November 2017

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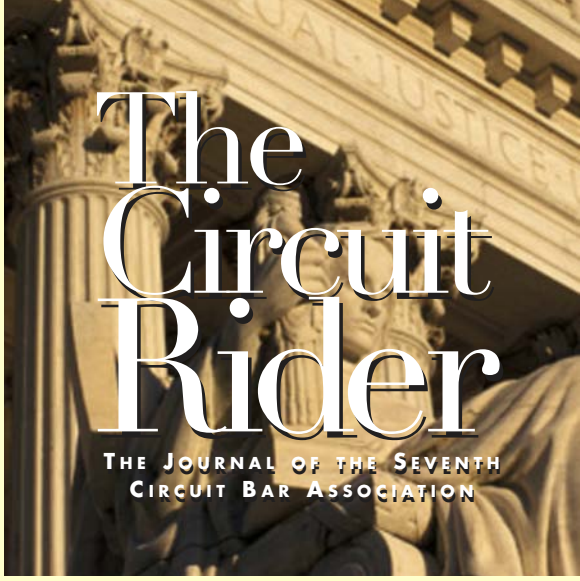
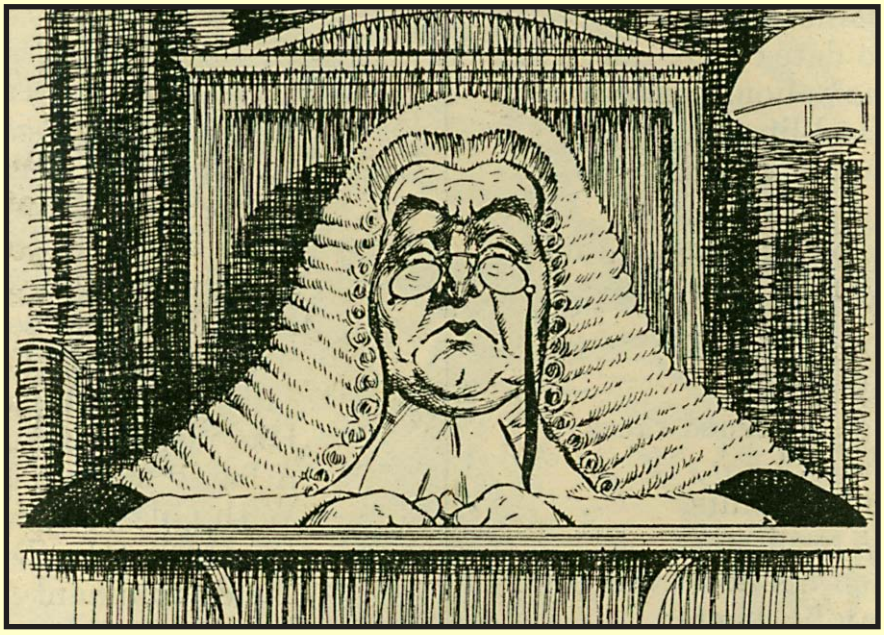


The Circuit Rider

THE JOURNAL OF THE SEVENTH CIRCUIT BAR ASSOCIATION

THE TIMES THEY *Are a Changin'*



In This Issue

Letter *from the* President

President Elizabeth Herrington
Morgan, Lewis & Bockuis LLP

Welcome to another edition of *The Circuit Rider*. Thanks to Magistrate Judge Jeffrey Cole and the entire Editorial Board and the contributing authors for their efforts towards another fantastic publication. Please take time to read each of the articles; you will be glad you did. *The Circuit Rider* is always first-rate and this issue is no exception.

Those of you who joined us in Indianapolis in May experienced first-hand the excellent programs planned by Past President Brian Welch and his team. We enjoyed appearances by Indianapolis Mayor Joseph Hogsett and Circuit Justice Elena Kagan, both of whom were engaging and offered thought-provoking comments. We also heard from the amazing Eva Mozes Kor, who is a survivor of the Holocaust. Along with her twin sister Miriam, she was subjected to human experimentation under Josef Mengele at Auschwitz. Kor founded the organization CANDLES (an acronym for "Children of Auschwitz Nazi Deadly Lab Experiments Survivors") and her perspectives were simply fascinating. Among numerous interesting topics, we heard discussions about the future of the United States Supreme Court, and legal issues surrounding data breaches and college sports. As always, we enjoyed opportunities for bench and bar to get to know each other, and appreciate each other's perspectives on the judicial system, a little better.

This year, we are looking to set the 7th Circuit Bar Association on a clear path for continued success and to become an ever bigger asset to our legal community. In the last two months, we have embarked on a strategic planning process to raise the profile and membership of this important organization. Working with a consultant, we have already surveyed and interviewed both members and non-members, in order to help solidify our goals and develop a clear strategic plan for our future. It is a very exciting time for the Association.

We already have a strong membership, but we would like to see it grow even more. In particular, we are looking for younger lawyers to join us and understand the real value membership in the Association brings. I started in the Association as a young lawyer and it has been a tremendous experience. Each year, I benefit not only from the programming the Association offers, but also from the opportunity to meet other lawyers and judges who work in the federal courts – not just in Chicago, but across Illinois, Indiana and Wisconsin. The Association offers lawyers these opportunities and we need to better broadcast all the terrific aspects membership includes.

Most lawyers know that the Association puts on an Annual Meeting with the 7th Circuit Conference. The 2018 meeting will be held April 29 through May 1 at the Radisson Blu Aqua Hotel in Chicago. Our Annual Meeting is traditionally filled with great programming and this year will again be fantastic. But, the Annual Meeting is just one part of what the Association does. The Association also offers other excellent programming throughout the year. For example, on October 13, the 7th Circuit Bar Foundation sponsored a symposium: *What To Do About Gun Violence.* The symposium planning was led by Thomas Campbell and Doug Carlson. It was a true success. The day-long event brought together gun violence thought leaders from around the country, each of whom offered information and perspectives on gun violence plaguing our country. Our Diversity & Inclusion Committee is putting on a 3-part series program on voting rights and gerrymandering issues. The first two parts of the series were held on September 25 and October 25. Both offered insightful looks at voting issues and were very well-received. Our Young Lawyers Committee will host social events and CLE programming throughout this year as well.

Two notable retirements occurred in the Seventh Circuit just within the last month. Judge Richard Posner retired from the Seventh Circuit after nearly 36 years on the bench and Judge Milton Shadur will retire from the Northern District of Illinois after 37 years. I know that you will enjoy Judge Robert Gettleman's article about Judge Shadur's impressive career. The Seventh Circuit also experienced significant other losses this year. This issue includes wonderful tributes to Judge Larry McKenney, Judge John Darrah, and Magistrate Judge Denise LaRue, each of whom passed away this year and will be missed.

This *Circuit Rider* contains insightful articles about the new Mandatory Initial Discovery Pilot Program, the "reasonableness" of defense counsel fees in insurance coverage litigation pending in the 7th Circuit, and the Supreme Court's limit of the use of settlements to skip priority creditors in bankruptcy proceedings. This issue also includes a book review of "Public Corruption and the Law" by David Hoffman and Juliet Sorensen and a piece about Operation Greylord, by Terry Hake, the lawyer who worked undercover for the FBI and the U.S. Attorney's Office in the investigation that culminated in significant indictments and convictions of judges and lawyers for corruption in the Circuit Court of Cook County. Finally, an article about the intersection of politics and three Milwaukee judges who faced impeachment is provocative.

I look forward to seeing you at one or more of our events planned for this year and encourage you to be a member of our wonderful Association. For now, enjoy your *Circuit Rider.*

Judge Richard A. Posner Announces His Retirement

Effective September 2, 2017, Richard A. Posner, 78, retired as a Judge of the United States Court of Appeals for the Seventh Circuit. He received his commission on December 1, 1981 after being nominated by President Reagan and confirmed by the Senate. Judge Posner previously served as its Chief Judge from 1993 to 2000. On his retirement, Chief Judge Diane Wood issued the following Press Release:

> "It is with great regret that I announce the retirement of Judge Richard A. Posner after nearly thirty-six years on the Seventh Circuit.For more than 50 years Judge Posner has been one of the leading public intellectuals in the United States – indeed, in the world. He is one of the most distinguished people to ever sit on the federal bench. His opinions have had an impact around the world. He has produced an unparalleled body of scholarship – books, articles, and public commentary – covering virtually every legal topic that can be imagined. The impact Judge Posner has had on this Court is immeasurable, and it is with the deepest gratitude that we wish him well."

The Press Release went on to quote Judge Posner:

> '"After nearly thirty-six years, I have decided to retire from the Seventh Circuit. It has been a tremendous honor to serve on this Court. I thank my colleagues, past and present, for the opportunity to work with them.
>
> During my time on the bench, I have authored more than 3,300 opinions and presided over many trials as a volunteer judge in the district court. I am proud to have promoted a pragmatic approach to judging during my time on the Court, and to have had the opportunity to apply my view that judicial opinions should be easy to understand and that judges should focus on the right and wrong in every case. I look forward to continuing to teach and publish, with a particular focus on social justice reform.'"

Milton Shadur: *the* Consumate Judge

*By Hon. Robert Gettleman**

It is 6:45 a.m., and I am sitting at my desk in my chambers sipping my first cup of coffee and struggling with a difficult procedural issue about which I have to make a decision later today, and which was poorly briefed by the parties. I pick up the phone and dial 2066. After a few rings, my call is answered.

"Milt, I have a problem and need some help?"

"What's the problem, Bob?"

I explained the problem to him and what the lawyers have argued.

"This is a new one on me, can you give me any help?"

"Well, what do you think?"

I tell him my initial thoughts, a bit embarrassed about how unformed they are.

"The lawyers really haven't addressed the issue that I see here."

"I think I remember dealing with this issue, or something close to it a while back. Let me see if I can find my papers on it and get back to you."

"Great."

I really don't expect a quick response, or perhaps, any response at all, but I am glad he at least didn't tell me I was totally off base.

Continued on page 4

** Robert Gettleman is a United States District Judge for the Northern District of Illinois. He was appointed by President Clinton in 1994 and became a Senior Judge in 2009. He graduated from Northwestern University School of Law and thereafter clerked on the Seventh Circuit for Chief Judge Latham Castle and Chief Judge Luther Swygert.*

Milton Shadur: *the* Consumate Judge

Continued from page 3

At 7:00 a.m. the phone rings. "Here it is," Milt explains, and proceeds to recite a holding of his from several years before.

"Ok if I come up to see you?"

"Sure."

I take the judges' elevator to Milt's office on the 23rd floor. The chambers door is open and Milt is standing there, holding a sheath of papers. I follow him into his chambers, which is piled high with case books, treatises, briefs and draft opinions. There is hardly an inch of open space on his conference table or his desk. He sits down at the conference table and beckons me to sit next to him.

"Here it is," he explains and proceeds to tell me the context of the case he has recalled and the basis for his decision. It is not exactly on point with my case, but close enough to lead me to an answer to my problem. "I'll get Wendy to make you a copy or get you the citation to Fed. Supp. or Westlaw," Milt offers.

We continue to talk about other matters involving the court. Milt is chair of the Rules Committee to which I have recently been appointed. There are some difficult issues with which the committee is dealing, and he explains them to me patiently and seeks my opinion about them. "I'll have to think about this," I demur. I am aware that Milt Shadur has drafted many of the local rules on our court, notably the ones dealing with summary judgment and pretrial orders. I am quite reluctant to give him an off-hand opinion about such things. He pulls out the agenda for the our next meeting, which is to take place in several weeks. "Take a look at this and let me know if there is anything you want to add to the agenda." I leave his office enlightened and somewhat in awe of his ability to recall a case that he decided years past and jump effortlessly into the present and future.

I had been on the bench several years when this happened, and it wasn't the first time and wouldn't be the last. I am an early riser, but Milt is even earlier, coming downtown from his home in Glencoe, and getting into the office before 6:00 a.m. Saturdays are no exception. The court is his life. It is difficult, no, impossible, to contemplate the court without Milt Shadur. After 37 years and at age 93, and with his full mental faculties as sharp as ever, my friend and colleague has reluctantly – and that is an understatement – decided to retire due to physical disabilities. Although I have many friends on the court, there will be no one to replace Milt Shadur. His was one of the first calls I got after I joined the court in 1994. "After you get settled, come up to see me," he stated more as a command than a request. Of course, I obeyed. As he did with most of the other new judges on our court, Milt spent hours with me going over his method of handling his docket and managing the hundreds of cases each of us had on our calendars. In those first few months of being a federal district judge, I spent many hours at Milt's side, both in and out of the courtroom, during civil and criminal proceedings as well as pretrial conferences. I had more questions than answers, and Milt was always there to help. He was a mentor in the true sense: selfless, brilliant, funny, and genuine.

Of course, I knew of Milt Shadur throughout my 25 year career as a lawyer in Chicago. Everyone did. But I had never had the opportunity to work with or against him in practice. I had a few cases assigned to him after he took the bench in 1980, and confess that in one of those cases he ruled against me and I was able to get a reversal from the court of appeals. That never affected his treatment of me either before or after I joined the court. Like much of the advice and counsel he gave me as a new judge, I didn't always agree with or follow everything he suggested, but I always respected the thought, sincerity and dedication behind every one of his suggestions, whether it was how to run a judicial office or how to decide a case.

So who is this man, Milton I. Shadur; this unique, valued friend, colleague and mentor? How does one become a legal giant like him?

Judge Shadur's Background

In retrospect, Judge Shadur's prominence and achievements seem preordained: He graduated from the University of Chicago in 1943, with a B.S. in mathematics. He was a Lieutenant (J.G.)

Continued on page 5

Milton Shadur: *the* Consumate Judge

Continued from page 4

in the Navy in World War II from 1943 to 1946, serving as a radar officer on aircraft carriers. Thereafter, he was – of course – the valedictorian of his law school class at the University of Chicago, where he was Editor-in-Chief of the Law Review.

Two law review notes written by Judge Shadur while still in law school were quoted by the United States Supreme Court. Following his graduation from law school in 1949, Judge Shadur joined the law firm of Goldberg, Devoe & Brussell, which was founded by Arthur Goldberg, who went on to be an Associate Justice of the Supreme Court of the United States. At the time of Judge Shadur's appointment to the district court, the firm was named Shadur, Krupp & Miller). At the firm, Judge Shadur combined a major transaction practice (including securities registration, taxation, intellectual property, real estate, etc.) with civil rights and civil liberties litigation.

Long before *pro bono* representation was recognized as important by all segments of the bar, Milton Shadur lived his professional life as a lawyer faithful to the principle that one of the obligations of membership in the bar is the obligation to render uncompensated legal services to those unable to afford them. His entire professional life was dedicated to the principle, best articulated by Justice Cardozo, that "'[m]embership in the bar is a privilege burdened with conditions.' [A lawyer is] received into that ancient fellowship for something more than private gain. He [is] an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice." *People ex rel. Karlin v. Culkin,* 248 N.Y. 465, 470-471, 162 N.E. 487, 489 (1928).

Judge Shadur's National Stature

Judge Shadur is a judge of truly national stature. Appointed by President Carter in 1980, he quickly achieved recognition for his exceptional brilliance and mastery of the broad range of subjects that daily confronts a United States District Judge. Well over ten thousand written opinions represent his prodigious outpouring of thought and are a testament to his extraordinary intellect and energy.

The late Edward Becker of the Third Circuit called Judge Shadur "a jurist of extraordinary distinction." *In re Cendant Corp. Litigation,* 264 F.3d 201, 274 (3rd Cir. 2001). That Judge Becker's assessment is shared by judges throughout the nation is evidenced by the fact that Judge Shadur was regularly asked to sit by designation on United States Courts of Appeals throughout the nation. For many years, he regularly sat by designation on the First, Second, Third – where he sat on multiple panels with then Judge Alito – Sixth, Ninth, and Tenth Circuit Courts of Appeals and from time to time on the D.C. Circuit as well. He has authored approximately 130 published majority opinions and 32 published dissenting opinions (as well as a number of unpublished opinions) for the Courts of Appeals on which he was sitting.

His extensive participation on panels in the Appellate Courts did not come at the expense of his own court: there was no diminution in his carrying out his judicial duties in the Northern District of Illinois. Indeed, to call Judge Shadur a senior judge, while technically accurate, is somewhat misleading because, until recently, he carried a full criminal and civil case load.

Judge Shadur's Lifelong Contributions to Federal Law

The volume and quality of Judge Shadur's opinions on our court and on the several courts of appeals have made a contribution to federal law perhaps unequaled by any district judge in history. The intellectual and literary quality of his thousands of opinions, which cover the entire spectrum of American law, are apparent even upon a superficial reading. Central to Judge Shadur's sense of craftsmanship is the principle that if the unexamined life

Continued on page 6

Milton Shadur: *the* Consumate Judge

Continued from page 5

is not worth living, the unexamined (and unproven) principle is not worth its implications. *See Erie County Retirees Ass'n. v. County of Erie, Pa.,* 220 F.3d 193, 219 (3rd Cir. 2000)(Shadur, J., dissenting). Thus, his opinions manifest rigorous analysis and lyrical exposition in equal measure, and thereby are far more than merely the resolution of an isolated dispute. Rather, they serve as a guide to the decision of future cases and thus have had a nationwide impact.

His opinions involving state actors have had an enormous impact on the rights of thousands of individuals. Early in his career, he wrote numerous opinions as he monitored the implementation of a desegregation plan for the Chicago public school system. *See, e.g., United States v. Board of Education of the City of Chicago,* 554 F. Supp. 912 (N.D. Ill. 1983); 567 F. Supp. 272 (N.D.Ill. 1983); and 567 F. Supp. 290 (N.D.Ill. 1983). In another case having a substantial impact on the civil rights of many individuals, Judge Shadur held that Illinois had systematically denied prisoners in protective custody in Illinois state prisons various constitutional rights. *See Williams v. Lane,* 646 F. Supp. 1379 (N.D. Ill. 1986), *aff'd,* 851 F.2d 867 (7th Cir. 1988). *See also* 548 F. Supp. 927 (N.D.Ill. 1982); and 96 F.R.D. 383 (N.D.Ill. 1982).

Judge Shadur handled the first case in the United States in which the government sought the death penalty under the continuing criminal enterprise statute. 21 U.S.C.§848(e). His was the first opinion dealing with (and upholding) the statute's constitutionality. *United States v. Cooper,* 754 F.Supp. 617 (N.D.Ill. 1990). The jury did not impose the death penalty, and the convictions – the first under that statute – were upheld on appeal. 19 F.3d 1154 (7th Cir. 1994).

United States ex rel. Green v. Washington, 917 F. Supp. 1238 (N.D. Ill. 1996), is another instance in which Judge Shadur's ruling significantly affected the constitutional rights of a broad class of litigants. There, Judge Shadur found that the class members were deprived of constitutional rights because resolution of their criminal appeals was substantially delayed as a consequence of the state's failure to appoint a sufficient number of attorneys to handle these appeals. The consequence of that failure was that a very large percentage of defendants would serve their entire custodial term before the appeal was heard.

In *Association of Community Organizations for Reform Now v. Edgar,* 880 F. Supp. 1215 (N.D. Ill. 1995), *aff'd,* 56 F.3d 791 (7th Cir. 1995), Judge Shadur upheld the constitutionality of the federal "motor voter" legislation and forced Illinois - which had resisted its obligations - to comply with the law. In *Federation of Adv. Industry v. City of Chicago,* 12 F. Supp. 2d 844 (N.D. Ill. 1998), Judge Shadur held that limitations on cigarette advertising imposed by the City of Chicago were preempted by federal law. While he was reversed in part by the Seventh Circuit (189 F.3d 633), the Supreme Court in *Lorillard Tobacco Co. v. Reilly,* 533 U.S. 525, 546-51 (2001), came to the same conclusion as did Judge Shadur.

