more to come. The site also features video segments by lawyers and judges with advice on appellate practice, from standards of review on appeal, to brief writing, to oral argument. And for still more guidance, consult the E-Mentoring Project videos, also housed on our website, featuring judges and lawyers addressing a wide range of topics, from how to develop client relationships to the importance of pro bono work.

Finally, the website includes a list of our committees, each of which offers an opportunity for deeper involvement in the Association. Anyone interested in serving on a committee may contact the relevant state or general committee chair. Alternatively, those looking to become more involved in the Association should feel free to reach out to me directly. I look forward to seeing everyone at our upcoming programs and at our next annual meeting, scheduled for May 3-5, 2020, at the Radisson Blu Aqua hotel in Chicago.

Get Involved!

Interested in becoming more involved in the Association? Get involved with a committee! Log on to our web site at www.7thcircuitbar.org, and click on the "committees" link. Choose a committee that looks interesting, and contact the chair for more information.

In Memoriam
Randall Crocker



*by Jeffrey Cole**

On September 24, 2019, a week before his 65th birthday, Randy Crocker, the immediate past President of the Board of Governors of the Seventh Circuit Bar Association, unexpectedly passed away. By any measure, he was an extraordinary person, who radiated gentleness and humility.

After receiving his law degree from Marquette in 1979, Randy joined the Milwaukee Firm of von Briesen & Roper, ultimately rising to the position of President and CEO in 2004. He led the Firm through a period of rapid growth, more than doubling its size to several hundred employees. He was also a highly skilled lawyer and, not surprisingly, he was recognized by "The Best Lawyers in America" continuously since 1996. He was also selected as "Lawyer of the Year" three times, and repeatedly included among Wisconsin Superlawyers. He was a frequent lecturer and speaker on complex legal matters at numerous law schools, bar associations and conferences and committees. He received scores of professional awards, befitting his enviable accomplishments as a lawyer. And with all he did, he still found time to be an avid outdoorsman, an ardent Churchillian, and a deeply involved member of his community, serving on numerous boards of directors in disciplines far removed from the law. The von Briesen & Roper website lists a number of his extensive community activities.

Not surprisingly, the extraordinary qualities of kindness and insight that had brought him fame and universal respect over the course of his lifetime were evident in the effortless and efficient way he conducted each meeting of the Association. There was never a harsh or impatient word by him – or anyone else. It was only in retrospect that one realized that Randy was the real source of the harmony that prevailed at the meetings. He made it all look so effortless. Would that there were more like him. He will be sorely missed.

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* *Jeffrey Cole is a United States Magistrate Judge in Chicago and is the Editor in Chief of* The Circuit Rider.

AN INTERVIEW WITH

Justice Ruth Bader Ginsburg

By Hon. Elaine Bucklo[*]

EB: Can you talk a little about the influence that your parents had on you and on your career?

RBG: My mother was perhaps the most intelligent person I knew, but she lived in an age when a man felt dishonored if his wife worked. She died at age 48 after battling cervical cancer for four years. One of my most pleasant childhood memories is of my mother reading to me. When I could read on my own, she would take me on an excursion, a weekly excursion, to the library. She would leave me in the children's section while she got her hair done next door, then pick me up with the three books I had selected to bring home that week.

EB: When did you first realize that you wanted to be a lawyer?

RBG: In my day, the safe occupation for a well-educated girl was to be a teacher, and I anticipated that I would be a high school history teacher. But I attended Cornell at a bad time for our country. It was the early fifties, the heyday of Senator Joe McCarthy. I took courses with, and was a research assistant for, a great teacher of constitutional law for undergraduates, Robert Cushman, and as his research assistant, one of my tasks was to follow the latest blasts of the House Un-American Activities Committee and the Senate Internal Security Committee. From that experience, I gained two impressions. First, our nation was straying from its most basic values, particularly the right to speak without Big Brother Government looking over your shoulder. Second, there were courageous lawyers who defended people targeted by the congressional committees. The idea Professor Cushman planted was that law might be a profession that would suit me well, one that could equip you to use your talent to make things a little better for your community.

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[*]*Judge Bucklo is a Senior United States District Judge for the Northern District of Illinois. She was confirmed by the Senate in 1994. Judge Bucklo received her Juris Doctor,* magna cum laude, *from Northwestern University School of Law, where she served on the Law Review as Articles Editor. Following graduation, she clerked for Judge Robert Sprecher on the Seventh Circuit Court of Appeals. Judge Bucklo is a former Associate Editor of LITIGATION, the journal of the American Bar Association, Section of Litigation. In 2017, Judge Bucklo was the recipient of the Chicago Bar Association's Alliance for Women Founders Award.*

Judge Bucklo's Interview with Justice Ginsburg, which originally appeared in the 2011 issue of LITIGATION, was one of only eight Articles selected for reprinting in the Spring 2019 issue of LITIGATION, entitled "Pearls of Wisdom." The Article is reprinted with the kind permission of LITIGATION Magazine.

An Interview with Justice Ginsburg

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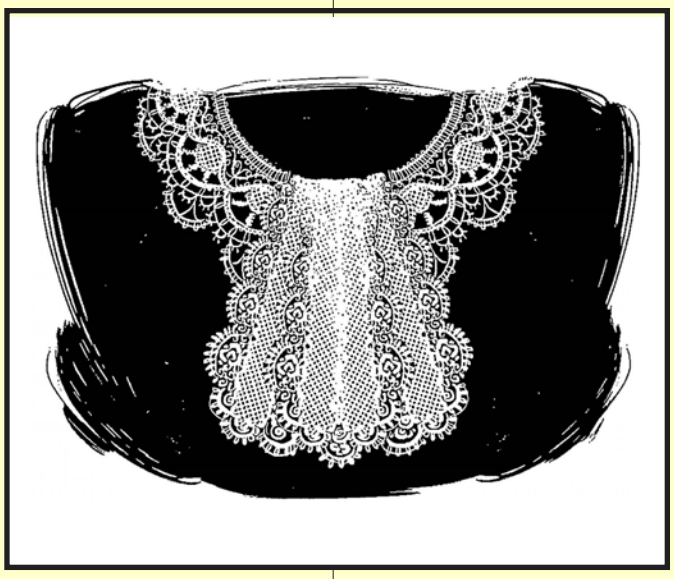
So I took the LSAT in my junior year in college. My husband, who was a year ahead of me, in fact took the LSAT later and achieved a near-perfect score. My family had some misgivings about my pursuit of a law degree. But when I married Marty within days after graduating from college, my family was content: If I couldn't get a job, I would have a man to support me. So far from being an impediment, marriage turned out to be an advantage to my pursuit of a legal education. So did having a child before I entered law school.



Weeks before we married, Marty was called into service. He had been in the ROTC at the tail end of the Korean War. We spent the entire two years of his service in Fort Sill, Oklahoma. Jane was 14 months old when I started law school. I think one of the reasons I did so well as a law student was I was not overwhelmed, as many of my classmates were, by the rigors of the first year. I went to school in the morning and came home at 4 o'clock in the afternoon when our nanny left. The next few hours were Jane's time. Something outside law studies was very important in my life. Jane was a respite from the law books. I think I used my studying time more efficiently than my classmates because I had home and childcare responsibilities.

EB: You transferred from Harvard to Columbia.

RBG: After my second year.

EB: When your husband graduated and took a job in New York?

RBG: Yes.

EB: And you were first in your class at Columbia and close to it or very high in your class at Harvard as well?

RBG: Yes.

EB: Both places. And then you graduated, and there are all these stories about what happened. Is the story true about Justice Frankfurter that you had been recommended for a clerkship and he said he's not ready to hire a woman?

RBG: Yes, that's true. The prospect of a clerkship with Justice Frankfurter arose a year after I graduated. I was clerking for a district judge in the Southern District of New York. Al Sacks, who later became dean of the Harvard Law School, was at the time the professor who chose Frankfurter's clerks. Sacks called me-and this was out of the blue; I never anticipated such a thing-to say that he wanted to recommend me to the Justice. He added that he would give the Justice an alternative, the then president of the Harvard Law Review, John French, and Frankfurter chose John. When I told this story years later, Bill Coleman said it couldn't be true. The reason: Bill Coleman was the first African American ever to clerk at the Court. Bill thought his Justice, Frankfurter, was free from prejudice. One of my Harvard classmates was clerking for Frankfurter the year Al Sacks asked the Justice to consider me. He confirmed that my report was accurate. In 1960, Frankfurter, in common with his colleagues, wasn't prepared to engage a woman as a law clerk.

EB: You ran into issues as well in terms of getting hired by law firms at that time.

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RBG: Yes. No law firm in the entire city of New York was willing to take a chance on me. After my second year in law school, I was a summer associate at Paul, Weiss. I interviewed for that job in my second year, while I was still at Harvard, and was hired on the spot. I barely uttered two sentences during the interview. Later, I realized what was going on. Paul, Weiss was an avant garde firm. They wanted to hire a woman as a summer associate. I had the best grades of the women who signed up for an interview. I thought I did a good job as a summer associate, but the firm didn't give me a bid for a permanent job.

There was a reason for that, I suspect. The firm had engaged a woman named Pauli Murray. She was a "twofer": a woman and an African American. The firm made its statement by engaging Pauli and didn't need me to show their lack of prejudice. For years, Paul, Weiss said they offered me a permanent job, but I preferred to accept a clerkship, so I turned them down. I said, "Check your records." With much embarrassment, they confirmed that they did not offer me a job.

EB: I think I read that you noted recently that there was a silver lining to the discrimination you faced – I think you were talking about Justice O'Connor as well-that if you had not faced a wall of discrimination when you came out of school, by now you might be retired partners from law firms instead of Justices on the Supreme Court.

RBG: We had to follow a different path. Sandra graduated a few years before I did. She ranked very high in her class. My later Chief, William H. Rehnquist, was number 1 in his Stanford Law School graduating class. Sandra was number 3. Nobody knows who was number 2. Sandra couldn't get a job, so she volunteered her services to a county attorney and said: "I'll work for four months, then if you think I'm worth it, you can put me on the payroll." That's how she got her first job in the law. Women lawyers of our generation were not heartily welcomed by the profession. It is quite true, I believe, that if Paul, Weiss had hired me, I would today be a long-retired partner.

EB: Do you have any message that you would give to young people today facing unfair discrimination in any form from your own experience?

RBG: Well, one thing you don't do is go off in a corner and cry. Instead, your attitude should be "I will somehow surmount this, I will find a way to do what I want to do." That was advice I received from my ever-supportive father-in-law when I became pregnant with Jane while Marty was in service. I had deferred my admission to Harvard, pending completion of his two-year commitment, and worried that I would be unable to manage law school with an infant. My father-in-law said: "Ruth, if you don't want to go to law school, you have the best reason in the world and no one will think less of you. But if you really want to go to law school, you will stop feeling sorry for yourself, and you will find a way to do it."

When I got to know Sandra, I appreciated that she was of a similar mind. Whatever came her way in life, she just dealt with it; she didn't waste time regretting a misfortune. She coped with it as best she could.

EB: You went on to-you actually wrote a book during the first year after you were clerking, then you went to Rutgers.

RBG: Yes. I was for two years associated with the Columbia Law School Project on International Procedure. During that time, I coauthored a book titled Civil Procedure in Sweden. The book was published in 1965 along with studies of French and Italian procedural systems. I clerked in the district court for two years, spent two years on the Swedish adventure, and then joined the faculty of Rutgers Law School in Newark.

EB: While you were at Rutgers, you began taking complaints from the ACLU. I don't know if they covered things other than sex discrimination, but you started taking

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some of these cases. Was that born out of your experience? I mean, you'd seen discrimination certainly against women.

RBG: I started teaching at Rutgers in 1963. It was the year the Equal Pay Act passed. My good dean said: "Ruth, you have to take a significant cut in the salary you've been getting at Columbia." I responded that I understood Rutgers, as a state university, had limited resources. But the amount of the cut was larger than I anticipated. So I asked, "What is so-and-so paid?" The inquiry concerned a male member of the faculty about my age and time out of law school. The response was swift: "Ruth, he has a wife and two children to support. You have a husband with a well- paid job at a New York law firm."

That's the way people thought in the early 1960s. They didn't immediately take the Equal Pay Act seriously. Title VII, enacted in 1964, was not yet on the books. People coming out of law school in the next generation-my younger colleagues, for example-encountered no similar barriers. Justice Sotomayor might have encountered discrimination as a Hispanic, but not as a woman, and I don't think any doors were closed to our newest Justice, Elena Kagan. But for my generation, employers would post interview sign-up sheets headed "Men only." We accepted that as the way things were. But then there was the civil rights movement, vibrant in the 1960s, and the rebirth of the women's movement starting in the late sixties. New kinds of complaints came trickling into the ACLU affiliate in New Jersey. I'll describe two categories of cases that were typical.

One concerned what was euphemistically called maternity leave. Most complainants were school teachers forced out of their jobs, put on maternity leave in the fourth or fifth month of pregnancy or as soon as they began to show. Maternity leave was a euphemism because it was unpaid and provided no guaranteed right to return. If the school district needed you, they'd call; otherwise, you were out of a job.

The pregnancy problem involved much more than unpaid leave. One of my most memorable clients had been in service, left voluntarily when her child was born, and then tried to reenlist. She couldn't because a pregnancy discharge was deemed a moral and administrative disqualification. They never clarified whether it was moral or administrative or both. The complainants in these cases, pregnant women or formerly pregnant women, weren't asking for any favors. They were saying, in effect, I am ready, willing, and able to work; all I seek is a day's pay for a day's work.

A second category of complainants were women in blue-collar jobs whose employers had advantageous health insurance coverage and whose spouses, if they had spouses, didn't have equivalent coverage. So these women wanted to sign up for family coverage. They were told that family coverage is available only to male workers; female workers could get coverage only for themselves, not for a spouse or children. The idea was that the woman working outside the home was only a pin money earner, not the wage earner that counted. The ACLU affiliate in New Jersey referred cases like that to me.

EB: In 1971 then, you wrote the brief in *Reed v. Reed* [404 U.S. 711], in which the Supreme Court held that the Idaho statute that gave mandatory preference to a male applicant as an administrator of an estate over a female applicant violated the Equal Protection Clause. How significant was that case in jurisprudence for women?

RBG: Tremendously significant, I think. It was the first time in history that the Supreme Court ever encountered a gender-based classification it didn't like. The succession of opinions before Reed was daunting. There was *Hoyt v. Florida* [368 U.S. 57], decided in 1961, holding it was OK to call only men for jury duty; there was *Goesaert v. Cleary* [335 U.S. 464], decided in 1948, holding it was OK to bar women from serving as bartenders unless their husbands or fathers owned the tavern. Every case starting with Virginia Minor's came out the same way. Minor's complaint: I read this newly ratified 14th Amendment. It says I'm a citizen.

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The most fundamental right of a citizen is to vote. The Court in *Minor v. Happersett* [88 U.S. 162], decided in 1874, replied: Of course, women are persons and may be citizens, but so too are children, and who would suggest that children should have the right to vote?

The judicial attitude in these cases was quite different from the mind-set of judges in race discrimination cases. By the sixties, almost everyone recognized that classifications disadvantaging racial minorities were odious. But laws restricting women were considered benign. They existed, it was thought, to protect the "little woman." Did they in fact favor women? Consider a law providing that women can work only eight hours a day; well, that meant women couldn't get overtime pay. Or a law prohibiting the employment of women at night, which meant women couldn't wait tables at the time tips are largest.

In Sally Reed's case, the law said that as between persons equally entitled to administer a decedent's estate, males must be preferred to females. Why did Idaho have that law? They copied the statute from California. Why did California have it? The law originated in days before the Married Women's Property Acts released women from common-law disabilities. So we had two people, a man and a woman. Likely the woman was married, and if she were married, she couldn't contract in her own name, sue and be sued in her own name. So it made sense, if you had a choice between two people equally related to the decedent, to pick the man because he wouldn't labor under those law-imposed disabilities.

By the time Sally Reed's case came up, married women's property and contract restrictions no longer existed. But the states hadn't cleaned up their law books. What was significant about Sally Reed's case? The law reflected the notion that women are destined to care for the home and children, while men are destined for a working life outside the home. Sally Reed was a woman from Boise, Idaho, an everyday woman, who sensed that she had experienced an injustice. She believed that courts could redress her grievance. She financed her case through three levels of the Idaho state courts. When the Idaho Supreme Court rejected her claim that the statute was unconstitutional, one of the ACLU's general counsel, Marvin Karpatkin, read the decision and believed Reed would be the turning point case.

ACLU's legal director, Mel Wulf, called Sally Reed's lawyer, Allen Derr, in Boise, Idaho. Derr said he would be glad to have the ACLU brief the case, but he wanted to argue it. So that was the agreement we made. I remember a day in November 1971, coming home from Rutgers on the train and noticing in a fellow passenger's hands the cover page of the New York Post, displaying a banner headline: "Supreme Court Outlaws Sex Discrimination." It was the announcement of the unanimous decision in *Reed v. Reed. Reed* was a very low key decision, but it held great promise for cases in the wings.

EB: It was short.

RBG: The Court didn't admit it was doing anything different from the norm. It simply said the classification was irrational. But, of course, something different was happening.

EB: Two years later [1973], you argued – it was your first argument – *Frontiero v. Richardson* [411 U.S. 677]?

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RBG: Yes.

EB: How rare was it for a woman to argue in those days before the Supreme Court?

RBG: It was uncommon. There was only one woman permanently in the SG's office at that time, Harriet Shapiro. She was a career Department of Justice lawyer. Her husband was also in the SG's office.

EB: Today, is it often that women argue, or does it still seem like it's way more men than women?

RBG: This last term, a woman, an outstanding advocate, argued six major cases. Her name is Elena Kagan. She was then solicitor general of the United States.

EB: Is it true that in *Frontiero,* when you argued, that you needed no notes, that you got up there and you argued and you knew all your cases backwards and forwards, and that your argument was so compelling that nobody asked you any questions?

RBG: I always had an attention-grabbing first sentence totally worked out and memorized, and a few index cards noting the main points I wanted to develop. Oral argument is fleeting. At best, you can get the Court to want to decide in your favor. When I speak to lawyers about briefing cases for the Court, I emphasize that the first thing I read when preparing for argument is not a lawyer's brief; it is, rather, the decisions of the courts that have ruled on the case before it came to us. I start with the trial court, then the appellate court, because I want to know what those judges said. I don't want to get the opinion of a judge filtered through the sometimes skewed lens of an advocate.

EB: In *Frontiero,* eight members of the Supreme Court agreed with you that the statute that allowed a member of the military to claim his wife as a dependent for housing and medical benefits without regard to whether she was in fact dependent butrequired that the woman, if she was a service woman, prove that her husband was dependent on her for more than half of his support, was unconstitutional. Four members of the Court agreed with your argument that gender should be a suspect classification.

RBG: Yes.

EB: Four others found that the statute was unconstitutional but did not reach the issue of a suspect classification. At that time, were you frustrated that you didn't get that fifth vote saying that sex was a suspect classification like race and national origin, and has it made any difference in the long run?

RBG: I was surprised that Justice Brennan pushed suspect classification so soon, even though it was the featured argument in our brief. My notion was that there would be four, five, six cases first, as low key as Reed, but striking down the gender line every time. I think Justice Brennan lost Justice Stewart's vote, not for the bottom-line judgment, but for declaring sex a suspect classification, by pressing the issue too soon. If he had waited for three, four, or more cases, he might have attracted the fifth vote.

After *Frontiero,* we had to live with the reality that we weren't going to get a fifth vote for suspect categorization of sex classifications. So the next best thing was to ratchet up the standard. We urged heightened scrutiny. Gender classifications, the Court later said, fail unless supported by an exceedingly persuasive justification, a phrase repeated in the VMI case.

EB: Speaking of VMI [*United States v. Virginia,* 518 U.S. 515], that was 1996. You had been on the Court three years. Was that the first gender discrimination case after you came on the Court in which you wrote the opinion?

RBG: Yes. I had written a concurring opinion in a case called *Harris v. Forklift Systems* [510 U.S. 17 (1993)1; it concerned sexual harassment, and Justice O'Connor wrote the opinion of the Court.

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EB: I was rereading the VMI case yesterday, and I was wondering what it felt like to be on the other side of this bench after having argued five or six cases before the Supreme Court in your capacity as a lawyer, to be writing that decision.

RBG: It was a most satisfying endeavor for me. About 20 years earlier, there was a case against the Philadelphia school district. The plaintiff's name was Susan Vorchheimer. Philadelphia had two high schools for gifted children, one was called Central High, and the other, Girls High. The names told the story.

Susan Vorchheimer wanted to go to Central because science and other facilities were better there. District Judge Newcomer, of the Eastern District of Pennsylvania, ruled in her favor, but the Third Circuit reversed 2 to 1, with a strong dissenting opinion. That left the federal judges evenly divided, 2 to 2. I didn't argue the case when it reached the Supreme Court. As not uncommonly happens at the ACLU, the local lawyer wants to argue the case even though national office lawyers or volunteers wielded the laboring oar in writing the brief. This Court divided four to four, which results in automatic, opinion-less affirmance of the court below. I have commented, in conversation with an ACLU coworker in the *Vorchheimer* case, that the right side prevailed-even if it took 20 years to do so. With time and evolving understanding, a 1977 cliff-hanger became, in 1996, a secure 7-to-1 judgment.

EB: It was a great opinion. Before you got to the Court, you had also argued *Weinberger v. Wiesenfeld* [420 U.S. 636 (1975)], in which eight members of the Court again agreed with you, with Justice Douglas not participating. They agreed that another anachronistic provision of our laws- this one was a provision of the Social Security Act that said men could not get benefits-

RBG: Childcare benefits. The provision at issue in *Wiesenfeld* granted a special benefit to a sole surviving spouse who has in her care a child, a minor child or a disabled dependent of any age. It was a dramatic case. Stephen Wiesenfeld's wife, Paula, died in childbirth, and he vowed that he would not work full-time until the child, Jason Paul, was in school full-time. Every one of these cases presented a compelling real-life situation. To this day, I remain in touch with Sharron Frontiero (now Cohen) and Stephen Wiesenfeld. We took the *Wiesenfeld* case from the district court through the Supreme Court before Jason reached his third birthday, and that was record time. I presided at Jason's wedding and, just this summer, saw him, his wife Carrie, and their three children. I was in Aspen, Colorado, and was interviewed during my stay by a local television station. Jason and his family happened to be on vacation in Aspen, so I invited them to be my audience for this event.

All of the complainants in the ACLU's 1970s gender-discrimination cases were everyday Americans who felt they had experienced an injustice and had faith in our court system. They were not test cases we manufactured. We didn't look for a plaintiff like Stephen Wiesenfeld. He just came to us on the advice of a neighbor.

After Stephen prevailed, many husbands and widowers seeking retirement benefits or survivors' benefits under their wives' accounts stated claims and similarly prevailed. Social Security, like so many laws at the time, divided people into two tight categories. There were wage earners- they were men; and there were dependents-they were women. In all of the Social Security cases after *Wiesenfeld,* a man sought benefits based on his wife's earnings. They all fit the same mold.

EB: For several years, you were the only woman on the Supreme Court. I have read that you have said you didn't like it or that they didn't listen to you as well. I don't know if that's an accurate quote. Was there that feeling?

RBG: Not so much that they didn't listen. By the time I got to the Supreme Court, they did. I had that kind of experience in my younger days. But it was lonely. It wasn't right that there should be just one woman. You looked out in the

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courtroom. School children filed in and out, as many girls as boys. But when they looked up to the bench, there was only one woman.

For the 12 years Justice O'Connor and I overlapped, the public could see two women. They didn't look alike. They didn't talk alike. One was appointed by a Republican president, the other by a Democratic president.

Even so, every one of those 12 years, every year that Sandra and I served together, at least one time per term, a lawyer called me Justice O'Connor. They had become accustomed to the idea that there was a woman on the Court, and her name was Sandra Day O'Connor. That did not happen last term. Nobody called Justice Sotomayor Justice Ginsburg, and I think the same is going to be true with Justice Kagan.

EB: Did you envision a time when there would be three women on this Court?

RBG: Yes.

EB: In your time?

RBG: I was overly optimistic. In one speech or another, I said I expected to see in my lifetime three, four, maybe more. And when people asked me, well, what about that prediction? I said it came true in Canada. Canada's Supreme Court has nine justices; four are women including the Chief Justice.

EB: Do you want to make a prediction about how long it will take before there's a majority of women on our Supreme Court?

RBG: I think it's clear that women are here to stay, they are no longer curiosities, and three is one-third of the bench. That's a better representation than in the House and Senate.

EB: What has been your biggest surprise on the Supreme Court?

RBG: The collegiality of this place. I've been on two law faculties. I never worked in a place where people so genuinely care about each other. I know that from my most recent sorrow, the death of my husband, but also from the two cancer bouts I had while seated on the Court. My colleagues rallied around me and made it possible for me to continue.

And hope springs eternal. I was exceedingly fond of Chief Justice Rehnquist. In my years as an advocate, he dissented in all the cases in which my client prevailed, except *Wiesenfeld.* He was the Justice who said in the Gilbert case that discrimination on the basis of pregnancy is not discrimination on the basis of sex. Yet, he joined the judgment, although not my opinion, in the VMI case. And then, late in his tenure, he wrote the opinion upholding the constitutionality of the Family and Medical Leave Act. When I brought the opinion home to show to my husband, Marty, he said, "Did you write it?"

There is always the possibility of learning-living and learning-and I suspect Chief Justice Rehnquist learned the most from his own family situation. I never discussed this with him, but he was a very caring grandfather to his daughter Janet Rehnquist's two girls. Janet was divorced. I think the Chief served as a substitute father in his granddaughters' lives. So as one lives, one learns.

I'm always hopeful that my colleagues will agree with me. I'm more than occasionally disappointed, but hope springs eternal.

EB: What is the most difficult aspect of being a Supreme Court Justice?

RBG: For me it's by far the death penalty cases. They are not always difficult, not always intricate legally. But it is trying to be part of our system of multiple reviews. An employee in the clerk's office does nothing but handle

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An Interview with Justice Ginsburg

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last-minute applications for stay of an execution. I will never become accustomed to dealing with those cases and hope that, in time, they will no longer appear on our docket.