Judge Shadur has written so many opinions in cases of first impression involving federal civil procedure that he has been a major influence in that area. One example of these cases is found in *Chesny v. Marek,* 547 F. Supp. 542 (N.D. Ill. 1982), in which Judge Shadur concluded that a rejected Fed. R. Civ. P. 68 offer followed by a less favorable verdict at trial cut off recovery of the civil rights plaintiffs' attorneys' fees. The Seventh Circuit affirmed in part and reversed in part, but Judge Shadur's conclusion was upheld by the Supreme Court. *Marek v. Chesny,* 473 U.S. 1 (1985).

Parnes v. Heinold Commodities, Inc., 548 F. Supp. 20 (N.D. Ill. 1982), was the first reported case to recognize the "person"/"enterprise" dichotomy under civil RICO, 18 U.S. C. §1962(c)., That conclusion was also affirmed by the Supreme Court. *See American Nat. Bank & Trust Co. of Chicago v. Haroco, Inc.,* 473 U.S. 606 (1985). In *Club Assistance Program, Inc. v. Zukerman,* 598 F. Supp. 734 (N.D. Ill. 1984), Judge Shadur's analysis and attempted reconciliation of Illinois cases under its long-arm statute was later adopted by the Illinois courts as the substantive law of Illinois. In *In re Amino Acid Lysine Antitrust Litigation,* 918 F. Supp. 1190 (N.D. Ill. 1996), *In re Bank One Shareholders Class Action,* 96 F. Supp. 2d 780 (N.D. Ill. 2000), and *In re Comdisco Securities Litigation,* 180 F.Supp.2d 943 (N.D.Ill. 2001), Judge Shadur wrote comprehensive opinions discussing, and adopting, a competitive bid procedure to determine lawyer representation of a plaintiff class.

Continued on page 7

Milton Shadur: *the* Consumate Judge

Continued from page 6

Judge Shadur's Contributions to the Administration of Justice

Judge Shadur has contributed significantly to the administration of justice throughout the nation by his work on the Judicial Conference Advisory Committee on the Rules of Evidence, on which he served for nearly 10 years from the time of its reconstitution in 1993 (the Committee had not existed since 1975). The nationwide importance and impact of the work of that Committee needs no elaboration. Judge Shadur chaired that Committee from late 1999 until September 30, 2002.

Before that, he served as the Chair of the Subcommittee that authored the December 1, 2000 amendments to Evidence Rules 701 through 703 relating to expert and opinion testimony. Judge Shadur was one of the two principal draftsmen of the amendments – amendments that have had a profound effect on the trial of cases in the federal courts.

Judge Shadur's Writings and Lectures

Judge Shadur has been a sought-after lecturer at judicial and bar seminars around the country. He developed comprehensive *voir dire* and jury instructions for use in federal death penalty cases, which have been adopted by the Federal Judicial Center and are used generally in death penalty cases nationwide.

He has taught at federal judicial conferences throughout the country, repeatedly at the Seventh Circuit Judicial Conference, at the Federal Judicial Center new judges' school, the annual meeting of MDL transferee judges, and every year at numerous educational conferences sponsored by such groups as the American Bar Association, the Chicago Bar Association, the Federal Bar Association, the American Judicature Society, the American Law Institute, the National Employment Lawyers Association, and the American Civil Liberties Union.

In addition to his extraordinary judicial productivity and other activities, Judge Shadur has been both teacher and model through his extrajudicial writings. A mark of his recognized brilliance and national stature is his authorship of Chapter 12 of Moore's FEDERAL PRACTICE, 3d Ed. (2004)("Defenses and Objections: When and How Presented - By Pleading or Motion - Motion For Judgement on Pleadings"). The range of topics about which he has lectured include such diverse subjects as employment law, class actions, settlement, attorney ethics, experts, criminal law, sentencing and evidence.

Judge Shadur's publications include "Traps for the Unwary in Removal and Remand," 33 Litigation 43 (Spring 2007); "An Old Judge's Thoughts," 18 Chi. Bar. Assn. Rec. 27 (2004); "Trials or Tribulations (Rule 56 Style)?," 29 Litigation 5 (Winter 2003); "Private Securities Law Reform Act: Is It Working?," 71 Fordham Law Rev. 2363 (2003)(panel); "Task Force Report: 'Against the Manifest Weight of the Evidence,'" 74 Temple Law Review 799 (2001); Task Force Report: "Against the Manifest Weight of the Evidence," 74 Temple L.Rev. 799 (2001); "The Unclassy Class Action," 23 Litigation 2 (Winter 1997); "Twenty Years of Change: Hardball Litigators," 20 Litigation 21 (Fall 1993); "Are Federal Courts Necessary?," 18 Loyola Univ. of Chi. L.J. 1 (1986); "A New Judge's Thoughts," 7 Litigation 5 (Summer 1981). *See also* "How Appealing: Twenty Questions for the Appellate Judge," April 19, 2004, http://20q-appellateblog.blogspot.com.

Judge Shadur's Contributions to the Advancement of the Rule of Law

Judge Shadur's involvement in public activities that demonstrate his commitment to the public weal include his membership on the Visiting Committee of the University of Chicago Law School from 1999 to 2002. He served as Chairman of that Committee from 1971 to 1976 and was a member from 1989 to 1992. He has been a member of the Board of Trustees of the Ravinia Festival and became a Life Trustee in 1994. The Ravinia Festival Lawndale Partnership was launched in 1998 in response to the community's expressed need to have greater access to mainstream fine and performing arts institutions and more opportunities for cultural enrichment.

Continued on page 8

Milton Shadur: *the* Consumate Judge

Continued from page 7

While in private practice, Judge Shadur served from 1975 to 1980 as counsel to the Illinois Judicial Inquiry Board. and also chaired the Illinois Supreme Court Character and Fitness Committee for the First Appellate District.

Judge Shadur also served as Director of the Chicago Bar Foundation from 1978-1983; Secretary of the Chicago Bar Association and Member of its Board of Managers; Chairman of the Association's Legislative Committee; Chairman of the Association's Judiciary Committee; Member of the Board of Editors of the Association's Chicago Bar Record; Chairman of the Association's Professional Responsibility [Ethics] Committee; and Chairman of the Association's Special Task Force on Lawyer Advertising and Related Subjects. At the University of Chicago Law School, Judge Shadur has also served as Vice President and a Member of the Board of Directors of its Alumni Association.

In May 2007, Judge Shadur was named a "Legal Legend" by the American Constitution Society, and in June 1993 was awarded the Professional Achievement Citation by the University of Chicago.

It is thus altogether fitting that the Chicago Bar Association has awarded to Judge Shadur its Lifetime Achievement Award. It is the first such award that the Association has ever presented. Judge Shadur will be honored at a reception at the Standard Club on December 5, 2017. No one could be more deserving of such an award than he.

* * * * *

Judge Shadur's contributions as a teacher do not stop with his judicial opinions, extrajudicial publications and lectures. The wise and generous help and counsel that he unselfishly gives all his colleagues – from the moment a new judge is nominated and continuously thereafter – has made him a cherished member of our court.

As I noted earlier, at the beginning of a new judge's tenure, Judge Shadur spends significant time mentoring the new judge on the basics of judging. But that is just the beginning. He is *always* available to answer substantive questions, not only from new judges but from any of his colleagues. It does not matter how busy he is, he always makes time and as much time as is needed. His knowledge of the law is truly encyclopedic and his intellectual curiosity is boundless. Thus, if he does not know the answer, he will do what is necessary to get it. Everyone on our court has been the recipient of his generosity of spirit. Judge Shadur wrote the Rules of Professional Conduct that have been adopted by the Northern District of Illinois. He also served as the first chair of the Rules Committee for the Northern District of Illinois, drafting many of our local rules.

Judge Shadur's judicial accomplishments and his involvement in activities manifesting his commitment to the improvement and benefit of society are a continuation of his extraordinary achievements before becoming a District Judge: Judge Shadur is a past member of the American Bar Association's Special Committee on Youth Education for Citizenship and is a Fellow of the American Bar Foundation. He was a Trustee of the Village of Glencoe, Illinois, where he continues to reside. He is a past Director of the Legal Assistance Foundation of Chicago and of the Law in American Society Foundation. He was a Member of the Governing Council of the American Jewish Congress and of its Commission on Law and Social Action, as well as Vice President of the Chicago chapter of that organization and Chairman of the chapter's Commission on Law and Social Action.

* * * * *

So those are the stats and the CV. But of course, there is more to the man than those accomplishments. Milton Shadur's commitment to our court, the extended "court family," and the fair and efficient administration of justice that we pursue every day has been unmatched. In my 23 years as a judge, I cannot remember a single monthly judges' meeting at which Milt Shadur did not participate and contribute. Sometimes it was to correct the minutes of the last meeting, a grammatical error in a proposed rule, or a substantive error in something under consideration by the court. In one of the most important things we do as a group, the selection of magistrate judges, Milt was always a source of insight and perception.

It is 6:45 a.m., and I am sitting at my desk pondering a difficult procedural question that I am supposed to rule on this morning. I swivel my chair around to pick up the phone and dial my friend and colleague for help. But there will be no one there to answer. I miss him already. And I am not alone.

Mandatory *Initial* Discovery:

Just, Speedy, and Inexpensive or Nasty, Brutish, and Short?

*By Daniel R. Fine**

Of the Constitution's First Amendment, it is sometimes said, "it is first because it's first." That can't be right. Notwithstanding the amendment's prominence in American life, it was not part of the Constitution's original text. It was not even the first amendment proposed in 1789. The real "first" (which would expand the House of Representatives to more than 6,000 members) remains twenty-seven states shy of ratification, and the real "second" (limiting congressional pay raises) was ratified only in 1992, becoming the Twenty-Seventh Amendment.

Rule 1 of the Federal Rules of Civil Procedure suffers from a different sort of disconnect. It is listed first, not just because the rule was viewed as important, but because the rule was intended to shape how all the other rules were to be applied. Yet the call for "just, speedy, and inexpensive" litigation often seems more chestnut than lodestar. The time and costs associated with modern discovery practice are much of the reason why.

A new pilot project that has been launched in the Northern District of Illinois and the District of Arizona has Rule 1 in mind. There is much to commend the effort, but some practitioners remain wary. Among other things, they fear that the essential feature of the pilot — early, court-mandated

Continued on page 10

**Dan Fine is a Partner at Barack Ferrazzano Kirschbaum & Nagelberg LLP in Chicago where he focuses on complex commercial litigation. He earned a Bachelor of Arts from The College of William & Mary (Go Tribe!) and his Juris Doctor from the University of Chicago Law School. Dan previously clerked for Judge Robert M. Dow, Jr., of the United States District Court for the Northern District of Illinois, and then for Judge Joel M. Flaum of the United States Court of Appeals for the Seventh Circuit. His interests include spending time with his family and, in his quiet moments, thinking about subject-matter jurisdiction.*

Mandatory *Initial* Discovery

Continued from page 9

discovery — at once interferes with the adversary process and fails to address problems that rankle litigators who (already) take their discovery obligations seriously.

The Mandatory Initial Discovery Pilot Project: An Overview

The Mandatory Initial Discovery Pilot ("MIDP") project is a three-year study, whose features are modeled off of the Arizona Rules of Civil Procedure. The pilot is operating in the Northern District with the blessing of the Judicial Conference of the United States. In keeping with Federal Rule 1, the pilot aims to "promote justice, reduce costs, and increase speed in the fair resolution of claims."

The MIDP applies to nearly all civil cases filed in the Northern District's Eastern Division since June 1 of this year. (All but a few judges are participating, and almost all types of civil cases are part of the pilot.) At a high level, the MIDP's principal features are these:

Court-Ordered Discovery. Before parties can obtain the keys to unlock broader discovery under the federal rules, parties are required early in a case to identify witnesses and produce documents relevant to any party's claims or defenses — even if doing so would cause self-inflicted injury. Production of documents occurs quickly at the outset of litigation. Parties must sign verifications and supplement their responses throughout the life of a case.

Early Factual and Legal Clarity. Parties are required to disclose the facts relevant to each of their claims and defenses and identify the legal theories supporting those claims and defenses. Parties must also provide a computation of each category of damages and describe the evidence that supports the calculation, as well as identifying materials that bear on the nature and extent of any injuries.

No Opt-Out. With very narrow exceptions, parties cannot opt out of the mandatory, court-ordered discovery. And there can be no cheating by gentleperson's agreement either; parties must file notices of service with the court for the initial responses and any supplements. Parties are not excused from providing responses because they have not yet investigated the facts or because their opponents have failed to provide required information.

Motions to Dismiss Do Not Pump the Brakes. Filing a motion to dismiss does not toll the time to file an answer, although the court has leeway when it comes to jurisdictional and immunity-based motions to dismiss.

During and after the MIDP, the pilot aims to test whether implementing these changes furthers Rule 1's goals. For this reason, the pilot applies broadly, and its exceptions are narrow.

The Need for the MIDP: Some Views from the Bench

Two of the moving forces behind the pilot were Judges Amy St. Eve and Robert M. Dow, Jr. of the Northern District of Illinois. Judge St. Eve is a member of the U.S. Judicial Conference's Committee on the Rules of Practice and Procedure, also known as the Standing Committee, which oversees several national rule-making committees. Judge Dow is a member of the Advisory Committee on Civil Rules. Both of those committees have been actively studying potential pilot projects and have approved the MIDP as well as a second pilot, focusing on accelerating the time for moving a case from cradle to grave, in which the Northern District is not participating.

As Judge Dow observes, the Northern District of Illinois has been at the forefront of some recent innovations in practice and procedure. Among the success stories are the Seventh Circuit's

Continued on page 11

Mandatory *Initial* Discovery

Continued from page 10

E-Discovery Pilot Program and the Northern District of Illinois' Local Patent Rules. "If pilot programs in federal courts can be likened to laboratories of democracy," he explains, "our district and circuit have proved particularly productive labs."

Here, the experiment seeks to test whether litigation can be hastened and costs reduced by forcing parties to reckon with the facts of their cases early. Judge Dow puts it like this: "By forcing parties to do more work earlier in the case, a principal aim of the pilot is for parties to evaluate their cases earlier. The hope is that in some sizable fraction of the cases, a realistic early evaluation and disclosure of the good and bad evidence may lead to settlements without the full expense of litigation."

Even where early settlement does not materialize, robust early discovery may convince lawyers to forgo dilatory motions to dismiss and to focus early on key depositions. As Judge Dow notes, "we often see cases where lawyers who had learned the case earlier might have been in position to advise their clients of litigation risk sooner, which might have enabled both sides to cut to the chase instead of sparring over peripheral matters."

Judges in the Northern District understand that practitioners have their doubts.

In response to the inevitable objection that the MIDP may not be right for all types of cases, you won't hear disagreement from the bench. But, like all systems of rules, the pilot aims to find the right balance for broad swaths of cases — not just any given case. "While litigants may incur costs in some cases that might have been avoided if the case had been placed on a slower track for early motion practice, it isn't obvious how to identify those cases," says Judge Dow. The goals of the pilot include identifying cases where mandatory discovery does not work or where rules should be tweaked.

Judges on the Northern District have been encouraged by experience among practitioners in Arizona. There, mandatory initial disclosure of both favorable and unfavorable information has been the rule for a quarter of a century. In their study of the issue, the federal rules committees learned that Arizona lawyers on both sides of the "*v*" have come to feel that, at least in the mine run of cases, parties save money by not fighting over every document and litigating every case the same way.

Early Skepticism from the Bar

Although many Arizona practitioners appear to have embraced their state's now-entrenched regime, the MIDP is not without skeptics among Northern District practitioners.

Among the concerns that practitioners have expressed are the following:

Tight Timeframes And Higher Costs. For those who work primarily on the defense side, there is a concern that the MIDP gives plaintiffs an unfair advantage. Plaintiffs can "prepackage" their initial discovery prior to filing suit. Defendants may then be forced to scramble. Contrary to the intent of the pilot, the tight timeframe may require defendants to use larger legal teams to make timely disclosures, thus driving up costs.

Scattered Data. Added to the concern about tight timeframes is the fact that many parties retain more data than ever before, and those data may be spread far and wide. Practitioners today not only identify witnesses, but must learn the vagaries of how computer systems are organized and where data are kept. When clients are large companies, or rarely litigate and are therefore ill-equipped to collect data in a way that preserves electronically stored information, these concerns may be magnified.

Private Ordering. Judges see only the fights that parties bring to their courtrooms, but in many cases counsel are able to work cooperatively on a schedule that accommodates the needs of the parties — and the workload of their lawyers. Mandatory discovery disrupts that dynamic.

Privilege and Loyalty. The MIDP requires production of "relevant" data, but relevance is often in the eye of the beholder. Thus, the MIDP may push lawyers to view

Continued on page 12

Mandatory *Initial* Discovery

Continued from page 11

disputes in a way that favors their adversaries rather than their clients. This may be in tension with a lawyer's duty of loyalty. As one partner at an Am Law 200 firm notes, "The 'what happened?' documents will probably be relatively easy to identify. But the 'why did this happen?' documents will require attorneys to engage in line-drawing that a lawyer should not have to make on behalf of another party."

"Borrowed Wit." Similar to the concern above, some worry that the MIDP forces parties to do the work of their adversaries, contrary to our tradition of adversary litigation. The concern here echoes Justice Jackson's concurrence in *Hickman v. Taylor,* 329 U.S. 495 (1947): "Discovery was hardly intended to enable a learned profession to perform its functions either without wits or on wits borrowed from the adversary." Shouldn't it be the job of parties and their lawyers to ask for the information likely to prove a claim or establish a defense?

Increased Nuisance Value. Some lawsuits seem calculated to extract an early settlement. Mandatory discovery may drive up settlement values across the board because, in nearly all cases, a motion to dismiss will not toll the time to answer and parties will be unable to convince judges to stay discovery while a motion to dismiss is under consideration.

Not every lawyer is bound to share these concerns. For every attorney who complains about asymmetric discovery and meritless fishing expeditions, there are others who complain that their adversaries hide the ball and simply fail to produce relevant documents sought in discovery. There is a reason why Jim McElhaney's depictions of the law firm "Windstrom & Crusher" hit home for readers of *Litigation.*

Yet an organizing assumption of the MIDP seems to be that placing on parties the burden of identifying their own good and bad documents will lead to a quicker and closer approximation of the truth, hastening the resolution of many cases. Litigants and parties too often fail to act honorably under the current regime, however, and the question is whether imposing new burdens will change behavior.

In the end, will changes to the rules actually have the desired effect? Here is one modest prediction on that score: not unless judges punish attorneys and parties who fail to adhere to both the federal rules and the strictures of the MIDP.

Conclusion – TBD

In *Judging Under Uncertainty,* Harvard Law Professor Adrian Vermeule observes that much of the work of judging comes down to a stalemate of empirical intuitions. Particularly where weighty constitutional matters are concerned, judges bring their own intuitions about the world to bear on the cases they decide. Those intuitions rarely can meaningfully be tested.

It is too soon to tell what life will be like for judges and litigants under the MIDP. The hopes for, and concerns about, the pilot are based largely on intuition. Over the next three years, we will get the empirical data and experience necessary to see how those intuitions shake out.

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.

Operation Greylord:

Corruption in the Cook County Courts

*By Terrence Hake**

For years, Cook County Judges were taking part in armed robberies, rapes, child molestations and murders. In accepting bribes to free the criminals committing these and many other crimes, the judges were in effect part of the crimes. Any crime could be fixed from a traffic ticket to a mob hit.

For the United States Attorney's Office (USAO) in the 1970's, the most shocking perversion of justice was the freeing of notorious Chicago Mob killer, Harry Aleman. On the night of September 27, 1972, Teamster Union truck dispatcher William Logan was leaving home for work, when Aleman called out from the shadows, "Hey, Billy!" As Logan turned around he was cut down by three shotgun blasts. A neighbor walking his dog saw the short, slender gunman heading for a car, and a woman talking on the phone glimpsed the man's face through a window. She shuddered because he looked so much like Aleman, whom she remembered from her old neighborhood. Aleman was charged with the murder, but a judge, who usually found everyone guilty in bench trials, found him not guilty, despite the eyewitness testimony. Many in law enforcement felt the case was fixed.