EB: Your nomination to the Supreme Court was confirmed by the Senate on a vote of 96 to 3, despite the fact that in your hearing you defended *Roe v. Wade* [410 U.S. 113 (1973)]. Obviously, the confirmation process has changed over the intervening years, and in a recent speech to the ABA, you noted that you wished this would change again. Do you think the current climate would discourage a president from nominating a person who had, like yourself or Thurgood Marshall, for example, been outstanding advocates for particular civil rights?

RBG: Yes. I don't think I would have had, frankly, a snowball's chance in hell of being nominated in today's climate. The ACLU connection just didn't come up at my hearings. Can you imagine that being so today? The White House was worried about my ACLU affiliation. I said forget it, there's nothing you can do that will persuade me to say anything derogatory about the ACLU, an organization that performs a vitally important role in our society.

It didn't come up. Then Senator Biden chaired the Senate Judiciary Committee. The ranking minority member was Orrin Hatch. He was entirely in my corner. He recalled in his autobiography that President Clinton called him before my nomination and asked, "On my list of potential nominees, who would be acceptable to you?" Hatch said, "Ginsburg and Breyer."

That doesn't happen now. The notion that only five Republicans voted for Elena Kagan, who is so very well qualified for the job, is unsettling. I wish a referee would blow a whistle and say: "Stop this, let's play fair." Just now it's payback time. It started with the Democrats, when they rejected Robert H. Bork's nomination. I was the beneficiary of a committee seeking to overcome its poor performance in the Clarence Thomas hearings.

EB: Recently, you said that you were not concerned about the future of *Roe v. Wade,* although some people have been worried about it. Can you comment on that?

RBG: *Roe v. Wade* was decided in 1973. Generations of girls have grown up with the notion that if they make a dreadful mistake, it's in their hands to decide what their destiny will be. The country will never go back to the way it was. Let's say *Roe v. Wade* were overruled. I'm not predicting that's going to happen, but suppose it did: At the time of *Roe,* four states provided for abortion for any reason or no reason in the first trimester: New York, Washington, Hawaii, and Alaska. Other states occupied a middle ground, permitting abortion where pregnancy resulted from rape or incest, or jeopardized a woman's health, including her mental health. The law was in a state of flux. It was changing. I compared the situation to no-fault divorce, which took the country by storm in 10 years. Abortion reform was heading the same way.

If the Court overruled *Roe,* you would have the situation that existed at the time of *Roe* itself. Then, a woman with the means to travel would have access to a safe abortion someplace in the United States. The sad truth is, were *Roe* overruled, only poor women would have no choice. There will never be a time when a woman who can afford transportation will be unable to choose whether and when to give birth. Current restrictions extend beyond our borders, I might note, affecting family planning grants to impoverished communities abroad.

I anticipate, too, that, over time, science is going to take care of this matter in large part. Women will have the protection they need without even a doctor's prescription.

EB: Do you have any tips for people who are arguing before the Supreme Court?

RBG: Ride with the waves, and don't show the pain you're experiencing when your prepared spiel is interrupted. Justices are constantly asking questions. If you welcome the Justices' questions, you'll do much better. It helps, too, to have a sense of humor when conversing with the Court.

EB: Do you have any views on televising oral arguments before the Supreme Court?

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RBG: My view is that as long as any one of my colleagues would be discomforted by it, I am not going to be in the ranks advocating televised arguments. Court control would be important, and coverage should be gavel-to-gavel. One can easily distort oral argument by splicing together snippets from discrete portions. My former colleague David Souter was the only Justice who had experience with cameras in the courtroom. He served on the New Hampshire Supreme Court, where arguments are televised. It was his impression that the lawyers sometimes performed in front of the camera in a way they wouldn't absent cameras; but worse than that, he censored his own questions, concerned that an inquiry a lawyer would understand might be misperceived by the public. So he tried to phrase his questions in a way non-lawyers could readily grasp. Sometimes that meant remaining silent or withholding a key question.

So long as any member of the Court would find oral argument an uncomfortable exercise if the argument were televised, then, as a member of a collegial bench, I would not favor television.

EB: The two new Justices like you come from New York.

RBG: We have all the boroughs represented here except Staten Island.

EB: Is this a particular delight?

RBG: Justice Scalia grew up in Queens, Sotomayor in the Bronx, I'm Brooklyn born and bred, and Elena hails from Manhattan. Though we are missing Staten Island, we have Justice Alito, who is from New Jersey, which is pretty close to New York. We are now a disproportionately northeast Court. But it wasn't so long ago that the Court included Chief Justice Rehnquist and Justice O'Connor, both from Arizona, a state with a relatively small population. Geographical diversity is an appropriate consideration, good to have but not essential.

EB: If you were to recommend any single book-this comes from a law clerk of mine-for lawyers or aspiring lawyers, what would you recommend?

RBG: One book I love is Jean Edward Smith's biography of John Marshall. It captures not only the man's brilliance as a jurist but his humanity. Another I would strongly recommend is Gerry Gunther's biography of Learned Hand. Both are great judicial biographies.

EB: Your son lives in Chicago, where he founded and heads the Chicago Classical Recording Foundation. Did he get his passion for music from you and your husband?

RBG: I don't think that we can take full credit for our son James's love of music. When my daughter Jane was born-she is 10 and a half years older than James - Marty was in service in Fort Sill, Oklahoma. Jane never had a feeding without something beautiful playing on the Victrola-a Beethoven symphony or an opera recording, for example. By the time James was born, we were both very much involved in our careers, so we were not compulsive, let's put it that way, about making sure that beautiful music was playing constantly. I noticed something about my dear son at an early age. He was what the school called hyperactive and I called lively. But if we took him to a concert, he would sit still and pay rapt attention. Last year, the Chicago Tribune had a feature, "Ten Chicagoans in the Arts," and James was one of the 10. We were so proud. His venture, as you mentioned, is the Chicago Classical Recording Foundation. He records artists who live in Chicago or have some other strong tie to Chicago, people who are extremely talented but have not yet achieved the full recognition they deserve. A number of them have had their careers take off-among them, Rachel Elizabeth Barton, Jennifer Koh, the Pacifica Quartet.

EB: If you were to have chosen a profession other than law, do you have any idea what it would have been?

RBG: You have to add to that, "and if I had any talent God could give me." Then I would be a great diva, which I am sometimes, but only in my dreams, for to tell the truth, I'm a monotone, rated by all my grade school teachers as a sparrow, not a robin. But in my dreams, I can be Maria Callas, Renata Tebaldi, Beverly Sills, or Marilyn Home.

A Historic Chief

*By Steven J. Dollear**

This past summer Judge Rebecca R. Pallmeyer made history. On July 1, 2019, she became the first woman to serve as Chief Judge of the United States District Court for the Northern District of Illinois in the court's 200-year history. When I asked about her new role and being a pioneer for women, Judge Pallmeyer demonstrated the humility and dedication for which she is so well known, stating:

> It's an enormous honor and a privilege. There are so many women, just as capable and determined as I am, who were denied the privilege to serve in a role like this. I intend to do the best job I can, to honor those who have gone before me and to inspire a future generation of women and men.

Judge Pallmeyer's historic appointment was made possible by former Chief Judge Rubén Castillo's decision to step down early, after six years of service as Chief Judge. He announced this decision, fittingly, on International Women's Day. Judge Castillo was also a pioneer, serving as the first Latino district court judge in Chicago, and later the first Latino Chief Judge. In an email announcing his decision, Judge Castillo wrote: "I am extremely pleased to be followed by someone who so deeply loves the Court." Judge Pallmeyer described Judge Castillo's decision to step down early this way: "It was an act of vision and of generativity — a gift not only to me, but also to so many women and girls who believe they should not only have a place at the table, but are entitled to sit at the head of the table."

Earlier in her career, Judge Amy St. Eve, who now serves on the United States Court of Appeals for the Seventh Circuit, tried a criminal case before Judge Pallmeyer as an Assistant U.S. Attorney. Judge St. Eve later served as her colleague on the district court for many years. Judge St. Eve shared

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**Steven J. Dollear is an Assistant U.S. Attorney in the Office of the United States Attorney for the Northern District of Illinois, and currently serves as the office's Chief of the National Security and Cybercrimes Section. He previously served as a law clerk for Chief Judge Pallmeyer after graduating from Marquette University (1996) and Loyola University Chicago School of Law,* summa cum laude, *where he served as the Editor-In-Chief of the* Law Journal.

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the enthusiasm over Judge Pallmeyer's selection, stating:

> It's about time we have a female Chief Judge in the Northern District of Illinois! I am thrilled that Judge Pallmeyer is the first woman Chief Judge and very grateful that former Chief Judge Rubén Castillo stepped down early to make this historic event happen. Her leadership, patience, experience, and intellect will contribute to her being an outstanding Chief Judge and a role model for all female judges and lawyers.

Corinne Heggie, President of the Women's Bar Association of Illinois, described Judge Pallmeyer's new role as "demonstrat[ing] that women are and should absolutely expect to be leaders in the law."

I clerked for Judge Pallmeyer many years ago, and it remains a highlight of my legal career. While I respect the humility Judge Pallmeyer has shown toward her historic position, the inspiration she provides to future generations — of lawyers and professionals of all backgrounds — cannot be overstated. I am privileged to be the father of three girls. Throughout the years, my wife and I have read bedtime stories to them — and later, they read bedtime stories to us — about women who have been trailblazers in their fields, often shattering long-held and misguided beliefs about what women can accomplish. They have opted to do book reports and class presentations on these same stories. They did not, however, know any of these trailblazers personally. That all changed with the announcement of the new Chief Judge. When I told my girls the news, they beamed. They were always proud of Judge Pallmeyer, whom they have known as a judge, their dad's former boss, summer barbeque host, and Girl Scout presenter. But now she inspired them in a new way; she was another piece of evidence that no one should hold them back. As an added bonus for me: I won some amount of credibility in their eyes simply because I once had the good fortune of working for this pioneer.

I know my girls are not alone. At the special ceremonial session to welcome Judge Pallmeyer as the court's Chief Judge, Alan Lapp, a former clerk and friend of Judge Pallmeyer, noted that his daughter's future "now brims with even greater possibilities because of the judge's willingness to teach others, to work hard, and to pursue life with intense curiosity."

Judge Pallmeyer is well-positioned to take on her new duties. While Chief Judge may be new to her, public service and taking on challenges are not. For over three decades, she has dedicated her career to public service. After studying at Valparaiso University and earning her law degree from the University of Chicago, she served as a clerk to Judge Rosalie Wahl on the Minnesota Supreme Court. Judge Pallmeyer learned about the law from Judge Wahl, but her old boss also taught her about what it means to take a new path. Judge Wahl was the first woman to serve on the Minnesota Supreme Court.

After a few years in private practice, Judge Pallmeyer started her career in public service. The love of public service was first instilled by her parents, who were both in service professions — her mother a teacher and her father a minister. Judge Pallmeyer's path began as an administrative law judge for the Illinois Human Rights Commission. The changes from her previous life at a firm were stark. The pay was drastically less, and her office was absent doors and computer equipment, although it was well stocked with broken furniture. But she loved her new life. Recalling the experience, she stated: "I was so happy to be doing something good, and feeling that I could be good at it."

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Despite the many challenges, she knew she wanted to stay in public service. Judge Pallmeyer explained that she does not view public service as a sacrifice: "I might make more money in private practice, but I would never be confronted daily with so much interesting, challenging work. It is enormously satisfying to be in a job in which my most important responsibility is to do what's right."

Years later, Judge Pallmeyer was selected as a United States Magistrate Judge for this Court. Then in 1998, she began serving as one of its district court judges. Judge St. Eve was an AUSA assigned to Judge Pallmeyer's first criminal trial. Judge St. Eve stated that Judge Pallmeyer distinguished herself from the start:

> She was a wonderful, thoughtful judge who was very prepared for the complexities of the trial. I was also impressed with the way she handled her courtroom and treated the jurors with such respect. When I became a judge, I certainly tried to emulate certain practices she employed during the trial.

Judge Pallmeyer later presided over the six-month criminal trial of former Illinois Governor George Ryan. Any trial is taxing for all involved, but a six-month trial is excruciating. And so many eyes were on this particular trial. Patrick Collins, the trial's lead AUSA, shared what stood out for him most about Judge Pallmeyer during that time:

> In little and big ways, she worked tirelessly to ensure that both parties received a fair trial. She was loath to cut off examination of a government witness, so that the jury could hear the good and the bad. She was an engaged listener in each side's argument on every occasion, and even though both sides fought hard, we came in to her courtroom each day with a clean slate. She never held a grudge for the zealous (and occasionally overzealous) advocacy, and respected that both sides were doing their very best for their respective clients.

When I recall Judge Pallmeyer's stories from the Ryan trial, I am most impressed with her ability to maintain perspective. Despite the demands on her that the case presented, and the high expectations she had — and always has — for herself, she never lost sight of the importance of family. She always managed to make time for her children and husband. She also views her clerks as part of her extended family, and always makes time to mentor them long after the clerkship has ended.

As I said at the outset, Judge Pallmeyer made history this summer. She actually made history twice. In July, she was appointed Chief Judge, but at the end of August, tens of thousands of people — the largest crowd of which I am aware — gathered to watch Judge Pallmeyer carry out a different kind of official duty: throwing out the first pitch at a Cubs game at Wrigley Field. To no one's surprise, Judge Pallmeyer approached this duty like all her others, with great preparation, tenacity, and humility. By all accounts, she did the district court proud. Something she will continue to do for years to come as Chief Judge.

Writers Wanted!

The Association publishes The Circuit Rider twice a year. We always are looking for articles on any substantive topic or regarding news from any district — judges being appointed or retiring, new courthouses being built, changes in local rules, upcoming seminars.

If you have information you think would be of interest, prepare a paragraph or two and send it via e-mail to: Jeffrey Cole, Editor-in-Chief, at Jeffrey_Cole@ilnd.uscourts.gov or call 312.435.5601.

AN INTERVIEW WITH

Judge Charles P. Kocoras

EDITOR'S NOTE

*By Jeffrey Cole**

On September 19, 2019, as part of the celebration of the 200th Anniversary of the United States District Court for the Northern District of Illinois, Judge Charles Kocoras was interviewed in the Ceremonial Courtroom in Chicago by his son, John, who is the First Assistant United States Attorney for the Northern District of Illinois – ironically, the very job Judge Kocoras once held so many years ago. The Interview could not be more captivating and inspiring. It begins with the Judge's parents' immigration from Greece and concludes with the Judge's observations about what it has meant to him – and ultimately to all of us – to be a federal judge for the last 40 years. But the interview is so much more than a mere collection of the Judge's random memories about events in his life. Its dominating themes focuse on the importance of hard work, dedication to family and adherence to sustained effort and those ideals that make life worth living. The Judge's reflection on those enduring values that have shaped his life have the capacity to inspire all of us – if only we take sufficient care to listen to what the Judge has to teach.

The interview, of course, gives us a sense of the extraordinary and exciting life of one of our most beloved judges. But it does much more, and in the ultimate lesson it teaches lies its real and enduring value. We begin with the remarks of Chief Judge Pallmeyer, introducing Judge Kocoras.

* * *

Chief Judge Pallmeyer: Good afternoon. Welcome to the Court at the Heart of America and to a very special event in the Judicial Interview Series that we have been conducting. I know it is no longer a secret to anybody that we are celebrating the court's 200th anniversary. It is my honor to serve as Chief Judge of the court and a particular honor to introduce today's special guest, once the Chief Judge himself…

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**Jeffrey Cole is a United States Magistrate Judge in Chicago and is the Editor-in-Chief of* The Circuit Rider. *The Interview's length (86 transcribed pages) and the limited space of* The Circuit Rider *required some hopefully "judicious" editing.*

An Interview with Judge Charles P. Kocoras

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He earned his undergraduate and law degrees at DePaul, a school that is justifiably proud of their law school valedictorian. A significant legal career followed, including years as an Assistant United States Attorney, as Chair of the Illinois Commerce Commission, as partner in his own law firm. He presided over many newsworthy cases, some of which I suspect we will hear about today. He stuck around long enough to become our Chief Judge… Judge Kocoras, with his words of wisdom, his enthusiasm, his sense of humor, and his demeanor of dignity and humility is a treasure in this courthouse, one of the reasons that we refer to the court family. [Judge Kocoras will be interviewed today by] his son, John Kocoras, who is First Assistant United States Attorney --a position …Judge Kocoras, held under two different United States Attorneys.

John Kocoras [hereinafter "Q:]: thank you, Chief Judge Pallmeyer. And thank you, Judge Castillo, for your important role in this, as well. And thanks to our family and our friends for getting together here to talk about one of my favorite subjects, my dad. So, I am going to jump in with a question I get asked most often about you. How old are you?

Judge Kocoras: That is all people want to know? (Laughter.) I am 81.

Q. Do you have any plans to retire?

Judge Kocoras: No, I don't.

Q. Good. Where were you born?

Judge Kocoras: In Chicago, Illinois. We lived at 6614 South State in Chicago. And when I was 6, I moved to 7105 South Lafayette, just west of State Street in the Englewood neighborhood. And I lived there until I was about 18, when the house was condemned for the Dan Ryan Expressway.

Q. What were your parents' names?

Judge Kocoras: My father was named Petros and my mother Constantina. My mother was from Korinthos and my father was from a little village in Greece called Valtetsi, which was the site of one of the principal battles in the Battle of Independence from the Ottoman Empire in 1821.

Q. So both were immigrants [from Greece]. You were born here, and what language did you speak at home?

Judge Kocoras: Almost exclusively Greek.

Q. Do you know why your dad came to the United States?

Judge Kocoras: Yes. And I will tell you the story, which is different from why I had assumed he came, namely for a better life. In 1984, when I first went to Greece -- the first time I went to Valtetsi, Greece, I talked to a lot of the town people, some who lived when my dad first came or, through ancestry, knew the story of why my dad came. And here was the real story, which my dad never told me.

Valtetsi was a mountainous village and you couldn't raise any crops. There was no manufacturing and the family wealth was measured by how many sheep you had…. Someone came along and stole the sheep my dad was determined to get the sheep back. And he did. But he wound up in a fight with the thief and he thought he killed him. He put some rocks over him and he went home and told his mother what had happened.

They found out later that he didn't kill the fellow, but he was severely wounded. And my grandmother told him that he wasn't going to be able to stay in Greece because he either was going to get killed by this man or he was going to have to kill the man…. My grandmother also mentioned the possibility of police involvement.

So, they hurriedly gathered up as much money as they could and he came to America to save himself from further consequences. I don't know if that made him an outlaw or what – but they can't take away my judgeship. (Laughter)

Q. Did you have brothers or sisters growing up?

Judge Kocoras: I have three sisters: Helen, Frieda and Charlotte, who is here. She is my only surviving sister. And there I am. (indicating). (Picture displayed.) Yes, I am the good-looking one on the right. (Laughter)

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Q. What did your dad do for a living once he came to the U.S.?

Judge Kocoras: He was a wholesale dealer in fruits and vegetables, essentially. He initially worked on a railroad as a water boy, because he was just a kid. He wound up in Utah. And then he gravitated to Chicago and he got into the produce business. In those days, a produce and wholesale dealer was prominent because supermarkets hadn't come into existence. It was not uncommon for fruit peddlers to go down the alleys with their horse and buggy and holler out and sell the produce to the ladies of the house, or whoever. And, so, my dad would go to the market; buy the goods wholesale, buy them and sell them to these peddlers and little ma and pa grocery stores, until, of course, things changed.

The neighborhoods my dad picked to live in, essentially, were sprinkled heavily with Greeks – people of his ethnicity. But that is true with Italians and Polish people. That is just the history of migration to the States. Certainly, of Chicago. And, then, as you made your way in life and in society, and made some money, the need to be connected to people of your kind, lessened and people started to spread out.

Q. Some of these fruit peddlers, with whom he worked, ended up living with you?

Judge Kocoras: Yes. The house was actually like a factory building. The first floor was where many of the peddlers kept their horses. And, upstairs, we had twenty-three rooms. And my poor mother would cook. These were mostly single men; some of them were married, but their families were back in the old country. My dad not only had them as customers, but he gave them a place to stay. My mother would cook meals not only for our family, but for everyone else in the house.

Q. What was your mom like?

Judge Kocoras: She was a disciplinarian. She saw to our care and feeding. She was never versatile in reading or writing English. But education was emphasized tremendously in the Greek community, and as in other groups like that. Even though my mother could not read, she would look at your report card and she knew what the best grades were. One time I brought home a G. E was the best. She asked me what that G was, because that was the first time she had seen it. So, I told her it literally stood for "good" and it meant "good," and she knew better. She told me, "Don't ever bring a G home, again." (Laughter)

Q. What was it like being the only boy in a traditional Greek family?

Judge Kocoras: Well, if you ask my sister, she will jump at me if I misstate it. But the boys were spoiled, and my other sisters always threw up to me, that I was the "prince" of the household, and so on. And I got special treatment. But they overstated it – (Laughter)

One tradition in the market, whether you were, Greek, Italian, Polish, or Jewish was when a son was born to the family, the writing on the truck changed. Instead of, "Petros K. Kocoras Wholesale," it was, "Petros K. Kocoras and Son." So, at birth, I was my dad's business partner immediately. (Laughter)

Q. How old were you when you lost your dad and how did your life change?

Judge Kocoras: Well, it changed materially because while I may have been viewed as the prince of the household, then all of the responsibilities came to me. I was all of 18. It is tradition that the oldest male in any family was responsible if something happened to the parents. And, so, I became responsible – for my sister's welfare, because she was younger than me, and for my mother. Basically, all of the responsibilities descended downward.

Our house ultimately was condemned for the Dan Ryan and the price they were going to pay was $18,000. I wasn't sophisticated or smart enough to hire a lawyer. So, I went downtown to argue that $18,000 wasn't going to be sufficient to buy a replacement house, which would cost at least $5,000 more. My dad had ended his business. He was really quite old. His health was not good. Anyway, maybe as a precursor to what I later became as a lawyer, I went down and argued vigorously for more money. And, so, I was successful – sort of. They gave us a hundred dollars more for my argument. (Laughter.)

I was embarrassed to come home and tell my mother, "We got another hundred dollars." She didn't say anything about my poor representation of the family. (Laughter.)

Q. You keep some remembrances of your dad close to you at work?

Judge Kocoras: I do, yes. When I went to his village in Greece, there is a tree in the square, which is the center of town life. And, so, when I went there, I took a picture of the tree, which I have on my bench. And I look at it every day. And I have his business card. And that follows me. I have had a number of courtrooms in the courthouse here. That business card travels along with the picture of the tree.

Q. Where did you go to college?

Judge Kocoras: I went to Wilson Junior College for two-and-a-half years, which became Kennedy-King. I started in '56 – from '56 to '58. And, then, I worked while I was going to Wilson. My father died around the time I started college. And, then, I transferred to DePaul and then, I finished DePaul downtown, while I was working in a liquor store, the fruit store having closed. I graduated in '61. And, then, I went into the Service.

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Q. So, there you are, right, in the liquor store? (Picture displayed.)

Judge Kocoras: There I am about, I don't know, 14 or 15 years old in the liquor store. We weren't permitted to drink, by the way. (Laughter.)

Q. So, how long did you work at the liquor store?

Judge Kocoras: Until I graduated from DePaul. When I finished college and was getting ready to become an accountant, which was my intended profession, the man I worked for who was as marvelous a human being as you can imagine, offered me a partnership in not only the liquor store, but in all of his business ventures. I was working my way through college, to get away from the market, and start a profession and do something different. Had I taken his offer, I could have retired twenty years ago. (Laughter.) But I declined and decided to finish school and practice my profession of accounting. I got a Bachelor of Science and Major in Accounting in 1961.

Q. And at some point you joined the Army National Guard; is that right?

Judge Kocoras: Yes. At that time, there was a draft… my youngest sister had married. And, so, I didn't think it was going to work out for me to leave home and leave my mother, because she would be alone and I didn't know if she could navigate things. So, I thought two years away from home wasn't such a great idea, so, I joined the National Guard reserves… And the six months' active duty followed my graduation from college and before I started my job.

Q. What was your first job out of college in accounting?

Judge Kocoras: I became an Internal Revenue agent. I was a field auditor and went out and audited businesses. I did that for two or three years. And, then, they asked me to teach new agents in income tax law.

So, I came downtown here, to this very building, and started teaching revenue agents tax law. You would spend four hours in the classroom Teaching; the other four hours you would spend preparing the lessons that you were going to deliver. It was fortuitous that I was in this building because courtrooms were here, as well. And I couldn't resist going up and watching trials. And I was – "fascinated" is not the right word. "Mesmerized" is probably too strong. But I couldn't get out of the courtroom. I loved to watch trials: their formality, the grandeur of presentations, how good lawyers were.

And it was my first, if you will, connection to the idea of practicing law. I had no thoughts ever of going to law school, but I couldn't stay out of the courtroom. And I became a "court buff" – which is what we used to call it in the old days. The retired people -- forty or fifty at a time -- who would roam the halls looking for trials. And they would go and watch trials instead of going to the theater or going to the show or doing something else.

I became, if you will, a part-time court buff. (Laughter.) And the first notion of perhaps me one day being a lawyer, as farfetched as it was for me at the time, apparently took root at that time.

Judge Kocoras: Some years later, I actually went to law school. There were about three or four years in between. I was in my mid-to-late 20s when I decided to go to law school.

Q. And you worked as a revenue agent that whole time?

Judge Kocoras: Yes

Q. Where did you go to law school?

Judge Kocoras: I went to DePaul Law School at night. They had a program where you would go four nights a week, for two hours a night. It took four years, but I graduated in 1969, while I was working at the liquor store.

Q. And what type of lawyer were you thinking about being?

Judge Kocoras: The obvious path was to be a tax lawyer, and when I graduated law school, I left the IRS and went to a small tax firm. But, by this point, I began to think lawyers should be in a courtroom.

Q. I want to turn to your graduation in 1969. And there you are. (indicating). (Picture displayed.)

Judge Kocoras: Oh, yes. And there is the Mrs. – my mother and my wife (Laughter.)

Q. So, tell us how you met Mom.

Judge Kocoras: This is another true story. (Laughter.) We were not dating anyone at the time and mutual friends thought we should get together. They gave me her phone number. But I still found it very difficult, even at my advanced age, to call somebody up I didn't know and introduce myself and see if I could induce them to go out with me. (Laughter.) Today's world is entirely different, but that is how it was in that time.

And, so, I was going to night law school, living with my mother, and the day was April 4th, 1968. For the historians in the group, that is the day Martin Luther King Jr. was assassinated.

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An Interview with Judge Charles P. Kocoras

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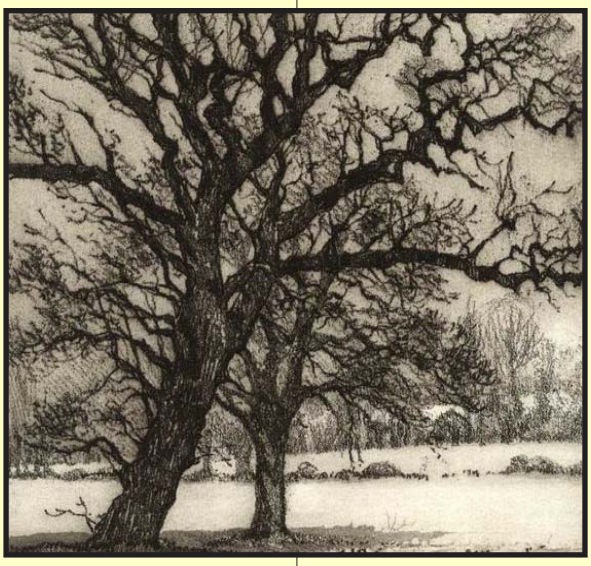
I found that simply just devastating news. And I was despairing of the welfare of the country….We had lived through JFK's assassination in 1963. And even though there was a separation in time, it was just a lot to bear. And I was despairing of the future, quite frankly….And, so, I had this phone number of your mother and I called her up, just for somebody to talk to. And we did talk. And I was in such a crazy frame of mind, early in the conversation I asked her if she would be willing to leave the country with me and go to an island in Greece. (Laughter.)



Q. And, still, this actually worked out -- this relationship. I have no idea how. (Laughter.)

Judge Kocoras: At least she didn't say, "Are you crazy?" (Laughter.) Anyway, she agreed to go out with me that weekend, which was another piece of insanity because, if you remember -- well, maybe you don't remember -- (Laughter.)

Q. I come later in the story.

Judge Kocoras: Yes. (Laughter.) Anyway, Chicago was rioting but we decided to go downtown to the show from the South Side of Chicago. Well, there were fires and all of this stuff going on in the City. Somehow, we made it, and saw the movie the Graduate. But we hit it off through all of that turmoil. And we went out, again. She went to Florida after a week, and we continued to date when she came back. Things happily proceeded quickly and we were married in six months. It was better than going to an island in Greece. (Laughter.) We have now been married for 51 years and have three boys.

Q. Which one is your favorite?

Judge Kocoras: You. (Laughter.)

Q. How many grandchildren?

Judge Kocoras: We have four grandchildren.

Q. Do you like being a grandfather?

Judge Kocoras: I adore it.

Q. So, you talked a little bit about after law school and thinking about being a tax lawyer and having some itch to get into a courtroom. Did you pursue that?

Judge Kocoras: I did. I applied for a job at the U.S. Attorney's Office when Tom Foran was the U.S. Attorney. Tom was in the middle of trying the Conspiracy 7 case and I was told by his First Assistant, "There has been an election. Tom will be out of office soon." So, he was going to pass my resume on to his successor. But I was starting to itch to get into a courtroom and I couldn't be sure of what the successor might do or whether they would even look at my resume. So, I applied for a job as an Assistant State's Attorney in Cook County. The first question he asked was how I managed to get the interview. I didn't understand then that was code for, "What is your clout," or, "Who is your political sponsor?" Because I didn't have one. And the way I got the interview was someone I was in class with had arranged for me to come and be interviewed. I had applied for the job.

So, three weeks later, I got turned down. So, then, I re-applied to the U.S. Attorney's Office and, thank God, Bill Bauer was in office…. There he is [pointing to Judge Bauer in the audience]. Dan Webb and I, we were going to be interviewed by Sam Skinner. And we were both in the office. I don't know what Dan was thinking, but I am thinking we were both here for the same job and only one of us is going to get it. (Laughter.)

I think we both had previously been interviewed once before. And, of all things, we were both offered the job on that occasion. And we met -- not "met," we had seen -- Bill, and we saw Jim Thompson, who was at that time the First Assistant, and we both got hired. And, then, we just arranged who was going to start first. There were four of us in the Complaint Unit: Dan, Ty Fahner, Tex Griffin and me. And we got, I would guess, 80 percent of the criminal cases that came into the office. Wouldn't you say that, Dan?

Mr. Webb: That's correct.

Q. The number seems to grow each year. (Laughter.)

Judge Kocoras: No, no, no. So does my age. (Laughter.) Ty Fahner, who was in the Complaint Unit, later became Attorney General of Illinois; and, then managing partner at Mayer, Brown. Tony Valukas was also a little ahead of us, but a spectacular lawyer, became First Assistant later for a short while under Sam Skinner and became the Managing Partner at Jenner & Block.

There (indicating Dan Webb) is the kid from Bushnell, Illinois.

Q. That is Dan Webb?

Judge Kocoras: Yes, Dan Webb. And that (pointing to the displayed photograph) is Howard Hoffmann, who became my

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trial partner in the biggest case he and I ever -- tried, and one of the most significant prosecutions during our stay there. The picture shows us fishing in Canada and before the picture was taken, we were drinking lots of beer. Breakfast was a case of Molson's. (Laughter.) We went on fishing trips for, I don't know, how many years, but a lot of years.

Q. So, what did you consider to be the most significant case that you prosecuted in the U.S. Attorney's Office?

Judge Kocoras: It was a case the papers called the Hit Squad Case. We investigated it for months on end. We thought that members of the Chicago Police Department -- and a police sergeant was the target – were killing people for hire. That case started when, at various times preceding the federal investigation, the bodies of young African American males were being found in the river, like a month apart. They were called the River Killings. And no one could solve those cases. And there was no apparent federal jurisdiction.

The FBI had a young African American lad who became an informant and managed to worm his way into this group we were investigating which included Sergeant Stanley Robinson. We never solved the River Killings, but we believed we and had evidence that Sergeant Robinson and others were killers for hire. We indicted Robinson, another police officer, and a drug dealer. The case lasted two months. Two of the three were convicted; the third defendant was acquitted. He had an alibi on the day of a particular killing. In those days, there was no alibi notice statute. So, I knew in my bones there was going to be an alibi defense. I didn't know how it was going to be presented or what it was going to consist of, but there was no way as prosecutors we could find out what it was. And he was represented by a terrific lawyer, Gene Pincham.

Sure enough, the defendant got on the stand and testified he was fishing in Wisconsin, didn't talk to anybody, didn't stop and have lunch, didn't buy gas, didn't buy anything, fished by himself and came back to Chicago. Now, I knew that was baloney. But we didn't have anything to counter that.

But I will tell you a cute incident. So, it was my job to cross-examine him. He took the the stand at 2:00 in the afternoon. And, so, I got to cross somewhere around 3:30. And our plan was to keep him on the stand at least overnight, so the FBI could send out people to see if they could find something to jam up his alibi, because I was convinced it was phony. Howard got to cross-examine Robinson. And we had a book he wrote that was used; fertile for cross-examination. But I had the other defendant and we didn't have anything to cross-examine him with. But I can't be mad at Howard, because he is gone now and I miss him terribly, but that is how it played out.

So, I am cross-examining this defendant, a fellow named Tolliver. I had to keep him on the stand. And I kept starting to ask him the same question over and over, again. And, finally, Gene Pincham objects and he says, "Judge -- Phil Tone was the judge, who I thought walked on water as the most spectacular judge I had ever appeared before – and Gene Pincham says, Judge, that is the third time he has asked him that question." And it was true, it was the third time. (Laughter.) But I couldn't say, "Judge, I have to keep him on the stand until you recess at 5:00." So, I made some stupid explanation why it was a different angle or something. Somehow I kept him on until 5:00 o'clock. And, then, the FBI tore to Wisconsin and tried to find out some chink in the armor of the alibi. And we didn't find it and, ultimately, he was acquitted. The jury thought we didn't prove it beyond a reasonable doubt. They didn't think he was innocent, but that jury did what they were supposed to do…So, that is what happened in a case that took two months to try, and in which I lost 30 pounds trying that case.

Well, I wanted to be a trial lawyer. That is the price you pay. (Laughter.)

Q. You tried Mr. Silvern? So, for those of us who practice criminal law, and in federal court, we are familiar with the Silvern instruction.

Judge Kocoras: Yes. I wasn't the chief lawyer on that case, but my trial partner let me try half the case. It was one of the first big cases I had. Silvern was what we would call an ambulance-chasing lawyer. And Tom Sullivan was his lawyer. I thought we had a rock solid case, and so did my trial partner. But Sullivan was really terrific in the courtroom.

So, the jury goes out. And I think they are going to come back in a few hours and we are going to win. This is a slam dunk. Little did I know. Twenty hours later, the jury comes in and they convict Silvern, but only on a few counts, and they acquit him on a few counts….Judge Austin, the trial judge, thought maybe the jury was going to deadlock, so, he created an instruction -- known now as the dynamite charge. That tells the jury, basically: "Do what you can to decide this case, because if you can't, somebody else is going to have to and we don't want to go through that." That was the Allen charge, now the Silvern charge.

I don't know if I can tell this story.

Q. Tom Sullivan later to become the U.S. Attorney?

Judge Kocoras: Yes. And my boss. I was First Assistant to Sam Skinner in the office. It is traditional, that when the U.S. Attorney gets changed, the First Assistant goes out the door right along with the U.S. Attorney. But, for whatever reason, Tom kept me on as his First Assistant. And I am forever thankful that he did that because he became very important to me, in terms of me winding up as a judge... It was easier to become a First Assistant then than now. (Laughter.)

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Q. You interviewed Judge Bauer not long ago as part of the 200th Anniversary celebration. And one of the themes in that interview is that Judge Bauer is, essentially, the father of the modern U.S. Attorney's Office.

Judge Kocoras: There is no question about it. And this is not to demean anyone who came before. Tom Foran, I am sure, was very, very good. And I knew Tom. And I had a lot of respect for him. So, I can't speak to it. But I can speak to Judge Bauer's administration, followed by Jim Thompson, followed by Sam Skinner, followed by Tony Valukas, and Dan Webb.

From '70 to '72 Judge Bauer hired people based on merit and he didn't care where you came from. And he didn't want any sponsors. He wanted to know whether you did well in wherever you were before: "Did you do well in school? Did you have the makings of a good prosecutor," however you divine that? And the Office was exclusively, in my view, based on merit selection. I know that was true under Tom Sullivan, and I know it was true under Sam Skinner. And that Office, even to the present day under John Lausch, who I know from when I was Chief Judge, that Office couldn't be manned with better people and higher-credentialed supervisors. And it has been, I think, a remarkable history of quality prosecutions.

Q. So, I would like to share some words from Judge Bauer, and consistent with what you just said. Judge Bauer said, "The greatest contribution, I think, the United States Attorney can make in an area like this is to surround himself with great and outstanding talent and then get the hell out of the way so that they can do their work. I did that."

And here is what he said about you: "Of all of the people I selected, however, none is superior to Chuck Kocoras. You all know he is intelligent. You know precisely what he has done. You know he is a man of great integrity and ability, and so on. What I would like to add to that is that he is one of the most intensely human men I have ever met in my life. He has a failure: He has a heart as big as all outdoors. If there is a failing you should bring to the bench, that is the one: A sense of compassion for your fellow human beings, a knowledge that we are all somehow sinners and everybody accused includes us. "He has never forgotten what it means to be a decent human being and I predict he never will." So, Judge Bauer said that about you. And he has made good on his prediction because he said that 39 years ago at your swearing in.

Judge Kocoras: Oh. (Laughter.) [Looking to Judge Bauer] Have you changed your opinion? (Laughter.)

Q. So, when did the possibility of you becoming a judge first emerge?

Judge Kocoras: When I became Chairman of the Illinois Commerce Commission. I reluctantly left the Office as First Assistant, because I felt an obligation to go to the State and work for Jim Thompson.

Q. Jim Thompson had been U.S. Attorney?

Judge Kocoras: He has been U.S. Attorney, and I worked for him for years. And he was very kind to me and to everyone in my group. And I didn't want to leave, but I was told I was -- I could be trusted. I told him I –

Q. He became Governor?

Judge Kocoras: Yes. And, he knew he was going to run for re-election. And the Illinois Commerce Commission sets all of the rates for electricity, telephones, intrastate trucking, gas and electric. So, it is a big consumer concern who is running the Commerce Commission and are they pro-government, pro-consumer, pro-utility. And, so, I told the Governor "I don't know this job and I won't be any good." And I was told, "Well, he trusts you," and he thought I would not do anything crazy. So, I finally agreed to take that job. And somehow he was prescient enough to know that the Commerce Commission was going to be a whipping boy. So, he wanted at least somebody there who wouldn't, he didn't think, "screw it up." So, that is how I got that job. But I didn't like it. (Laughter.)

Q. So, what year did you leave the U.S. Attorney's Office?

Judge Kocoras: In 1977.

Q. And you had been First Assistant U.S. Attorney?

Judge Kocoras: Right.

Q. And you actually were U.S. Attorney for a time, right?

Judge Kocoras: Yes. For ten days. There was a conspiracy to give me the title. Sam Skinner agreed to leave, and Tom Sullivan agreed not to start right away, so I could be court-appointed.

So, maybe my picture should be down on the wall.

Q. Yes. Right, right. (Laughter.)

Judge Kocoras: Technically, the shortest tenured U.S. Attorney in history. That is me. (Laughter.)

Q. So, you go to the Commerce Commission, but you don't like it?

Judge Kocoras: I was not crazy about it. And I don't think I am any good at it -- quite frankly. But I wound up doing it for about two years. But during that time period, I did -- I made one of the stupidest decisions I ever made, although I ultimately recovered.

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Tom Sullivan came to see me at some point early in my tenure there and asked me if I would be interested in being a federal judge. I stupidly said, "Not now. I am in this State job and I have a family." I wanted to make some money. Privately I thought it is, like, "When I am ready, I will let him know when I am ready." Of course, it doesn't work that way. (Laughter.) So, I told him, "No. I have to make some money when I leave here. I have a family," and so on. But I left as soon as the election was over and the results were confirmed, and Thompson was the winner.

Q. And where did you go when you left the Commerce Commission?

Judge Kocoras: And, then, I went to Stone, McGuire, Benjamin & Kocoras. And Howard Stone is here, my then partner. I enjoyed it. I was a criminal defense lawyer, and I had a nice career. But the idea of being a federal judge surfaced in my mind, and I thought, "How could you be so stupid to tell Sullivan you are not interested in being a federal judge?" (Laughter.)

Q. That money for your family idea got suppressed? (Laughter.)

Judge Kocoras: Somebody wisely told me, "Money is not everything." So, I called to see if the possibility of presenting my credentials was still open. And I was told, "No, it wasn't. That vacancy has been filled." So, I stayed at what was then Stone, McGuire, Benjamin and Kocoras for two years, when the opportunity again for me to be considered for a judgeship. And, then, of course, at this point, I had made some money. Thank you, Howard, for enriching me. And, so, I made some money; I paid some bills; and, thought, "Yes, I definitely would like to be a federal judge, if I can do it."

Q. Tell us a little bit about the type of work you did while you were at the law firm?

Judge Kocoras: At the firm I, basically -- well, Dan [Webb] was kind enough to send me a case or two, criminal -- federal criminal – work and we did some regulatory work. As a commissioner, people came to me and they had issues with the Commission. So, I had represented some people before the Commission and did some criminal cases, including a case with Dan Webb. We tried the case, won it and had the grandest victory party you can ever imagine. (Laughter.)

Q. So, then, walk us through how it was that you ultimately did become a judge when you reconnected with Tom Sullivan on the issue.

Judge Kocoras: Well, I told him I would be interested. And he submitted my name. I had an interview with Senator Adlai Stevenson, III who was a Democrat. He didn't know me from Adam. And I didn't know what he knew of me. But apparently it went okay and he forwarded my name to the White House. I had worked with Governor Thompson and others who were aligned with the Republican party, but that wasn't a factor for the Senator.

I think he was looking for merit. That had been the tradition in Illinois for a while. Senator Charles Percy had started it. He would put on people who he thought would make the best judges. Senator Percy was a Republican. Pren Marshall was a Percy appointment. And Stevenson put me on. I wasn't a Republican or a Democrat. I just voted the way it was. I was never in partisan politics. But, to his credit, Senator Stevenson never raised that, and it wasn't an issue. I think Senator Durbin is similar. They are putting on people that they think are good people, talented lawyers. And they have spent -- and I think the Republicans did the same thing with the congressmen now.

My court -- this court that I sit on -- I think is just so terrific, both quality-wise and diversity-wise. I happen to think we have the best court in the country. There is no data to support that, but I know the people. They are my colleagues and I know how good they are and how they judge. And I am just -- I can't tell you how proud I am of this court and being a part of it. Our recent appointees, I think, are off-the-charts good. And it has been that way for a good while.

Q. When were you sworn in as a federal judge?

Judge Kocoras: November 24th, 1980.

Q. So, I have some photos from that. (Picture displayed.) There you are at your swearing in. And, then, tell us who else is in the photo?

Judge Kocoras: That is Governor Thompson, my wife and Stuart Cunningham, who was the former Clerk of this court for years.

Q. And the other one?

Judge Kocoras: Oh, there you are.

Q. Yes, that is me. That was my first court appearance. (Laughter.)

Judge Kocoras: Is that why you showed this one? (Laughter.)

Q. Yes, that is me in the blue. And my younger brother Paul in the red. And Peter is behind in the white suit. And Mom and the Marshal.

Judge Kocoras: Right.

Q. Well, consistent with what you have shared today, at your swearing in, you described Tom Sullivan as the one who most

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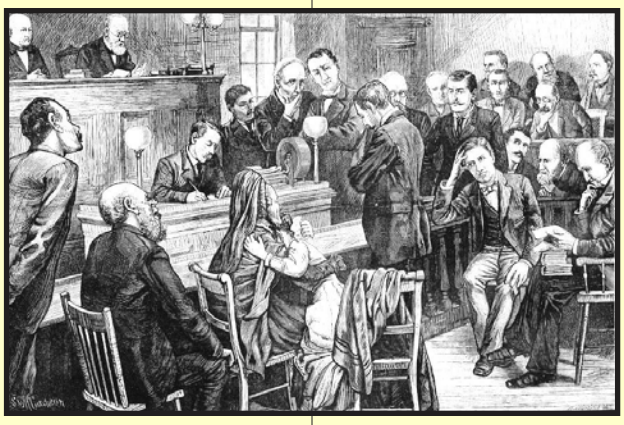
> The Supreme Court does not sit to correct errors made by the courts of appeals. The real issue is whether this is a case that calls for a nationally binding pronouncement from the Supreme Court that clears up the confusion in the lower courts.

Judge Kocoras: I remember saying that and memorizing it, because my acceptance speech was not humorous. You know, I wasn't auditioning for the Tonight Show. (Laughter.) But I thought you had to say something a little humorous. And that was the line. Because in those days, before you came along, son –



Q. No, I was there. I just showed you. (Laughter.)

Judge Kocoras: No, no. But, I mean, as an adult --patronizing the restaurants in downtown Chicago. They were all Greek owned and operated. The world has changed…. So, that was the line -- that Sullivan caused there to be a little fissure in the Greek restaurant thing.

Q. Here is what Tom Sullivan said at your swearing in: "We have in our midst a very extraordinary human being; a man whose qualities just shine through, and he can be picked out of a crowd for the marvelous qualities that he has. He is a man of not only good judgment and knowledge of the law, but a man of humility, compassion, kindness and love. My wish for you, Chuck, is that until your last day on the bench, you will retain those qualities, despite the obeisance that will be paid to you by the court personnel and by the lawyers and the litigants, and despite the tremendous power that the law will vest in you. I believe that you will retain those tremendous qualities that you have, and that, too, will make you an unusual person."

Q. I think you have done well by that. What do you think are the characteristics that are most important in a judge?

Judge Kocoras: When all things are considered, you use every part of your being in order. Being a good judge requires that you have a certain intellectual ability. Many of the cases are complex. And, so, you have to have a certain level of legal skill and comprehension.

And, then, you can never divorce yourself, especially in the criminal law area, of the humanity that you must possess: The ability to understand the problems of life and the problems of a particular defendant; the needs of society to be protected from people who violate the law.To be a good judge, all of the stuff has to come together. And sometimes I find sentencing, the longer I am a judge -- and, of course, I don't have criminal cases anymore -- but sentencing is very difficult.

Q. I am sorry about that –

Judge Kocoras: Yes.

Q. Q: -- the no criminal cases. (Laughter.)

Judge Kocoras: Well, I plan to outlive your tenure. (Laughter.) Here is the point. Sometimes you have to be heavy-handed and impose punishment for the protection of society, for respect that the law is entitled to and is due; you have to honor the principle of the law and what it stands for and what it is intended to do. Those are favoring some sort of sanction for conduct that violates the law.

On the other hand, you can't divorce yourself from the consequences of a sentence: The rupture in family life; the absence of an ability to be free and walk the streets when you feel like it. You are going to be confined. There are some serious consequences. And somehow a sentence has to reflect every possible effect of that sentence, both on society and on you -- you, the defendant, and whoever you are punishing.

And, to do that, sometimes twists you in knots and gives you Crohn's Disease. (Laughter.)

Q. Which you have.

Judge Kocoras: Which I have.

Q. And you are doing well.

Judge Kocoras: I am not blaming the judgeship for that. (Laughter.)

Q. So, in terms of sentencing, there was a long period of time where there were mandatory Sentencing Guidelines that really limited judges' discretion.

Judge Kocoras: Right.

Q. And there has been a reasonable amount of time since the Supreme Court decided that those will be treated as advisory, not mandatory. Under which regime is it easier to sentence a person?

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Judge Kocoras: Well, it is easier if you want to abdicate your obligation and say, "Oh, this is the Guidelines and this is what you get." You don't have to think about it and torture yourself. Okay? That is the easiest, but that is not the acid test.

Let me tell you why the Guidelines came into effect, because I was here when there were no Guidelines. And the Guidelines came into effect for, essentially, three reasons: One, different judges would give different punishments for the same crime, and almost someone who was similarly situated. So, it wasn't some objective standard of laws that governed like cases. Sometimes your fate depended on what judge you drew. Did you draw a hard judge? Did you draw a soft judge -- in the vernacular. You could go on the same court, get two different draws and have two different outcomes. That is not a system worthy of respect.

The other part of the problem with it was this: You could go to different parts of the country and there would be a regional difference, maybe attributable to all of the sentencing judges, but either pro or con, liberal or conservative, whatever the case may be. That is wrong, too. We are one United States. So, that doesn't pass, if you will, objective muster.

And the other thing about sentencing was there was no truth in sentencing. You could sentence somebody, as I did once, to ten years. And they served four years. Okay? Everybody thought they were going to do ten years. But there was a Parole Commission -- a body of men and women -- who would pass on whether someone is in there long enough or short enough. So, those three things compelled the change: To take out -- to bring truth in sentencing and to eliminate disparity. So, then, we have the Guidelines. We had virtually no discretion. The Court of Appeals, which never had any discretion to, basically -- not hardly any -- to overrule our sentences, now had discretion to review whether you jumped off the Guidelines or not.

There were occasions where you could depart, but very narrowly interpreting. So, then, we had Guidelines. And my problem with the Guidelines is, is they took the thought process out of it. You can find similarly-situated people and you can find similar crimes, but there are always some kinds of differences. And the Guidelines have been, as they have developed -- and I am not being critical of it, but this has happened -- the lawgivers and the Sentencing Commission were more and more giving increases or decreases for every manner of human trait or condition or action. We are going to give some number to it and either it increases or decreases the Guideline. So, pretty soon, interpreting the Guidelines was like a maze. Is there some arithmetic number that this particular act deserves to have ascribed to it; do you see?

And, so, they got so tight and so labyrinthine that they became very difficult to work with. At least I found it so. There were still occasions where you could depart; and, then, the laws got a little more liberal. And, then, we finally got the Supreme Court case that says, "The Guidelines are only advisory." And, so, we are not unshackled in using our entire discretion, but we have discretion. It is easier to not follow the Guidelines, although you have to pay attention to them.

Q. I want to ask you about a case that you handled as a judge, that involved a high Guideline sentence. Do you remember the John Cappas case?

Judge Kocoras: Very well. John Cappas was a young kid out in the southwest side in the Chicago suburbs. He went to a party one time. He was an 18-year-old kid and he had no plans to go to college. He bought some cocaine and, a half-hour later, he doubled his money in selling the cocaine to other party participants. So, he thought, "This is for me."

So, the next thing you know, he is a big drug kingpin. He has got 20 kids working under him -- not kids. They are young 20s, late teens. And they are all selling dope on the South Side. And he was luxuriating in the business. He was as happy as can be. He had a lot of money. And, quite frankly, he liked the fame. He was a natural born leader, but he was a bad kid, quite frankly.

Q. And, so, ultimately Cappas and others get charged and the case is assigned to you.

Judge Kocoras: Right. He goes to trial and he is convicted. He was in his early 20s and I sentenced him to 45 years.

Q. I looked up the news accounts and what the Tribune said was that you could barely control your anger during the sentencing hearing. And that you described him as part of the enemy.

Judge Kocoras: Right.

Q. And you told him he lost his soul. And he had a lot of support. A lot of letters came to you requesting a lenient sentence. And a number of them, I think, from the Greek community. And what you said on the record was, "I wonder how many of those letter writers would have written those letters if it had been their children using your cocaine." And, so, he appeals the sentence. And, actually, the Seventh Circuit decides that the sentence was too high and it had to be adjusted. And he comes back and, on re-sentencing, the new sentence is 19 years. But tell us the rest of your history with John Cappas.

Judge Kocoras: All right. I thought he had lost his soul. I don't know why I had that in my mind. Because he was a bad kid. And they were selling dope to whoever wanted to buy it. And two kids, at separate times, sons of police officers, took their fathers' weapons and committed suicide. They were buying drugs from someone in the Cappas organization.