The USAO and the FBI had heard rumors about the alleged corruption in the Cook County court system for a long time. In 1975, the FBI was wiretapping a group of organized crime gamblers. While listening to the gamblers' criminal conversations, the agents overheard an attorney brag to the gamblers that if they

Continued on page 14

** Terrence Hake is 1977 graduate of Loyola University of Chicago School of Law. He served for five years as prosecutor in the Cook County State's Attorney's Office in Chicago, Illinois and later as an FBI Agent in Chicago. In April of 1980, he agreed to assist the FBI and the United States Attorney's Office in an investigation of the Cook County Court system. For three and one half years he worked undercover posing as a corrupt prosecutor by accepting bribes from attorneys and later as an attorney in private practice making payoffs to judges and court personnel for the dismissal of cases. The investigation, known as "Greylord", resulted in bribery and tax charges being filed against 103 judges, lawyers and other court personnel and is one of the FBI's most successful undercover investigations. When the last Greylord trial concluded in 1994, Mr. Hake had testified at the trials of 23 defendants. After serving in federal law enforcement for 23 years, he retired from the United States Department of Justice Office of Inspector General and eventually returned to the practice of law as an Assistant State's Attorney in Cook County. Mr. Hake retired in 2016 and he now provides Professional Responsibility CLEs to attorneys.*

Operation Greylord

Continued from page 13

were arrested for their gambling activities, they didn't have to worry about a thing. He told them that he could pay bribes to Cook County judges to get them off. After the gambling investigation concluded, the USAO approached the attorney and convinced him that it was in his best interest to cooperate, rather than being prosecuted. He then laid out his corrupt activities in bribing judges and became a Confidential Source (CS). He agreed to wear a wire and recorded conversations with a police officer and a court clerk; however, he was never willing to wire up on a judge or lawyer. The source always had an excuse as to why he couldn't do it.

After the CS attorney did not fully cooperate, and after the Aleman murder acquittal, the FBI worked with Assistant United States Attorneys (AUSAs) Daniel Reidy, Charles Sklarsky and Scott Lassar, under the supervision of U.S. Attorney Thomas Sullivan, to put together an undercover proposal. The proposal was approved by the Department of Justice, and in March 1980, FBI Special Agent David Ries was transferred to Chicago from Detroit to work undercover as a criminal defense attorney. Ries, from North Central Illinois, went to law school at the University of Illinois and had an Illinois law license.

The USAO decided to notify public officials in the State of Illinois that they were going to conduct an undercover case targeting the court system. The USAO believed that a recent Illinois Supreme Court case, *In re: Friedman,* required notification to protect the law licenses of agent/attorneys and Assistant United States Attorneys because fake cases would be introduced into the court system and undercover FBI agent/attorneys would be suborning perjury in presenting testimony regarding these cases to judges. The USAO felt it could entrust the secret of this investigation, code named Operation Greylord, with the former U.S. Attorney for the Northern District of Illinois, then governor, Jim Thompson. After Thompson was notified, the USAO thought the State's Attorney of Cook County, Bernard Carey, was trustworthy, because he had complained about many cases being fixed against his prosecutors, in particular the Aleman case.

When Carey was informed of the investigation, he mentioned that one of his prosecutors, Terry Hake, had recently complained about cases being fixed in the murder, rape and child molestation preliminary hearing courtroom. I was a 28-year-old Assistant State's Attorney (ASA), who had graduated from law school three years previously. From the moment I began my work as a prosecutor, I had heard rumors about criminal defense attorneys paying off judges and judges taking bribes. As I worked my way through the misdemeanor courts in Chicago, I started losing cases in front of judges, where the evidence was overwhelming in the State's favor.

Eventually I was transferred to the murder, rape and child molestation preliminary hearing court at the main criminal courthouse in Cook County. The rumor in that courtroom was that if Lucius Robinson, Judge Maurice Pompey's bailiff, sat in the jury box during a preliminary hearing, this was a signal to Judge Pompey that Robinson had received the bribe money from the defense attorney and Pompey could throw the case out. Interesting story, but I never saw Robinson sit in the jury box during my three months in the courtroom. However, Judge Pompey and Robinson did not have to go to such extremes to fix cases. I eventually told the USAO and the FBI that I was sure that the most serious cases in the criminal justice system were being fixed. But first, I complained to one of my supervisors in the State's Attorney's Office about the corruption in Judge Pompey's courtroom. That was how State's Attorney Carey became aware of me and why he informed the USAO about my disgust with the courts.

The USAO decided to take a chance on approaching me. AUSA Sklarsky made the telephone call to me, because I had known Chuck when he was an ASA. I was brought down to

Continued on page 15

Operation Greylord

Continued from page 14

the Chicago FBI Office. I met with the FBI and U.S. Attorney Sullivan and AUSAs Reidy, Sklarsky and Lassar. The USAO made me think that I was the entire focus of the investigation, without telling me that Ries had been working undercover for a month. I said that I had been informed by the State's Attorney's Office that if I participated in the investigation, I would not be able to practice law again in Cook County for five years. Reidy told me, if I went undercover and made cases on lawyers and judges, I would never practice law again in Cook County. After two meetings, I said I would cooperate with the federal government in Operation Greylord.

The USAO decided that I would be assigned to Judge Wayne Olson's narcotics courtroom as an undercover ASA. Olson was rumored to be one of the most corrupt judges in the county. The night before I was transferred to Olson's courtroom, an FBI agent and I practiced with the Nagra body recorder, thinking that Olson and the corrupt attorneys practicing there would take me in on their schemes. But of course, it only works that way on television and I did not make too much headway for about three months. In August 1980, I received my first bribes from criminal defense attorney Jim Costello. Costello had been both a corrupt police officer and Assistant State's Attorney, before becoming a defense attorney. My first bribe from Costello was $50 to release a car that had been seized with narcotics in it. Then the bribes increased to $100.00 to dismiss felony narcotics cases. I was wearing the Nagra recorder every day.

Costello took me into his confidence and related that he and Judge Olson had cut a deal whereby Olson would refer defendants to Costello, if Costello kicked back 50% of his fees to the judge. Costello began paying $500 to $1,000 to the judge in his chambers every Friday. Costello would come out of chambers and tell me and my Nagra recorder about the payoffs. The USAO decided that this gave the FBI probable cause to bug Olson's chambers. This was easier said than done. A judge's chambers had never been bugged in the United States. The DOJ proceeded very cautiously in making the decision to install the bug. After considering the Title III request for three months, it was approved after I, Sullivan and Reidy flew to Washington and met with Director William Webster and the Chief of the DOJ Criminal Division. Director Webster instructed the FBI agents in Chicago that only agent/attorneys were to monitor the Title III, because bugging a judge's chambers was so sensitive.

During the six weeks the bug was in Olson's chambers, 10 lawyers were overheard fixing cases with Olson. Most importantly, Costello and Olson were heard arguing about how much Costello owed Olson for the week. They were arguing over $50.00! Costello stormed out of the chambers and lamented to me what a "greedy bastard" Olson was. I calmed Costello down and advised him to pay Olson what he demanded because Olson was developing a lot of business for him. Costello followed the advice and went into the chambers where he paid off the judge. The importance of this conversation was that it confirmed the conspiracy between the judge and lawyer, and now all of my recordings of Costello would be admissible against Olson in any future prosecution.

In early 1981, the Title III ended and the USAO decided that I could be of more value as a criminal defense attorney. That way I could roam throughout Cook County paying judges who were looking for bribes. I quit the prosecutor's office and became an undercover attorney working for the FBI.

The DOJ decided it did not want me and Ries fixing the cases of real criminals, who could then commit other crimes, after being freed, because of a bribe paid by the government. So, in our roles as defense attorneys, we represented dozens of undercover FBI Special Agents from throughout the country, who came to Chicago to pose as criminal defendants and as witnesses in FBI created criminal cases. In these cases, agents shoplifted, stole autos and possessed illegal guns and narcotics. For example, I represented an undercover agent (UCA) from Los Angeles, Luis Rivera, who in a staged robbery, pushed UCA MaryJo Marino, also of Los Angeles, to the ground and stole her purse. After practicing my cross examination with Sklarsky, I cross examined Marino at the trial, casting doubt on her ID of Rivera. Rivera was found not guilty by Judge Pompey, after I paid Lucius Robinson $1,300 to fix this felony case.

Staging these phony cases was logistically difficult and complex because the arresting Chicago Police Officers were not informed of the investigation. Credit cards, identities and other personal

Operation Greylord

Continued from page 15

facts were backstopped. Guns, drugs and vehicles were procured to be possessed, stolen and used in cases. A team of FBI agents handled all the details in staging the cases.

Such was the situation in 1981, when Judge Brocton Lockwood, agreed to wear a wire — in one of his cowboy boots. Lockwood was a judge from Marion County, three hundred and fifty miles to the south of Chicago. He had first come to the big city because downstate judges were used to ease the backlog in traffic court. When he first arrived, he didn't even know what a bagman was. Shocked by what he saw on a return visit, Lockwood decided to call the DOJ in Washington, because he felt he could not trust anyone in Chicago. The USAO saw this as a great opportunity to gather evidence augmenting the work UCA Ries had been able to accomplish as a crooked attorney in the Traffic Courts. Lockwood volunteered to take the Chicago time owed by all the judges in his district. Since he was recently divorced, he claimed he just liked the singles action in the toddlin' town. So, the judge boarded a train and took an apartment near the Traffic Court Building for an indefinite stay.

Lockwood successfully introduced Ries to a major bagman, gruff policeman Ira Blackwood, and to Assistant Corporation Counsel Thomas Kangalos, in charge of prosecuting drunken drivers and other traffic violators. Blackwood had mob friends, and Kangalos was a hyperactive gin drinker who always illegally packed a gun. Ries went on to use Kangalos, Blackwood and another bagman, Court Clerk Harold Conn, to fix numerous criminal cases, not only in traffic court, but throughout the county. These three bagmen could fix cases with judges in many courtrooms because most of the judges started out in traffic court to gain judicial experience, before moving to assignments in misdemeanor and felony courts.

Meanwhile, over the next two plus years, I used a series of bagmen to funnel bribes to 10 judges. Once a fix was setup through a bagman, I would arrive at the courthouse early and visit the judge in chambers. With the reels on my Nagra turning, I would ask the judge if he had received a phone call from the bagman. When the judge would confirm it, I would then tell the judge that my client was going to lie in his testimony at the trial. These recordings played very well in front of juries.

My best bagman was Chicago Police Officer Jimmy LeFevour. Jimmy could fix anywhere in the courts because he was the bagman for Judge Richard LeFevour, his first cousin. Judge LeFevour was the presiding judge of the municipal courts in Chicago, the largest division of the circuit court. Judge LeFevour and cousin Jimmy organized attorneys, who hustled and solicited clients in the hallways of the courthouses, into a "Hustlers Bribery Club". Soon the the judge was collecting $2,500 a month from the hustling attorneys for the right to hangout in the courthouse hallways and unethically solicit clients.

After over three years of undercover investigation, the secret of Greylord leaked to the press on August 5, 1983. It is thought that bagman Ira Blackwood might have leaked it. The FBI approached Blackwood to cooperate and he refused. Within a few weeks, the press was onto the investigation. It is unfortunate that Greylord leaked because another attorney had recently joined the case to act as a corrupt lawyer in the civil divisions of the circuit court. The day Greylord leaked I had fixed the first case in a suburban courtroom, paying the judge $500 on a drunken driving case.

Shortly after the leak, Ries was exposed in the press and Judge Lockwood held a press conference. My undercover role was not exposed. On August 8, I was sworn in as a Special Agent of the FBI while I was still undercover. I remained undercover for an an additional four months, recording conversations and trying to fix cases, before I was exposed in the press in December 1983. Two months later, I attended Quantico.

The first Greylord indictments were returned in December 1983, under the supervision of U.S. Attorney Dan Webb. The trials began in 1984 and would conclude in 1994. The trials lasted over 10 years because, as the USAO and the FBI conducted historical investigations and secured convictions, more and more attorneys and judges cut deals and testified against other corrupt players.

Continued on page 17

Operation Greylord

Continued from page 16

AUSA Sheldon Zenner conducted a massive investigation of Traffic Court and numerous attorneys were indicted for their case fixing, as was the chief judge, John McCollom. One attorney, testified that he had bribed 24 judges, who had sat in Traffic Court. The same attorney estimated that he had paid Judge McCollom 200 to 400 times to fix mostly drunken driving cases. In another Greylord-related investigation, AUSA Joseph Duffy prosecuted and convicted Judge Frank Salerno of taking bribes in licensing court. This was a very lucrative assignment for Salerno because many Chicago business owners were more than happy to pay bribes to the judge to ensure that they would not lose their licenses for serving someone underage or having a filthy kitchen in their bars or restaurants. Salerno received nine years and was the first judge to testify during the trials.

The largest Greylord indictment came in 1985 when Judge Ray Sodini and 21 codefendants were indicted for being part of a bribery scheme in Sodini's courtroom and four other courtrooms located in the Chicago Police Headquarters building. This case was prosecuted by U. S. Attorney Anton Valukas and AUSAs Jim Schweitzer and Jeff Rogers. All 21 defendants were convicted, with nine defendants being tried together.

Greylord's success led to corrupt attorney Robert Cooley cooperating with the FBI. Cooley came forward of his own volition in 1986 and wore a wire for three years. Cooley's case was called Operation Gambat. The lead AUSA on the case was Thomas M. Durkin, now a federal judge in Chicago. One of the first things Cooley told the USAO was he paid $10,000 to Judge Wilson in 1977 to find Harry Aleman not guilty of murder. Cooley did this at the request of Chicago mobster Pasqualino Marchone. Judge Wilson committed suicide in 1990, shortly after Cooley's cooperation became known. Aleman was convicted of the 1972 murder in a 1997 trial. The courts ruled against his claim of double jeopardy, reasoning that because the bribe had been paid, Aleman knew he was not in jeopardy.

Gambat led to the indictment of three judges, two of whom overlapped with the Greylord investigations. One of these judges, Thomas Maloney, was the last judge convicted in 1994. AUSAs Scott Mendeloff, Bill Hogan and Diane MacArthur prosecuted Maloney under the supervision of U.S. Attorney Fred Foreman. Maloney's fixes included three murder cases. Maloney took $100,000 from the Chicago mob to find one defendant not guilty of murder and $10,000 to fix another murder by two brutal street gang members.

By the time the Maloney case concluded, 103 individuals had been charged in what was by then a joint FBI and IRS CID investigation. The evidence developed by the IRS CID, concerning judges spending enormous amounts of cash above their judicial incomes, dovetailed perfectly with the bribery evidence. The number of charged individuals included 20 judges, 57 lawyers, 9 police officers and 17 court personnel. Three judges died before indictment, two by shooting themselves.

Today, Greylord is still recognized as one of the DOJ's most successful undercover investigations and one of its largest public corruption cases.

Epilogue

Lucius Robinson was convicted of bribery and received three years. He admitted to delivering over two hundred bribes to Judge Pompey, only after the statute of limitations had expired. Robinson later testified at Judge Maloney's trial. Judge Olson and Costello lost their motion to suppress the Title III tapes and both pled guilty and received 12 years and eight years, respectively. Policeman Ira Blackwood received seven years. Tommy Kangalos fled to Greece and died there in 2006 of cancer. Harold Conn received six years, but said the worst part was losing his county pension. Judge LeFevour was convicted after a lengthy trial, which AUSAs Dan Reidy and Candace Fabri prosecuted, along with former U.S. Attorney Dan Webb. The star witness was his bagman cousin, Jimmy, who by his cooperation saved his police pension. The judge received 12 years and his cousin received over two years by pleading guilty to misdemeanor tax charges. Judge Sodini took a plea for 8 years in the middle of his trial because of the overwhelming evidence. Judge Maloney was sentenced to 16 years in prison. In 1995, the Seventh Circuit, in a 2-1 decision, concluded that the district court had not erred in refusing to admit evidence of claimed prosecutorial misconduct necessary to a finding the conspiracy was not time barred. Maloney was represented on appeal by now Magistrate Judge Jeffrey Cole. Maloney was the last Greylord defendant released from prison, in 2008.

My book, *Operation Greylord: The True Story of an Untrained Undercover Agent and America's Biggest Corruption Bust* was published in 2015 and filming of a movie, based on the book is to begin in 2018.

Who, *Me*, Unreasonable?

Establishing "Reasonableness" of Defense Counsel Fees in Insurance Coverage Litigation in the 7th Circuit

By Jesse Bair[*]

A common problem arises in insurance cases when the policyholder controls the selection of defense counsel: what is a "reasonable" rate for defense fees? When an insurer refuses to defend entirely, the answer is relatively straightforward: the fees paid by the policyholder are deemed reasonable as a matter of law. *Taco Bell Corp. v. Cont'l Cas. Co.,* 388 F.3d 1069, 1075–77 (7th Cir. 2004).

But what about the situation where the insurer agrees to defend, but seeks to limit the rates it will pay defense counsel? The policies themselves generally offer little guidance here. A policy, for example, may define "defense costs" as "reasonable and necessary fees." But what is a "reasonable" rate for a given case? Naturally, insurers and policyholders often disagree on this point.

Case law in the Seventh Circuit has not squarely addressed this point. Nevertheless, several courts in the Seventh Circuit have addressed the "reasonableness" question in other contexts, including statutory fee-shifting provisions or contractual indemnification clauses. Those cases indicate that a "reasonable" rate should be based on several factors, including the market rate actually charged by defense counsel to other paying clients in similar cases and the skill and reputation of defense counsel. Those factors should apply with equal force in the insurance context.

Disputes may also arise over case staffing arrangements or "block-billing" by defense counsel. Here, too, case law in the Seventh Circuit instructs that these concerns should be analyzed in light of the

Continued on page 19

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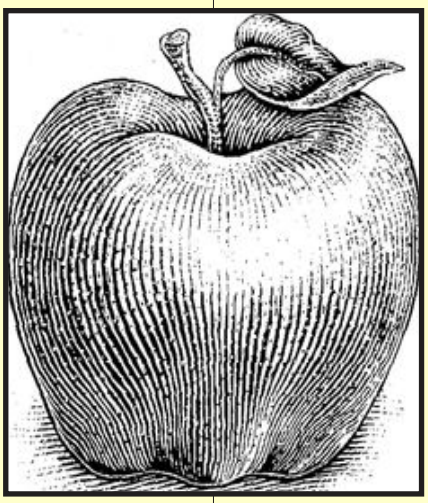
Who, *Me*, Unreasonable?

Continued from page 18

scope and complexity of the underlying action, as well as the level of detail of invoices required by the law firm's paying clients. Each of these issues is discussed below.

If others pay them, they must be reasonable.



When a rate dispute arises between an insurer and its policyholder, one position often advanced by insurers is that they will decline to pay rates higher than the "average" rate for legal practitioners in the relevant "market." According to the insurer, rates below the average are "reasonable," whereas higher rates are excessive. This approach, however, ignores the fact that policyholders facing company-threatening lawsuits will often need a specialized set of lawyers, who are usually employed at large national law firms, and whose rates are often higher than those of the "average" law firm. Considering the risks posed to insureds facing high-stakes lawsuits, a better gauge of "reasonableness" is the standard hourly rate actually charged by the insured's preferred counsel to other paying clients, including the policyholder itself.