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John Cappas, the evidence disclosed, had a rival in the drug business. And Cappas and, I think two or three of his friends laid a trap to induce him to come to a particular place and they were going to kill him. So, nothing good about John Cappas came out in the evidence. And I would look at him every day, and it was like he had no soul. And that is what I said, and that is what I felt. So, I gave him a lot of time.

So, then the case came back. I think Jeff Cole is in the audience. The case came back for re-sentencing. The Seventh Circuit sent it back. By now, Cappas has spent some time in prison and he actually saw a murder committed in prison. I become aware of that and I know Cappas is starting to change his life. So, Jeff came in and –

Q. This is Magistrate Judge Jeff Cole –

Judge Kocoras: Magistrate Judge Cole, who was representing Cappas after the trial.

Q. Jeff didn't represent him at trial, but on appeal.

Judge Kocoras: Yes, on appeal. And one of the -- aside from what the Seventh Circuit said, one of the -- things that Cappas was convicted of, as I recall, were some firearms violations, which those are add-on counts. You sentence for the drug stuff; and, then, you add on for these firearms violations. And Cappas had three of them, as I recall -- at least three -- and I stacked each punishment on top of the other punishment. So, the question was whether the law permitted or required non-stacking of the firearms counts – the punishment -- and just one add-on.

So, Brother Cole there convinced me that the law was, in another circuit -- the Seventh Circuit hadn't yet dealt with this issue -- so, I became convinced for that and other reasons. And, now, he is before me and not the same person. So, I gave him a lesser sentence of twenty years.

Q. And, in fact, then, I think, the U.S. Attorney's Office appealed you.

Judge Kocoras: Yes, but I finally got affirmed. (Laughter.)

Q. So, the second time was the charm there?

Judge Kocoras: Here is what happened the second time around… At some point, I got a letter from John Cappas. He is at Oxford Prison in Wisconsin. And I can tell from the letter -- I don't even -- I have the letters in a drawer in my chambers. But Cappas is writing to me and I know he is not the same guy anymore. And I think it invited a response. But I have this moral dilemma, because I still remember these two kids who died…. So, I think about those kids. And, then, I think: Is there redemption? Do people change? And should you accommodate that? So, I decide to write Cappas back. And that started a chain of correspondence. And John started to go to college in prison and go to cooking school. And after, I don't know, years go by, I, then, get another letter from John saying, "I am going to graduate. I am getting a four-year degree."

At this point, he is cooking for the prison. He is sending me pictures of cakes he is baking and meals he is giving these inmates. So, I figured, "We have got to encourage this," right? So, the long and the short of the story is he invites me to go to his graduation. He is getting two degrees: A two-year cooking degree and a four-year bachelor degree. Well, I went and saw him graduate. His parents were there. It was a very enriching experience. And I felt all the better that I did that.

And, so, after that, we did correspond some more. He got out of prison. He looked me up. He has opened a restaurant. He goes and makes speeches now about the evils of drugs. So, he is, at least, returning the debt he owes society, about trying to keep kids out of trouble. He is very, very successful in business. And I think he is not the same person who I sentenced a long time ago.

Q. When did you become Chief Judge?

Judge Kocoras: In 2002. (Picture displayed.)

Q. And there you are being sworn in by Judge Bauer (indicating).

Judge Kocoras: Yes. Him (indicating). (Laughter.) 2002. I can't get him out of my life. (Laughter.)

Q. And in what I think must be one of your highlights, you appeared on the Oprah Winfrey Show.

Judge Kocoras: It was shortly after 9/11. One of the best things judges ever do, and I used to love doing it, was swearing in new citizens: People who bust their tail to come to America; make all kinds of sacrifices, like my parents did; and, like many did after -- and 9/11 was horrible for the country. And we had enemies. Anyway, Oprah decides to do a piece on all of these immigrants, especially some from the Far East who were in the midst of war and can't wait to come to America, to, if you will, make us feel a little better over the tragedy of 9/11. I and my staff were invited to be guests. Oprah interviewed me very briefly, and I realized what an audience she had – my one moment of fame-- because I heard from people all over the country –

Q. And you were recognized at the grocery store, that you –

Judge Kocoras: Yes, I was.

Q. There are a couple things I want to cover in our remaining time. For how long did you teach at John Marshall Law School?

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An Interview with Judge Charles P. Kocoras

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Judge Kocoras: From 1975 until 2015, forty years on the Adjunct Faculty.

Q. Teaching Trial Advocacy?

Judge Kocoras: Yes.

Q. When did you go on senior status?

Judge Kocoras: In 2006, when I stepped down as Chief.

Q. So, how often are you at work now? On senior status, you have flexibility in your schedule?

Judge Kocoras: I do, but my flexibility is I take Friday off and I work Monday through Thursday; and, if I am on trial, then I will work the whole week.

Q. And how have you been spending your three-day weekends since then?

Judge Kocoras: I have taken to writing books. There (indicating) is the subject of the first book I wrote, "May it Please the Court."

Q. And that is a book on trials that Dan Webb handled through the years?

Judge Kocoras: Yes.

Q. That is your first book. And you published that. And, then, what else?

Judge Kocoras: I am familiar with Operation Greylord, for a variety of reasons. And I have just finished a fictionalized account of Operation Greylord, which will be published in early November. And I am kind of excited about it, because I think it is pretty good. (Laughter.)

Q. What is it called?

Judge Kocoras: It is called, "Where's Mine?" Which means the judge has his hand out to fix the case. (Laughter.) Writing is what I do on the three-day weekends, I write books.

Q. I know. (Laughter.)

Judge Kocoras: Brother Durkin has reviewed the book.

Q. Yes.

Judge Kocoras: And Brother Cole has reviewed the book, too.

Q. And I haven't. So, I reviewed two chapters of your first book in draft. And I returned them with edits, which did not go well. (Laughter.)

Judge Kocoras: It didn't go well because you are such a great teacher and –

Q. That is not why it didn't go well.

Judge Kocoras: No, no, I am telling you. I figured it would take me forever to get through all of your corrections. (Laughter.)

Q. No, that is not it. Judges, they get reversed. They don't get edited, I have learned. (Laughter.)

Q. So, we have stopped doing that. (Laughter.)

Judge Kocoras: Are you going to tell the referee story?

Q. About the basketball game?

Judge Kocoras: Yes.

Q. You handled the case of Ty Warner, who had parked some money overseas and didn't pay taxes on that money and was prosecuted and sentenced to probation. And I know the facts well because when defense attorneys pitch in our office, they remind us of the Ty Warner sentencing. (Laughter.)

Judge Kocoras: And you tell them, "He was off his rocker when he did that." (Laughter.)

Q. So, I was at a -- my son was playing Park District basketball in 6th grade and the referee was retired, and my neighbor, and he asked me at half-time what I did for a living. And I was in the private sector at the time and I told him. And he said, "I have one question for you. You tell me why did Ty Warner get probation?" And do you know what my response was?

Judge Kocoras: Yes, "Ask him." (Laughter.)

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An Interview with Judge Charles P. Kocoras

Continued from page 27

Q. I said, "Ask him. He is the one who decided it."

Judge Kocoras: The first reaction I had when I drew the Ty Warner case, was, "How much time am I going to give this guy?" So, then, he pled guilty. All of a sudden, I have an avalanche of supporting letters. And they are not the look-alike letters you sometimes see. Not here. I took all of these 70 or so letters home and read every one of them. And I read about a man who I thought had such a decency of heart, that he gave away money and for causes that he didn't have to. Nobody was looking over his shoulder when he did that.

So, I thought, in terms of sentencing, "What you have done all of your life needs to be measured. Not only the bad, but the good. It is all a balance. The sentencing has got to reflect who you are as a person. Not only what you did bad, but what you did good." And as I read every one of these letters, I became convinced I could not put this man in jail…. I thought, "Here we have this tremendous businessman. Let him go out to talk to some of the schools that need his wisdom, his guidance, his expertise. Let us use him to go lecture and talk to high schools or kids in some other way. I will give him a big ton of community service." And if I put him in jail, I know he is not going to handle prison well. He is an older man. Older men just don't do well in prison. And he is not an evil, evil, evil guy. Okay? And I thought, "In all good conscience, I can't put him in jail."… And three Court of Appeals' judges agreed with me after your office had the nerve to appeal that. (Laughter.) So, that is the Ty Warner case.

Q. I have had the good fortune of seeing you go to work to be a judge for the past 39 years and know, from observation, how much you love it. And I want you to try to put into words why you do love it so much.

Judge Kocoras: Because, I know it is a cliché, but you really have to make things a little better than you found them before you go. And I think being a judge permits me to do that. It permits me and requires me to use every faculty that I have. And, at the end of the day, if you put all of your energy and your brain and your heart into what you do, and expend yourself -- don't leave anything left; nothing left -- it is the one job that can consume you. And it makes things better.

Maybe in a miniscule sort of way, given the world we live in and its complexity and its plurality, but it is just -- there is no way I can really explain it to you, other than to talk to another judge and get their reaction. The job is a gift. And, so, we have to give it back to the other people who don't get a chance to do that. And you are obligated -- you are obligated -- to be fair; have integrity in what you do; and, be faithful to the principles you believe in and that the law has commanded you to follow.
So, I don't know how else to explain it, but I don't know of many jobs in the world that could give you this. And that is what it gives me. And it has since the beginning, even though you have got to work your you-know-what off to do it. (Laughter.)

Q. I think I can speak on behalf of everyone here to say thank you for your service and to wish you many more happy and healthy years on the bench.

Chief Judge Pallmeyer: I think you can all see why we could not be prouder of this colleague and more inspired by his words and more thrilled to be a part of a court that he has graced all of these years.

Upcoming Board *of* Governors' Meetings

Meetings of the Board of Governors of the Seventh Circuit Bar Association are held at the East Bank Club in Chicago, with the exception of the meeting held during the Annual Conference, which will be in the location of that particular year's conference. Upcoming meetings will be held on:

Saturday, December 7, 2019
Saturday, March 7, 2020
Tuesday, May 5, 2020 *at the Radisson Blu Aqua hotel in Chicago*

All meetings will be held at the East Bank Club, 500 North Kingsbury Street, Chicago at 10:00 AM

A Life Well Lived:

An Interview *with* Justice John Paul Stevens

By Jeffrey Cole and Elaine E. Bucklo[*]

Editor's Note

Justice John Paul Stevens, passed away in July 2019 at the age of 99. He was the third longest serving Justice in the history of the Supreme Court – and the Circuit Justice for the Seventh Circuit. In the wake of his death, bar associations and professional groups across the country participated in programs honoring his extensive and extraordinary contributions to the law. Given his importance to the Court and the Country, we thought it appropriate to reprint the interview of the Justice which was conducted in his chambers at the Supreme Court. It was the first such interview Justice Stevens had ever given. The Justice's comments are not only of historical significance and interest, but his insights observations about brief writing and oral argument are as valid today as ever.

In late 2005, we interviewed Justice John Paul Stevens in his chambers at the Supreme Court — the first such interview he has given. He had just completed his 30th year as an Associate Justice; only nine Justices have served longer. Justice Stevens's chambers reflect its occupant — informal, unpretentious, and welcoming, with floor-to-ceiling bookshelves crammed to overflowing. It is quiet there, as it is everywhere in the Court, but as Holmes once remarked, it is "the quiet of a storm center." Two impressions predominate — and linger: gentleness and vitality. Justice Stevens was born in April 1920. He could just as easily have been born in 1950.

> *You know that if you move fast enough, you will keep time back in some curious way that baffles the clocks. . . . If we measure youth by the power to assimilate what is new, by freshness of outlook, by sympathy, by under-standing, by quickness of response, by affection, by kindness, by magnanimity, he is not old.*

L. Hand, "Mr. Justice Holmes," in Frankfurter, Mr. Justice Holmes at 186-87 (1931). So it is with Justice Stevens.

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[*]*Jeffrey Cole is a United States Magistrate Judge in Chicago.*

Elaine E. Bucklo is a United States District Judge for the Northern District of Illinois, in Chicago.

This interview first appeared in LITIGATION, the journal of the American Bar Association Section of Litigation, in Spring 2006. It is reprinted here with the kind permission of LITIGATION.

An Interview *with* Justice John Paul Stevens

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After graduating Phi Beta Kappa from the University of Chicago in 1941, John Paul Stevens served with distinction in the Navy during World War II, earning a Bronze Star. He was discharged just in time to start law school at Northwestern University, graduating in two years with the highest grades in the history of the school. Following a clerkship with Justice Rutledge, Stevens returned to Chicago where, for the next 20 years, he was in private practice, specializing in antitrust litigation first with the firm that became Jenner & Block and then for 18 years with Rothschild, Stevens, Barry & Myers. Although well known to the small fraternity of antitrust lawyers in Chicago, John Stevens was anything but a house-hold name. In 1969, all that was to change.

Like Louis Brandeis, whose participation in various investigations and public interest cases ultimately led to his appointment to the Supreme Court, Stevens's appointment traces its lineage to his having been named chief counsel to the special commission appointed by the Illinois Supreme Court in 1969 to investigate the integrity of one of its decisions, after questions were raised about the propriety of the conduct of two members of the court. As a result of that investigation, the then chief justice and one associate justice of the Illinois Supreme Court resigned, and a year later, Stevens was appointed to the U.S. Court of Appeals for the Seventh Circuit. Five years later, President Gerald Ford, in the wake of the Watergate scandal and with a view toward reestablishing public confidence in government, appointed Stevens to the seat on the U.S. Supreme Court previously occupied by Justices Louis Brandeis and William O. Douglas.

It has been said that Stevens began as a moderate and moved to the left. He denies the allegation, contending that he has stayed the same while others around him have changed. He is an inveterate opinion writer, not hesitant about writing dissents and separate concurrences — a practice that grew out of his experiences in the Illinois Supreme Court investigation. As Justice Stevens, himself, has said, it is much too early to judge his role on the Court. What is certain are his brilliance, the meticulous care he brings to the analysis of each case and the writing of each opinion, and his deep and abiding devotion to the nation.

Q. After graduating Phi Beta Kappa from the University of Chicago in 1941, where you were an English major, you served in the Navy, didn't you?

A. Yes, I spent most of the war in Pearl Harbor. I was transferred back to the States in the summer of '45, and stationed here in Washington. After the bomb was dropped, the war ended very promptly, as you know, and I had enough discharge points accumulated because I had been in so long, so I was able to get out in time to start law school at Northwestern at the end of that September.

Q. You've written that among those who had the most substantial influence on you were two of your professors at Northwestern — Leon Green and Nathaniel Nathanson.

A. There were others who definitely had an influence, too. But you're right, I have mentioned both of them publicly, and they were tremendously influential. Just off the top of my head, I couldn't begin to tell you all the things I learned from either or both of them. Leon Green taught tort law. He taught me about the adversary process, the importance of procedural protections and procedure in general, and getting to the truth — and just basically, I think, did an awfully good job of helping me learn how to think as a lawyer. Of course, Nat Nathanson was a brilliant teacher, and he inspired everybody in the constitutional law class that he taught. I also wouldn't want to forget what I learned from Harold Havighurst and Bill Wirtz and Walter Schaefer [justice of the Illinois Supreme Court]. It was a very strong faculty. Brunson MacChesney, Jim Rahl, Homer Carey — they were all my teachers. They had an enduring influence on me and on all those who had the great privilege of being their students.

Q. Nathanson had clerked for Justice Brandeis.

A. Correct.

Q. And here you are today in the seat occupied by Justice Brandeis.

A. Correct, the grandchild, with Bill Douglas intervening. One of my favorite stories about Nat involves his experience as Brandeis's clerk. Brandeis often worked at home. Shortly after Nat started, the justice would have him prepare memoranda and told him he wanted them slipped under the front door of his residence before, I think, 7:00 in the morning. After Nat finished his first memorandum, and desperate to be punctual, he got to the justice's house at about 6:40 or 6:45, and as he began to put the memorandum under the door, it was silently pulled in from the other side.

Q. Weren't Nathanson and Green supporters of Roosevelt's Court-packing plan?

A. I didn't — I was not aware of it if it is true. I know Wiley Rutledge supported it, before he went on the Court.

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Q. After graduating from Northwestern, you went directly to clerk for Justice Rutledge.

A. Yes.

Q. How did you get the clerkship?

A. Well, that was the result of the efforts of Willard Pedrick and Willard Wirtz. And I suppose Willard Wirtz, more than anybody else, had an influence, because he had known Rutledge in Iowa while Rutledge was a dean there, and they had both been on the faculty at the same time. And back in 1947, Congress had enacted a statute that made it possible for justices to have two law clerks. And some of them took advantage of this and some did not. And Justice Rutledge did, and he talked to Wirtz, and they were able to get me the second clerkship with-out even an interview. I have tremendous admiration for Justice Rutledge's work as a judge, even when I was a clerk. He was a very conscientious and decent man and very, very hardworking. He wrote everything out in longhand, all his opinions. I still admire him extremely.

Q. Felix Frankfurter was there while you were clerking. What was he like?

A. Frankfurter was a sort of a gadfly. He was very dynamic, and he, well, he was — what's the word to describe him? He was very friendly, very talkative. He would stop you in the hall and talk about a case, and he loved to talk to the young clerks because he was a former professor, as you know.

Q. Was he proselytizing all the time, trying to get your vote?

A. Well, yes and no. Just, you know, just engaging in intellectual discussion. And he, as I'm sure you've heard, sometimes offended some of his colleagues by giving the impression that he thought he was perhaps more intelligent than anybody else, which may well have been true. He was a very aggressive questioner in oral argument. As I understood it, he did not read the briefs before oral arguments, but he would ask a lot of questions to find out what the case was all about, and because he had a very quick, brilliant mind, he figured things out very quickly. But sometimes time was taken requiring the lawyers to explain to him what the basic issues were in the case. Today, that is not the practice, and everybody is well prepared.

Q. At the time you were clerking, was Frankfurter's role well known, in trying to persuade President Roosevelt to appoint Learned Hand for the seat that ultimately became Justice Rutledge's?

A. I've read about that. The irony of it, of course, was that Roosevelt thought that on a longevity basis, Rutledge would be a better investment than Hand. But he died one year after my clerkship, while Hand went on for quite a while and continued to be very productive

Q. In your dissenting opinion in *Texas v. Johnson,* you concluded that a state or the federal government has the power to prohibit the public desecration of the American flag. 491 U.S. 397, 436 (1989) [Chief Justice Rehnquist and Justices White and O'Connor dissenting in a separate opinion]. Did your wartime experiences have a significant influence on your view of the case?

A. They probably did. I don't think anybody can go through a war and not have it have a profound effect on him — or her, nowadays. It certainly had a profound effect on my feeling about that issue. I'm still convinced I was dead right, to tell you the truth. The one thing that that case accomplished is that nobody burns flags anymore.

Q. Is that right?

A. I think Dick Posner makes that point in his article in the *Harvard Law Review,* and I think he recognizes it. ["A Political Court," 119 *Harv. L. Rev.* 31 (2005).]

Q. When you left Justice Rutledge, you went into private law practice, specializing in antitrust litigation.

A. Well, yes and no. I guess the first two or three years in private practice, I worked for Poppenhusen, Johnston, Thompson, Raymond & Myers, in Chicago, which is now known by the more familiar name of Jenner & Block. At first I worked with both Bert Jenner and Sam Block. Then in 1950 or '51, I came to Washington to serve as an associate counsel on the Subcommittee on the Study of Monopoly Power, which was known as the Celler Committee. And I was there for about a year. We had the first congressional hearing on organized base-ball, which was a very fascinating investigation. And I interviewed Ty Cobb, Ford Frick, Peewee Reese, and so many others. They were all supposed to be experts on the legality of the reserve clause.

Q. Did your interest in baseball precede that? I know that you're a Cubs fan.

A. My interest in baseball preceded it, but I had nothing to do with the selection of that industry as a basis for investigation. It was chosen by elected representatives who were more interested in news coverage of the hearings than what would be accomplished at the hearings.

Q. Prentice Marshall [of the U.S. District Court for the Northern District of Illinois] had a burning desire to be commissioner of baseball, even over being a district judge, which he adored.

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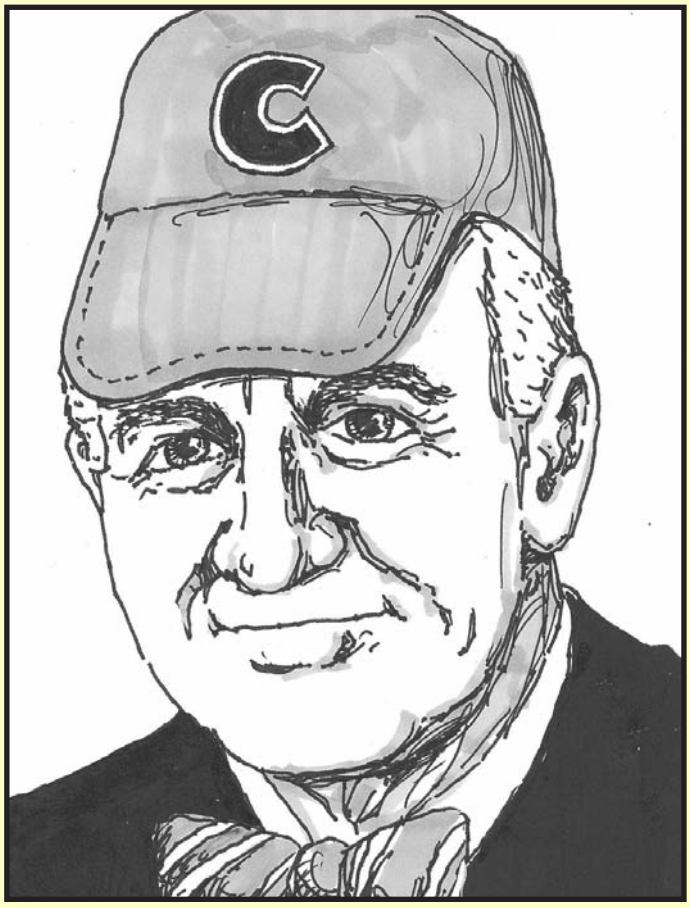
A. Well, a lot of people have wanted that job. I thought, from time to time, the way Prentice did, and that it would be a great job. The other job I thought would really be the pinnacle of the profession would be solicitor general. I never thought that being on the Court was a likely possibility. But, not having been offered either job, I practiced law in Chicago and was quite happy.

Q. One day in 1969 you got a call that was destined to change your life.

A. You're right. I was asked to be counsel to a special commission that had been formed to investigate allegations that had raised questions about the integrity of a particular decision by the Illinois Supreme Court.

Q. Tell us about that.

A. Well first of all, I wasn't the commission's first choice to be its counsel. Milt Shadur, who of course went on to be an eminent district judge of your court, was. But Milt had been involved in some shareholder litigation against the Chicago Cubs that would have required the Cubs to install lights for night games, and Ed Austin, who was on the commission, had developed some kind of an adversary feeling about Milt — as you can imagine, at that time, the suit aroused a lot of controversy — and didn't want to ask Milt to be the commission's counsel. So I was second choice. One day I was at home and the phone rang. It was Frank Greenberg, asking me to be the committee's counsel, and I decided to do it.



Q. Were you reluctant at all since the investigation was going to involve members of the Supreme Court of Illinois?

A. Well, I thought it was the kind of thing, you know, a lawyer has certain obligations to the profession. I thought it was something I ought to do. So I did it, and I think a day or two later, I was downtown walking down LaSalle Street and I bumped into Jerry Torschen [an attorney in Chicago, who recently passed away]. Jerry and I had been on opposite sides of a case, and we stopped to chat, and I explained to Jerry what I had been asked to do and said that I was going to need some help. I told him it would probably take a couple of days. I said, "By any chance, can I get you to help out?" Of course, we weren't going to be paid anything, but he had the same feeling about it as I did, and that it was the kind of thing he ought to do. So he agreed, and it turned out that we both spent the next several weeks working full-time on what we initially thought would be a very brief assignment. As it turned out, we worked full-time seven days a week, 20 hours a day, under tremendous pressure.

Q. Since this is not a well-known story outside of Chicago, could you describe what the investigation was? The story is important because, as you have said publicly many times, without your involvement in the investigation, you wouldn't be on the Court today.

A. I don't think there's any doubt about that. Well, the story really begins with a fellow named Sherman Skolnick, who was quite well known in Chicago. He had raised questions about the integrity of the Illinois Supreme Court's decision in a case called *People v. Isaacs,* in which the Illinois Supreme Court affirmed an order quashing and dismissing an indictment against a Chicago lawyer named Ted Isaacs. [37 Ill. 2d 205 (1967).] Although Skolnick was not a lawyer or office-holder of any kind, he was a sort of self-appointed, one-man supervisor of the ethics of the judiciary, and the allegations he was making about the *Isaacs* case were quite serious. *Isaacs* was the state revenue commissioner under Governor Otto Kerner and was involved in organizing the Civic Center Bank in Chicago. Somehow or other, Skolnick learned that Chief Justice Roy Solfisberg and Justice Ray Klingbiel, who authored the *Isaacs* opinion, had received stock in the bank shortly before the *Isaacs* decision was handed down.

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As you can imagine, his allegations created quite a stir. They ultimately led to the Illinois Supreme Court asking the presidents of the Illinois Bar and the Chicago Bar Associations to co-chair a special commission to investigate the integrity of the judgment in the *Isaacs* case. The public reaction to the idea of lawyers conducting the investigation was somewhat negative, the feeling being that, well, the lawyers are going to protect the judges.

Skolnick was not always accurate or right. But he was right on a lot of things. He accomplished more than he's been given credit for, because he's made a lot of other mistakes. But, as I say, he turned out to be absolutely right in this case, and we concluded that there was a basis for concluding that two members of the court had acted improperly, or at least there was the appearance of impropriety.

Q. Hadn't Chief Justice Solfisburg taken stock and put it in the name of a nominee?

A. Yes. He had created a trust and put the stock in the name of the trustee, as I remember it. Justice Klingbiel had taken the stock as a campaign contribution and given it to his grandchildren. The net result was that the special commission made a recommendation to the two judges that they should resign, and they did. And the special commission was unappointed. And that was a very controversial decision on the part of the members of the commission, because we were not sure they had the authority to make that kind of recommendation, as opposed to sort of a fact-finding mission. We made detailed findings, which should be on file in Springfield.