As the Seventh Circuit has explained, "reasonable" hourly rates are typically "derived from the market rate for the services rendered." *Pickett v. Sheridan Health Care Ctr.,* 664 F.3d 632, 640 (7th Cir. 2011). The "best evidence" of an attorney's market rate is his or her "*actual billing rate* for similar work," *Johnson v. GDF, Inc.,* 668 F.3d 927, 933 (7th Cir. 2012) (emphasis added). This rate is "presumptively appropriate" to use as the market rate. *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205,* 90 F.3d 1307, 1310 (7th Cir. 1996) (internal citations and quotations omitted). "Only [i]f the court is unable to determine the attorney's true billing rate . . . (because he maintains a contingent fee or public interest practice, for example) should the court look to the next best evidence — the rate charged by lawyers in the community of reasonably comparable skill, experience, and reputation." *Muzikowski v. Paramount Pictures Corp.,* 477 F.3d 899, 909–10 (7th Cir. 2007) (internal citations and quotation omitted).

Applying those standards, district courts in the Seventh Circuit have awarded attorney fees calculated at hourly rates near the top of the rate range charged by some of the nation's top litigators. *E.g., Nat'l Rifle Ass'n v. Vill. of Oak Park*, 871 F. Supp. 2d 781, 788 (N.D. Ill. 2012) (holding that attorneys were entitled to fee award calculated at hourly rates of $1,020 and $880 where attorneys charged other paying clients those rates: "[c]onsumers of legal services are willing to pay those lawyers their respective hourly rates of $880 and $1,020, and NRA is entitled to recoup at those rates"); *Shepard v. Madigan,* No. 11-CV-0405-MJR-PMF, 2014 WL 4825592, at *6 (S.D. Ill. Sept. 29, 2014) (concluding that hourly rates up to $925 were reasonable where the record "contain[ed] evidence of comparable rates charged by Washington, D.C. firms, and by [law firm] in similar litigation").

Defense counsel's standard hourly rates should carry the same weight when assessing "reasonableness" in the insurance context. Particularly when the policyholder is a regular client of the defense firm, and pays the firm's standard hourly rates on a regular basis with no expectation of reimbursement, the insurer should not be allowed to challenge the "reasonableness" of those rates. Where clients actually pay the firm's standard rates, those rates are "presumptively appropriate" to use as the market rate for the firm's services in the statutory fee-shifting context, and should be in the insurance context, too. *People Who Care,* 90 F.3d at 1310.

What do you mean by "community" exactly?

As noted early, insurers often point to lower rates charged by other practitioners in a given legal community to show that the rates charged by the policyholder's preferred counsel are excessive. District courts in the Seventh Circuit, however, have rejected this type of argument where the firm in question shows that clients have actually paid its rates in similar cases. In *Six Star Holdings, LLC v. City of Milwaukee,* for example, a partner submitted evidence showing that clients pay his standard hourly rate of $575 an hour (the same hourly rate he requested in that lawsuit).

Continued on page 20

Who, *Me*, Unreasonable?

Continued from page 19

No. 10-C-0893, 2015 WL 5821441, at *3 (E.D. Wis. Oct. 5, 2015). The City of Milwaukee, however, challenged that rate as "excessive" because a survey conducted by the State Bar of Wisconsin found that, in 2012, the average hourly rate for "tort/personal injury" lawyers was $207 and the 95th-percentile hourly rate for all private practitioners in Wisconsin was $395. *Id.,* at *4. The court rejected the City's argument, explaining that "the survey evidence does not undermine the conclusion that the Olson firm's rates are reasonable" because the "best evidence" of an attorney's reasonable rate is "the rate paid by actual clients for similar work." *Id.*

Moreover, the concept of the appropriate "legal community" within which to compare the firm's rates with other attorneys is itself problematic. Where a policyholder is sued outside a major metropolitan area, insurers will often attempt to define the relevant "community" as the rates charged by law firms within the geographic area where the underlying lawsuit is venued. When a policyholder faces a company-threatening lawsuit, however, the quality of its defense should not be impacted based on the venue in which the underlying plaintiff chooses to file its lawsuit. *Cf. Northmobiletech, LLC v. Simon Prop. Grp., Inc.,* No. 11-CV-287-WMC, 2013 WL 12090092, at *3 (W.D. Wis. May 21, 2013) ("Defendants did not choose to litigate in Madison, they were dragged here by plaintiff. The court will not punish defendants for using their preferred counsel, who happen to work in a more expensive market than this one.").

Several district courts in the Seventh Circuit have rejected attempts to limit the relevant "community" to a small geographic area. *E.g., Shepard,* 2014 WL 4825592, at *4 ("Though [d]efendants would have the Court cabin the discussion to East St. Louis or St. Louis-area lawyers, the scope of the inquiry is not so geographically lim[ited]. The test refers to a community of practitioners, particularly when 'the subject matter of the litigation is one where the attorneys practicing it are highly specialized and the market for legal services in that area is a national market.'") (quoting *Jeffboat, LLC v. Director, Office of Workers' Comp. Programs,* 553 F.3d 487, 491 (7th Cir. 2009)); *Metavante Corp. v. Emigrant Sav. Bank,* No. 05-CV-1221, 2009 WL 4556121, at *7 (E.D. Wis. Nov. 27, 2009) (rejecting argument that attorney's rates were not reasonable given the forum in which the litigation occurred: "reasonable attorney's rates are premised from the attorneys' market rates, not the local rates") (emphasis in original); *Mathur v. Bd. of Trs. of S. Ill. Univ.,* 317 F.3d 738, 744 (7th Cir. 2003) ("By simply declaring that the lower rate was appropriate because of the prevailing local rates in southern Illinois, without regard to the quality of services rendered by the appellants, the district court abused its discretion.").

This rule makes sense because the risks faced by an insured with respect to an underlying lawsuit are not dependent on the geographic location where the suit is venued; rather, the policyholder's risks are dependent on the scope and complexity of the underlying lawsuit, as well as the experience and skill of opposing counsel. If, for example, a proposed nationwide class of plaintiffs sues a policyholder in Madison County, Illinois — a largely rural and suburban county dubbed by some as "America's Class-Action Capital" — the policyholder still faces substantial liability, regardless of the fact that it is facing suit in southern Illinois, as opposed to Cook County. Yet under the geographic conception of "reasonable" attorney fees, a policyholder would be limited to advancement of attorney fees from its insurer at rates only meeting or below the average rate for law firms in Edwardsville, Illinois (population 24,293). That position is extremely dangerous from a policyholder's perspective. When a policyholder faces a company-threatening lawsuit, its carrier must ensure that the policyholder is adequately protected against the case at hand, irrespective of the geographic location where plaintiffs choose to file that lawsuit.

A better rule for "reasonableness" focuses on the skill and experience needed for defense counsel to adequately defend against the underlying case. Instead of focusing on average rates charged in a limited geographic area, when the scope and complexity of the underlying case requires specialized counsel, the relevant "community" for purposes of assessing reasonableness should be based on the prevailing rates for lawyers of comparable skill, experience, and reputation in the national marketplace, irrespective of the geographic location where those lawyers reside. *Jeffboat, LLC,* 553 F.3d at 490.

Moreover, the reasonableness of these rates are often further confirmed by the experience and reputation of the underlying plaintiffs' counsel. When the plaintiffs are represented by highly experienced counsel, the policyholder, too, should be represented by counsel with the requisite experience, legal knowledge, and skill to match the plaintiffs' attorneys. *U.S. Bank Nat. Ass'n v. Long,* No. 13-C-0257, 2014 WL 3044617,

Continued on page 21

Who, *Me*, Unreasonable?

Continued from page 21

at *2 (E.D. Wis. July 3, 2014) ("The relationship between the aggregate costs and the stakes of the case and the opposition's litigation strategy is another gauge for reasonableness."); *cf. Metavante Corp.,* 2009 WL 4556121, at *7 ("[T]he court notes that the stakes in this litigation were enormous and, given the defendant's choice to employ a high power New York law firm to try the case, the court does not find it unreasonable that Metavante hired a major Chicago law firm for trial."). Accordingly, the "reasonableness" analysis in the insurance context should also take into account the magnitude of the underlying suit, as well as the skill and experience of plaintiffs' counsel, and not be limited merely to the geographic location where the underlying plaintiffs chose to file their lawsuit.

It takes two to confer.

In addition to hourly rates, another issue of contention between insurers and policyholders will likely involve staffing of cases. Insurers will likely contend that too many lawyers are working on the underlying defense, that too many lawyers are working on individual projects, and that there is duplication of effort between attorneys. This issue is especially likely to arise in a case where both a corporation and its executives have been sued. In that situation, each defendant will likely want separate counsel.

Though insurers will likely contend that multiple firms working on the same case will almost certainly perform redundant tasks (thus warranting a reduction in the amount of defense costs the insurers will advance), case law in the Seventh Circuit provides a strong basis for policyholders to justify the fees incurred by separate counsel, particularly in large, complex matters. *Cf. Oldenburg Grp. Inc. v. Frontier-Kemper Constructors, Inc.,* 597 F. Supp. 2d 842, 847 (E.D. Wis. 2009) ("[I]t is not uncommon for companies to hire more than one law firm to defend them in litigation. Here, OGI was exposed to over $10 million in liability, and thus hiring two firms to defend such a large claim was not patently unreasonable."). As the Eastern District of Wisconsin has explained, "just because the two firms may have performed similar tasks does not mean that their work was duplicative." *Id.* Moreover, "whether a party's counsel is guilty of staffing overkill depends on the circumstances, including the complexity of the case and the length of the litigation." *Stragapede v. City of Evanston,* No. 12 C 08879, 2016 WL 6092630, at *2 (N.D. Ill. Oct. 19, 2016). Thus, especially in the beginning of a complicated lawsuit, there is nothing inherently unreasonable about having a number of attorneys assisting with the matter, particularly when the bulk of the hours will be incurred by a smaller litigation team. *E.g., Driscoll v. George Washington Univ.,* 55 F. Supp. 3d 106, 115 (D.D.C. 2014) (rejecting claim that fee application including hours worked by thirteen different employees was inherently "overkill" where the bulk of the hours were attributable to a smaller litigation team).

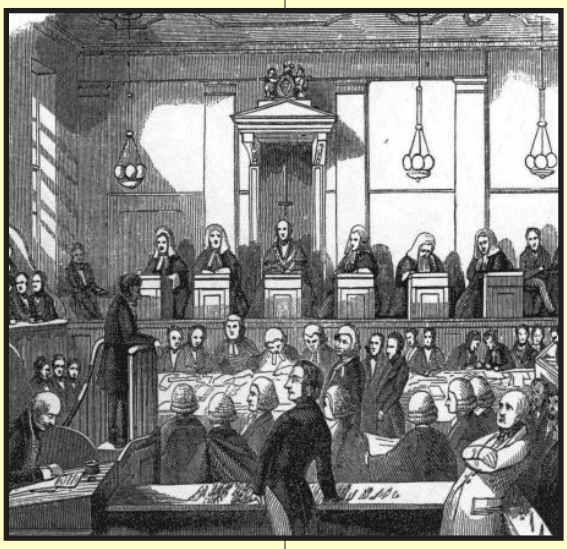
Invariably, the defense of any case will involve meetings between lawyers on the defense team, especially if multiple firms are involved in the defense. Insurers will likely object to these meetings in an attempt to reduce their payments of defense costs. Again, however, courts in the Seventh Circuit have recognized that there is nothing unusual or unreasonable about case strategy meetings. *E.g., Third Wave Techs., Inc. v. Stratagene Corp.,* No. 04-C-0680-C, 2006 WL 517629, at *4 (W.D. Wis. Feb. 21, 2006) ("[I]t is inherent in the nature of a complex case that the lawyers performing different tasks have to meet and exchange information, plan their prosecution strategy and assign tasks."). In fact, courts have explicitly recognized that "'[t]he practice of law often, indeed usually, involves significant periods of consultation among counsel.'" *Stragapede,* 2016 WL 6092630, at *7 (quoting *Tchemkou v. Mukasey,* 517 F.3d 506, 511–12 (7th Cir. 2008)). These decisions make practical sense, as case meetings are necessary in order to make strategic and informed decisions on behalf of the defense team. Thus, although insurers may criticize this common practice, holding team meetings early in order to coordinate the case defense will likely save time and money in the long run. On the other hand, preventing defense counsel from meeting could hinder the insureds' defense and result in much higher defense fees later.

Continued on page 22

Who, *Me*, Unreasonable?

Continued from page 21

Finally, insurers may also object to paying defense counsels' reasonable travel costs. However, there is nothing unusual, and certainly nothing unreasonable, about billing travel time, particularly when lawyers travel by car. *E.g., Six Star Holdings, LLC,* 2015 WL 5821441, at *6 (rejecting argument that fees representing 11.7 hours in travel time spent driving between Milwaukee and Madison was unreasonable: "it is presumed that a reasonable fee includes reasonable travel time billed at the same hourly rate as normal working time."). Yet even when attorneys travel by air, that travel time is still regularly compensable. *E.g., United States v. All Funds on Deposit with R.J. O'Brien & Assocs.,* No. 11 C 4175, 2014 WL 1876139, at *7 (N.D. Ill. May 9, 2014) ("[T]he Court has enough experience attempting to work in airports and airplanes that it can safely say that claimants' position on this point is reasonable and that the government's argument does not provide a basis for reduction of the fee request.").



Insurers will likely seek to reduce defense cost payments based on alleged over-staffing, team meetings, and attorney travel time, among other issues. In light of the above-cited authorities, however, such reductions should not occur as a matter of course. Insureds have strong arguments that multiple attorneys should be permitted to work on a defense team, that case meetings are beneficial (and save costs in the long-run), and that attorney travel time should be reimbursed.

To block-bill, or not to block-bill.

Finally, an additional area of likely dispute between insurers and policyholders is the manner in which legal time is billed. If retained defense counsel "block-bills" their time (e.g., enters the total hours per day devoted to a matter rather than specifying what individual tasks a lawyer performed and for how long), policyholders can almost certainly expect that the insurer will seek to reduce their defense payments on account of that billing practice. Importantly, however, if the invoices submitted by defense counsel contain detail sufficient for the law firm's paying clients, case law indicates that those invoices should also be sufficient for insurers. *See In re Synthroid Mktg. Litig.,* 264 F.3d 712, 722 (7th Cir. 2001) ("[T]he amount of itemization and detail required is a question for the market. If counsel submit bills with the level of detail that paying clients find satisfactory, a federal court should not require more."). While some clients may refuse block billing, many others accept the practice. Thus, if the policyholder is a regular paying client of the law firm, and regularly accepts block-billed time entries, the policyholder has a strong argument that insurers should also accepts those invoices without reduction.

Nevertheless, despite the above, policyholders should encourage their defense counsel to use itemized billing. Block-billed time entries present an easy target for insurers to point to when seeking to reduce defense cost payments. As a result, although policyholders may be able to avoid defense cost reductions based on "block-billed" time entries if the policyholder itself regularly accepts invoices with similar levels of detail, the policyholder (and its defense counsel) can avoid complications down the road by using itemized billing from the outset. While this type of billing may take more time for defense counsel, the benefit of avoiding disputes with insurers on this issue will likely outweigh the administrative burden created by the change.

Conclusion

The issue of what constitutes "reasonable" defense costs will continue to proliferate in the years to come. Insurers will recognize coverage, but seek to limit the rates it will pay defense counsel. Though this issue is often negotiated — and settled — outside of litigation, the issue is arising with increased frequency in the insurance coverage context. As courts in the Seventh Circuit begin to address this unique topic, case law involving statutory fee-shifting provisions or contractual indemnification clauses will likely guide the analysis. After all, the consideration of those cases only seems "reasonable."

SUPREME COURT LIMITS USE OF SETTLEMENTS TO . . .

Skip *Priority* Creditors *in* Bankruptcy

By David Christian[*]

Earlier this year, the Supreme Court of the United States reversed the Third Circuit's approval of a so-called "structured dismissal" in the highly-anticipated case of *Czyzewski v. Jevic Holding Corp.,* _U.S._, 137 S.Ct. 973 (2017). In Jevic, the secured creditors, facing a fraudulent transfer suit by the unsecured creditors committee for their role in a failed leveraged buyout of the debtor, reached a settlement that allowed for some distribution to general unsecured creditors in connection with dismissal of the Chapter 11 case. But the settlement skipped the debtor's former employees holding wage claims entitled to priority treatment under Section 507 of the Bankruptcy Code. The debtor's former truck drivers, with a judgment for their unpaid wages, complained that the parties could not get around the priority scheme decreed by Congress through the expediency of a structured dismissal. The Third Circuit approved the structured dismissal in this "rare case" based on "sufficient reasons" supporting the relief, namely that the only alternative was a liquidation scenario where neither the employees nor the unsecured creditors would receive anything. 137 S.Ct. at 986. The Supreme Court, by a 6 to 2 vote, reached the opposite result.

Writing for the majority, Justice Breyer noted that Congress provided three possible outcomes for a Chapter 11 case under the Bankruptcy Code. Hopefully, the debtor can confirm a Chapter 11 plan. If not, the bankruptcy court might be called upon to dismiss the case, returning the parties to the *status quo ante* (so much as possible). Or the bankruptcy court can convert the case to Chapter 7, resulting in the appointment of Chapter 7 trustee to liquidate and distribute the debtor's assets. 137 S.Ct. at 979.

Continued on page 24

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Skip *Priority* Creditors *in* Bankruptcy

Continued from page 23

The structured dismissal in *Jevic* followed none of these paths. The case would be dismissed, of course, but only in conjunction with court-approved transactions – outside of a plan – that deviated from the priority scheme commanded by Congress. Holding that "a bankruptcy court does not have such a power," the Court specified that "[a] distribution scheme ordered in connection with the dismissal of a Chapter 11 case cannot, without the consent of the affected parties, deviate from the basic priority rules that apply under the primary mechanisms the Code establishes for final distributions of estate value in business bankruptcies." *Id.*

Justice Breyer acknowledged that events during the case might mean that the parties could not always be returned to their precise positions prior to bankruptcy. Indeed, Section 349(a) of the Bankruptcy Code provides that a court may adjust the consequences of dismissal "for cause," but the Court read this as providing flexibility to protect rights acquired in reliance on the bankruptcy case. The Court also acknowledged that Chapter 11 provides the courts with greater flexibility to fashion equitable relief than in Chapter 7. *Id.* "But a bankruptcy court cannot confirm a plan that contains priority-violating distributions over the objection of an impaired creditor class." *Id.* And now, under *Jevic,* parties cannot generally escape this rule through a structured dismissal.

This result provides safer footing in insolvency scenarios for employees and other priority creditors (e.g., certain tax claims of governmental units and claims by former spouses for domestic support obligations). But the rule is not iron-clad. For one thing, the Court's decision makes clear that the affected parties can consent to different treatment. Left unclear is whether consent can be determined on a class-wide basis, as opposed to requiring consent by everyone affected by the settlement, and whether such consent can be implied. Practitioners can expect hold-out creditors to use *Jevic* for leverage, arguing that their individual consent must be obtained.

The Court also distinguished the end-of-case settlement at issue in *Jevic* from interim steps taken during the case, such as so-called "first day" relief that might provide for payment to critical vendors. Proponents of such relief will need to demonstrate "significant Code-related objectives" served by variation from a strict application of the priority scheme. 137 S.Ct. at 985. Practitioners can expect litigation about applying the principles of *Jevic* to first day and other interim orders during a Chapter 11 case.

Another heavily-litigated issue, so-called "gift plans" whereby a creditor agrees to gift its distribution to a junior class of creditors in order to eliminate objections and obtain the affirmative vote of the junior class, will also require consideration of *Jevic's* reasoning. Will non-consenting creditors skipped by such a gift mount successful objections like the truckers in *Jevic?* Can just one skipped creditor hold up confirmation of a gift plan? *Jevic's* strong statement about the importance of the priority scheme as mandated by Congress strengthens the objectors' arsenal.