Q. And then, as a consequence of the work you did as counsel to the special commission, a year later, in 1970, Senator Charles Percy offered you a judgeship on the U.S. Court of Appeals for the Seventh Circuit. [Senator Percy would later say, of all the appointments he had made, his appointment of John Paul Stevens to the federal bench was his proudest.]

A. That's right. He and I had been classmates and good friends years earlier at the University of Chicago.

Q. And what was your reaction when you got the call? You initially were somewhat reluctant because of the financial considerations.

A. Well, I was. I was just beginning to have a feeling of some security, and I thought my practice was successful and if I had a little more time, I would have been more financially secure. But nonetheless, I was certainly interested, and when I got the telephone call from a member of his staff asking me to meet the senator, I of course agreed.

Q. Wasn't the ostensible purpose of the meeting to solicit your advice about other candidates?

A. Yes. I met with him on a Saturday morning to discuss — supposedly — my views about some candidates that he had in mind for two or three vacancies. And we talked a little bit, then he said, "Well, would you be interested?" I said, "Well, Chuck, I hadn't really thought about it." He apparently had a group that he — as I'm sure you know, Senator Percy made a really great contribution to the quality of the judges in the Seventh Circuit and in the district court in Illinois. He took the matter of appointments very seriously, which Senator Douglas had not because he had not been as interested in this issue. But Percy had some people in the profession whom he consulted and got advice from. And, as you know, Pren Marshall is an example of the outstanding people who came to the federal bench because of Chuck Percy. Some of the people that he picked were not necessarily Republicans. He did it totally on a nonpolitical basis.

Q. But you ultimately agreed to be appointed.

A. Yes, I did, and I thought about it because I did have some misgivings.

Q. You spent five years on the court of appeals.

A. Right.

Q. One of your colleagues on the court was John Hastings, a man for whom you have said you had extraordinary feelings of respect.

A. I did, and still do for a lot of reasons. He was very independent. I learned a lot from him. He wrote all his opinions out in longhand. And I remember him saying if you write the statement of facts out carefully, the rest of the opinion will write itself. You know, it's really true. Not always, of course, but if you have the relevant facts arranged in proper sequence, it's amazing how often everything else seems to fall into place. And both John and Justice Rutledge, as I say, wrote their own drafts, and that's one of the things that persuaded me that that's the right way to do it. And I still do that, and my own test of myself has been that if I continue to enjoy doing the first draft, then I'll do it. If I ever get to the point where I start asking a clerk to write it, I'll know I shouldn't be doing the job. And part of that is from John Hastings. And he had another thing he'd say, which I still use as a guide on disqualification. He said, "You know, if you've got a question about whether you should disqualify yourself, you probably should."

My approach is also traceable to Northwestern Law School and Leon Green and his approach to the law. Northwestern's,

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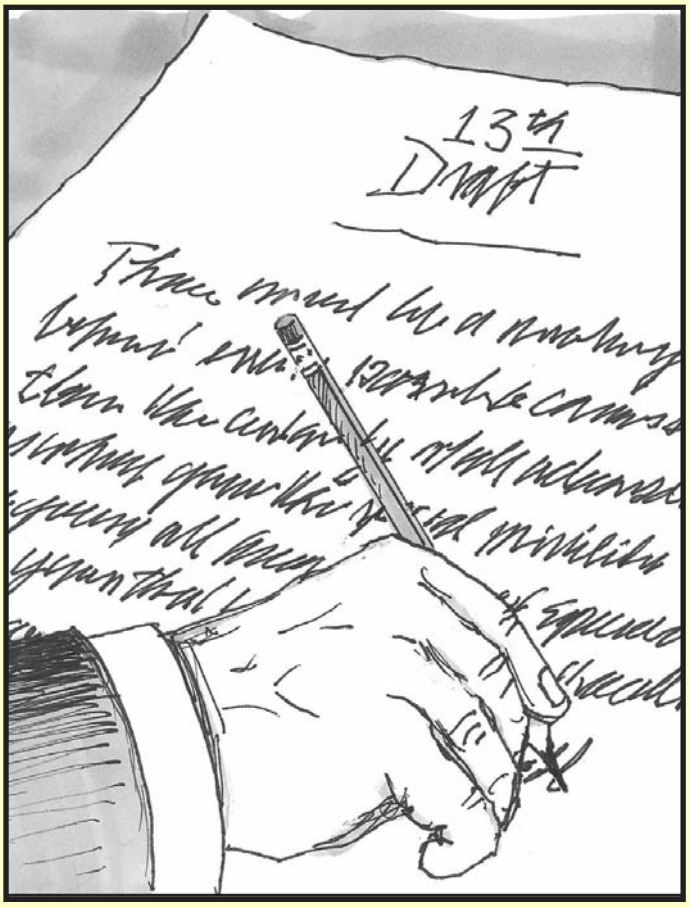
which was different from the approach of Michigan and Harvard, emphasized the importance of the factual context as it impacted on the doctrine of the particular subject matter, rather than starting out with a set of rules and then memorizing or learning the appropriate rules. You look at the procedure of the case as well as the facts, rather than just the abstract rule that should come out of it. That was part of the whole approach that Leon Green had.

Q. And that's still your approach?

A. It definitely is.

Q. How long does it take you to do a first draft, on average?

A. Well, I spent two weeks in Florida recently, and I spent perhaps three or four days reading the briefs, and the rest of the time was required to do the draft. So it takes sometimes a week or two, sometimes it takes longer. Sometimes you write a draft in a matter of days. But, bear in mind, when I write a first draft, it's not the final draft, and I do rely on my law clerks. It's a first draft.Walter Cummings, who was also one of my colleagues on the Seventh Circuit, wrote his own opinions. He only needed one law clerk, and I did the same thing. The two staff attorneys on the court when I was there were my second law clerk and Walter's second clerk.



Q. In 1975, at the urging of Senator Percy and Edward Levi, who was then the attorney general and formerly dean of the University of Chicago Law School, you were nominated to become an associate justice of the United States Supreme Court. How did you prepare for your hearing before the Senate Judiciary Committee?

A. It's interesting that you should ask. I remember that with one exception, I really didn't prepare. Attorney General Levi thought that if somebody's qualified to be nominated for the Supreme Court, they ought to be able to handle the interview process. He didn't believe in this process of preparing the candidate for the interviews and so on. And I'm sure if somebody had prepared me and told me about certain of the questions I was asked, I might well have given different answers to some questions. I don't know.

Q. When one reads the transcript of your confirmation hearings, the difference between your hearing and at least some others is quite stark in that things went, for the most part, so smoothly and were so nonconfrontational. But there were a few moments when you were pressed on particular topics, such as judicial salaries and the Equal Rights Amendment. In fact, your willingness to stand up to Senator Byrd on the matter of judicial salaries — when it would have been easy enough for you to just let the matter go — was, under the circumstances and given the stakes, quite courageous and principled.

A. I thought about that later. As I said, Attorney General Levi did not believe in extensive preparation by the candidates. And I'm sure if somebody had prepared me and told me, here's the question, I might well have given Senator Byrd a different answer. But it seemed to me — I felt very strongly, and I still do, that federal judges are underpaid and that it's not good for the country to have those important positions not adequately compensated.

Q. And he backed down.

A. Yes. One of the things I think I remember him saying is that he could give me a list of 30 or 40 people who would be glad to have that job. And I said something along the lines of they are people who are either very rich or are making the kind of money that a judge makes now. And I said that I knew a lot of people who wouldn't take the job because of the salary. Although I did not use his name, one of the people I had in mind was Jim Rahl, who was a great lawyer and a great person, but he had financial concerns that made it not feasible for him to take the job.

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Incidentally, now that you mention it, I remember Senator Percy telling me that Senator Byrd was the per-son in the opposite party who told him that if you don't get the confirmation completed by the end of the year, it'll be too late, because the following year was an election year. So there was a time factor. If the hearings had not been completed by the end of December, I would not be sitting here.

Q. The whole process from nomination through confirmation took only a few weeks.

A. Senator Kennedy was vigorous in his questioning, wasn't he?

Q. Have you ever seen a case where as a consequence of questions a lawyer does not have a chance to make any meaningful argument, and thus asks the court for additional time?

A. Yes. Well, he gave me a very thorough examination. I remember he gave a long speech about submerged class-es or something like that. I don't remember how he described the classes, but I had just received two letters from prison inmates who had apparently read about an opinion I had written on the Seventh Circuit about prisoners' rights. Wilbur Pell and Luther Swygert were on the panel. The opinion was basically protective of prisoners' rights, or at least they thought so since the law at that time was really, really almost barbarian on the sub-ject. But anyway, both letters were all for me, so I thought, well, I'm not sure they are the best endorsement you could get, but when Senator Kennedy asked me about it, I mentioned those letters, and said, "All I can say is that there'll be at least two people who are qualified members of the class and they support me." The other thing I remember from Senator Kennedy was that I didn't give him satisfactory answers about how I was prepared to reform the world generally, and he gave me a long speech, which, in essence, said that "I fear if I say to you that all you're going to do when you get this job is try to decide each case as best you can, you're going to say yes." I said, "Yes, Senator, that is my answer," and he let me go. I think he was shocked by that answer.

Q. The only seeming opposition to your appointment came from the National Organization for Women.

A. I don't know if it was the only, but they did voice opposition, and that was the one area that I did prepare for, in this sense: I knew that NOW was concerned about two opinions I had written that they particularly did not like. I reread those opinions, and I was expecting a lot of questions on them. I was going to explain why I thought my position was absolutely right, but I wasn't asked a single question about them. However, Senator Kennedy and Senator Tunney, I believe, did ask me for my views on the Equal Rights Amendment. And I told them I wasn't in favor of it, because I thought that the Equal Protection Clause properly construed would do whatever the amendment would do, and I thought it more symbolic than anything else. And that didn't go over very well.

I had met Senator Bayh when I went around and inter-viewed with the senators. He was very interested in the Equal Rights Amendment, and I think that he did not vote, but if he had, he might not have voted for me.

Q. Was coming to the Supreme Court from the Seventh Circuit a sort of culture shock?

A. Well, yes, it was and still is to an extent. Of course, the cases are very different.

But having been a law clerk here made it much less of a change. I mean, I sort of knew what was happening in general here. One of the decisions I had to make fairly soon was whether to join the *cert.* pool. The Court has a pool where justices share their law clerks, who split up the petitions for certiorari and write memoranda on each petition, recommending either a grant or a denial. Chief Justice Burger was very considerate and invited me to join the pool and gave me copies of the pool memos for the first several weeks or so. And I remember thinking to myself that I would not join the pool, because I concluded I could make a judgment whether to grant *cert.* a lot quicker by looking at the papers than I could by looking at those elaborate memoranda. And so I thought the memoranda were a very inefficient way to come to a conclusion about what to do in a case. So I just didn't join the pool.

Q. From the beginning?

A. From the beginning. I never thought it was the right way to do it, and I still feel the same way.

Q. You're the only one, though.

A. I'm the only one now. And it's — I have a very different approach. But part of that was because I'd been a law clerk, and I did a lot of *cert.* memos myself, and I think that was the major thing that I did as a law clerk.

Q. In your foreword to Ken Manaster's book, Illinois Justice (2001), you said that your unwillingness to join the *cert.* pool was in part a product of your work on the special commission in the *Isaacs* case. You said that you were concerned about the risk that "a pre-assignment procedure will cause members of the court other than the designated author to be less diligent in their pre-argument preparation particularly in the less interesting cases." And you went on to say that you were

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concerned about a procedure that "delegated the task of preparing a pre-argument bench memo for the entire court to a member of the staff, no matter how gifted and impartial that staff person may be."

A. That's true. My unwillingness to join the *cert.* pool does — at least in part — stem from my work for the special commission. There are two other respects in which my involvement in the *Isaacs* investigation influenced my work as an appellate judge. We can talk about them. But having said that, the memos form the basis only for the justices' initial reactions. I'm sure each justice also looks at the papers themselves and may well have his or her own clerk do a separate memo or annotate the pool memo. I don't really know. It varies from chambers to chambers.

Q. And how do you do it?

A. I have my clerks go through everything. They write the memos on those cases that they think are reasonable candidates for a grant, either because they're apt to be put on the "discuss list" by some other justice or I might want to put them on myself. And if I think there's a significant likelihood, before I vote to grant, I'll get the papers, and I generally read the papers myself and at least read the opinion.

Q. How do you keep up with the sheer volume of seven thousand or eight thousand petitions?

A. Well, that's why we have multiple clerks, and you can go through them pretty fast. You don't have to write a memo on every case. One reason I feel protected by that is that if we miss something, somebody else will almost certainly get it. Significant cases kind of jump out at you.

Q. In your opinion, how important is apparent error in the court below? Is that a significant issue for you?

A. Sometimes. But more important is how important the case is. This is not an error-correcting court, and you can't correct every error, even if you wanted to.

Q. How would you describe the difference between the way the Court functioned under Chief Justice Burger and under Chief Justice Rehnquist?

A. In terms of the administration of the Court, Bill Rehnquist was a much more efficient and effective pre-siding officer in conference. Very well organized, very clear, and under his leadership there were some interesting discussions. Whereas Warren Burger was fair but not as efficient. He tended to have more to say and not to keep things as orderly as perhaps he could. Perhaps, as a presiding officer in Court, Warren Burger was a little more sensitive to the problems of the lawyers and would be a little more tolerant of giving a little extra time when justices had used up the lawyers' time while the white light was on. Whereas Bill Rehnquist tended to be much more rigid in enforcing the red light very firmly. But he was totally fair; he treated the solicitor general or chairman of the Judiciary Committee, whoever was arguing, exactly the same as he would any other lawyer. And I think Warren Burger, I'm sure, was impartial, too, but he ran the risk of not appearing totally impartial by sometimes being a little bit lenient on extending time and so forth. But they both did a good job.

Q. What do you think Chief Justice Rehnquist's lasting contribution will be from an institutional perspective?

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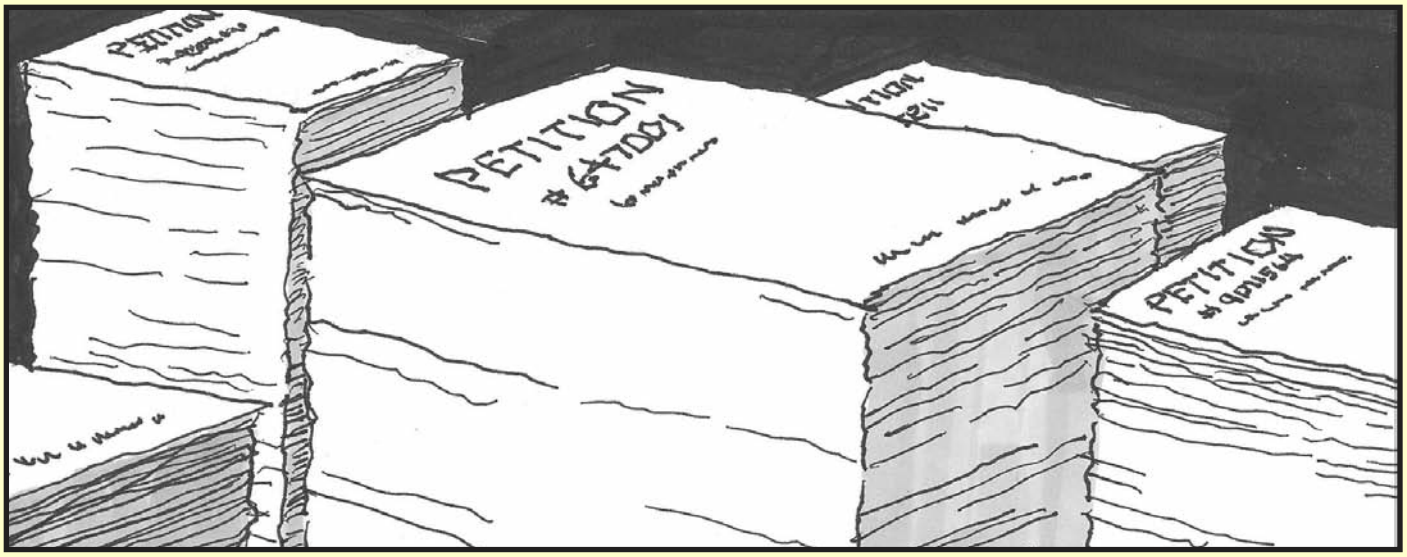

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A. Time will tell. It's too soon to evaluate any of us.

Q. Do you think, Justice Stevens, that the style of opinion writing has changed from the time you came on the Court?

A. I think the opinions are probably longer now. I sometimes think that's partly attributable to law clerk input. I think that is one difference.

Q. Is the composition of the cases different now than it was 25 or 30 years ago?

A. Oh sure, it changes. You have periods where you get an awful lot of Fourth Amendment cases or other particular types. The year I was a clerk, we had a heavy load of antitrust cases, perhaps ten or 12. Of course, they're all important.

Q. You're not a textualist in terms of statutory construction, are you? This is how you put it in your speech to the Clark County Bar Association in Las Vegas in dis-cussing *Exxon Mobil v. Allapattah,* 125 U.S. 2611 (2005):

> Because ambiguity, like beauty is in the eye of the beholder, I remain convinced that it is unwise to treat ambiguity as a necessary precondition to the consultation of legislative history. Indeed, I believe judges are more, rather than less, constrained when we make ourselves accountable to all reliable evidence of legislative intent.

A. It's all very much attributable to my work on the House Judiciary Committee years ago. I remember once spending a lot of time explaining to a congressman a proposed amendment to a statute of limitations. I explained some of the complications of what happens when you have government tolling. Questions like this and many others are left for judges to figure out, and I realized that legislation is a cooperative venture between Democrats and Republicans. Legislators don't think they can answer every question. They really expect the judges to try and fill in the holes and carry out the intent of the measure. And they do have certain things they are trying to accomplish if you understand what the legislature is really shooting for. Sometimes you recognize that the statute doesn't say exactly what they intended, so I never thought that the text should be the final answer.

Q. And you're not an originalist either, are you?

A. Well, yes and no. I think it's always important to try and figure out what the people who drafted whatever you're working on had in mind. You always have to look at and get the best information you can. You have to take in both perspectives; you've got to look at today's perspective and the original perspective.

Q. This is how you put it in a speech in 1989 about Thomas Fairchild, one of your colleagues on the court of appeals:

> Even if historians accept Story's view that the original intent of the framers was merely to prevent the state from discriminating against Christian sects, under my view of history and the law, it is important to consider how subsequent generations have understood that intent. . . . We must learn as much as we can about the original intent of our lawmakers, but we must also remember that that learning is merely the beginning, not the end, of a dispassionate attempt to understand any rule of law.

"A Judge's Use of History — Thomas E. Fairchild Inaugural Address," 1989 *Wis. Law Rev.* 223.

A. These are still my views about that.

Q. It is said that you write more concurrences and more dissents than any of the other justices. Is that some-thing that is also traceable to the *Isaacs* investigation?

A. Yes. It goes back to that. I can certainly remember being so surprised when it came out that the unanimous opinion of the Illinois Supreme Court in the Isaacs case had originally not been unanimous and that Justices Underwood and Schaefer had both written dissents. Justice Schaefer, who was one of the great judges in the history of the Illinois Supreme Court or any court, explained at the hearing that it was not an uncommon practice for judges not to dissent even though they may have had disagreement about a result in a particular case. I remember that he said that Justice Brandeis had often done that, waiting for a better opportunity to voice his opposition. My goodness — in a case like that. The public is entitled to know what judges really think. And it seemed to me that if you dis-agree, the better practice is to explain your disagreement so that the public knows more about the decision-making process. But back in those days, it was not considered the best judicial manners to write dissents unless it was really a matter of overriding importance. There was an interest in preserving the collegiality of the court and the apparent majesty and seamlessness of the law and so on. So, what Underwood and Schaefer did was totally consistent with judicial practice, and they should not have been criticized.

My thought was that the practice was wrong and that the law is best served by an open disclosure of a judge's disagreement. I remember going to a class at N.Y.U. for new appellate judges, and one day was devoted to a discussion of when should you dissent. I thought about Wally Schaefer, and I decided that if I disagreed, I would dissent. I have followed

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that practice ever since. I know that lawyers would like to deal with one rather than a lot of different opinions, but I firmly believe in my decision to write perhaps more often than others.

Q. There have been suggestions in recent years that perhaps the Court could or should turn out more than the approximately 80 or so full-dress opinions that it is currently producing.

A. There are two or three factors that account for the number of cases the Court has been deciding. One, our mandatory jurisdiction was restricted several years ago. Second, I think the members of the Court do a better job of identifying cases we should not take. If you look through the load when it was heavier, you'll see a fair number of cases, and you think, well, why did they bother to take this case? I think perhaps there are less conflicts out there than there have been in past years. My own view is that the *cert.* pool process tends to have a negative impact on the total number of cases taken, because the author of the pool memorandum is institutionally committed to the most risk-averse recommendation, unless it's pretty clear that the petition should be granted or the solicitor general has taken a particular position, and so on. While the pool recommendation does not dictate the decision of the justices — in fact, I'm sure more cases are granted than there are recommendations to grant — I think the practice tends to reduce the number of grants. That's just my own assessment.

I go to lunch with the law clerks, and they also agree that if they have a choice, they tend to take the risk-averse choice in writing the memos. Whereas writing for one justice, you could be much more free in saying what you really think.

Q. What are the greatest failings that you see in the briefs and the oral arguments?

A. I think the greatest failing in the oral arguments is too often we don't give the lawyers adequate opportunity to complete their arguments. Many of the questions take the form of leading questions. Of course, that's proper since it's the first time we have a chance to hear one another's views about a case.

Q. Is the decision to grant or deny *cert.* influenced by whether the opinion from the court below is a published or nonpublished opinion?

A. Well, I tend to vote to grant more on unpublished opinions, on the theory that occasionally judges will use the unpublished opinion as a device to reach a decision that might be a little hard to justify.

Q. People have said that you have moved from right to left while Justice Black moved from left to right. Is it an accurate assessment?

A. I won't comment on Justice Black, but I think people around me have changed. But I'm often amazed, to tell you the truth, how often positions I've taken here, and it's true recently as well as earlier, are consistent with positions I took on the court of appeals. It's really surprising how often we get replays on similar issues.

Q. Have you thought about the extraordinary fact that of the 109 justices in the history of the Court, only Chief Justice Marshall and Justices McLean, Wayne, Field, Story, the first Justice Harlan, Brennan, White, and Black have served longer than you?

A. Chief Justice Roberts very graciously mentioned that a few days ago from the bench. I hadn't thought about it that much, but whenever anybody brings that up, I find it amazing. Time — time just goes by so fast.

Q. We hope you're going to have the longest service of anyone.

A. I'm not in the business of trying to set records, so . . . .

Q. I don't know if you noticed the reaction of those who attended the luncheon at which you spoke recently in Chicago — and I've seen this on other occasions where you have spoken — but when you finished speaking and everybody stood up and gave you a standing ovation, I was looking around the room, and I don't know if you realize how much affection there is for you among the bar, certainly in Chicago.

A. No, I feel it. I do feel it. It's great.

Appeals: *The* Classic Guide

*By William Pannill**

When you want the best advice on handling an appeal, turn to the classics. The classic book about how to write a brief and argue an appeal is Effective Appellate Advocacy, by Colonel Frederick Bemays Wiener. It originally appeared in 1950. Although revised and reprinted with new cases and examples in the 1960s and 1970s under the title Briefing and Arguing Federal Appeals, Wiener's book is now out of print and largely forgotten. Yet Wiener's treatise is one of the finest books ever written about briefing and arguing an appeal. I have read it again and again.

I came across Briefing and Arguing Federal Appeals early in my career in a large law firm. Although I had a graduate degree in journalism and five years of writing for daily newspapers, my briefs kept running aground on the partner for whom I worked. One day, in the time when legal self-help books were rare, I saw this book on the shelf in the firm library. I read it straight through. That single reading turned me into an effective brief writer. My next brief made it past the partner in charge and into the court of appeals, where it won the case.

For years, I thought anyone writing a brief would have read this book. Yet for a quarter of a century I never encountered another lawyer-except for some of the editors of this magazine and the lawyers in my own law firm-who had read it. I have listened (as required) to dozens of speeches about appellate practice and read even more papers from courses of continuing legal education on the subject. Not once has an eminent speaker or author mentioned Wiener's book.

As a result, I have been able to keep to myself for 25 years this wonderful guide to the art of appeals. For an appellate lawyer, owning the book was like owning the formula to Coca-Cola. Colonel Wiener

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**William Pannill was with Pannill, Moser & Barnes, LLP in Houston, Texas. He was the Editor-in-Chief of LITIGATION from 1982-84. Along with Judge Bucklo's Interview of Justice Ginsburg, Mr. Pannill's Article is one of only eight that were deemed to be classics and were reprinted in the Spring 2019 issue of LITIGATION. Mr. Pannill's observations and insights are as meaningful and insightful today as they were when his Article first appeared in the Winter 1999 issue of LITIGATION. It is invaluable to veterans as well as to those who appear in the courts of appeals only infrequently. Anyone who is involved in appeals must read this Article. The above article is reprinted with the kind permission of LITIGATION Magazine.*

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died in 1996 at the age of 90. Reluctantly, I have decided that now is the time to part with this great secret before the book and I both disappear.

Why is the book so good? In part, it is because Wiener was such an elegant legal writer. Wiener's style of writing aims at clarity above all else. It is far superior to most legal prose. Here is Wiener's statement of purpose for his work:

> Advocacy needs to be taught, and it needs to be learned. Too many, far too many, lawyers burden appellate courts with poorly prepared, poorly presented, and thoroughly unhelpful arguments-for which they receive, and clients pay, substantial and not infrequently handsome fees. Lawyers, like other professional men, can be divided into the classic threefold scale of evaluation as able, unable, and lamentable. Nonetheless, and after making due allowance for the frailties of mankind, it is really amazing how few good arguments are presented and heard, quite irrespective of the tribunal concerned. About a dozen years ago, I was told by a Justice of the Supreme Court of the United States that four out of every five arguments to which he is required to listen were "not good" ...

Effective Appellate Advocacy at 6.

In my experience, you can expand Wiener's lament to include briefs. He concludes:

> The present book is a response to the conviction that there is nothing mysterious or esoteric about the business of making an effective written or oral presentation to an appellate court, that the governing principles of that process can be extracted and articulated and therefore taught, and that any competent lawyer has the ability, with study and proper application, to write a brief and make an argument that will likewise be competent-and that will further his client's cause.