Finally, practitioners can expect litigation about *Jevic's* application in a Chapter 7 context. This author represented a proposed class of former employees with priority wage and

Continued on page 25

Skip *Priority* Creditors *in* Bankruptcy

Continued from page 24

WARN Act claims in the involuntary Chapter 7 case of a failed fractional-ownership airline in Florida. The Chapter 7 trustee for the airline attempted to settle claims against the directors and officers by paying non-priority plaintiffs "outside" of the bankruptcy estate. We objected, asserting that the trustee could not sidestep the Bankruptcy Code's priorities by cleverly structuring distributions under the settlement.

Although we resolved our case before the Supreme Court reversed in *Jevic,* the Court's decision should strengthen the hand of priority creditors in similar situations. Describing the priorities in Section 507 of the Bankruptcy Code, the Court plainly observed, "The Code makes clear that distributions of assets in a Chapter 7 liquidation must follow this prescribed order." 137 S.Ct. at 976. "In Chapter 7 liquidations, priority is an absolute command – lower priority creditors cannot receive anything until higher priority creditors have been paid in full." *Id.* at 983. Practitioners may see, however, Chapter 7 trustees attempt settlements that do not strictly follow the priority scheme, arguing that *Jevic* is distinguishable because it applies to the Chapter 11 context, and claiming that their efforts to administer and expeditiously close the Chapter 7 case serve the significant Code-related objectives mentioned by Justice Breyer.

Practitioners should always think creatively in attempting to fashion results that put an end to litigation, especially in the zero-sum context of an insolvency situation. As the examples above show, however, respect for the priority scheme mandated by Congress in the Bankruptcy Code and the possible exceptions left open by *Jevic* must be part of the practitioner's calculus in fashioning settlements during bankruptcy.

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 2, 2017
Saturday, March 3, 2018

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

When Unpopular *Opinions* Meet Politics:

Three Milwaukee Federal Judges Who Faced Impeachment Investigations

By Barbara Fritschel[*]

"Treason, Bribery, high Crimes and Misdemeanors." This is the constitutional basis for the impeachment and removal not only of the President and Vice President, but federal judges (and other "civil officers" of the United States), as well. However, impeachment proceedings have multiple purposes. Judges who make an unpopular ruling, have a different political ideology, or is someone Congress wants to leave the bench face the possibility of an impeachment investigation. Indeed, investigations of federal judges by the Congress under Article II, Section 4 of the Constitution are not unknown.

Judge Andrew G. Miller, Judge James Jenkins (Judge Miller's son-in-law), and Judge Ferdinand A. Geiger are three federal judges in Milwaukee who went through impeachment investigations. The proceedings started quickly after an unpopular decision and before appeals were heard. Getting the U.S. House of Representatives Judiciary Committee involved before the lawsuits were finalized introduced politics into an otherwise normal case proceeding. Fortunately, for the judges involved, the House of Representatives refused to vote articles of impeachment. Judges Miller and Jenkins continued to have long judicial careers. Judge Geiger retired shortly after the investigation due to age and health.

Judge Miller and the Panic of 1857

Judge Andrew G. Miller (judge from 1838-1873) had many political enemies. He was a Democrat in a state that became overwhelmingly Republican. He came to Wisconsin from Pennsylvania to serve as a territorial judge, and was unknown to the local legal community. He was plaintiff oriented, but the plaintiffs were East Coast creditors, not the local debtors. In a memorial, Judge Miller was noted as

Continued on page 27

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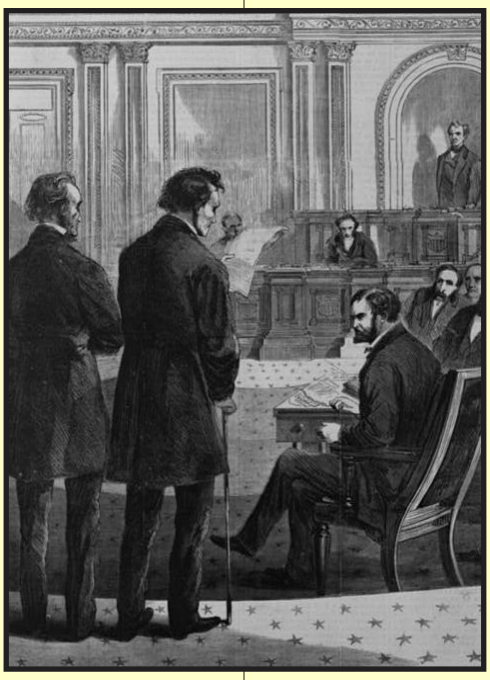
When Unpopular *Opinions* Meet Politics

Continued from page 26

someone who was "exalted with his own sense of power" and whose "love of power probably led him to enjoy it more because it was irresponsible". Death of Judge Andrew G. Miller, 37 Wis. 21, 28 (1875). By a quirk of the law, the District Court of Wisconsin was not assigned to a circuit court until 1862, which meant disgruntled parties had to make costly appeals directly to the U.S. Supreme Court. An Act to amend the Judicial System of the United States, Pub. L. No. 37-178, 12 Stat. 576 (1862).



The articles of impeachment featured the case of *Brooks v. Martin,* 69 U.S. 70 (1864) and a variety of lawsuits regarding the La Crosse and Milwaukee Railroad. These were not even his most unpopular decision, that being *In re Booth,* (unreported) which upheld the Fugitive Slave Act. However, the Civil War mooted that case by the time the impeachment investigation started.

Martin sued Brooks over fraud in a partnership to purchase and sell certain land warrants given to Mexican War veterans. Martin ultimately won the lawsuit, but he complained about several of Judge Miller's practices including ex parte contacts with Brooks' attorneys and delaying the entry of the judgment.

The major focus of the impeachment articles were the cases dealing with the La Crosse and Milwaukee Railroad. In 1857, the United States suffered a "panic" (recession). While railroads were not always the cause of these panics, they were among the first industries to collapse. The capital (mostly mortgages, stocks and bonds) needed to create and expand a railroad was tremendous — one of the mortgages in this case was issued for $13,000 per mile of track.

Railroads were vital to the nation, which is why they got federal land grants help fund their construction. In the 1850s, there was no national bankruptcy law. Equity jurisdiction allowed the courts to place railroads into receivership and appoint receivers to take care of the business in a manner similar to a Chapter 11 Bankruptcy today. This was a new procedure in the 1850s.

The La Crosse and Milwaukee Railroad was organized into two divisions, the Eastern Division from Milwaukee to Portage, and the Western Division from Portage to La Crosse. The railroad could issue stocks, bond, and mortgages on either division separately or on the line as a whole.

The details of the cases are not important. (For details *see Minnesota Co. v. St. Paul Co.,* 69 U.S. 609 (1864)). Eventually, there were seven U.S. Supreme Court opinions dealing with the La Crosse and Milwaukee Railroad Co. Issues involved included the role of receivers in railroad bankruptcies, whether those mortgages that only covered one division of the line included all or only part of the train stock, whether stockholders could intervene in the case, numerous orders regarding foreclosure sales, and factual disputes in the reports of masters and receivers. Essentially, no one was happy with the rulings. Perhaps the complexity of the case is best seen by the note of the Reporter of the Supreme Court at the end of *Bronson v. La Crosse and Milwaukee Railroad,* 68 U.S. 405, 411 (1863) where he plaintively states:

> The record of the case filled more than one thousand large 8vo. pages, of small pica type, set "solid;" a record, therefore, itself greatly larger than the whole of the present volume. The discussion of this case, too, by counsel, consumed no small fraction of a five months' term. The Reporter presume that he need make but slight apology for not reporting this part of the case in existing circumstances.

Unfortunately, the Reporter will deal with this case five more times.

Continued on page 28

When Unpopular *Opinions* Meet Politics

Continued from page 27

The impeachment investigation started late 1863 and evidence was gathered in early 1864 — it is difficult to be precise as many of the statements are undated. On January 30, 1864, there was a Petition of the Members of the Legislature of the State of Wisconsin that read in part:

> Without personal knowledge of the facts charged against Judge MILLER, they feel bound to state there is a widespread belief, among both the members of the Bar and the people of this State, that he has been guilty of misconduct in office, disqualifying him to hold a seat upon the Bench.

This petition was signed by a majority of the Senate and all but eight members of the Assembly.

Judge Miller was the only Wisconsin judge whose investigation resulted in articles of impeachment. The cases mentioned figured prominently in the articles but other articles included charges of nepotism and favoritism. On March 25, 1864, the House of Representatives rejected the articles of impeachment. Judge Miller would serve until 1873.

Judge Jenkins and the Panic of 1893

James G. Jenkins served on both the district court (1888-1893) and the circuit court (1893-1905). In 1893, the country was in another panic. Whereas railroads in receivership was new in the 1850s, by the 1890s the practice was common. The receivers for the Northern Pacific Railroad sought an injunction to prevent a potential strike over wages. Judge Jenkins' response to the potential strike led to the impeachment investigation.

Judge Jenkins oversaw the receivership of the Northern Pacific Railroad while he was a circuit judge. Until 1911, circuit judges had concurrent trial jurisdiction with district judges in many cases. District court judges had exclusive jurisdiction over admiralty, trade statutes and seizure of land while the circuit judges had exclusive trial jurisdiction over diversity cases. Raymond L. Solomon, History of the Seventh Circuit 1891-1941, p. 2 (1981). The circuit court as a trial court would be abolish in 1911 by the Judicial Code of 1911 (Pub. L. 61-475, 36 Stat. 1087 (1911)).

By 1893, judges were giving broad discretionary powers to railroad receivers. Under receivership, all employees of a railroad were officers of the court and could be held in contempt if they failed to perform their duties. Judges relied on the interstate commerce clause, the Sherman Antitrust Act, and mail contracts with railroads to keep the trains operating during times of worker unrest.

Farmers Loan & Trust Co. v. Northern Pacific Railroad Co., 60 F. 803 (C.C.E.D. Wis. 1894) is known as the famous injunction case. Judge Jenkins appointed receivers for the Northern Pacific on August 15, 1893. Over the course of the next few weeks, the receivers cut salaries on the general pay schedules by various percentages. On October 28, the receivers gave notice that all general pay schedules would be abrogated on January 1, 1894 and new schedules would be used. When the receivers heard there was discussion of a strike, they applied for an ex parte injunction to prevent the workers from walking out.

The injunction prohibited workers from:

> combining and conspiring to quit, with or without notice, the service of said receivers, with the object and intent of crippling the property in their custody, or embarrassing the operation of the said railroad, and from so quitting the service of the said receivers, with or without notice, as to cripple the property or prevent or hinder the said operation of the railroad.

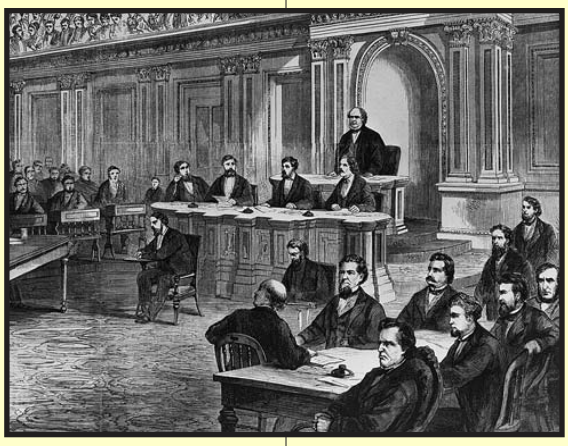
Farmers Loan & Trust Co. v. Northern Pacific Railroad Co., 60 F. 803, 807 (C.C.E.D. Wis. 1894)

Continued on page 29

When Unpopular *Opinions* Meet Politics

Continued from page 28

(Embarrassing is used in the rare sense of meaning being a hindrance, encumbrance, impediment, obstruction or obstacle). The injunction was amended three days later to bring local and national unions under its coverage.



Judge Jenkins' injunction was the climax of a series of court cases enjoining strikes but no one had gone as far to hold that the workers could not quit. In his formal opinion at 60 F. 803 (C.C.E.D. Wis. 1894) Judge Jenkins held that no right, including the right to quit work, is absolute. Can a doctor leave when the surgery is only half performed? Can an attorney quit halfway through a case? No. Therefore, the workers must remain working for the railroad at pay levels they had not agreed to. Judge Jenkins also expressed doubts that a strike could ever be legal since previous labor protests, such as the Haymarket Riot (Chicago) and the Bay View Tragedy (Milwaukee), had been violent. The injunction was a command to work until the receivers could find replacements.

Reaction was swift. On February 5, 1894, a resolution to investigate Judge Jenkins was introduced in the House of Representatives and was adopted on March 6. The House investigation was pro-labor. They found the receivers had never talked to the workers about the pay schedules, the workers testified there had never been talks about striking and the committee refused to endorse the idea that there could never be a legal strike. The committee report looked at the legal precedent and decided that Judge Jenkins' decision was a maverick. However, they did not find any evidence of bad faith or corruption, so instead of recommending articles of impeachment, the committee recommended some legal changes to make the law clearer. The minority report from four representatives argued this was a disagreement about the law, which was a matter for the courts. The case was overturned by *Arthur v. Oakes,* 63 F. 310 (7th Cir. 1894).

Judge Geiger and the Grand Jury

Judge Ferdinand A. Geiger (judge from 1912-1939) had a great reputation. He was perceived as having strong ethics and ran a no nonsense courtroom. The Eastern District of Wisconsin was chosen out of all of the federal district courts in the United States, to be the site of a Sherman antitrust action brought against the three major automobile manufacturers and their related finance companies. While Robert Jackson, Chief of the Department of Justice Antitrust Division stated it was for the convenience of the witnesses, many people believed it was because of Judge Geiger's reputation, developed over his 25 years on the bench. The district clerk's office also had a reputation for being "tight" and unlikely to leak anything.

By 1937, the U.S. Attorney General was ready to go after antitrust violations. With *West Coast Hotel v. Parrish,* 57 S. Ct. 578 (1937), the Supreme Court starting upholding New Deal programs so the Justice Department could focus on other issues. This began a period of "vigorous enforcement" of antitrust laws and one of the case selection criteria was the impact it would have on the nation. Thomas K. Fisher, *Antitrust During National Emergencies II,* 40 Mich. L. Rev. 1164, 1180 (1942).

The automobile financing industry was a natural target. In 1937, General Motors, Chrysler and Ford made 92% of the automobiles sold in the United States and their related financing companies accounted for 75% of automobile financing. At this time, 55% of automobile purchases, both new and used, were financed.

Independent finance companies wanted part of this action. They complained about several practices that kept them out of the lucrative finance market. Allegedly, dealers who used independent finance companies were unable to renew their franchise agreements. Dealer's wholesale financing was tied to the retail financing. The manufacturer related finance companies charged consumers a large excess reserve that was split between the manufacturer and the dealer. This excess reserve significantly increased the price of the car for the consumer.

Continued on page 30

When Unpopular *Opinions* Meet Politics

Continued from page 29

The grand jury for the Eastern District of Wisconsin first met in September 1937. Local papers noted the biggest case before the grand jury was the automobile antitrust case. The number of witnesses kept increasing from 50 to 200 to over 300. After an initial flurry of activity, the grand jury slowed down. The number of days between hearings grew, sometimes for a couple of days, then weeks. Meanwhile, in Washington DC, the Justice Department and the automobile makers were engaged in talks to see if a consent decree could be reach. One of the automobile makers supposedly requested the talks, but General Motors protested. When Judge Geiger discovered this, he told the Justice Department to stop the talks. There was a dispute as to when the talks stopped.

On December 17, 1937, Judge Geiger held a hearing regarding the consent decree talks. He found they had continued until late November, after he was told they were discontinued. The attorneys for General Motors argued that the grand jury was used to pressure the firms--either agree to the consent decree or face criminal antitrust charges. Judge Geiger thought this was unethical and an abuse of the criminal process. He dismissed the grand jury, even though they had voted on the indictment but had not formally returned it.

The Justice Department moved quickly. On Dec. 20, 1937, Attorney General Cummings wrote to the House Judiciary Committee, complaining about the dismissal of the grand jury, six tax cases, the general processing of the criminal docket and "other matters". He asked for a hearing on those issues. This reaction perhaps reflects a sense of betrayal by the Department's handpicked judge on what was expected to be an easy win. These "other matters" were not enough keep the antitrust case away from Judge Geiger until he dismissed the grand jury.

Assistant Attorney General Robert Jackson represented the department. He argued that it was a common practice for the Justice Department to use compulsion (but not threats) by entering consent decree talks while there were related grand jury proceedings. (There is evidence that this was not the case. *See* Harold F. Birnbaum, *The Auto-Finance Consent Decree: A New Technique in Enforcing the Sherman Act,* 24 Wash. U.L.Q. 525 (1939)). Judge Geiger was the only judge who objected to the practice. Jackson tried to get the committee to consider all of Attorney General Cummings' complaints, but the committee was not interested, especially after Jackson conceded there was not an impeachable offense among them.

Once again, committee members asked if this was an attempt to go around the court of appeals by appealing to Congress instead. Mr. Jackson conceded he did not know if there had been any investigation by the Justice Department into whether the decision was made in bad faith or because of corruption—the complaint was made merely because of the judge's ruling. Because there was no evidence of malfeasance, the committee refused further action. Shortly after the Judiciary Committee refused to take further action, the Justice Department got indictments against the car finance industry in the Northern District of Indiana. Chrysler and Ford entered into consent decrees. General Motors went to trial and lost. The Justice Department also issued a letter stating that it would be normal policy to seek concurrent actions — criminal indictments and consent decrees. Judge Geiger left the bench in 1939 because of ill health and died shortly thereafter.

Summary

Impeachment investigations can be used to intimidate judges, to force them to leave the bench or harass them in hopes of more "acceptable" rulings in the future. Congress has the duty to provide oversight of federal officials and to impeach them when necessary. As these three incidents show, there is a thin line between oversight and trying to avoid the separation of powers given to the different branches of government. Fortunately, for all three judges, Congress upheld the separation of powers and the independence of the judiciary. Absent bad faith, corruption or a criminal act, the proper place for oversight of unpopular opinions was with the courts. As stated in the minority report for Judge Jenkins, "Individually, we may not believe his law was sound, and may not think it will be so pronounced by the tribunal of appeal, but if he was honest and has given his honest opinion honestly, it would seem as if the correction should come from another source."

Minority Report, Receivership of the Northern Pacific Railroad Company, H. R. Rpt. No. 52-1049, at 21 (1894).

Book Review

*By Joseph Ferguson**

PUBLIC CORRUPTION AND THE LAW: Cases and Materials

*by David H. Hoffman[1] and Juliet S. Sorensen***

The most subliminal glance at the 24/7 onslaught of news media makes it hard to escape the observation that public corruption is a central aspect of our legal and political zeitgeist. A months old presidential administration has been dogged from the outset with: allegations and investigations of corrupt ties to foreign governments during and, some speculate, possibly affecting, the 2016 presidential election[2]; non-disclosures and/or concealments of ties to foreign countries and actors by senior officials[3]; accusations of possible conflicts of interest of the Special Prosecutor (and his boss – the Deputy Attorney General) who was chosen in the wake of the controversial summary dismissal of a sitting FBI Director investigating administration officials[4]; and an unresolved welter of potential conflicts of interest arising from the President's complicated business ties and interests.[5] Among other things. And this fraught ethics and public corruption moment should not be hung solely on current political events. Corruption is a major off-the-field problem in the world of sports.[6] This is not lost on the American public. To the contrary, in the two years preceding the most recent national election, a highly regarded national survey of fears of the American public revealed that fear of a "terrorist attack" was a distant second to fear of "corrupt government officials."[7]

Beyond the numerous prompts, the now commonplace invocation of and civic discourse on corruption occurs even though, or maybe in significant part because, it is ill-defined and fluid in concept, operating

Continued on page 32

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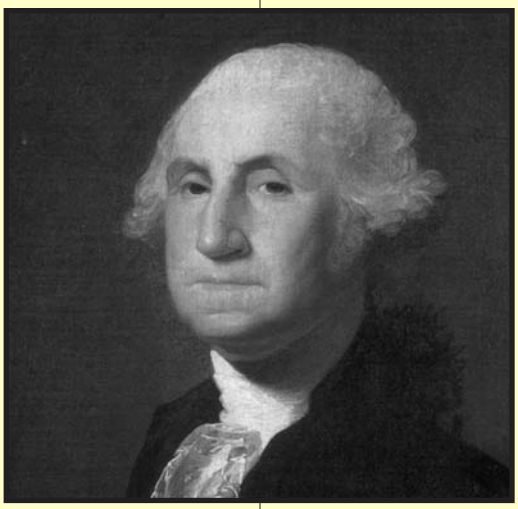
Book Review

Continued from page 31

more from a visceral intuition than clear guidelines and parameters. We might be forgiven this state of affairs were it the consequence of new and emerging technologies or organizational paradigms, but corruption was an, if not *the,* animating force to many of the Constitution's structural components. Concerns about the darker tendencies of the human heart and the inclinations of monarchs spurred the founding fathers to operationalize mechanisms to counter the inevitable corruption that would be corrosive to a well-functioning republic that, to long survive, must be seen as legitimate by the population from which it derives its authority and which it ostensibly exists to serve.[8] Leading corruption law scholar, Fordham University Law School Associate Professor Zephyr Teachout notes that Benjamin Franklin's first speech to the Constitutional Convention "was about money, power and the inconsistencies of the ambitious human heart."[9] While concerns about the vulnerability of the fractured and debt-ridden states to internal competition and external military threat from foreign powers precipitated the move from the Articles of Confederation to a new form of government, "[c]orruption, influence, and bribery were discussed more often in the [Constitutional] convention than factions, violence or instability."[10] The paramount concern about corruption prompted Hamilton to argue in *Federalist No. 68* that "[n]othing more was to be desired than that every practicable obstacle should be opposed to cabal, intrigue and corruption."[11] On the face of it, the Founding Fathers had much the same paramount fear as the American public does today, 230 years later. The Founding Fathers appear to have accomplished their anti-corruption objectives if for no reason other than there being, by Prof. Teachout's well-researched count, 23 separate anti-corruption provisions contained in the Constitution, as amended.[12]



Leading political and judicial figures for the ensuing 170 years generally followed the cues of the Founders and carried forth with a broad understanding of corruption applied most particularly through various forms of bribery and extortion laws.[13] But the jurisprudential milestones over the last 40-plus years has found the regnant conservative wing of the Supreme Court edging increasingly away from the broad "originalist" anti-corruption principle to a more narrow understanding of corruption under the law, albeit in the name of a fairly broad and possibly originalist-oriented view of the First Amendment Free Speech Clause. The result? A looming civic and policy Tower of Babel where all construct and freely speak their opinions with little consensus on the meaning of the key terms. The legal community therefore owes an enormous debt of gratitude to David H. Hoffman and Juliet S. Sorensen for the thankless task of stepping into the void with the first ever casebook devoted to the subject -- *Public Corruption and the Law.*[14]

The authors appropriately set the stage in Chapter One with readings that shed light on the definitional problem,[15] the causal correlations and consequences of corruption,[16] and the painfully complex task of investigating and prosecuting it even (and maybe especially) where it is so extensive and manifestly corrosive of an important public institution as to be widely known and systemic.[17] In doing so, Hoffman & Sorensen signal a shared perspective on the challenges of the subject. The public's visceral intuitions (mentioned above) may be explained by a default to what the authors refer to as a "moral lens", which tends to define corruption broadly. This view is distinguished, they explain, from both "economic" and "cultural relativist" lenses. The former inclines toward an efficient market redressment of deviant behavior (resulting in a narrow legal definition of corruption), with the latter fully recognizing the moral dimensions, but factoring prevailing cultural norms into its policy line-drawing exercises.[18] The authors, finding each approach problematic, plant a flag for

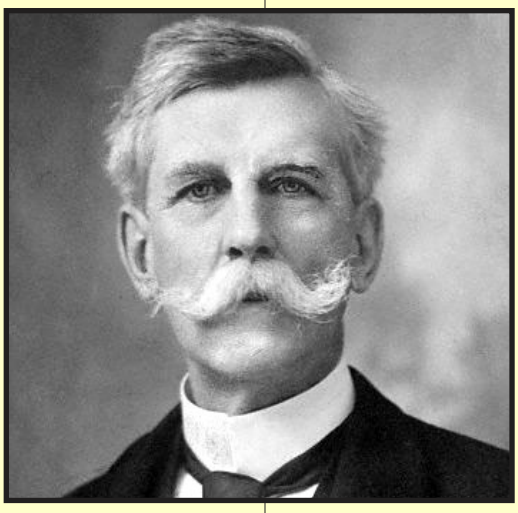
Continued on page 33

Book Review

Continued from page 32

what they cast as a "pragmatic-republican" lens, which would:

> "pragmatically ask how public corruption squares with a society's system of government and the system's underlying public values, as defined by its core documents. In a republican system of government like America's, where the fundamental value is that the governed own the government and must provide their consent for public officials to exercise power, the law would define the contours of corruption – and the interest in preventing corruption – *based on the threat to this system from actions relating to public officials or elections.* The value judgments from this pragmatic-republican view of corruption come not from morality, efficiency, or a culture's historical tolerance level for corruption, *but from the harm to the system of government from specific actions that may be considered corrupt, or that may make corruption more or less likely.* Public corruption is, after all, a subject that relates solely to how governments and their officials function, so it is sensible to judge corruption's scope and importance by its effect on how those governments and officials function."[19]



I read such an approach as casting the corruption strike zone in a morality that is not boundless, relative and fluid, but rather in a morality bounded by the core values formally embodied in the core documented foundational structure of government – our constitutional system, which as noted above, was forged as an anti-corruption document. We would call illegal (or corrupt) only that conduct resulting in or threatening unacceptable harm to the integrity, (i.e., legitimacy), and operation of that structure. What is detrimental to the system is simply not allowed. What is not allowed is reduced to a roster of clear prohibitions. The debate, in theory, can end.

This is a bold strike, but one I am not entirely confident hurdles our current jurisprudential moment. In order to strike down this path, it seems we would have to have to resolve the comparative weighting and priority of inarguably competing constitutional values. Most notably, recent jurisprudence has flipped the historical script by elevating First Amendment Free Speech (as well as Due Process) values to the front of the line, ahead of anti-corruption values. How to resolve which should come first is the very nub of our currently challenged state--but more on this later.

After setting the table, Hoffman & Sorensen turn to shooting the legal rapids of public corruption law. To do so, they structure the book through a thematic organization of the law and cases. The first grouping, presented in Chapter Two, is styled "Individual Corruption: Traditional Prohibitions on Bribery, Fraud, and Other Crimes."[20] This grouping is appropriately cast. The traditional crimes -- whose roots generally are traceable to the common law long pre-dating the country's founding – were, in fact, individual in nature. The case law (and author introductions and post-script analysis and commentary), is broken out into subsections devoted to distinct (exclusively federal[21]) crimes – bribery (18 U.S.C. secs. 201(b) and 666), extortion under color of official right (18 U.S.C. sec. 1951), gratuity (18 U.S.C. sec. 201(c)), honest services mail and wire fraud (18 U.S.C. secs. 1341/43 & 1346), and racketeering (18 U.S.C. sec. 1960 *et seq.*). This is not as easy an organizational exercise as it would seem. Modern public corruption jurisprudence commonly takes foundational concepts and elements from one statute – say, bribery – and applies them outside their statutory fencing to supply the basis for analysis where they have neither a presence nor historical application – say, extortion, for example. Thus, while efficiently walking the reader through the aforementioned statutes provisions, buttressed by instructive case law, Hoffman & Sorensen also take care to give distinct, standalone treatment to the definitional elements that waft over the entire corruption law landscape. For example, *quid pro quo,* a phrase not found in any statute, and, until recently, seldom invoked over the long jurisprudential arc of the so-called "individual" prohibitions,[22] receives rightful standalone treatment, along with definitionally elusive statutory

Continued on page 34

Book Review

Continued from page 33

terms such as "corruptly", "intent to influence, "thing of value" and "official acts".[23]

Many casebooks can be something of a shock and awe experience, dense with secondary citations and quotes. Given the complexity of the subject here, this, mercifully, is not one of those books – the authors clearly opted for quality over quantity. The book's fine excerpts from key Supreme Court cases are longer than usual, which is a good thing. Given the nature of the subject, it is the only way to capture the important debates transpiring across the competing separate concurring and dissenting opinions that are common to public corruption cases.[24] A distinguishing characteristics of a casebook in a field of law that is fluid and evolving is its authors' ability to identify the right questions to frame comprehension of the materials, and the jurisprudential treasures lurking under the tidal surges of Supreme Court jurisprudence. Where there is a lack of clarity from the high court, the burden is carried by the lower courts, where, of course, the practice of law is waged. Hoffman & Sorensen's offering excels in both respects.

Indeed, the intelligence of this collection and its layout may be reflected less in its provision of answers (which it could not do anyway because there are few, or at least few that have legs) but rather, in their North Star fixation on the foundational, doctrinal questions, through various eras and statutory and jurisprudential developments. This focus enables coherent analysis vertically, through time, as well as horizontally, within any one period across simultaneously overlapping but, at times, nearly incommensurable statutory regimes. Their choices of lower court cases range broadly in a manner that suggests exhaustive research coupled with surgical, tactical and incisive selection. Two excellent examples of their lower court cherry-picking are found in: (1) an extended excerpt from *United States v. Ganim,*[25] a multi-faceted racketeering, extortion, honest services mail fraud and bribery case out of the Second Circuit in which future Supreme Court Justice Sotomayor puzzled through the historical thicket in search of the required specificity of a *quid pro quo,* which in that case was a promise to perform a future, but unspecified act; and (2) the late Judge Evan's Seventh Circuit opinion in *United States v. Giles,*[26] a racketeering, mail fraud and extortion case which the authors use to demonstrate the straits in which the circuit courts were left in the wake of *McCormick v. United States,* 500 U.S. 257 (1991), and *Evans v. United States,* 504 U.S. 255 (1992). Many other such examples abound.

The navigation through the evolution of "individual" public corruption law highlights the limitation of that conceptual moniker. What in the common law era were acts of individual deviance against the crown, with the conceptual border between the legal and illegal reasonably well-understood, in modern times involves individual acts and actors exploiting weaknesses of complex and culturally conflicted institutions and structures. Because traditional prohibitions generally are common law crimes made statutory, Chapter Two teases their inadequacy to a more complex institutional and cultural matrix, which is why their choice to lead with the traditional prohibitions is an excellent setup for what follows. Chapter Three, titled "Public Corruption and Power: Patronage and Campaign Finance" might better be referred to as institutional and/or structural corruption. Institutional corruption might, here, be better characterized as systemized corruption, wrought variously of informal or official systems that may additionally reflect a set of prevailing cultural precepts. The chapter leads with political patronage, a both/and – originally non-official systems of support for ethnic-based immigrant communities or factions that, upon achieving some degree of political ascendancy, are channeled into formal electoral and governmental modalities. The result works best and most for the winners who take the spoils. Fraud-like corruption within those systems triggered statutory and regulatory constraints starting at the federal level with the Pendleton Civil Service Reform Act of 1883 and working eventually down to the state and municipal level (usually after court prescription, which, too often, has been the way of things in Chicago and Illinois).[27]

Continued on page 35

Book Review

Continued from page 34

As political patronage machines that provided a ready-supply of field workers in election season were flushed from the regular operation of government, money, the contemporary "mother's milk of politics," became an ever more necessary commodity to waging a successful campaign. In its corruption modality this took the form of pay-to-play schemes.[28] Hoffman & Sorensen devote extensive space to the progression of regulatory reforms to curb the corrupting tendencies of money in the political system, beginning, after a concise historical lead-in, with the regulatory campaign finance limits of Federal *Election Campaign Act of 1971* (FECA), as elucidated through *Buckley v. Valeo,* 424 U.S. 1 (1976). The book then moves to a fine analysis of the limits of FECA and the consequent attempt to rein in the proliferation of so-called "soft money" and corporate-funded "issue ads" (left largely unregulated by FECA) through the *Bipartisan Campaign Reform Act of 2002* (BCRA, (aka McCain-Feingold)). The book devotes nearly 40 pages of exegesis to the resulting challenge to BCRA's constitutionality from a broad spectrum of interests in *McConnell v. Fed. Elec. Comm'n,* 540 U.S. 93 (2003), in order to give due attention to the eight separate opinions through which the Court engaged nuanced discussion regarding "campaign finance, the First Amendment, and the nature of democracy" that, for the authors, "is arguably unparalleled in any other area of the Court's jurisprudence."[29] In similarly extended excerpting of multiple separate opinions, usefully interspersed with incisive analysis, the book brings us to *Citizens United v. Fed. Elec. Comm'n,* 558 U.S. 310 (2010) and the present state of campaign finance law.

Chapter Three's well-guided tour through the thicket of campaign finance and election law, (bolstered by a quick jaunt through gerrymandering as an institutional (i.e., structural or systemic) corruption topic), has a bit of the relentless inevitability of Sherman's March to the Sea about it. Most uses of money are now regarded as political speech so highly protected that the anti-corruption enterprise is all but pushed out of play. After *Citizens United,* the First Amendment arguably may be seen as rooted less in the rights of the speaker, and more inhering in speech itself, with the identity of the speaker all but irrelevant. Corporations are thus effectively elevated to full First Amendment standing not necessarily because they have been conferred the same rights as people, but because they generate speech through their allocation of money to political objectives. Because of the resource advantage corporations (and other moneyed interests) possess, their speech generation activities crowd out those of the little guy, and further are elevated in the jurisprudence such as to crowd out most other constitutional values.[30]

There is little debate over the enormous impact of money on our electoral system and how we govern. Where there is debate is over whether and in what ways it is corrupt or corrupting. This chapter of the book thus concludes with a section on a specific theoretical platform for reframing the assessment and legal analysis of the enormous, largely corporate, sums of money washing through politics. The theory, which has wafted into both Court jurisprudence and scholarly analysis for the last forty years, but without ever gaining traction, is referred to as "equalization" which, in brief, posits a compelling interest in the assurance of a fair and level playing field for all to participate in and influence election outcomes -- bringing the campaign finance system into alignment with the one person, one vote principle.[31] Such an approach appears to bid either for a broader definition of corruption, to include not just corruption in the traditional sense, but in the sense of a system being corrupted, as in having outcomes misaligned relative to policy objectives or, alternatively, for an interpretation of campaign finance law as something other than anti-corruption measures in the ordinary sense of the term.[32] I read this as a hopeful offering of a road out from the current imbalanced state of affairs. Between such a postulated depersonalized creep of the First Amendment Free Speech Clause and the insufficiency of traditional "individual" corruption crimes to meet the institutional complexities of modern society, the scope of the anti-corruption enterprise is in full retreat in ways that run counter to both the priorities of the Founding Fathers, as reflected in the very structure of the Constitution, and the fears of the country today.

Continued on page 36

Book Review

Continued from page 35

Were the book to end here, Hoffman & Sorensen could claim a signal achievement and important curricular contribution. But they push on. Chapter Four tees up as an additional corruption category "Public Corruption and the Law Outside the United States."[33] The Foreign Corrupt Practices Act, the throw weight in this chapter, is an important component to the anti-corruption enterprise and ethos. Historically, the pursuit of foreign business in corrupt countries all but impelled American companies to engage in practices – think bribery -- that would be criminal at home or else operate at a competitive disadvantage. In order to be competitive abroad, American companies thus operated with two or more different sets of ethical (and legal) standards – the higher one at home and the rest in certain countries abroad. In the context of any single country, the operation of the latter inevitably threatens to corrode the compliance culture of the former. Given the fact that a great deal of domestic corruption involves corporate pursuit of business with or regulatory benefit from the U.S. government, the corrosive effect of double cultures within is obviously problematic. The inclusion of the FCPA materials and commentary thus appropriately broadens the authors' effort to define the anti-corruption enterprise. More practically, it makes the book not only a critical curricular platform for future government and criminal lawyers, but also one for future corporate lawyers -- whether in Big Law or in-house – pointed to, among other things, the ever-burgeoning corporate compliance practice field. With the inclusion, the book positions Public Corruption Law as a near imperative curricular subject. As for how well this category fits with the rest of the book, as the authors note, the FCPA – which includes both anti-bribery and accounting provisions -- is itself challenged by uncertainty about scope and interpretation because of comparatively sparse appellate case law, leaving traditional domestic terms and concepts coupled with district court opinions and Justice Department guidance to frame understanding and practice.[34] A perfect fit.

Writing a review of a casebook is a unique legal experience. Few, if any, law students, practitioners, judges, or professors for that matter, read a casebook straight through without diversion or narrowing objective. Indeed, I do not anticipate doing it again, at least not in the foreseeable future! However, with respect to a public corruption law text, the experience magnified and deepened the surface level impression of a complex legal matrix collapsing in on itself.[35] Viewed on a case-by-case basis, the mighty straining of courts to secure pragmatic outcomes in the context of a legacy statutory framework that ill fits contemporary institutional politics and governance is palpable. Sustainably pragmatic outcomes at times require no small judicial courage, particularly where they result in dispiriting factual outcomes, which courts themselves take pains to note, possibly in an effort to pre-empt the public frustration and outrage sure to ensue.[36] In the name of pragmatism, this area of the law, read in whole, yields a sense of veering close to a Humpty-Dumpty scenario unmoored from history and doctrinal origins that only the most brilliant of jurists are able to keep stitched together – with the Seventh Circuit, courtesy of the long stream of public corruption prosecutions emanating from the office of the U.S. Attorney for the Northern District of Illinois, supplying a disproportionate share.[37]

I suspect that the few law professors who teach (Public) Corruption Law as a curricular corpus have come to much the same conclusion.[38] I would urge, however, that this state of affairs be a call to arms to lawyers generally. While by no means supplying a large dataset, my modest teaching experience suggests that students are hungry for answers – black letter law where possible, (especially as the Sword of Damocles that is the Bar Exam looms in their consciousness). More than a few appear befuddled where there are few to no answers to be served up. Where faint signs of frustration arise, I am prone to suggest that where answers are in shortest supply is where the fun – real lawyering -- begins. The roots and history of the profession, I prattle on (probably with annoying parental overtones), should signal that being a lawyer is a calling to be pursued as much

Continued on page 37

Book Review

Continued from page 36

more than well-paid intellectual production line work. If we are serious about the training of not only skilled practitioners, but guardians of the law who will be engaged and conversant participants in the important civic issues of their time, then (Public) Corruption Law, because of its roots, fluidity, lack of clear answers, and direct connection to ethics, morality and the integrity and legitimacy of our constitutional system and culture ought to be widely taught. Hoffman & Sorensen speak to this with modesty, but unmistakable clarity.[39]

It is this vision, I suspect, that partly informs the choice of materials at the back end of their casebook. In addition to the aforementioned materials on the FCPA, the meaty Chapter Four includes a dip into country-specific laws outside the United States most notably the United Kingdom's rigorous, burden-shifting, strict liability Anti-Bribery Act of 2010, which addresses both domestic and international corporate bribery,[40] Canada's recently strengthened analog to the FCPA, the *Corruption of Foreign Public Officials ACT* (CFPOA),[41] as well as the corruption-burdened South Africa's *Prevention and Combatting of Corrupt Activities Act 12 of 2004*.[42] It also serves up a couple of differently modeled multi-lateral agreements; for example the OECD[43] Convention on Combatting Bribery of Foreign Public Officials In International Business Transactions[44] I read the marker they put down with these materials, (buttressed with little to no commentary), as the leading edge of an effort to expand discussion beyond the tether of domestic caselaw to visioning a ground up reworking of our domestic anti-corruption mechanisms.