Briefing and Arguing Federal Appeals at 6-7.

Wiener-known as Fritz-graduated from Brown University in 1927 and Harvard Law School in 1930, where he was an editor of the *Harvard Law Review.* He developed his craft as a government lawyer in the 1930s, after Felix Frankfurter brought him out of private practice to join the New Deal in Washington. He worked in the Department of the Interior, served as a captain in the Judge Advocate General's Corps of the United States Army during World War II, and served for several years in the Office of the Solicitor General of the United States. He rose to become Assistant to the Solicitor General before he resumed private practice in 1948.

Perhaps Wiener's most famous exploit as a private lawyer was persuading the Supreme Court of the United States to reverse itself on rehearing-a feat as rare then as it is now. *Reid v. Covert,* 354 U.S. 1 (1957). An Army court martial had tried a military wife in Japan for killing her husband and sentenced her to life in prison. In a companion case, an Air Force court martial had tried a sergeant's wife who had killed her husband in England and sentenced her to life in prison. The Supreme Court first held in the 1956 Term that courts-martial could try civilians accompanying the armed forces overseas. But Wiener persuaded the Court to grant rehearing, and the Court changed its mind the next year by a vote of 4 to 3, holding that courts-martial had no power to try civilians in peacetime.

Writing the Brief

Wiener's principles of brief writing and argument render his book invaluable. If you follow his precepts, it is impossible to write a bad brief or give a poor argument. Here are the points on brief writing I consider the most important:

1. Write the statement of facts so that the facts alone will make the court want to decide the case in your favor

Remember that the briefs will almost always decide your case. Not only are oral arguments disappearing in appellate courts under the drive for efficiency, but many judges read the briefs and make up their minds before they hear argument. So you cannot dash off a bad brief and cure that with oral argument.

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You should put the kind of effort and skill into writing a brief that a poet or novelist puts into his art, for when you write a brief you are a professional writer.

Wiener writes that, "In many respects, the Statement is the most important part of the brief." Effective Appellate Advocacy at 52. In my experience, the facts are always the most important part of the brief. The facts make each case stand out; the facts are what the judges strive to learn from the brief. If you can explain the facts of the case in your brief, clearly but completely, you have taken a giant step toward persuasion of the appellate court. As Wiener put it:

> Here the task is to present the facts, without the slightest sacrifice of accuracy, but yet in such a way as to squeeze from them the last drop of advantage to your case - and that is a task that in a very literal sense begins with the first sentence of your Statement of Facts and continues through the last one (in which you set forth the opinion or judgment below).

Briefing and Arguing Federal Appeals at 49.

Yet, most lawyers fail to use the facts to persuade. Only last year, I saw the appellees drop a five-page summary of the facts of an immensely complicated case into a 50-page brief. The statement of facts should not be an afterthought or a summary that you scribble out of the case file. Properly written, it is a complete story of the vital events and procedural history of your case. Your job as an advocate is to bring the case to life in the minds of the readers so that they incline to your side.

Wiener recommends writing the statement of facts before you take up any other part of the brief. That forces the brief writer to lay out his entire case on the facts-to tell the story of the case-before he begins any of the argument. This leads to the second of Wiener's principles.

2. Never argue or editorialize in your statement.

The shrieking statement of facts has become more and more a part of brief writing as the "me generation" takes over the courts. Your goal is for the court to accept your brief as the most accurate and complete statement of the case. When you begin to argue or snipe at your opponent, the court's guard instantly goes up and you lose the value of the statement as a means of persuasion. Wiener makes the point this way: "[A] court reading a statement wants to feel that it is getting the facts, and not the advocate's opinions, comments, or contentions."

Effective Appellate Advocacy at 64.

The way you write a statement of facts that persuades is to tell a complete story. Arrange the facts in logical order-usually chronological. But work at stating all the facts that are material to your case. Wiener puts it this way:

> In short, write your statement of facts from beginning to end, from the first paragraph to the last, with this one aim always before you: to write your Statement so that the court will want to decide the case in your favor after reading just that portion of your brief.

Id. at 54.

This is a much easier principle to state than to execute. I usually spend the majority of my writing time pulling the facts together. The statement requires constant trips to the record while you check facts and select testimony or exhibits to work into the statement.

The advantage of Wiener's way of writing the statement is that you will look at your case in a different way if you recite the facts fairly. Even if this is your first time with the case, writing the facts forces you to understand and organize the evidence in your own mind in a way that reading alone will not. You will see connections between facts that you did not recognize before. I think of it as turning a diamond in the sunlight. The brilliance of the gem flashes in different ways as it revolves.

The effort to put the facts together so that they persuade without argument yields many dividends. Like a novelist, you have to arrange and compress facts to produce a readable narrative. With a thorough knowledge of the record, you will seek out and find evidence to paint a picture of the plaintiff and the defendant that illuminates the situation in the readers' minds. Wonderful material often lies overlooked in the record. You have a reason to search for it and use it.

Wiener gives several examples of an effective statement of facts. Here, for example, is a paragraph from an appeal by the United States to the Supreme Court. The government asked for

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review of a case in which a man called up by the draft on the last day of World War I, but not taken, had obtained a judgment 25 years later that awarded him an honorable discharge and veterans' benefits.

> Pursuant to the provisions of Section 2 of the Selective Draft Act of 1917 (c. 15, 40 Stat. 76, 77-78) and regulations promulgated thereunder, respondent James John Lamb was ordered by the local draft board at Davenport, Iowa, to report for military duty at 9:00 a.m. on November 11, 1918 [Armistice Day] (R. 2-3). The order recited that "From and after the day and hour just named you will be a soldier in the military service of the United States" (R. 13). He reported at the time and place fixed in the order and was appointed leader of a contingent of drafted men who were to travel to Camp Dodge (R. 3-4). Before actually entraining for camp, however, he was orally notified by the local board that he should not entrain because of cancellation of all calls for induction and mobilization (R. 4-5). The cancellation had been made by order of the Provost Marshal General under instructions of the President, the contents of the order being communicated to all State draft executives by telegram on November 11, 1918 (R. 16). On November 15, 1918, respondent was notified in writing by his local board of the cancellation order and advised that "such cancellation in cases of registrants who were inducted has the effect of an honorable discharge from the Army"(R. 5, 15). On January 26, 1919, respondent received a certificate entitled "Discharge from Draft" on Form 638- 1, A.G.O., dated November 14, 1918 (R. 5-6, 17).

Id. at 243. (The entire brief appears in *Effective Appellate Advocacy* at 242-51.)

In writing the statement of facts, you are creating a mosaic using many different bits of the record. You may use testimony and other evidence, but you may also use the pleadings, documents from related cases, the lower court's own judgment and opinion, its findings and conclusions, the docket sheet-anything that fairly illuminates the case. You must bring the case alive for the appellate court.

3. Always be accurate.

"If the court finds that you are inaccurate," Wiener says, "either by way of omission or of affirmative misstatement, it will lose faith in you, and your remaining assertions may well fail to persuade." *Briefing and Arguing Federal Appeals* at 49. This is another way of saying that like all advocates, the most important quality you have is your credibility. When court or jury ceases to believe in you, they will also cease to believe in your case.

One way to make sure of accuracy is to insert a record reference for each sentence in the statement of facts. Although a tedious and time- consuming process, that will force you to test your statements of the facts against the record.

Citing to the record also allows you to review crucial testimony and other evidence you might overlook when you write from a digest. As different facts take on new significance, you will find yourself modifying your arguments-or thinking of entirely new ones (which, with any luck, you have preserved in the trial record). Write those ideas down (mine usually come in the middle of the night), because some of them will improve your brief.

Err on the side of understatement. Understatement forces you to build your case through successive record references. Do not risk losing your credibility by stating something as fact that the judges cannot find in the record.

I constantly encounter briefs that tell only part of the story. When you are answering, read not only your opponent's legal citations-some of which will probably turn out to help you-but also the record references. Misstatements of fact impeach a brief as much as a witness.

4. "Grasp your nettles firmly."

Tell the court about the facts that hurt you. Lawyers constantly violate this principle. Every case has some bad facts, or it would not have gone to trial in the first place. It is tempting to ignore facts that go against you, in the hope that the appeals court will not pick up on them. But an alert opponent will point out every one of your omissions to the court. As Wiener says, "No matter how unfavorable the facts are, they will hurt you more if the court first learns of them from your opponent." *Effective Appellate Advocacy* at 55.

There are several reasons behind Wiener's suggestion that you explain the problems in your case. If your client has done some

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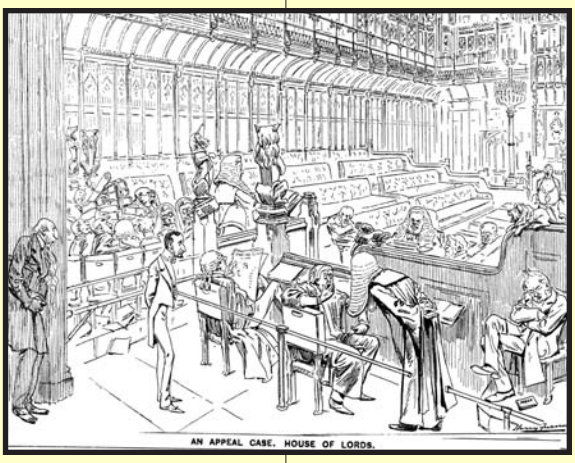
questionable things, you should be the one to explain and mitigate his actions, if possible. Moreover, some of the facts that seem to hurt your cause may have a reasonable explanation that a court may well accept if the court hears about the problem from you.

5. Index the record.

Wiener offers several suggestions for writing the statement of facts. The most vital is to prepare an index of the entire record. That means that the brief writer must also read the record. Wiener puts it bluntly: "The painful but inescapable preliminary to writing the Statement is reading the record; there just isn't any short cut or laborsaving gadget to spare the man who actually pushes the pen." *Effective Appellate Advocacy* at 102.



It takes time to read and digest any record. But you can hardly arrange the mosaic without sorting the tiles. Even if you are a senior partner who leaves it to the juniors to write the briefs, Wiener says you must still read the record:

> No lawyer, and I will say it dogmatically, here and now and many times again, should ever risk his reputation by arguing a case on a record he has not read. And since you should read it anyway, the time for that reading is when the process can still influence the brief.

Id. at 105.

Wiener recommends making handwritten notes-or better, dictating the notes. Here is one place where dictation has a place in the writing of briefs. For actual composition of the brief, you should write it yourself by hand or by typing. Dictation produces wordy writing. Once you have written a clear statement of the facts, you can begin the remainder of the brief. Follow Wiener's advice about the argument.can also get involved by contacting the Clerk of Court and Counsel to the Chief Judge, Meg Robertie.

6. Phrase the "question presented" by the appeal so that the question will lead the reader to answer the question your way.

The most memorable pages of Wiener's book are the ones in which he collects examples of how to state the question presented. The question presented is the first of your argument that a federal appellate court sees. Many state appellate courts follow the same practice. Even Texas, which long required the advocate to state points of error, now allows the use of a question. TEX. R. APP. P. 38.1(a). The question presented is therefore your first opportunity to persuade the court.

Wiener offers two forms for presenting a question. The first form is to write a sentence that begins with "whether," e.g., "Whether postmortem declarations are admissible." The second-for use in complicated cases where you cannot cram the essential facts into a single sentence-consists of a statement of the most important facts followed by a statement of a simple question, e.g., "The question presented is whether in these circumstances the later proceeding is barred by the earlier judgment." *Effective Appellate Advocacy* at 74. The challenge for the appellate lawyer is how best to write either kind of question.

Wiener says the "essential technique" for writing an effective question is "to load the question with the facts of the particular case or with the relevant quotations from the statute involved," fairly stated, so that "you can almost win the case on the mere statement of the question it presents." *Id.* at 74. Here, for example, is the question in the Armistice draft case quoted above:

> Whether a court may, by mandamus, order the Secretary of War to issue an "Honorable Discharge from the Army" to an individual who received a "Discharge from Draft" in 1918, over 25 years prior to the institution of suit, where such individual simply reported for induction on November 11, 1918, returned to his home on that day because of the cancellation of all draft calls by order of the President, never entrained for travel to a military camp, never wore the uniform, and never was accepted for military service by the Army.

Id. at 76, 243.

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The court of appeals had held in the draftee's favor. The Supreme Court unanimously reversed the court of appeals- "a mere thirteen days after oral argument." *Id.* at 76; *Patterson v. Lamb,* 329 U.S. 539 (1947).

Like drafting the statement of facts, drafting the question presented requires concentration and (in my case) many drafts. You must know the case so well that you can sum up the argument in a single sentence.

7. "Think before you write the argument."

This is the hardest of Wiener's admonitions for me to follow because I am always behind schedule and under deadline pressure after pulling together the statement of facts. But he is right: "Never start to write until you have thought the case through and completed your basic research." *Id.* at 106. If you write too soon, the final brief reflects it-just as the wall you build will not stand straight if you have not strung it out beforehand.

An equally good reason to plan your argument and read the cases is that "the basic authorities are always full of suggestive leads for further development." *Id*. But how do you know when you are through with the research? Wiener says, "The only answer is, you come to sense it." *Id.* Then, you start to write.

I have never been able to outline an argument on paper as Wiener suggests. Writing the statement of facts and doing the research sets up the argument in my mind. A formal outline would doubtless work better. Whatever your method, do not hesitate to move sections of the argument all around in later drafts. You must find the strongest point in your case and lead with that.

Remember, writing is thinking. Revisions trim and simplify your argument. Every changed word or crossed-out sentence helps you perfect the flow of your argument. Go through as many revisions as time permits. Your goal is to write an argument that your opponent cannot answer. No one produces arguments of that kind in the first draft.

8. "Never let the other side write your brief."

If you take away only one idea from Wiener's book, take this one. I have seen myriad briefs that begin by reciting the other side's argument. The purpose of your argument is to persuade the court that your position is the correct one. Restating the other side's contentions will not help you do that. Restatement can only persuade the court that your adversary's position is correct.

I knew an appellate lawyer who was such a fine writer that he restated the adversary's contentions before each section of his own argument far better than his adversary had stated the matter to begin with. I call this throat-clearing: The lawyer was writing the other side's argument to make sure he understood it. Start with your argument, not your opponent's.

Grab your opponent by the throat (figuratively, of course) with the very first sentence of your argument, and say some thing positive. "The lower court erred because ...," or "The evidence proves that..." In the rest of your argument, refer to your opponent in passing as you knock down his contentions. Rebut your opponent's point as you state your own.

Wiener tells you not to write a responsive brief that merely answers the other side's argument point by point: "Don't follow the appellant's outline of points, even when you must reply to all of them. Put your own strongest point first, because what may be strongest for him may not be so for you." *Id.* at 107. Wiener illustrates this point with an anecdote. A solicitor general asked one day when the government's brief in such-and-such a case would be ready. The reply came back that the lawyer had not started drafting the brief because he had not yet received the appellan's brief. "What's the matter?" asked the solicitor general. "Haven't we got a case?" *Id.*

Drop weak points. Weak arguments in your brief will dilute all your other arguments. If you think you must include every conceivable argument regardless of its strength, remember what Wiener says: "Indeed, critics of outstanding competence have emphasized that it is the ability to discern weak points, and the

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willingness to discard weak points, that constitute the mark of a really able lawyer." *Briefing and Arguing Federal Appeals* at 96.

9. Always use argumentative headings.

The most useless heading I encounter in a brief is: *"I. Introduction."* It tells the reader nothing. It grabs nobody and goes nowhere. And yet I have seen it in dozens of briefs.

You write every word, every sentence, and every paragraph in the argument of a brief for only one reason: to advance the argument. It follows that headings, too, should advance the argument.

In many briefs I see headings like, "The defendant was negligent." That is better than "Introduction" or even "Negligence," but all it does is make an assertion. The statement proves nothing.

What you want to make is an argument, and you make an argument by telling the reader why: "The defendant was negligent because he saw the train approaching at a high rate of speed but did not wave his red flag at the plaintiff." That kind of heading boils down your argument on that point into a single sentence. If you work hard enough on the sentence, it will stick in the court's mind.

Wiener gives an example of "how not to do it," using what the newspapers call label heads, i.e., verb-less headings:

> I. The Rule of Jurisdiction Invoked by the Court Below Is Not Unconstitutional.
> A. The Intent of Congress.
> B. The Constitutional Considerations.
> C. The Application of the Constitutional Considerations to this Case.
> D. The Effect of Petitioners' Contentions.

Id. at 71-72

Go back to recent briefs you have received. Many will contain headings of this type. They tell you nothing of value to the argument. Wiener writes:

> Every one of the subheadings is blind, giving the reader no clue whatever to the substance of the argument; and the principal heading is only assertive. It falls short of being argumentative because it does not explain why the rule being appealed from is not unconstitutional-a matter of more than passing importance, since that was the vital issue in the case.

EFFECTIVE APPELLATE ADVOCACY AT 73.

Do not use argumentative headings in the statement of facts. Label heads work well in the statement of facts, where you wish to appear objective. But label heads do not argue. An argumentative heading grabs the reader and pulls him into the argument.

Repetition

There are other advantages to the argumentative heading. Repetition drives a point home, as advertising shows us. But you had better not repeat yourself in today's era of page limits and time constraints. As Judge McGarry said in these pages, "Say it once. Say it right-but say it once." *McGarry's Illustrated Forms of Jury Trial for Beginners,* 9 LITIGATION, No. 1, at 42 (1982). The argumentative heading allows you not only to repeat your main arguments **but to do it in boldfaced type.** Of course, you do not want to start your argument under each heading with the exact sentence you have just used for a heading. But each heading should sum up and encapsulate the argument of each section of the brief.

Wiener points out another advantage of the argumentative heading: A series of argumentative headings turns the table of contents into a powerful tool of persuasion. The reader can scan the table of contents and see not only the complete history of the case but also each point of the argument. *Effective Appellate Advocacy* at 70.

10. Do not use footnotes.

Wiener makes a persuasive case against footnotes in briefs. He says:

> Perhaps no single implement of all the vast apparatus of scholarship is so thoroughly misused in the law as the footnote. There may be some justification in the manifold sphere of the academic world for that formidable display of learning and industry, the thin stream of text meandering in a vale of footnotes, but that sort of thing is quite self-defeating in the law, because it makes the writer's thoughts more difficult to follow-and hence far less likely to persuade the judicial reader.

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> The worst offenders on this score are undoubtedly the law reviews, whose student editors have at least the excuse of still being at the apprentice stage, and whose faculty editors may have had but insufficient opportunity to gain firsthand acquaintance with judicial psychology. Next in order are the attorneys at law who are not lawyers but who like to make a show of erudition.

Id. at 157-58.

Nevertheless, Wiener believes there are occasions on which you may use footnotes. Here I disagree with the master. I do not believe anything justifies a footnote in a brief. The purpose of a brief is to get read. Anything that interferes with reading jars comprehension. What greater interference can there be for a reader than to stop his eye at the top of the page and drop it down to the bottom to read small type single-spaced?

Your goal in a brief is to hook the reader with the first sentence and pull him inexorably from each sentence to the next until he has read the entire brief. You want to turn your product into a legal thriller. You may not attain that goal, but it is certainly your aim. A footnote allows the reader to pause and to put down your brief. When that happens, you have failed. Never use footnotes.

11. Use "good, clear, forceful English."

For some reason, Wiener did not have much more to say on the subject of legal writing-style than that. *Id.* at 66. He urged lawyers to use short sentences and to minimize legal formalisms such as "the said," hereinbefore," "thereinafter," and so on. But in general, he concluded that "[s]tyle is of course an individual matter." *Id.* at 67.

Wiener was a natural writer. Most lawyers, sadly, are not. Therefore, let me add some writing suggestions that I make to new lawyers in my office.

Read and memorize the first five rules that George Orwell lays down to writers in his essay "Politics and the English Language," 4 *Collected Essays, Journalism & Letters of George Orwell* at 127, 139 (New York 1968):

- "Never use a metaphor, simile or other figure of speech which you are used to seeing in print."
- "Never use a long word where a short one will do"- not even if you wrote for the law review.
- "If it is possible to cut a word out, always cut it out." ("Always" is the important word in this sentence.)
- "Never use the passive where you can use the active."(This rule applies particularly to lawyers, who do not seem to know what the active voice is. See Strunk & White, *The Elements of Style* 18 (1979 ed.).)
- "Never use a foreign phrase, a scientific word or ajar-gon word if you can think of an everyday English equivalent." (Words such as "hereinafter," and "aforesaid," and "such," and "said" (as in "said case"), and "prong" (as in "the second prong of the rule") are jargon. There are many more, which you have spent years learning. Translate them into every-day English or leave them out.)

Forget the sixth rule, which allows you to "[b]reak any of these rules sooner than say anything outright barbarous." Lawyers in general write so barbarously that, like alcoholics, they cannot take any liberties with the rules.

I have three other suggestions for briefwriters:

- Never dictate a brief or any other kind of argumentative writing. Talk, especially formal lawyer-talk, becomes far too corpulent for easy reading.
- Do not file your first draft. As Kipling suggested, "Let it drain"-at least overnight.
- Then revise it, and revise it many times until some nonlawyer can explain to you what you are talking about. Try to imagine yourself as the reader. Move around to the other side of the desk. What seems powerful on Monday in the throes of composition will look weak and wordy on Tuesday or Wednesday.

Wiener suggests reading good legal opinions, such as those of Chief Justice Hughes, to improve your argumentative writing. *Effective Appellate Advocacy* at 68. But do not confine yourself to legal writing. Read widely. For example, read the essays of Sir Francis Bacon-the pithiest writing in English-and the prewar speeches of Sir Winston Churchill that urged the British nation to re-arm against Hitler.

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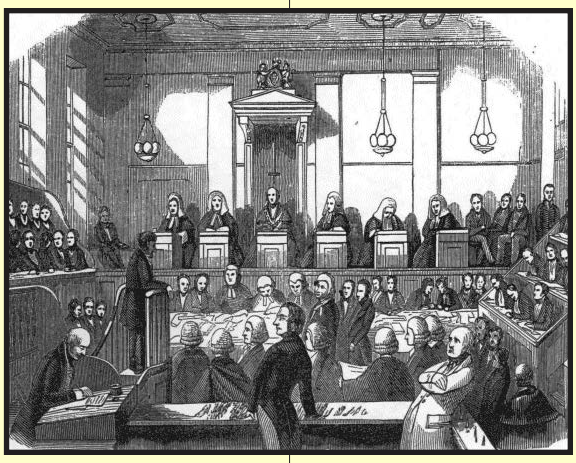
Wiener also had some suggestions for oral argument. If you are lucky enough to get an oral argument in this day of maximized judicial efficiency, the most important is to study the record.

1. Achieve complete knowledge of the record.



Wiener insists that you read the record yourself, and reread the critical portions:

> If I were asked to name the advocate's secret weapon- a weapon, indeed, that still remains a secret to many- I should say that it is complete knowledge of the record... No lawyer, no matter how able he may be, can afford to argue any case in ignorance of the record. It is done, of course, but it is risky, on a par with passing a car on a curving hill; you may pull it off, but the chances are heavily weighted against you.

Briefing and Arguing Federal Appeals at 293-94.

2. State the facts clearly.

You must have the ability to explain a complicated set of facts to the court just as much as to the jury. Even the panel that tells you it is familiar with the facts will require explanation of some points. You must be able to tell the judges quickly and simply what the problem is all about. Wiener writes:

> "The great power at the bar is the power of clear statement." If that expression standing alone seems unduly sententious, just listen someday to a really able lawyer outlining a complicated fact situation to a court or jury, and compare his exposition with the efforts of some garrulous dowager at the bridge table to explain just what happened to the girls at the last big country club dance. The lawyer states the essentials first, then develops and unfolds the details; the dowager runs on endlessly and repetitiously, expounding whole masses of trivia.

Effective Appellate Advocacy at 186-87.

3. Give an effective opening.

You must catch and seize the court's interest in the opening minutes of your argument. This is particularly true for the appellee, who must "in his opening sentence seize upon the central feature of the case, and, by driving it home, dispel the impression left by his adversary." *Briefing and Arguing Federal Appeals* at 286.

Perhaps the most effective opening in the book is that of Wiener himself arguing for the United States Government in a denaturalization case in the Supreme Court: "The question in this case is whether a good Nazi can be a good American." *Id.* at 289. The case was *Knauer v. United States,* 328 U.S. 654 (1946).

Wiener could handle questions during oral argument with equal aplomb. In fact, when he was an assistant to the solicitor general, Wiener gave one of my favorite answers to a question asked during an oral argument. A former postal employee sued the government in federal court in his home state of Oregon claiming unlawful termination. The government contended that Congress had changed long-existing law and required the ex-postman to bring his suit in the District of Columbia. Wiener had to defend the government's interpretation.

In preparing for argument, he struggled to come up with an answer to a question that he knew was coming- how could Congress have possibly thought that it was reasonable to make an ex-employee go 3,000 miles to have his routine case heard? The question did come, and Wiener gave his prepared answer: Congress knew that any court deciding these cases must have an intimate knowledge of complex government regulations. Because courts in the seat of government must be more familiar with these regulations than some court in the hinterlands, Congress had favored Washington, D.C.

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Justice Frankfurter now joined the debate. He pointed out that he had been an Assistant United States Attorney in New York early in his career and that suits by postal workers were common. Those cases were so easy that the United States Attorney always assigned them to the most inexperienced lawyers in the office so they could get some trial time. With that in mind, Justice Frankfurter asked, would Wiener reconsider his previous answer.

Wiener's response:

> "Your Honor, there were giants in those days"

* * *

These are only the highlights of a work containing dozens of suggestions about brief-writing, oral argument, and rehearings. Even the most experienced appellate lawyer will take something away from a reading of Wiener's book.

After several years of practice using Wiener's treatise, I discovered a division of opinion between those who preferred the original 1950 edition of the book and those who preferred the 1967 edition. I had never seen the 1950 version, so I began a search for the first edition. That ultimately led me to the author himself.

In the mid-1980s, someone scheduled a committee meeting of some kind for Phoenix, where Fritz Wiener-then nearing 80-lived in retirement with his wife, Doris, to whom he had dedicated the 1967 edition. I resolved to meet this eminent lawyer, both to tell him what a wonderful book he had written and to see if he himself had an extra copy of the first edition.