Chapter Five, "The Unique Enforcement Problems Presented By Public Corruption,"[45] delves into a few specialized realms that challenge our ability to measure corruption, our societal inclination to enforce it as such, and some of the legal, institutional and cultural challenges of doing so. For example, the chapter explores hindrances to investigation of public officials and the need for disproportionality greater investigative resources and tools, whistleblower protections to assure the flow of leads and evidence, and structural independence to assure objective, non-partisan investigation without fear of reprisal, (firing or slashing of appropriations for needed resources). Two other special realms of particular moment are explored. The investigation and prosecution of police corruption is plumbed for the enforcement complications posed by, among other things, the immense authority and commensurate discretion with which we endow law enforcement in the performance of critical and, at times, dangerous public duties, which in turn, partly as a result of a history of non-oversight, has fostered cultural obstacles like the proverbial "thin blue line" or "code of silence." Finally, of significance to an extent the authors could not have imagined when compiling the book, the investigating and prosecuting of a corrupt President, where the need for Special Prosecutors, the complexities of Executive Privilege, and the overlay of Constitutional provisions and procedures – Impeachment powers -- make effective enforcement especially daunting.[46] All of these can be viewed as fascinating thought exercises that, again, provide a platform for both problem-solving exercises and a broadened engagement of "corruption."

The paradigm-challenging aspects of the latter part of the book take most obvious form in the final chapter, "Different Legal Conceptions of Public Corruption."[47] Having concluded our tour, Hoffman & Sorensen take the reader back to where we began in Chapter One, to re-engage the dominant, philosophical and interdisciplinary theories on corruption. Now endowed with a broad and deep exposure to the law and the generational and jurisprudential evolution of the anti-corruption enterprise, the reader has the opportunity to re-assess the societal and cultural scope, scale and importance of corruption from moral, economic, cultural relativist, constitutional and democratic theory perspectives, which are quickly explored through a surgical selection of academic readings. I read the closing

Continued on page 38

Book Review

Continued from page 37

materials – references to the work of Harvard Law Professor Lawrence Lessig, and an extended excerpt from Zephyr Teachout's *The Anti-Corruption Principle*[48]-- as our tour guides' take on the road out from challenging legal (as well as political and societal) thicket of the moment. For Lessig and Teachout, as well as Hoffman and Sorensen, the state of anti-corruption law is confused in significant part because it has become unmoored from its historical roots. The myriad corruption-related provisions of the Constitution – the meaning and intent of which are explicitly informed by the historical record of the Constitutional Convention in 1787 and The Federalist papers[49] -- embody what Teachout refers to as an "anti-corruption principle." It is that from which the Supreme Court's public corruption jurisprudence, beginning 40 years ago with *Buckley v. Valeo,* has become either unmoored or which the Court's increasingly expansive weighting of competing First Amendment values has crowded out. A corrective to reflect the originalist weighting of those competing values would open the door to the more rigorous and effective anti-corruption enterprise needed to salvage the legitimacy of our tattered republican form of government. That, in turn, might create the space necessary for the authors' bounded but flexible "pragmatic-republican" lens[50] to flourish.

Whether Hoffman & Sorensen have that right is undeniably a question worth extensive, thoughtful, informed discussion. In a law school classroom. In every law school. As a foundational core curricular requirement. Which this excellent textbook makes immediately possible.

Notes:

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[2] Michael Crowley, *All of Trump's Russian Ties in 7 Charts,* Politico (March/April 2017) *available at* http://www.politico.com/magazine/story/2017/03/connections-trump-putin-russia-ties-chart-flynn-page-manafort-sessions-214868.

[3] *See, e.g.,* Chad Day and Stephen Braun, *House Democrats Pressure White House on Kushner, Flynn Security Clearances,* Chicago Tribune (June 21, 2017) *available at* http://www.chicagotribune.com/news/nationworld/politics/ct-kushner-flynn-security-clearance-20170621-story.html.

[4] *See, e.g.,* Sophie Tatum, *Bharara: 'Odd and unusual' that Rosenstein Oversees and Is a Witness in Mueller Probe,* CNN.com (Sept. 25, 2017) *available at* http://www.cnn.com/2017/09/24/politics/preet-bharara-rod-rosenstein/index.html.

[5] *See, e.g., Donald Trump: A List of Potential Conflicts of Interest,* BBC News (April 18, 2017) *available at* http://www.bbc.com/news/world-us-canada-38069298; *see also* Eric Lipton and Nicholas Fandos, *Departing Ethics Chief: U.S. "Is Close to a Laughingstock",* New York Times (July 17, 2017) *available at* https://www.nytimes.com/2017/07/17/us/politics/walter-shaub-ethics.html?_r=1.

[6] Rebecca R. Ruiz, Matt Apuzzo and Sam Borden, *FIFA Corruption: Top Officials Arrested in Pre-Dawn Raid at Zurich Hotel,* New York Times, (Dec. 3, 2015) *available at* https://www.nytimes.com/2015/12/03/sports/fifa-scandal-arrests-in-switzerland.html?_r=0; Nolan D. McCaskill, *NCAA Coaches Face Federal Charges Over Alleged College Basketball Fraud Scheme,* Politico (Sept. 26, 2017) *available at* http://www.politico.com/story/2017/09/26/ncaa-coaches-college-basketball-fraud-scheme-justice-department-243151.

[7] *America's Top Fears 2016,* Chapman University Survey of American Fears (Oct. 11, 2016), https://blogs.chapman.edu/wilkinson/2016/10/11/americas-top-fears-2016/ (reporting 60.6% of those polled as "Afraid" or "Very Afraid" of "Corrupt Government Officials," to 41% for "Terrorist Attack").

[8] *See generally,* Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuffbox to Citizens United,* Harvard U. Press, Cambridge, MA (2016 ed.) 56-80 (hereinafter "Teachout").

[9] *Id.* at 56.

[10] *Id.* at 57.

[11] *The Federalist No. 68 (Alexander Hamilton),* in *The Federalist,* J. Cooke (ed.), Meridian (1961) at 459. Revisiting *The Federalist* for this assignment was something of a revelation – I found the presence and use of the term "corruption" to proliferates at near obsessive levels, particularly in the writings of Hamilton.

[12] *See* Teachout, at 307-310.

[13] *See generally,* Teachout, at 81-194.

[14] DAVID H. HOFFMAN & JULIET S. SORENSEN, PUBLIC CORRUPTION AND THE LAW: CASES AND MATERIALS, West Academic Publishing (2016) (hereinafter "Hoffman & Sorensen"). A general search yielded only one other legal textbook, a highly useful practice-oriented compendium of leading statutes and their tactical applications. *See,* Peter J. Henning & Lee J. Radek, *The Prosecution and Defense of Public Corruption: The Law and Legal Strategies,* Oxford U. Press (2017 ed.)

[15] Hoffman & Sorensen, at 12-21 (excerpt from Susan Rose Ackerman, *Bribes, Patronage and Gift-Giving,* in Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform,* Ch. 6, (1999) (setting forth a Law & Economics, contract-oriented typology of corruption).

[16] *Id.* at 21-32 (excerpt from William Easterly, *The Elusive Quest for Growth: Economists' Adventures and Misadventures in the Tropics,* (MIT Press, 2001) (detailing correlations between levels and varieties of corruption and government, institutional and economic characteristics).

[17] *Id.* at 32-45 (excerpts from two leading Seventh Circuit cases – *United States v. Murphy,* 768 F.3d 1518 (7th Cir. 1985)(Easterbrook) and *United States v. Maloney,* 71 F.3d 645 (7th Cir. 1995) (Eschbach) – arising from the decade-long *Operation Greylord* undercover investigation into pervasive fraud in the Circuit Court of Cook County (IL)).

[18] *Id.* at 5-6.

[19] *Id.* (emphasis supplied).

[20] *Id.,* at 47-271.

[21] The largely federal focus is not to the complete neglect of state law as the authors include, for example bribery statutes and cases from Illinois and California. Hoffman & Sorensen, at 117-32.

Continued on page 39

Book Review

Continued from page 38

[22] By Prof. Teachout's count, prior to the 1976 decision in *Buckley v. Valeo,* 424 U.S. 1 (1976), the term *quid pro quo* was not part of any definition of corruption and had appeared less than 100 times in all bribery and extortion cases -- less than 10 times prior to 1956 – and even then, not in relation to those crimes per se, but rather to witness immunity deals arising under prosecutions of those crimes. It was only in the 1970s that it began to show up in bribery discussions, but still not as an element or essential feature of the crime. The term begins to proliferate with the Roberts Court, with Justice Kennedy's opinion in *Citizen United v. Fed. Elec. Comm'n,* 558 U.S. 110 (2016) using the phrase *quid pro quo* fourteen times. Teachout, at 238-39.

[23] Hoffman & Sorensen, at 56-113.

[24] *See* Teachout, at 130-31 & 214 (noting that public corruption cases are commonly among the longest opinions produced in the history of the high court, with the seminal campaign finance case *McConnell v. Fed. Elec. Comm'n,* 540 U.S. 93 (2003), "the longest case in constitutional history").

[25] 510 F.3d 134 (2d Cir. 2007) (excerpted in Hoffman & Sorensen, at 62-70).

[26] 246 F.3d 966 (7th Cir. 2001) (excerpted in Hoffman & Sorensen, at 190-97).

[27] *See* Hoffman & Sorensen, at 281-301.

[28] *See* Dan Walker, *The Mother's Milk of Politics Is Corrupting Absolutely,* Nw. U. L. Rev. Colloquy (Spring 2009) *available at* http://scholarlycommons.law.northwestern.edu/nulr_online/164 (analysis of the "pay-to-play epidemic in the State of Illinois in the immediate wake of the unveiling of the corruption schemes of Illinois Gov. Rod Blagojevich from another of the series of recent Illinois governors to find himself on the wrong side of a federal felony conviction).

[29] Hoffman & Sorensen, at 366.

[30] *See* Teachout, at 241-45.

[31] *See generally,* David A. Strauss, *Corruption, Equality and Campaign Finance Reform,* 94 Colum. L. Rev. 1369 (1994) (quoted in Hoffman & Sorensen, at 476-77).

[32] *See* Strauss, at 1370 ("'corruption' in the system of campaign finance is a concern not for reasons that true corruption, such as conventional bribery, is a concern, but principally because of inequality and the dangers of interest group politics."), *quoted in* Hoffman & Sorensen, at 476.

[33] Hoffman & Sorensen at 491-734.

[34] For this reason, the authors provide a succinct "Comparative Analysis of the FCPA and Other Domestic Laws Related to Bribery", Hoffman & Sorensen, at 669-79. For example, and among other things, they offer authority and analysis establishing that "the FCPA anti-bribery provisions are in many ways based on the parallel provisions of the bribery of federal officials statute [18 U.S.C. 201(b)]." *Id.* at 669.

[35] *See, e.g., McCormick v. United States,* 500 U.S. 257 (1991) (importing into Hobbs Act (18 U.S.C. sec. 1951) extortion an explicit 18 U.S.C. sec. 201(b) bribery a *quid pro quo* requirement when the benefit at issue takes the form of campaign donations to an elected official), and *Evans v. United States,* 504 U.S. 255 (1992) (reading out of Hobbs Act extortion the historical (and statutory "inducement" requirement thereby collapsing the historically, doctrinally and statutorily distinct and separate crimes of bribery and extortion).

[36] *See, e.g.,* (and famously), *McDonnell v. United States,* 579 U.S. ___, 136 S.Ct. 2355 (2016) (excerpted in Hoffman & Sorensen at 110) ("There is no doubt that this case is distasteful; it may be worse than that."); *See also, McDonnell v. United States: Leading Case,* Harv. L. Rev. 467 (Nov. 10, 2016) ("Most people would assume that giving $175,000 in loans, gifts, and other benefits to a sitting governor while trying to secure his state's help in launching your business would be unequivocally illegal. Most people would now be wrong, despite thirty-eight states prohibiting the receipt of an equivalent amount in campaign contributions.") *available at* https://harvardlawreview.org/2016/11/mcdonnell-v-united-states/.

[37] *See, e.g, United States v. Blagojevich,* 612 F.3d 558 (7th Cir. 2015) (excerpted in Hoffman & Sorensen, at 84-90, for, among other things, the holding that, however unseemly, the offer of one political act in return for another – the selection of a favored successor to the senate seat of then-President-elect Barack Obama in return for a Cabinet seat – was, however unseemly, was a form of logrolling fundamental to everyday political activity that must therefore be kept outside the ambit of 18 U.S.C. 1951 Hobbs Act extortion, 18 U.S.C. 666 bribery and/or 18 U.S.C. 1343/46 honest services wire fraud). Indeed, beyond the key Supreme Court cases, the book's case law excerpts for the extensive offerings on honest services fraud and racketeering come from the Seventh Circuit. Hoffman & Sorensen, at 198-272.

[38] Casual online surveying of the course offerings at major law schools (informally confirmed in conversation with one of the authors) suggests that Hoffman (at the University of Chicago) and Sorensen (at Northwestern) hold this ground at two of only a small contingent of schools nationally that offer (Public) Corruption Law as a standalone curricular subject.

[39] Hoffman & Sorensen, at v-vi ("Public corruption is properly viewed as a separate, standalone topic in the law, even though the law school academic texts have not traditionally treated it as one. It is a topic that demands our study *per se,* both because of its social important and because it is a cohesive topic with consistent themes and principles that interweave the various issues encompassed within it.

[40] *See* Hoffman & Sorensen, at 679-89.

[41] Hoffman & Sorensen, at 689-706.

[42] Hoffman & Sorensen, at 706-17.

[43] Organisation for Economic Co-Operation and Development

[44] Hoffman & Sorensen, at 491-734.

[45] Hoffman & Sorensen, at 735-837.

[46] *See* Hoffman & Sorensen, at 808-37. One might reasonably anticipate with a 2d Edition to involve an expansion of the offerings on this topic to include treatment of, among other things, the Emoluments Clause and executive conflicts of interest and, depending on the direction of current events, possible consideration of placement of the section into the "institutional or structural" corruption set out in Chapter Three.

[47] Hoffman & Sorensen, at 839-889.

[48] 91 Cornell L. Rev. 341 (2009) (excerpted at Hoffman & Sorensen, at 873-889).

[49] *The Anti-Corruption Principle* (excerpted at Hoffman & Sorensen, 879-881).

[50] *See* pp. 4-5, *supra.*

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Recent Events *within the* Circuit

This section highlights recent important events within the 7th Circuit. The articles both memorialize and celebrate.

A Tribute
to Judge John W. Darrah

*By Jim Dvorak**

The Honorable John W. Darrah of the United States District Court for the Northern District of Illinois passed away on March 23, 2017, following a tough-fought battle with a yearlong illness. Jack, as his friends and family called him, was a loving husband, father, grandfather and great-grandfather, and an outstanding lawyer and jurist.

Judge Darrah was born on December 11, 1938, on Chicago's Southside. He graduated from Mount Carmel High School and received his degree in philosophy from Loyola University. In 1969, Judge Darrah graduated from the Loyola University Chicago School of Law. Following graduation, Judge Darrah served as an attorney advisor at the Federal Trade Commission from 1969 through 1971. From 1971 through 1973, Judge Darrah served as a deputy public defender in DuPage County, Illinois.

Judge Darrah then went into private practice from 1976 through 1986. He broke from private practice between 1973 and 1976, during which time he served as a DuPage County Assistant State's Attorney. In 1986, he was elected a Circuit Court Judge in DuPage County, Illinois. On May 11, 2000, he was nominated by President William J. Clinton to succeed Judge George M. Marovich on the United States District Court for the Eastern District of Illinois. His nomination was confirmed by the United States Senate on June 30, 2000; and he received his commission on July 14, 2000. Judge Darrah served as an active member of the court until he took senior status on March 1, 2017. Judge Darrah continued as a senior judge until his death.

Judge Darrah was a member of the faculty of the National Institute for Trial Advocacy. He also was the founder and former Co-Chairman of the DuPage County Bar Association Trial Advocacy Workshop and was awarded the DuPage County Bar Association Board of Directors Award. He was also a member of the American Judicature Society, Federal Judges Association, Federal Circuit Bar Association, Assembly of the Illinois State Bar Association, Past President of the DuPage County Bar Association, Past President

Continued on page 42

** James Dvorak currently serves as the Supervising Staff Attorney for the United States District Court for the Northern District of Illinois and served as Judge John W. Darrah's elbow clerk for eight years in the United States District Court for the Northern District of Illinois.*

A Tribute: Judge John W. Darrah

Continued from page 41

of DuPage American Inns of Court, and Past President of the DuPage County Legal Aid Society.

Judge Darrah was an Adjunct Professor of law at Northern Illinois University College of Law from 1976 to 2006. He taught Criminal Law, Property, Trial Advocacy, Agency/Partnership, Future Interests, Illinois Civil Procedure, Administrative Law, Real Estate Transactions, Evidence, Constitutional Law, Consumer Protection, Advanced Criminal Procedure, and Unfair Trade Practice. In addition, he coached the NIU National Moot Court Competition and received the NIU Professor of the Year Award in 1992 and 1995. More recently, Judge Darrah taught Accelerated Trial Advocacy and Trial Lawyer-Evidence at The John Marshall Law School.

Judge Darrah was admired and loved by those who knew him and worked with him. He treated his staff with the utmost respect and valued their opinions. Judge Darrah treated his staff as though they were part of his family. He always showed genuine interest in his staff's life outside of the courtroom and supported his staff in any manner that he could.

He was well respected by counsel who appeared before him, and he treated counsel with respect as well. He also treated the *pro se* parties who appeared before him with respect and compassion. He acknowledged that they were often not well versed in the law but, nonetheless, were engaged in their right to file a lawsuit to try to remedy a wrong they believed they had experienced. He always treated the *pro se* parties with compassion and patience. His compassion also showed through at sentencings; where he would often comment that sentencing a defendant was one of the most difficult tasks he had to perform.

Judge Darrah was dedicated to the administration of justice and worked meticulously to ensure fair and impartial decisions. He took seriously every matter before him, whether small or large, simple or complex and strived to ensure that he made proper, well-reasoned and just decisions. He loved the practice of law and readily delved into a party's argument, carefully analyzing the facts and the law. Judge Darrah was always a dedicated and devoted student of the law. For him, practicing and teaching the law were not simply his chosen professions, they too, were also his passions. He was a non-judgmental, compassionate man who always reveled and took great delight in witnessing the success and joy of others. He took particular delight and pleasure in watching others grow and succeed in their professions and personal lives. The lawyers who practiced before Judge Darrah are better lawyers after doing so, as are those who were lucky enough to have him as a professor and those who served as one of his law clerks or externs.

Some of Judge Darrah's higher profile cases included: *Nilssen v. Osram Sylvania Inc.,* 01 CV 3585, a patent-infringement lawsuit in which Judge Darrah found that Nilssen's inequitable conduct rendered eleven patents unenforceable; *USA v. McCaffrey,* 02 CR 591, sentencing a former priest to the maximum term of imprisonment for possession of child pornography; *Cancer Treatment Centers of America, Inc. v. USA,* 03 CV 2958, litigation arising from the airplane crash and resulting death of Chicago radio host, Bob Collins; *Fox v. Sheriff of Will County,* 04 CV 7309, civil lawsuit arising from the wrongful arrest and prosecution of a father for murder of his daughter; *USA v. Klein,* 11 CR 401, ex-prison chaplain admitted to conspiring with convicted Chicago Outfit hit man Frank Calabrese Sr. to recover a supposedly rare 18th century Stradivarius violin said to be hidden in the mobster's vacation home; and *Friends of the Parks v. Chicago Park District,* 14 CV 9096, litigation stemming from the previously planned George Lucas Museum of Narrative Art in Chicago, Illinois.

The importance of family was one of Judge Darrah's cornerstones. He is survived by his wife Jeannine, three daughters, two sons, three stepdaughters, two stepsons, nineteen grandchildren and three great-grandchildren. He glowed when he spoke about his family, and his love and devotion to Jeannine was obvious. He took pride in his children and stepchildren and cherished every moment he was able to spend with his family. Thanksgiving and Christmas were two of Judge Darrah's favorite holidays because he knew that he would be surrounded by family.

Judge Darrah was an avid Chicago White Sox fan and tried to attend as many games as he could. His yearly Crosstown Classic event was enjoyed by family, friends, and colleagues. He was also an avid fisherman – be it a bi-yearly fishing trip with the guys or a last-minute trip to the lake.

A memorial service was held for Judge Darrah on June 22, 2017. Those who filled the James Benton Parsons Memorial Courtroom at the Northern District of Illinois Courthouse heard remarks from over a dozen, varied speakers who paid tribute to a man who had such an impact on their personal and professional lives. He was remembered as a 12-year-old catcher in Southside sandlot games, a young law student who supported his growing family by working in a pipe yard by day while attending school at night, a dedicated lawyer, a devoted father, a sage grandfather, an inspirational teacher, a public servant, a mentor, and a friend. His life was a life well lived. All who knew him, loved him. We will all miss him.

A Tribute
TO JUDGE LARRY J. MCKINNEY

*By Hon. Tim A. Baker**

Friend. Mentor. Judge. Family man. Role model. Humorist. No single word adequately describes Judge Larry J. McKinney, who died on September 20, 2017. His unexpected passing at age 73 leaves a void that will never truly be filled.

McKinney was born on the fourth of July in 1944, in South Bend, Indiana. "I was 12 years old before I finally realized that my dad wasn't telling me the truth when he told me all that celebration was just for me," said McKinney. A stellar Indiana trial court judge who served as U.S. District Judge for the Southern District of Indiana for 30 years, McKinney remained a humble man known as much for his quick wit and sense of humor as his intellect and work ethic.

McKinney graduated from South Bend John Adams High School in 1962. It was during this time that McKinney got his first taste of power, when he was assigned to introduce a speaker to the student body. After the speaker was done, it dawned on McKinney that none of the 1,500 students in attendance, or the teachers or the principal, could leave until he dismissed them. McKinney recounted that he walked "slowly" over to the microphone. "I took five minutes to summarize his points and then dismissed everyone. And you should have seen them. I had kids sitting on the edge of their seats in the front row just waiting to race to their classes. And the longer and the more they bent over and the more inertia taking them toward the door, the longer my summation took. I really enjoyed that," McKinney said with a familiar twinkle in his eye.

Following high school, McKinney attended MacMurray College in Illinois, where he met his wife Carole. He asked her to marry him on their graduation day in 1966, and they enjoyed 51 years of marriage until his death. Following graduation from MacMurray, McKinney attended Indiana University Mauer School of Law in Bloomington, and Carole pursued a graduate degree at IU in psychology. Though there were no lawyers in his family, McKinney said he was drawn to the law because of the esteem in which lawyers were held in their communities and because being a lawyer gave him the opportunity to help others.

Continued on page 44

* *Tim A. Baker is a magistrate Judge in the Southern District of Indiana.* *The primary source for the information in this article, including quotes by Judge McKinney, is taken from the Oral History of Judge Larry J. McKinney, taken on May 4 and 9, 2009, in Indianapolis by the author.*

A Tribute: Judge Larry J. McKinney

Continued from page 43

Upon his graduation in 1969, McKinney accepted a position with the Indiana Attorney General's Office for $7,200 per year. The McKinneys' lean earnings left little room for frolic. "I kept a journal of our expenses one year," McKinney said. "Our entire entertainment expenses for one month was 35 cents. It was for a 25 cent Dairy Queen for me and a dime Dairy Queen for Carole." The McKinneys' financial outlook improved over time, if slowly. McKinney opened a a private law practice, Rogers & McKinney, with Charlie Rogers in Edinburg, south of Indianapolis. The law firm began inauspiciously. McKinney and Rogers made a sign for their law firm they were very proud of — if only briefly. "Then a puff of wind came along and just blew that thing down in 30 seconds," McKinney said. "I never did put it back up. I've still got that sign at home. I was just quite proud of the sign that lasted 30 seconds." After painting and wallpapering his new law office, McKinney landed his first client. Except it wasn't legal work the man wanted; he asked McKinney to remodel his kitchen. "I thought to myself, this is another one of life's crossroads," McKinney joked.

In 1974, McKinney joined forces with Jim Sargent in Greenwood, Indiana, at Sargent and McKinney. Around this time, McKinney had mentioned an interest in becoming a judge to the heir-apparent to the Johnson Circuit Court judge. Serendipity resulted in that person opting to remain in private practice. McKinney jumped in, won the Republican primary, defeated his World War II hero Democrat opponent, and was sworn in as the Johnson Circuit Court Judge in 1979. The McKinneys had started a family by this time, with their first son, Josh, being born in 1976. "I was just so proud," McKinney said. "I just was thrilled." A second son, Andrew, followed in 1980.

Back in those days, state court rules permitted an automatic change of venue. McKinney was developing a reputation as a skilled trial judge, and many big firm lawyers in Indianapolis were eager to have him hear their cases, even though they risked a longer wait given McKinney's increasingly heavy caseload. McKinney estimated he had more than 100 jury trials in his first six years on the bench, in addition to handling countless guilty pleas, sentencing, divorces, child support modifications, and other court-related responsibilities. He did all his own research and writing; he had no law clerks or legal interns. "It was a very busy place to do business," McKinney remarked.

In 1987, President Ronald Regan nominated McKinney to be a U.S. District Court judge. In typical humble McKinney fashion, when he went to Washington, D.C. for his confirmation hearing, the trial court judge from Edinburg, Indiana, didn't stay in a fancy hotel. Instead, he drove out in a trailer with his dad, wife, two kids, and his blind and diabetic dog and stayed at a KOA campground. "We had to give her shots every morning and every night, had to follow her around with a little pan to get her urine," McKinney said of his dog. "And then you'd dip the tester strip in the urine." When McKinney informed a member of one of the Indiana senator's staff that he was staying at the KOA campground she was "flabbergasted. She said, 'I've never heard of anyone staying there,'" McKinney remembered.

Soon after his Senate confirmation, McKinney realized the power available to him at the federal court was significantly greater than he had as a state court judge. One Friday afternoon a lawyer filed a request for a temporary restraining order involving a horse from Chile that was in Indiana for the Pan American Games. Remembering the moment, McKinney stated, "It dawned on me that instead of the power to throw somebody in jail for failure to pay child support, or sort out a family crisis by putting the children here or there, or to sort out other domestic relations issues, in one stroke of my pen, I could have brought the whole darn Pan American Games to a halt." Ultimately, McKinney did not grant the restraining order and interfere in the games. "[F]fortunately, I was able to rely on my judicial philosophy, which comes from the Dolly Parton school of jurisprudence, which is, 'Don't take my man just 'cause you can,'" McKinney joked.

Continued on page 45

A Tribute: Judge Larry J. McKinney

Continued from page 44

For the next 30 years, McKinney handled high-stakes, complex cases. He once had a 10-defendant criminal court case involving gang activity that lasted three months. There were so many defendants and lawyers in his courtroom for that trial that he had risers erected to ensure adequate seating. "That was a very interesting case," McKinney noted, adding that there were excellent lawyers on both sides.

Excellent lawyers and case complexities also dominated his civil docket. Patent disputes were among the cases McKinney particularly enjoyed. Over the years, he handled cases involving the design of tennis shoes, oxygen tanks, and much more. McKinney's expertise in patent law earned him opportunities to travel to Argentina, Chile, China, and other countries to explain America's patent and legal system to foreign lawyers and judges. Though he found patent cases interesting, McKinney's affinity for such cases had a deeper origin. As McKinney explained it: "My dad has always been my mentor; and he told me once that in order to be successful in life, you had to learn to like what everybody else didn't like, which explains my affinity for patent law."

Through his many trials, McKinney earned a reputation among the bar as a "lawyer's judge" who had high expectations for lawyers but never took the law or himself too seriously. "I think it's part of the judge's role to set a tone of civility and set a tone of relaxation in that courtroom so lawyers can concentrate on the matters of representation instead of oppressive protocol," he stated. "The dispute resolution system constitutionally created as the third branch of government needs to be respected and protected by lawyers and judges alike. This is best done, in my view, in a relaxed courtroom."

McKinney did take seriously and respected his obligation to help others. In 2007, McKinney helped launch the first re-entry court in Indiana's federal system. The court was dubbed "REACH," which stands for Re-Entry and Community Help. The program is designed to assist high-risk offenders return to society following incarceration and reduce recidivism. "[W]e need to be increasing our efforts to ensure that these people have every chance available to do what we've asked them to do, which is be a law-abiding citizen," McKinney said. Through the work of McKinney and others, the program doubled in size and added a second REACH court in 2017. One of the REACH court graduates is an individual that McKinney once sentenced to life in prison. After his sentence was reduced, he embraced the REACH court, served as a mentor to other REACH court participants, holds a steady job, and was moved to tears upon hearing of McKinney's passing.

McKinney's efforts to help others were not limited to the REACH program. McKinney's dedication to public service and civil education was exemplified by his commitment to the "We the People" program, an Indiana Bar Foundation program that educates middle school and high school students about the Constitution. McKinney spent countless hours judging and volunteering his time for this program. On a separate front, McKinney also worked tirelessly with others to ensure that a new federal courthouse was constructed in Terre Haute, Indiana, when the lease agreement for the former courthouse location expired. Having a federal court presence in Terre Haute was important to McKinney, particularly given that there is a federal prison and a robust bankruptcy docket there. "Seemingly impossible obstacles were overcome" in getting a new Terre Haute courthouse built, McKinney observed.

In many ways, it seems impossible that McKinney is gone. But on September 20, 2017, he suddenly was. Thankfully, his caring spirit, friendship, humor, and humility will live on in the countless people he touched.

A Tribute
to Judge Denise K. LaRue

*By Hon. Tanya Walton Pratt**

In recent months, the Indiana legal community has suffered an unimaginable loss by the passing of two of our beloved colleagues. On August 2, 2017, Magistrate Judge Denise LaRue lost her brief but valiant battle with cancer. Then just seven short weeks later, on September 21, 2017, Senior Judge Larry McKinney suddenly and unexpectedly passed away peacefully in his sleep. The federal family in the United States District Court, Southern District of Indiana is attempting to come to grips with our tremendous losses.

At times like these I am reminded of something said at a funeral I attended some years ago. When the preacher took to the podium to give remarks, he momentarily looked around the sanctuary, saying nothing, and then finally said rather scornfully "look at us…just look at us…we are a room full of losers...", then he softened his tone and said "...for we all have lost someone we loved." And, indeed, we have.

Magistrate Judge Denise K. LaRue was born on March 31, 1958 to Robert and Jewell LaRue in Indianapolis, Indiana. She and her sister, Collette, were just 12 months apart, and they enjoyed an idyllic childhood. Judge LaRue attended Indiana University, Bloomington where she received her B.S. from the School of Public and Environmental Affairs. While a student at Indiana University, she worked as a salaried intern with the Indiana Education Employment Relations Board.

Following graduation from Indiana University, she became the Human Resources Administrator for AllState Insurance Company, Indianapolis, where she handled employee relations matters. While working for AllState, Judge LaRue decided to pursue her longtime dream of attending law school to further her effectiveness in the area of labor and employment relations.

In 1989, Judge LaRue graduated *cum laude* from Indiana University's Robert H. McKinney School of Law. She began her legal career as a staff attorney at the Indiana Civil Rights Commission. She subsequently

Continued on page 47

** Tanya Walton Pratt was appointed to the United States District Court, Southern District of Indiana, on June 15, 2010. She was nominated by President Barack H. Obama and unanimously confirmed by the full United States Senate. She received her B.A. from Spelman College in Atlanta, Georgia and her law degree from Howard University School of Law in Washington, D.C. She is married to Marion Superior Court Judge Marcel A. Pratt, Jr.; they have one daughter who is also a lawyer. She and Judge LaRue were sisters in Delta Sigma Theta Sorority, Inc., and close friends since 1984.*

A Tribute: Judge Denise K. LaRue

Continued from page 46

entered private practice as an associate at what became Haskin & LaRue, LLP in 1994 and was named a partner two years later. She was a trailblazer in that she was one of the first African-American women in the Indianapolis community to be a full partner in a law firm and one of the few women attorneys to own an office building in downtown Indianapolis.

As a trial lawyer, she was a trailblazer in her chosen specialty, employment law. Her contributions to civil rights, human rights, and racial and gender equality are pivotal to the improvements of our society and are now part of her legacy. Denise LaRue tried the first American with Disabilities Act case and the first Family and Medical Leave Act case before juries in the Southern District of Indiana – and she won. She also handled claims asserting various constitutional violations of due process rights, free speech, and political association violations, wage and hour violations, and claims under an array of federal labor acts.

On May 11, 2011, Denise LaRue was appointed to the United States District Court, Southern District of Indiana, as a Magistrate Judge. She possessed all of the qualities of a good judge — patience, a strong work ethic, impartiality, a good listener, decisiveness and she resolved cases efficiently. She ensured that both sides felt the justice process was fair. But most importantly, we could always depend on Judge LaRue to make sound, well-reasoned decisions. All of our magistrate judges are wonderful and efficient, but Judge LaRue had a personality that was soothing and compassionate, yet commanding and strong. As a former plaintiff's lawyer and civil rights attorney, and as a woman of color, she brought a unique perspective to our court that enhanced its credibility and the quality of justice.

Magistrate judges in the Southern District of Indiana handle a myriad of case-related issues, not the least of which are settlement conferences. These conferences can be emotionally draining and physically taxing and can take hours and sometimes days. But conducting settlement conferences was Judge LaRue's forte. Not only was she persistent yet understanding during negotiations, but by her very nature, she was a peacemaker; she was determined to find a resolution beneficial to both sides. Even when one party was dead-set against settlement and reconciliation, she was often able to bring everyone to an amicable agreement and mutual understanding. "Blessed are the peacemakers, for they shall be called the children of God." (Matthew 5:9)

In one of our final conversations, Judge LaRue told me that she loved her job … she loved being a magistrate judge. She had an exceptional appreciation for the work that she was doing. Without question, she provided an important service to the court, to the lawyers and litigants who appeared before her, to the community that we live in, and to the nation that she so faithfully served. Her many rulings will have long standing value.

Judge LaRue served on the Local Rules Advisory Committee and Pro Bono Committee for the Southern District of Indiana. She was also a member of the Federal Magistrate Judges Association, Seventh Circuit Bar Association, and a Master with the Indianapolis American Inn of Court (President 2014-2016). She was a life member of the Marion County Bar Association. She served as a frequent speaker for continuing legal education courses, including a course on Civility in the Profession for the IBA's Applied Professionalism Course. In 2007, Judge LaRue received the prestigious Antoinette Dakin Leach Award from the Indianapolis Bar Association Women in Law Division.

For several years, she volunteered with the Chicago-based organization Just The Beginning — A Pipeline Organization. The primary purpose of this organization is to inspire minority students to enter the legal profession, convince them that a career in the legal profession is attainable, and assist them in college and law school admission and preparation, internships and clerkships. By working with Just the Beginning, her goal

Continued on page 48

A Tribute: Judge Denise K. LaRue

Continued from page 47

was to help design a more diverse justice system at both the state and federal levels.

Hers was a life well lived and in addition to judicial responsibilities, Judge LaRue was active in the community. She was a Diamond Life Member of Delta Sigma Theta Sorority, Inc., a member of the Indianapolis Chapter of Links, Inc., and an Associate member of Jack & Jill of America.

An avid reader, Judge LaRue prided herself on completing several novels during family vacations. She also loved the friendships and the book discussions during her monthly book club, "BookLovers" meetings. She was the 2007 Indianapolis Business Journal (IBJ) Indiana Super Lawyer and appeared in Who's Who of Black Indianapolis for several years. In 2012, Judge LaRue was nominated as a "Break Through Woman" by the 100 National Coalition of Black Women and also received the Achievement in Public Service Award from the Center for Leadership Development.

Judge LaRue had deep ties to her church and was a 50 year plus member of Witherspoon Presbyterian Church, Indianapolis. She was involved in many aspects of her church community, including serving as Chair of the Women's Day Luncheon for two years, and at the time of her passing, she was an Elder.

Most importantly, Denise LaRue was a family woman. The love of her life was her son, Robert. She was a fantastic artist and created many pieces of art which were displayed in her home. She had a love for travel, good food, dancing, singing, and family, Judge LaRue enjoyed every aspect of her life. She leaves behind her beloved son, Robert, her devoted sister, Collette Duvall, and her adoring parents, Robert and Jewell LaRue.

There have been numerous articles and glowing tributes to Denise K. LaRue over the past few weeks. But what many may not know, is the grace and dignity with which she battled cancer. She was accepting of God's will and spoke of the full and wonderful life that she had lived. Over the final few months of her life, through her strength, courage and grace, she gave all of us who spent time with her a final, wonderful gift. She brought together relatives and friends from different parts of her life, who learned over those long, hard days to laugh, love, respect, support, and grieve with each other. If it is indeed true that we can be judged by those with whom we surround ourselves, then in her death, Denise LaRue's life can be viewed as a magnificent triumph.

We will miss our dear friend, but we can all be grateful for the time that she shared with us and be grateful for having had the opportunity to know her, to love her, and to call her our friend. So, Judge LaRue, on behalf of your colleagues and friends, I thank you. I salute you for your brilliant mind, your passion for and commitment to justice, your kindness to and nurturing of others, your generosity, your moral leadership, your patience and understanding, for your spirituality and acceptance of God's will, for your deep devotion to your family, for your truth, and for your uncritical acceptance and love.

Goodnight, Judge Denise K. LaRue. Sweet dreams. And rest assured that your son Robert, your sister Collette, and your mom and dad, will be held close, protected, loved, and supported by your family, your friends, and this community.

Send Us Your E-Mail

The Association is now equipped to provide many services to its members via e-mail. For example, we can send blast e-mails to the membership advertising up-coming events, or we can send an electronic version of articles published in The Circuit Rider.

We are unable to provide you with these services, however, if we don't have your e-mail address. Please send your e-mail address to changes@7thcircuitbar.org.

NEWS AND EVENTS OF INTEREST

Around *the* Circuit

By Collins T. Fitzpatrick[*]

Court of Appeals

Notre Dame Law School Professor Amy C. Barrett has been nominated to replace Judge John Daniel Tinder who took senior status in February of 2015.

Attorney Michael B. Brennan has been nominated to replace Judge Terrance Evans who took senior status in January of 2010.

Judge Richard A. Posner retired on September 2, 2017.

Judge Ann Claire Williams took senior status in June of 2017.

Mia Furlong (Supervisory Staff Attorney) and Phil Police (Deputy Senior Staff Attorney) are both retiring from the Office of Staff Law Clerks after serving long tenures there. Matthew Becker has been hired to replace Ms. Furlong, and Katherine Agonis has been hired to replace Mr. Police.

Northern District of Illinois

Senior Judge Milton I. Shadur will be honored at a dinner on December 5, 2017 at which he will be awarded the Chicago Bar Association's first ever Lifetime Achievement Award.

Judge James Zagel took senior status on October 21, 2016.

Northern District of Indiana

Judge Robert Miller took senior status on January 11, 2016

Judge Joseph Van Bokkelen took senior status on September 29, 2017.

James R. Ahler was appointed to replace Bankruptcy Judge Philip Klingeberger, who has retired.

Southern District of Indiana

Judge Sarah Evans Barker took senior status on June 30, 2014.

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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.*

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