But for some reason, I had to drop out of the trip. So I telephoned him, explained that I was a devotee of his 1967 work, and said that I would like to own a copy of the first edition as well.

I asked if he had an extra copy of the first edition and offered to pay for it.

"Well, what do you think I should charge you?" Wiener asked. "You set the price," I replied.

"How about a hundred dollars?" Wiener said.

I agreed, although I remember thinking that the price was high for an out-of-print book. But then the book arrived, and I began to read it. I realized that Fritz Wiener underestimated the true value of his masterpiece. Indeed, I had bought all this wisdom at a bargain price.

Grab any version you can find in the used bookstore. Wiener's book contains the finest advice you will find about how to win an appeal.

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JOHN PAUL STEVENS: A *True* Gentleman *of* Justice

*By Rachael D. Wilson**

Anyone who knew him will tell you that Justice John Paul Stevens was one of the most gentlemanly men you could ever meet. The Chicago Inn of Court held a meeting on October 10, 2019, to share stories about the late Justice Stevens. The Inn gathered a panel of those who spent time with Justice Stevens both on the bench and off. Sitting in front of a room filled with some of Chicago's finest attorneys and jurists, the Honorable William J. Bauer of the Seventh Circuit Court of Appeals, the Honorable Joel M. Flaum of the Seventh Circuit Court of Appeals, Collins Fitzpatrick, the Circuit Executive of the Seventh Circuit Court of Appeals, and Edward Siskel, the Chief Legal Officer of Grosvenor Holdings, LLC, and a former law clerk of Justice Stevens', -- with the Honorable Amy J. St. Eve of the Seventh Circuit Court of Appeals moderating -- shared their recollections about Justice Stevens.

Justice Stevens touched each panelist's life in a special way. Some of the best stories of the evening helped shape a picture of the Justice as a true gentleman of justice.

Even when he reversed you, he was kind.

Judge Bauer started off the evening with a story from his early days on the District Court. One of Judge Bauer's most memorable experiences with Justice Stevens occurred early in his judicial tenure, while Justice Stevens was on the Seventh Circuit Court of Appeals.

Judge Bauer's first case after his appointment to the United States District Court for the Northern District of Illinois was inherited from another Judge. He was sworn in on a Friday, then started a preliminary

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hearing on Monday. By Wednesday evening, Judge Bauer entered an order granting a stay. "On Thursday morning, I was reversed, and John Paul Stevens wrote the reversal," stated Judge Bauer as he laughed. "What a record," he chuckled at the memory, "five days." Judge Bauer reminisced that to his knowledge he has the shortest tenure on the District Court before being overturned. Later on, Judge Bauer spent some time kidding with Justice Stevens about that reversal, and Justice Stevens remembered the case. Justice Stevens told Judge Bauer, "I was right," and Judge Bauer agreed, "I agreed with him, he was right. I had to. He was one of the nicest men I ever knew."

Judge Flaum told the Inn that as the Circuit Justice for the Seventh Circuit, Justice Stevens would visit annually, as most Circuit Justices do, and the Justice would give a review, up or down, of how the Supreme Court ruled on Seventh Circuit cases. Judge Flaum laughed, "he was very kind when he talked about reversals saying 'tough case,' maybe it was, maybe it wasn't. But he was very generous and better to say, diplomatic."

But Justice Stevens would not stop with merely sharing diplomatic criticism. Judge Flaum explained that the Justice would go out of his way to take care of those in his Circuit:

> "He would go out of his way, especially if there was a new Judge, I'm talking about a District Judge, not just a new Court of Appeals Judge. And you could see him, whether it was in a corridor or in a coffee shop, reach out and somehow embrace in a way to say you're now a part of a court family. I thought that was so inviting, so much so that as the years went on, when he would ask for questions from the Judges, he would get a lot because they felt comfortable. He seemed to know everybody's name. I know that may seem like a little small item to some people, but you know to have a Justice, especially for somebody just coming on the Court and as the years go by with his high ranking and standing, it was a very special time."

"I want to tell you how diplomatic he was."

Judge Flaum first knew of Justice Stevens through the bar associations in Chicago, but his first meaningful experience with the Justice did not occur until Judge Flaum himself was appointed to the United States District Court for the Northern District of Illinois.

"I'm well into my 5th month as a District Judge, I [looked young, and] I didn't look like I was maybe ready for the post." Sitting at the table with a number of other Judges and a visiting Judge during a conference in southern Indiana in 1975, Judge Flaum and other Judges were discussing legal issues:

> "So in the course of conversation, some legal issue came up and I volunteered that I had an opportunity in my short time to deal with a related subject and here's how I handled it. So the visiting Judge says, 'don't you mean how your Judge handled it.' I didn't really know what to say, so Justice Stevens came to my rescue, and said 'oh, he's really a federal Judge.'"

The room erupted in laughter.

His humility was inspiring.

Ed Siskel had the opportunity to clerk for Justice Stevens, so his first memory of the Justice was at his interview for that clerkship.

After Ed got the call about the interview, he contacted one of the Justice's former clerks and asked how he should prepare for the interview. The former clerk explained that Ed should not worry about printing off all of the Justice's opinions, concurrences, and dissents, but rather just go in there and be himself. Ed then proceeded to print all the concurrences, dissents, and opinions Justice Stevens had ever written. He read the print-outs the rest of the day, into the night, and on the plane to the interview, but the former clerk was right. He did not need them.

Justice Stevens and Ed talked for about 30 to 45 minutes, and Ed does not remember much of what they talked about. "It was all a blur," he said. But Ed does remember talking about Edward Levi, the former United States Attorney General who had passed not long before the interview and had had a great influence on Justice Stevens' career. They talked about Attorney General Levi's impact on the country and the Justice Department in the wake of Watergate.

When Justice Stevens called Ed a few days later to offer him the clerkship, Ed explained that, "he went out of his way to say, 'Now you may want to take some time to think about this and see if you have better offers out there.' And I had to literally force him to let me accept the job right then and there on the phone because he thought it wouldn't be a forgone conclusion." Ed said that experience is merely a taste of how modest and humble Justice Stevens was.

"He didn't agree with us all… but he was kind."

Judge Bauer explained that Justice Stevens' legacy on the Seventh Circuit can be summed up in one word: decency. "He was in favor of deep civility," said Judge Bauer, "he insisted on it. He was a model, and I think his role model in that area of treating everybody decently, not just fairly, decently. He viewed that being decent [was] in itself the way to do it, and he did it beautifully. He was just a wonderful guy."

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Judge Flaum, in examining Justice Stevens' legacy on the Supreme Court, explained that the Justice's dissents were very passionate for someone so mild-mannered. "I always remember how powerful his dissents were," stated Judge Flaum. When the Justice retired from the Supreme Court, he decided to add his voice and commentary on the decisions that had come before. "He felt strongly about the Court as an institution."

During his time on the Supreme Court, Justice Stevens loved to hear from the clerks, up to a point. According to Ed, Justice Stevens was not a Judge who liked to rely on bench memos. "He liked to talk through the cases, and so he would come into the office that I shared with one of my co-clerks, we had a sofa and a couple of chairs. He had the chair he would always sit in," explained Ed as he set up the story for the Inn. The Justice and his clerks would sit in the office and talk through the cases for hours to prepare for oral argument. "It was some of the most heavy conversations as a young lawyer that you could possibly imagine."

But the clerks all knew that, although the Justice loved discussing the cases with them, he would send a signal when to wrap it up. "The Justice loved to hear from the clerks, but at a certain point he would go like this," as Ed lifted his folded arms and patted his elbows with his hands to demonstrate the Justice's signal.

From the first experience to the last.

The last time Circuit Executive Collins Fitzpatrick saw Justice Stevens was when he and Gino Agnello, the Clerk of the Seventh Circuit, were preparing for a Circuit Conference. They wanted Justice Stevens to speak at the conference, but the Justice was not travelling that much at that time. So Collins and Gino set up a video interview with the Justice at his home in Fort Lauderdale, Florida, which was right on the beach.

After the interview, they walked across the street to the beach to go for a swim and helped Justice Stevens across the dunes and into the waves. As soon as Justice Stevens was into the water, he took a big dive into the waves. Gino almost had a panic attack because he could no longer see the Justice and did not know that the Justice was a good swimmer. Gino turned to Collins, "I just lost a retired Supreme Court Justice."

The Justice was not lost of course, and Collins and Gino helped the Justice back to his home after their swim. While the three were out and about, everyone wanted to say hello to the Justice, not because he was a Supreme Court Justice, but because he was a nice person.

Judge Flaum also shared his last discussion with the Justice. Speaking slowly, Judge Flaum first went back to when he had an opportunity to spend time with Justice Stevens in 1981, when Judge Flaum was first considered for the Seventh Circuit bench. At that time, the Justice asked him what inquiries were made during the interview process for the seat. Judge Flaum shared that the Congressmen asked him which two Justices he identified with. In response to the question, Judge Flaum told the Congressmen that he identified with Justice John Marshall Harlan and Justice Stevens. Justice Stevens laughed and said, " 'oh Joel, that's a mistake.' And indeed he was right."

A few years ago, Justice Stevens planned to give a talk. The Justice called Judge Flaum and sent him a draft of his remarks for the meeting, asking for his permission to use the story of their exchange from 1981. Judge Flaum chuckled, "safely ensconced on the Seventh Circuit by that time, I said of course, John." Judge Flaum's exchanges with Justice Stevens led him to believe that, "it's hard to believe that any Circuit Justice could surpass him in concern for their individuals, and their individual Circuit."

Humble to the end.

Tradition has it that when a Supreme Court Justice dies, the Justice's former clerks line the Supreme Court steps as the casket is brought into the courthouse to lie in state. The clerks then stand vigil through the night as the Justice lies in the Great Hall of the Supreme Court. Justice Stevens, however, told his clerks at their reunion -- combined with the Justice's 99th birthday -- that when he lies in state, he did not want any of them to stand vigil past midnight. Ed stood with his co-clerks, as the Justice requested, until nearly midnight.

"It was a really meaningful moment. To just have the quiet over the Great Hall of the Court, and to think about him and what he has meant to me, what a mentor he was to me, was really beautiful."

Always a Gentleman.

At the very beginning of the panel discussion, Collins told the Inn about his first memory of Justice Stevens, before he was on the Supreme Court. He explained that he first met Justice Stevens when Collins was a caddy at the Beverly Country Club.

"He always treated caddies very well. He was always a gentleman. As you can see from his whole life, he was always a gentleman." Collins explained that for the golfers who were great tippers and even better players, he and his fellow caddies remembered them well. He also made it clear that those who were terrible tippers and even worse golfers were also well remembered. Justice Stevens was neither, but Collins said most importantly, "he did not lose his cool even after a bad shot." According to Collins, Justice Stevens was "what we would call as caddies a good loop." A good loop is a golfer who plays 18 holes well.

* * *

All in all, the panel echoed that Justice Stevens was and is an iconically humble, kind, and brilliant man. As Judge Bauer stated at the beginning of the night, "One of the nicest men I ever knew. He was kind, he was decent, to everybody."

Reversing *the* Magistrate Judge

*By Jeffrey Cole**

Introduction

There are approximately 580 United States Magistrate Judges actively serving on the federal bench, and they are exercising greater judicial authority than at any time since the Federal Magistrates Act of 1968 replaced the then-existing commissioner system. This significant enhancement of judicial power by the Congress was intended to relieve the District Courts' "mounting queue of civil cases," "improve access to the courts for all groups," and create a vehicle by which litigants can consent to a less formal, more rapid, and less expensive means of resolving their civil controversies. *Roell v. Withrow,* 538 U.S. 580 (2003). The system has succeeded far beyond Congress's expectations. Today, Magistrate Judges account for a "staggering volume of judicial work," *Peretz v. United States,* 501 U.S. 923 (1991); *Govt. of Virgin Islands v. Williams,* 892 F.2d 305, 308 (3rd Cir. 1989), disposing annually of literally hundreds of thousands of discrete matters in both civil and criminal cases. Indeed, for the 10 year period ending September 30, 2018, the Administrative Office of the United States Courts has reported that a total 1,210,163 total matters were decided by Magistrate Judges.

It is no exaggeration to say given the bloated dockets that we have now come to expect as ordinary, the key role discovery now plays in civil litigation, *Bell Atl. Corp. v. Twombly,* 550 U.S. 544, 576 (2007); *A.H. Robins Co. v. Piccinin,* 788 F.2d 994, 1013 (4th Cir. 1986); *Bankdirect Capital Fin., LLC v. Capital Premium Fin., Inc.,* 2017 WL 4005918, at *1 (N.D. Ill. 2017)(collecting cases), and the central role

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Magistrate Judges now play in overseeing complex, pretrial discovery, *Celexa & Lexapro Mktg. & Sales Practices Litig.,* 293 F. Supp. 3d 247, 249 (D. Mass. 2018), the role of the Magistrate Judge in today's federal judicial system is "nothing less than indispensable." *Peretz,* 501 U.S. at 928. Without them, "the work of the federal court system would grind nearly to a halt.'" *Wellness Int'l Network, Ltd. v. Sharif,* _U.S._, 135 S. Ct. 1932, 1938–39 (2015).

Thus, every lawyer with a case in the federal courts will have part of the case – often large and critical parts – decided by a Magistrate Judge. And since "all judges make mistakes," *Fujisawa Pharmaceutical Co., Ltd. v. Kapoor,* 115 F.3d 1332 (1997), the question is not whether you will be on the losing side of a decision, but what to do about it when it occurs. The Federal Magistrates Act provides a detailed procedure for review by the District Judge of a Magistrate Judge's 1) non-dispositive decision in a non-consent case, 28 U.S.C. §636(a), or 2) a "recommended" disposition of a "dispositive" issue that has been referred for a non-binding recommendation. 28 U.S.C. § 636(b); Rule 72(b), Federal Rules of Civil Procedure. We begin with a discussion of principles governing review by the District Court of rulings by Magistrate Judges on non-dispositive matters – that is, matters that do not dispose of a claim or defense.

A.

Magistrate Judges do not have jurisdiction to try civil cases to verdict or even to "decide" a matter that is dispositive of a claim or defense, unless the parties unanimously consent to have the Magistrate Judge either conduct the entire case, including trial to verdict, *Brown v. Peters,* 940 F.3d 932 (7th Cir. 2019), or consent on a limited basis to have the Magistrate Judge resolve a particular dispositive matter – what is often referred to as limited consent. *See* 28 U.S.C. §§ 636(c)(1); Rule 73(a), Federal Rules of Civil Procedure. Consent to have a Magistrate Judge oversee the entire case must be unanimous, and generally (and certainly preferably) in writing. However, while written consent is theoretically not essential, consent must be unanimous, clear and unambiguous. *Stevo v. Frasor,* 662 F.3d 880, 883 (7th Cir. 2011). Courts have held that consent can sometimes be implied from conduct of parties during the proceedings. *Id.* But don't take a chance needlessly and give your opponent a significant argument for the Court of Appeals. *See Trzeciak v. Petrich,* 670 F. App'x 390, 391 (7th Cir. 2016).

Where the parties properly consent to have the Magistrate Judge try a civil case to verdict, the Magistrate Judge has all the powers of a District Judge, including the power of contempt. Any final judgment entered in the case will be appealable directly to the Court of Appeals in the same way as an appeal from any other final judgment of a District Judge. *Roell v. Withrow,* 538 U.S. 580 (2003); 28 U.S.C. §636(c)(3); Rule 73(c), Federal Rules of Civil Procedure.

There are two "species" of pretrial matters that may be assigned by the District Judge: those that are not dispositive of a "claim or defense of a party" and those that are. *See* 28 U.S.C. §636; Rule 72(a) and (b). Although the range of referable, non-dispositive pre-trial matters is extensive, discovery supervision and settlement conferences comprise a substantial portion of, and are a staple of the day-to-day work of a Magistrate Judge. Discovery supervision can, in complex cases, involve often substantial and difficult issues. Indeed, rulings on these kinds of controversies can significantly affect the outcome of a case. Given the realities of modern litigation, pre-trial discovery and other pretrial proceedings have become a "monster on the loose. Pre-trial proceedings have become more costly and important than trials themselves." *A.H. Robins Co. v. Piccinin,* 788 F.2d 994, 1013 (4th Cir. 1986). Thus, the role of the Magistrate Judge in modern litigation is often critical to the progress and outcome of the case.

In non-consent cases, Congress has established a mechanism for review of objections of decisions of the Magistrate Judge. First, a party may serve and file "objections" to the Order within 14 days

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after being served with a copy of the Order. For the sake of convenience, I shall use the term "appeal," instead of "review of assigned errors" – the phrase used in the Federal Rules of Civil Procedure – in reference to a request for review by the District Court of a Magistrate Judge's Order. *See* 28 U.S.C.§636(b)(1)(A); Rule 72(a), Federal Rules of Civil Procedure.

Section 636(b)(1)(A) and Rule 72(a) allow a losing party to contest a Magistrate Judge's ruling on a non-dispositive matter by serving and filing written objections with the referring District Judge within 14 days. "The District Judge in the case must consider timely objections and modify or set aside any part of the Order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a). *See also* 28 U.S.C. §636(b)(1)(A). The clear error standard requires as a precondition to reversal of a challenged ruling that the District Judge be left with the "the definite and firm conviction that a mistake has been made." *Weeks v. Samsung Heavy Indus. Co.,* 126 F.3d 926, 943 (7th Cir. 1997). *See Hassebrock v. Bernhoft,* 815 F.3d 334, 340 (7th Cir. 2016); *Sommerfield v. City of Chicago,* 2008 WL 11395582 at *2 (N.D.Ill. 2008). A non-dispositive Order is not, however, reversible merely because the District Judge might have exercised his/her discretion differently than did the Magistrate Judge. A Magistrate Judge – no less than a District Judge – has very broad discretion in the resolution of discovery disputes. *Crawford-El v. Britton,* 523 U.S. 574 (1998). Since Rule 72 requires the District Court to employ an "abuse of discretion" standard of review in determining whether a Magistrate Judge's decision in a discovery matter should be set aside, a party seeking to overturn a discovery Order bears a heavy burden because reversal is appropriate only if the magistrate's discretion is abused. *Botta v. Barnhart,* 475 F. Supp. 2d 174, 185 (E.D.N.Y. 2007). *See* discussion in *Sommerfield, supra.*

Remember, "reasonableness is a range, not a point," *United States v. Cunningham,* 429 F.3d 673, 679 (7th Cir. 2005), and therefore, a "striking of a balance of uncertainties can rarely be deemed unreasonable...." *United States v. Bullion,* 466 F.3d 574, 577 (7th Cir. 2006). Or, as Justice (then Judge) Stevens succinctly put it, discretion can go either way. *Rogers v. Loether,* 467 F.2d 1110, 1111-12 (7th Cir.1972). Indeed, two decision-makers faced with the same factual record can arrive at opposite decisions without either constituting an abuse of discretion. *See Mejia v. Cook County, Ill.,* 650 F.3d 631, 635 (7th Cir. 2011); *United States v. Banks,* 546 F.3d 507, 508 (7th Cir. 2008). Indeed, "'[t]he very exercise of discretion means that persons exercising discretion may reach different results from exact duplicates.'" *McCleskey v. Kemp,* 753 F.2d 877, 891 (5th Cir. 1985), *aff'd, McCleskey v. Kemp,* 481 U.S. 279, 289-290 (1987).

Thus, given the very nature of discretionary decisions and the deference accorded them, it's a tough sell convincing a District Judge that the Magistrate Judge's decision on issues like how costs of discovery should be allocated, where a deposition should be taken, whether a witness can be deposed for longer than 7 hours, what is "relevant," whether a particular discovery request imposes an "undue burden," and the hundreds of other kinds of discretionary calls that a Magistrate Judge makes somehow constitute an abuse of discretion – that is, that no reasonable person could agree with the Magistrate Judge's conclusion. *See supra; Rivera v. City of Chicago,* 469 F.3d 631 (7th Cir.2006).

While the 14-day time period defines the timeliness of the request for review, the 14-day rule is not jurisdictional, and noncompliance may be excused in the interests of justice. *See Schur v. L.A. Weight Loss Centers, Inc.,* 577 F.3d 752 (7th Cir. 2009); *Spence v. Superintendent, Great Meadow Correctional Facility,* 219 F.3d 162, 174 (2d Cir.2000). But don't place too much faith in the District Judge's permissiveness. A refusal to overrule the Magistrate Judge because the "appeal" was untimely will be measured by the highly deferential standard of abuse of discretion and will seldom be reversed by the Court of Appeals.

It should be noted that arguments not advanced in support of a particular position before the Magistrate Judge generally cannot be made to the District Judge on a request for review of the non-dispositive Order. While the cases are not uniform, most hold or at least contain language to the effect that a waiver will result if the argument relied on in the District Court was not made to the Magistrate Judge. *See e.g.,* Rule 72(a); *Smith v. School Bd. of Orange County,* 487 F.3d 1361, 1365 (11th Cir. 2007); *Wingerter v. Chester Quarry Co.,* 185 F.3d 657, 661 (7th Cir. 1999). Nonetheless, there is authority that the District Judge reviewing a Report and Recommendation is not precluded from considering an argument even though not advanced to the Magistrate Judge.

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As the Court stressed in *United States v. Street,* 917 F.3d 586, 598 (7th Cir. 2019), a District Judge "'is not precluded from reviewing a Magistrate Judge's Order to which a party did not object.'" "'[T]he District Judge was free to consider any issues she wished to.'" *Id.*

But don't count too much on the District Court's indulgence and magnanimity. Therefore, don't save your best arguments for the District Court or you may find that the Judge will refuse to consider an otherwise meritorious argument, because it was not made to the Magistrate Judge. *See* Rule 72(a). On the question of waiver, generally, see J. Cole, *Object Now or Forever Hold Your Peace: The Unhappy Consequences on Appeal of Not Objecting in the District Court to a Magistrate Judge's Decisions,* The Circuit Rider 38 (April 2011).

Of course, the fact that you can "appeal" a Magistrate Judge's ruling does not mean you should. Whether to appeal a particular ruling is often a difficult question, and there is no easy or algorithmic answer. Here are some of the factors you might want to consider in making the decision: First, has the case been referred for general discovery supervision and for the resolution of all non-dispositive pretrial motions? Second, is the case complicated and the discovery likely to be labyrinthine and lengthy? If so, you may be spending years with the Magistrate Judge, and the rulings may well influence the outcome of the case. Indiscriminate appeals from his or her Orders will do little to advance your standing in the case – either with the Magistrate Judge or the District Judge. I do not mean for a moment to suggest that the decision should be guided by considerations of appeasement or concerns about ruffling anyone's feathers. My point, rather, is that over time, mistakes are inevitable, but may not be of sufficient import to warrant an "appeal."

Indiscriminate "appeals" of decisions of a Magistrate Judge – *see e.g., Sommerfield v. City of Chicago,* 813 F.Supp.2d 1004 (N.D.Ill. 2009) -- should be avoided. Not only are they not likely to succeed, but they are inconsistent with the purposes sought to be achieved by the Magistrate Judges Act. Needless and indiscriminate appeals may affect your credibility with both the Magistrate Judge and the District Judge and will needlessly create unnecessary friction with your adversary without advancing your case one whit.

The "clearly erroneous or contrary to law" standard is quite stringent. A decision is generally held to be clearly erroneous if, although "there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.,* 333 U.S. 364, 395 (1948). This exacting standard plainly does not entitle a District Court to reverse the finding of a Magistrate Judge simply merely because he or she might have decided the issue differently. Compare *Doe v. First Nat. Bank of Chicago,* 865 F.2d 864, 874 -875 (7th Cir. 1989).

It is not enough simply to show that the challenged decision was "just maybe or probably wrong." For a time, courts were fond of saying that a ruling could only be shown to be "clearly erroneous" if it struck the court as wrong "with the force of a five-week-old, unrefrigerated dead fish." *TFWS, Inc. v. Franchot,* 572 F.3d 186, 194 (4th Cir. 2009); *Educational Credit Mgmt. Corp. v. Jesperson,* 571 F.3d 775, 789 (8th Cir. 2009); *Parts & Electric Motors, Inc. v. Sterling Electric, Inc.,* 866 F.2d 228, 233 (7th Cir. 1988). The dead fish phraseology may be a bit indelicate, and not quite in vogue today, but it underscores the highly deferential standard of review that a District Judge must employ in reviewing a Magistrate Judge's decision on non-dispositive pretrial matters and the uphill battle that you will have in such cases. *See also Sommerfield v. City of Chicago,* 613 F.Supp.2d 1004, 1010 (N.D.Ill. 2009)("Plaintiff faced a substantial hurdle in attempting to upend [the Magistrate Judge's] discovery rulings.").

Quite apart from the limitations Congress has imposed on review of Magistrate Judges' decisions, there are intensely practical and common sense considerations that should govern the decision of whether to appeal a Magistrate Judge's Order.

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Just because an Order on a non-dispositive matter may be reviewable does not mean you should appeal to the District Court. Be selective in picking your fights. A possible win may ultimately not be worth what you think you have achieved. In making the decision to seek review, keep in mind the importance of the issue and that a failure to appeal a Magistrate Judge's ruling to the District Judge may preclude later raising the issue in the Court of Appeals in the event there is an appeal from a final judgment in the District Court. *Caidor v. Onondaga County,* 517 F.3d 601 (2nd Cir. 2008); *United States v. Brown,* 79 F.3d 1499, 1504, n. 4 (7th Cir. 1996)(collecting cases). *See also Wingerter v. Chester Quarry Co.,* 185 F.3d 657, 661 (7th Cir. 1999). *Cf. Thomas v. Arn,* 474 U.S. 140 (1985).

Still, any number of cases hold that a district judge has discretion to consider untimely or unmade arguments and is not prohibited from conducting his or her own review *sua sponte,* despite Rule 72(a). *United States v. Street,* 917 F.3d 586, 598 (7th Cir. 2019). As a practical matter, the issue is unlikely to arise very often since district judges do not routinely review unobjected-to Orders of magistrate judges, and if the issue is important enough, the adversely affected party will seek review.

B.

The Magistrate Judge's Act and the implementing Federal Rules of Civil Procedure prohibit a District Judge from referring to a Magistrate Judge for plenary determination a dispositive motion that disposes of a claim or defense, including motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or permit maintenance of a class action, to involuntarily dismiss an action, or to dismiss for failure to state a claim upon which relief can be granted. 28 U.S.C. § 636(b)(1)(B); Rule 72(b). The statutory list of prohibited motions is generally interpreted as illustrative, not exhaustive. *See Williams v. Bee Miller, Inc.,* 527 F.3d. 259 (2nd Cir. 2008)(motion to remand to the state court although not mentioned within §636(b)(1)(A) is case dispositive). And it has been held that a sanctions motion which would, in effect, be case dispositive, cannot be decided by a Magistrate Judge.

But, this does not mean that a Magistrate Judge has no role to play in dispositive motions. On the contrary, the Act and the Rules authorize a District Judge to assign dispositive matters to a Magistrate Judge, not for decision, but for issuance of a recommended disposition, including any proposed findings of fact. 28 U.S.C. §636(b)(1)(B); Rule 72(b). In other words, dispositive matters can be "heard," but not "decide[d]" by the Magistrate Judge, who is to rule promptly and in writing. Rule 72(a).

Appeals to the District Court from a Report and Recommendation regarding dispositive matters are governed by a different standard of review than that which applies to review of objections to Orders deciding non-dispositive matters. Section 636(b)(1)(C) and Rule 72(b)(2) require that objections to a Report and Recommendation and/or proposed findings must be filed in writing with the District Court within 14 days. In resolving written objections to a recommended disposition of a dispositive matter that has been properly objected to, the District Court decides any objection *de novo.* Rule 72(b)(3). "[T]he difference between a rule of deference and the duty to exercise independent review is 'much more than a mere matter of degree.' When *de novo* review is compelled, no form of appellate deference is acceptable." *Salve Regina College v. Russell,* 499 U.S. 225, 238 (1991).

The rule prohibiting a party from raising arguments before the District Judge not raised before the Magistrate Judge generally will apply to review of dispositive and non-dispositive matters alike – at least in many jurisdictions, as the Eleventh Circuit explained in *Williams v. McNeil,* 557 F.3d 1187, 1291 -1292 (11th Cir. 2009). And the rule prohibiting a party from raising in the Court of Appeals arguments on dispositive matters where no appeal was taken to the District Judge, who simply adopted

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the recommendation. *See Schur, supra,* 2009 WL 2477642 at n.7. Where the objections were untimely filed with the District Judge, the rule is different, and the Court of Appeals will consider the issue so long as "'the filing [of the objection] was not egregiously late and caused not even the slightest prejudice to the [opposing party].'" *Kruger v. Apfel,* 214 F.3d 784, 787 (7th Cir. 2000).

C.

In the event the decision has been made to challenge the ruling of the Magistrate Judge, your brief to the District Judge should forthrightly acknowledge the appropriate standard of review, rather than arguing as though it did not exist. Hiding one's head in the sand is a futile stratagem. And one that the courts frown on. *See, e.g., Gross v. Town of Cicero, Ill.,* 619 F.3d 697, 703 (7th Cir. 2010); *Fred A. Smith Lumber Company v. Edidin,* 845 F.2d 750, 753 (7th Cir. 1988); *Hill v. Norfolk & Western Ry. Co.,* 814 F.2d 1192, 1198 (7th Cir. 1987). Most importantly, the avoidance approach doesn't work. The District Judge knows the standard of review, and you can be sure your opponent will not only point it out, but point out that your brief ignores it. If this sounds theoretical and contrary to the way things actually occur on a daily basis, it isn't.

Keep in mind that unsupported conclusions are not arguments. Nothing is simpler than to make an unsubstantiated allegation." *Parko v. Shell Oil,* 739 F.3d 1083, 1086 (7th Cir. 2014). But "unfortunately... saying so doesn't make it so...." *United States v. 5443 Suffield Terrace, Skokie, Ill.,* 607 F.3d 504, 510 (7th Cir. 2010). *See also, Biestek v. Berryhill,* —— U.S. ——, 139 S. Ct. 1148 (2019); *Madlock v. WEC Energy Group, Inc.,* 885 F.3d 465, 473 (7th Cir. 2018); *Brenda L. v. Saul,* 392 F. Supp. 3d 858, 868 (N.D. Ill. 2019). Moreover District Judges will not develop arguments that should have been made in the brief below or in the briefs before them. It's not their job to do so, as the Courts of Appeals continually remind lawyers. *Fabriko Acquisition Corporation v. Prokos,* 536 F.3d 605, 609 (7th Cir. 2008). Further, the rule everywhere is that skeletal, perfunctory, or unsupported presentations will not be considered, and the point will be deemed waived. *Blow v. Bjora,* 855 F.3d 793, 805 (7th Cir. 2017); *Lee v. City of Chicago,* 69 F.Supp. 885, 888 (N.D.Ill. 2014)(collecting cases). Thus, an essential precondition to a successful "appeal" from a Magistrate Judge's Order is a brief that spells out the error alleged to have been made and is supported by comprehensive arguments and legal authority, and explains rather than merely concludes, why the decision of the magistrate judge should be reversed.

The tone of the brief to the District Court is all important. It should be respectful, impersonal, non-accusatory, and directed solely to the merits of the Order being appealed: a significant mistake has been made that needs to be corrected; nothing more. Accusations against the Magistrate Judge are counter-productive. After all, judges, no matter how gifted, make mistakes, *Olympia Equipments v. Western Union,* 802 F.2d 217, 219 (7th Cir. 1986), and the brief should be written in a way that underscores the importance of the challenged ruling to the case and ultimately the discovery of truth which is the object of all trials. Moreover, it should be stressed that reversals foster public confidence in the federal judiciary. *See Mistretta v. United States,* 488 U.S. 361, 407 (1989); *Sherman v. United States,* 356 U.S. 369, 380 (1958).

In short, attacks on the Magistrate Judge or on your adversary are unproductive and will not advance the result you ultimately seek to achieve. *Carter v. Daniels,* 91 Fed.Appx. 83, 84 (10th Cir. 2004). Disrespectful and uncivil language will not be tolerated – or appreciated – by the District Court. *United States v. Venable,* 666 F.3d 893, 904 (4th Cir. 2012); *Hooks v. Astrue,* 2012 WL 3454416, 4 (E.D.Tenn. 2012)("If Counsel honestly believes that one of the judicial officers of this court is lacking in candor and sincerity then Counsel should relinquish his membership in the bar of this court. If Counsel does not so believe, then Counsel has been reckless with the language he choose. In either event, this is not up to the standards the Court expects of attorneys practicing in this district and is uncivil, inflammatory and unprofessional. The Court instructs counsel that it is sufficient to assert the Magistrate Judge's reasoning is in error; it is unnecessary and improper to impugn the Magistrate Judge's motives or question her integrity."). *See also Redwood v. Dobson,* 476 F.3d 462, 469-470 (7th Cir.2007); *United States v. Hoskins,* 2014 WL 4650219, at *4 (N.D. Ill. 2014). Let the facts speak for themselves. The message will not be lost on the reviewing court.

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Most judges believe that there is "growing incivility among contending lawyers [that] mars our justice system and harms clients and the public interest." *Dahl v. City of Huntington Beach,* 84 F.3d 363, 364 (9th Cir.1996); *Hooks v. Astrue, supra.* They continue to subscribe in substance the sentiments expressed by Chief Justice Burger in an address to the American Law Institute: "Someone must teach that good manners, disciplined behavior, and civility-by whatever name-are the lubricants that prevent lawsuits from turning into combat. More than that, civility is really the very glue that keeps an organized society from flying into pieces.... I submit that lawyers who know how to think but have not learned to behave are a menace and a liability, not an asset, to the administration of justice." (*reprinted in In re Appl'n of McLaughlin for Admission to the Bar of New Jersey,* 144 N.J. 133, 675 A.2d 1101, 1112 n. 9 (1996)).

As the number of cases and law review articles attest, the problem of civility in brief writing is one that persists. *See, e.g.,* Francine Griesing, *Taking the High Road* (2019 ABA); L. McKinney, *Some Thoughts on Civility and the Practice of Law* ("The study also found that brief writing… [is] infected by incivility"). For example, suppose your opponent relies on a citation from a case that is inexact or inapplicable because it excludes a critical portion of the text through the use of ellipses – or worse, without even signifying that the quote is incomplete. Of course, the gambit ought not go unchallenged. There are two ways to deal with the problem. One way is to point out the omission and attack your opponent for what you perceived to be his dishonest and unscrupulous presentation. But the more effective way is to point out the incompleteness of the quotation and set forth the excised portion. Don't resort to an ad hominem attack. Instead, find a case – and there is a case to fit every occasion – which has commented on conduct sufficiently similar to that involved in your case. For example, you could talk about how "[s]trategic omissions do not" change the real meaning of clauses or phrases, *Swanson v. Bank of America, N.A.,* 563 F.3d 634, 636 (7th Cir. 2009), or how courts have frowned on incomplete quotations. *See e.g., May Dept. Stores Co. v. Federal Ins. Co.,* 305 F.3d 597, 599 (7th Cir. 2002); *United States v. Johnson,* 187 F.3d 1129, 1132 (9th Cir. 1999). The judge will get the point and you will not have deviated from high professional standards.

Case selection for the brief is critically important. Yet, all too often, once a case is found that articulates the general principle seemingly involved, that is deemed sufficient. The facts of the supposedly supporting decision are improperly ignored. But, "general propositions do not decide concrete cases." *Lochner v. New York,* 198 U.S. 45, 76 (1905)(Holmes, J., dissenting). It is the facts of a case that are invariably outcome-determinative. They should not be ignored in favor of glittering generalities. *Sandra T.E. v. South Berwyn School Dist.,* 100 600 F.3d 612, 619 -620 (7th Cir. 2010). *See also* the discussion in *Silversun Indus., Inc. v. PPG Indus., Inc.,* 296 F.Supp.3d 936, 939 (N.D. Ill. 2017).

Since the Supreme Court decides very few cases presenting issues like those which will comprise the bulk of appeals to the District Court of Magistrate Judges' decisions, one should look for Seventh Circuit cases involving relevant issues. An obviously persuasive line of authority will consist of decisions from the District or Magistrate Judge overseeing the case. This should be so obvious as to make mention of it superfluous. Yet, seldom does one see cases cited that were decided by the judge who has made the referral. Instead, there is often a seemingly random selection of cases, without regard to their age or factual similarity to the issue at hand or to the identity of the court issuing the Opinion upon which reliance is placed. This is not an infrequent problem, even though case selection is critical to the persuasiveness of your presentation.

The problem of ineffective brief writing is one that has concerned judges for years. The late Karl Llewellyn recounted how every one of his many law professor friends who became judges told him that "the general run of briefs which has come before his court...seems to him barely and scrapingly passable, or else inadequate or worse." The Common Law Tradition: Deciding Appeals, 30 (1960). The passage of time has not cured the problem, *See also* Robert W. Gettleman, *We Can Do Better,* 25 LITIGATION 3 (Summer 1999); Matthew F. Kennelly, *From Lawyer To Judge,* 27 LITIGATION 3 (Summer 2001).

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The moral is once you've decided to seek review of an Order or a Report and Recommendation of the Magistrate Judge, it is imperative that you spend the time necessary to prepare a brief that comprehensively presents the issue being appealed, acknowledges the appropriate standard of review, sets forth the relevant historical facts and background of the litigation, and marshals meaningful authority in a persuasive manner. The brief must carefully explain not merely that there is an alternative view of the issue, but rather why the Magistrate Judge's ruling on the non-dispositive matter at hand was "clearly erroneous or contrary to law." Rule 72(a). Or, in the case of a dispositive issue, it must explain why the Magistrate Judge's Report and Recommendation, when reviewed *de novo,* should be reversed. Rule 72(3). A brief that casually relies on an unfocused selection of authority hinders rather than helps the achievement of your goal, which is to help the judge rule in your client's favor. *Dal Pozzo v. Basic Machinery Co., Inc.,* 463 F.3d 609, 613 (7th Cir. 2006).

Do not hesitate to review one of the scores of helpful books on brief-writing. There is, of course, the classic, Aldisert, Winning on Appeal: Better Briefs in Oral Argument (Clark, Boardman, Callaghan 1992). A more modern and perhaps easier to digest book is the late Justice Scalia's, Making Your Case: The Art of Persuading Judges (2008). A more recent and quite spectacular book is Ross Guberman's, Point Taken: How to Write Like the World's Best Judges (Oxford Univ. Press 2015). And finally, if you really want to know all there is to know -- and more -- there is Steve Shapiro's absolutely extraordinary, Supreme Court Practice (11th ed Bloomberg Law 2019).

Another common error that can undermine efforts to reverse a Magistrate Judge's decision is to submit a brief to the District Court that does not point the court to the specific place in the record where facts supporting your argument – or refuting the opponent's argument – can be found. Judges will not scour a record to locate evidence supporting a party's argument. They are not, the Seventh Circuit assures us, either "pigs hunting for truffles buried in briefs" or "archaeologists" searching the record to locate supporting evidence for one party or the other. *Alexander v. City of South Bend,* 433 F.3d 550, 552 (7th Cir. 2006); *DeSilva v. DiLeonardi,* 181 F.3d 865, 867 (7th Cir.1999). Consequently, it is not sufficient simply to say "see Exhibit B," and hope the judge will find in the perhaps lengthy exhibit the particular page, clause or provision that you think is supportive of your position. The same is true of transcripts. which can be also quite lengthy. Don't just point the judge to the multi-page transcript. Specify the pages you rely on. The judge won't do your work – even they were allowed to. *See Aker v. Americollect, Inc.,* 854 F.3d 397, 399 (7th Cir. 2017); *Arnold v. Villareal,* 853 F.3d 384, 388 (7th Cir. 2017); *Minemyer v. R–Boc Representatives,* Inc., 695 F.Supp.2d 797, 802–803 (N.D.Ill.2009). You would be surprised at the frequency with which such omissions occur.

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I do not mean to paint a gloomy picture and to suggest that you ought not appeal a Magistrate Judge's decision that you believe incorrect and which you have concluded significantly affects the case. Quite the contrary. However, in making the decision of whether to appeal an adverse ruling, it is imperative to keep in mind the structure for review created by the Congress and the substantial body of interpretive case law that requires that appeals to the District Judge be timely, that they be specific, that they not raise new arguments, that they comprehensively spell out the issues, and that they consist of carefully reasoned and supported argument. Adherence to these simple rules and to the basic principles of brief writing will enhance immeasurably your chances of a successful appeal from a decision or recommendation of a Magistrate Judge.

Answering *the* Call part 2:

The Northern District of Illinois' Rockford Bankruptcy Help Desk

*By Laura McNally**

In "Answering the Call: Pro Bono Programs in the Courts of the Seventh Circuit" (*The Circuit Rider* Vol. 25 (Nov. 2018) pp. 40-44) Margot Klein and I profiled pro bono programs in the courts of the Seventh Circuit. Through these programs, members of the bar provide critical legal services to those in need while sharpening their own skills and assisting the Court.

Following publication, Bankruptcy Judge Thomas Lynch called our attention to a program we overlooked: The Bankruptcy Help Desk of the Western Division of the Northern District of Illinois in Rockford.

Volunteers at the Western Division bankruptcy help desk provide assistance to *pro se* bankruptcy filers at the Stanley J. Roszkowski Federal Courthouse. As Judge Lynch noted, "a few early mistakes by an uninformed or ill-informed Debtor can have disastrous consequences," and the help desk volunteers can perform a critical role in heading off such disasters. Prairie State Legal Services and the Offices of the Bankruptcy Clerk help with scheduling, but all of the advising comes from volunteer lawyers and paralegals, who often travel from distant communities to assist the court. Laura McGarragan of McGarragan Law Offices is one of the generous lawyers who volunteer at the help desk. "Most people cannot fill out the bankruptcy paperwork accurately which results in their cases being dismissed. It is rewarding to help someone get through the bankruptcy process and get a fresh start in their financial health," says Ms. McGarragan.

Jaime Dowell of McKenna-Storer has chaired the volunteer program for several years. In addition to the positive feelings that come from helping people who are otherwise overwhelmed with the legal system, she appreciates how the help desk assists the bankruptcy court as a whole. With assistance from the help desk, pro se debtors can navigate court calls without causing needless delays. And with the number of matters on bankruptcy calls frequently reaching triple digits, that efficiency is no small matter.

If you are a bankruptcy practitioner in the Western Division of the Northern District of Illinois and want to volunteer, contact Wendy Crouch of Prairie State Legal Services, wcrouch@pslegal.org or Jaime Dowell of McKenna-Storer at jdowell@mckenna-law.com.

Laura McNally is Co-Chair of the Retail and Consumer Brands Group at Loeb & Loeb, Programs Chair for the Seventh Circuit Bar Association, and an Associate Editor of The Circuit Rider. *She serves as the Chicago Chair of Loeb & Loeb's Pro Bono Committee.*

In Recognition of Barbara Crabb

*Comments by Diane P. Wood**

Congratulations to everyone who has been recognized thus far. We are indeed blessed to have people in this circuit who are so dedicated to public service, and who give of themselves so selflessly. And there is one more such person whom we are recognizing tonight. She is someone well known to everyone in this room. Someone we all have counted on, year in and year out, and someone who has never let anyone down, even the tiniest bit.

You will not be surprised to learn that I am talking about District Judge Barbara Crabb. We could not let the opportunity of this Circuit Conference in Judge Crabb's home state go by without publicly acknowledging the pioneering role she has played for the federal judiciary within the Seventh Circuit — and indeed, nationally.

2019 marks the *fortieth* year of Judge Barbara Brandriff Crabb's illustrious tenure as a federal district court judge for the Western District of Wisconsin. This is a benchmark that we wish to celebrate this evening in the company of her many Wisconsin colleagues and friends, as well as her admirers throughout the circuit and beyond. A fortieth anniversary is plainly worth honoring in its own right, but in this case there is more: Barbara's anniversary comes just as the country is gearing up to celebrate the centennial of the Women's Suffrage movement. Congress submitted the Nineteenth Amendment to the states on June 4, 1919. It became part of the Constitution a little more than a year later, on August 18, 1920. As we speak, organizations ranging from the National Archives Museum to the 2020 Women's Vote Centennial Initiative to the National Women's History Project have been commemorating this pivotal event.

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*Diane Wood is the Chief Judge of the United States Court of Appeals for the Seventh Judicial Circuit. The tribute to Judge Crabb was made at the 68th Annual Judicial Conference in Milwaukee, Wisconsin on May 6, 2019.

Barbara Crabb

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Barbara is part of that history. In 1976, when President Jimmy Carter was elected, there were only five women judges out of more than five hundred federal district and appellate court judges across the country. But, though not yet an Article III judge, Barbara was already part of the federal judiciary: from 1971 to 1979, she served as a United States Magistrate Judge. She left that position in 1979, when President Carter appointed her to the newly created judicial seat in Wisconsin's western district. There she became not only the first woman federal judge in Wisconsin, but the first to serve in our circuit as a whole. Taking together the eight years of her service as a Magistrate Judge and her time on the district-court bench, her overall tenure is now approaching the 50-year mark.

During this half century, Barbara has been a trailblazer and judicial pioneer. And along the way, Barbara has provided incontrovertible evidence (if it was needed) of the wisdom of including women, and indeed people of all backgrounds, in the ranks of the judiciary. The judicial legacy she has created continues to inspire all who have been beneficiaries of her extraordinary stewardship. Since the beginning of her remarkable tenure, among her many notable accomplishments, none is more important than the way in which she has held the door open wide for many other women to follow her into the ranks of the federal judiciary. She was the first woman judge in our circuit, but in short order came the appointments of Judge Susan Getzendanner in 1980 to the Northern District of Illinois, Judge Sarah Evans Barker in 1984 to the Southern District of Indiana, Judge Ilana Diamond Rovner in 1984 to the Northern District of Illinois (and later, in 1992, to the Seventh Circuit), and Judge Ann Claire Williams in 1985 also to the Northern District of Illinois (and also later, in 1999, to the Seventh Circuit). But it was Barbara who led the way!

In countless ways throughout this past half-century, our circuit has been the frequent beneficiary of Barbara's companionship. We have drawn on her experience and wisdom, her remarkable efficiency and productivity, her learned judgments and eloquent writing and her fair decision-making. In practical and helpful ways, she has devoted copious amounts of time and effort to special judicial projects and challenging case assignments, she has managed several highly complex cases, and she has helped whip into shape the full to overflowing dockets in other districts. Here is one small example: When I was hoping that we could find ways to handle the flood of *pro se* cases facing every district, I turned to Barbara to chair a circuit-wide committee on that subject. She did so with understanding, imagination, and efficiency; the committee promptly devised new and consistent forms for both prisoner and non-prisoner cases. Barbara has been our Mary Poppins, dropping in whenever and wherever she was needed to put things in order and straighten up messes.

Those of us who have been privileged to watch her in action, or even better to work side by side with her, have come away from that experience with heightened admiration and deep gratitude for the opportunity to bask in her quick wit, agile mind, and good heart. Barbara is a generous friend, a sympathetic consoler, an astute advisor, an enthusiastic encourager, and an ever-present help in times of trouble. Best of all, she has been and continues to be, a truly extraordinary judge. Barbara, please come up and let me give you this small memento of our enormous gratitude to you.

NEWS AND EVENTS OF INTEREST

Around *the* Circuit

*By Collins T. Fitzpatrick**

Seventh Circuit Bar Association Report on the Seventh Circuit

Northern District of Illinois

District Judge Rebecca Pallmeyer succeeded Judge Rubén Castillo as Chief District Judge on June 30, 2019.

Former Chief Judge Castillo retired in September 2019.

Retired Judge John Grady passed away on December 2, 2019.

Magistrate Judge Mary Rowland was sworn-in as successor to District Judge Amy St. Eve who was elevated to Circuit Judge.

Attorney Martha Mary Pacold was sworn-in as successor to District Judge John Darrah who passed away.

Attorney Steven Seeger was sworn-in as successor to District Judge James Zagel who retired.

Attorney John Fitzgerald Kness has been nominated to replace District Judge Samuel Der-Yeghiayan who retired.

There is no nominee to succeed District Judge Frederick Kapala who took senior status May 10, 2019 and continues to serve the court as a senior judge.

Sunil Harjani was sworn-in as successor to Magistrate Judge Daniel Martin who passed away.

Jeffrey Cummings was sworn-in as successor to Magistrate Judge Michael Mason who retired.

Lisa Jensen was sworn-in for the new magistrate judge position in the Western Division in Rockford, Illinois.

Attorney Gabriel Fuentes was sworn-in for the new magistrate judge position in the Eastern Division.

Magistrate Judge Sidney Schenkier will retire on April 30, 2020.

Chief Bankruptcy Judge Pamela Hollis will retire on January 2, 2020. A person has been selected to fill the position, but no announcement will be made until the FBI and IRS investigations are complete. Bankruptcy Judge Benjamin Goldgar will succeed her as chief bankruptcy judge.

Amanda Garcia was sworn-in on July 15, 2019 as successor to Chief Pretrial Services Officer Ann Marie Carey.

Marcus Holmes succeeded Jeanne Walsh as Chief Probation Officer.

Central District of Illinois

District Judge Sara Darrow succeeded Judge James Shadid as Chief District Judge on March 12, 2019. Judge Shadid remains an active Judge.

Chief Bankruptcy Judge Mary Gorman will take senior status on September 19, 2019 and will continue to serve the court as a recalled Bankruptcy Judge.

Bankruptcy Judge Thomas Perkins succeeded Bankruptcy Judge Mary Gorman as Chief Bankruptcy Judge on September 1, 2019.

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*Collins T. Fitzpatrick is the Circuit Executive for the federal courts in the Seventh Circuit. He began work at the U.S. Court of Appeals for the Seventh Circuit in 1971 as a law clerk to the late Circuit Judge Roger J. Kiley. He served as administrative assistant to former Chief Judge Luther M. Swygert before his appointment as Senior Staff Attorney in 1975 and Circuit Executive in 1976. He is a Fellow of the Court Executive Program of the Institute for Court Management, a Master of the Bench in the Chicago Inn of Court, a member of the Seventh Circuit, Chicago, and American Bar Associations, and a Fulbright Specialist. He has an undergraduate degree from Marquette, a law degree from Harvard, and a graduate degree from the University of Illinois at Chicago.

Around *the* Circuit

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Southern District of Illinois

District Judge Nancy Rosenstengel succeeded Judge Michael Reagan as Chief District Judge.There is no nominee to succeed him.

There is no nominee to succeed District Judge David Herndon who retired on January 7, 2019.

Gilbert Sison was sworn-in as successor to Magistrate Judge Donald Wilkerson who retired on March 1, 2019 and continues to serve the court as a recalled Magistrate Judge.

Mark Beatty was sworn-in as successor to Magistrate Judge Stephen Williams who retired on January 1, 2019.

Northern District of Indiana

Chief District Judge Theresa Springmann has relocated her official duty station from Ft. Wayne to Hammond.

Attorney Holly Brady was sworn-in as successor to District Judge Joseph Van Bokkelen. He took senior status and continues to serve the court as a Senior Judge. She has her duty station in Fort Wayne.

Attorney Damon Leichty was sworn-in as successor to District Judge Robert Miller Jr. who took senior status and continues to serve the court as a Senior Judge.

Assistant United States Attorney Joshua Kolar was sworn-in as successor to Magistrate Judge Paul Cherry who retired on December 13, 2018. Judge Cherry will serve the court as a recalled Magistrate Judge.

Southern District of Indiana

Attorney James R. Sweeney was sworn-in as successor to District Judge Sarah Evans Barker who took senior status and continues to serve the court as a Senior Judge.

Attorney James P. Hanlon was sworn-in as successor to District Judge William T. Lawrence who retired.

State court judge Andrea McCord was sworn in as successor to Bankruptcy Judge Basil Lorch who retired.

Eastern District of Wisconsin

District Judge Pamela Pepper will succeed Judge William Griesbach as Chief District Judge on November 1, 2019. Judge Griesbach will take senior status on December 31, 2019.

There is no nominee to succeed District Judge Rudolph Randa who passed away on September 5, 2016.

Bankruptcy Judge Michael Halfenger has been appointed Chief Bankruptcy Judge replacing Bankruptcy Judge Susan Kelly who retired.

Katherine Perhach was appointed to succeed Bankruptcy Judge Susan Kelley.

Magistrate Judge David Jones announced that he is resigning effective September 30, 2019.

2019-2020
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