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Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

An Interview With the Chief Justice

BY HON. ALFRED M. SWANSON, JR. (RET.)

Justice Anne Burke has set some very clear goals for her three-year term as Illinois' 121st—and third woman—chief justice. While these goals are direct and straightforward, they revealed her passion for growing the court and the Illinois judiciary. At the same time, in discussing her goals in a recent conversation in her Chicago chambers, the chief justice revealed a background that was not so direct or straight on a path to her current position.

Current court initiatives that she wants to continue include: communication with the legislative leaders through a series of individual lunches with some of the justices, the judicial college that includes judges, clerks, staff, sheriffs, and all of the stakeholders involved in the operation of the court system; increased use of standardized court forms; and the use of evidence-based information to assist bond court judges in exercising their informed

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Deal or No Deal

BY ALBERT E. DURKIN

The recent first district opinion in *Tielke v. Auto Owners Insurance Company, et. al.* 2019 IL. App. (1st) (181756), filed August 16, 2019, is a must read for members of the bench and bar who are engaged in litigation. The case involves mistakes made by both a trial judge and a plaintiff's attorney as well as a possible ethical violation by a defense counsel. Those mistakes proved very costly to the plaintiff's personal injury case, resulting in a loss to the plaintiff of nearly $400,000. It also may lead to a malpractice claim against plaintiff's counsel.

In *Tielke*, a plaintiff's personal injury attorney filed a breach of contract claim against the defendants and their attorney in an underlying slip and fall case after the underlying case went to verdict. In the underlying case, the defendants' attorney had extended a $700,000 settlement offer during the course of the trial. That evening, defense counsel confirmed in a text message that the offer was still open. The following day, during a break in testimony, plaintiff's attorney advised defense counsel

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discretion.

Chief Justice Burke also explained her primary initiative in partnership with the Illinois State Bar Association of a series of listening tours throughout the state with the various stakeholders in court operations. She does not plan these sessions to be strictly local to the particular part of the state. Rather, she wants to draw stakeholders from different parts of the state to discuss issues and learn from their counterparts from other parts of Illinois. For example, she said Cook County's chief judge, Timothy Evans, has expressed interest in participating in some of the downstate sessions. In addition, the Administrative Office of the Courts is designating staff to be a liaison with each of the appellate districts. She told me, "We need all of the people from across the state to work together as a team" to build a stronger judiciary.

Working together, team building, and gathering facts were themes that arose several times in our conversation. "It is all about education and engaging people. We want to hear what people want and need to make things easier for the public and the courts." Chief Justice Burke cited as an example the late Justice Seymour Simon's consistent opposition to the death penalty. She told me his legal analysis was that the death penalty was "not being applied fairly and equally across the State's 102 counties." Chief Justice Burke wants to bring people together to gather facts to bring more consistency to the justice system. Another example she cited was South Dakota where that state's supreme court brought stakeholders together to develop a uniform way to deal with the myriad of mental health issues facing the court system. Her goal is to apply what she learned from South Dakota to many different areas of law in Illinois.

The chief justice wants to use technology as a vehicle to make the practice of law easier for attorneys and for the courts. One example, she told me, was the possibility of using Skype downstate to facilitate routine status calls to save attorney travel time and still keep the court informed on pending cases. This is all part of her plan for the listening tours, to engage people to identify problems and gather the facts necessary to find ways to implement solutions that can be applied in the diverse parts of Illinois.

If this sounds like the words and goals of a schoolteacher, they are. Her first job was as a physical education instructor for the Chicago Park District. Getting there, however, was not a direct path. Justice Burke described her life as being one of doors opening and her stepping through them.

Justice Burke told me that in high school at Marist on Chicago's south side, her interests and strengths were in art and physical education, not academics. She credits one of her teachers at Marist, Sister Henrietta, with encouraging her to use those talents and become a physical education teacher. She first attended George Williams College, but dropped out to join the Chicago Park District as a physical education instructor.

She developed a program of competition for the disabled children at West Pullman Park where she then taught. She told me those children flourished with the competition. The program caught the attention of Park District officials who encouraged its development. Along the way she met Sargent and Eunice Kennedy Shriver, who then lived in Chicago and became aware of their volunteer programs for handicapped children. So, at age 21, she wrote to Mrs. Shriver seeking a grant for a city-wide program of competition for disabled children to be held at Soldier Field just like the city-wide track and field competition for other athletes. She described her initial disappointment when Mrs. Shriver rejected her proposal as not being good enough. So she took Mrs. Shriver's advice and adapted the program to be more national in scope. The result was a grant and formation of the Special Olympics. The first competition held in 1968 was a big success. Justice

Bench & Bar

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Burke showed me the ante room just off her chambers with the walls lined with various photographs and posters depicting her life-long involvement with the Special Olympics.

Justice Burke told me she then realized she could be better able to develop her ideas and persuade people to support them if she had a college degree. So, now married with three young children, and with the encouragement of family and friends, she enrolled at DePaul University and received her bachelor's degree in 1976.

Chief Justice Burke told me her life demonstrates "the need to be flexible when doors and windows open." She firmly believes that "everything you do is a foundation for the next step." For Anne Burke that next step was law school at Chicago Kent. That was not an easy step with four children under age ten and the need for tutorial help. She was successful and received her J.D. in 1983.

She started a neighborhood law practice with four children under age ten and became a judge on the Illinois Court of Claims. That position led to other state appointments from governors Thompson and Edgar. Justice Burke cites as mentors in her early career as former Chief Justice Mary Ann McMorrow and defense attorney Patrick Tuite, among others. She described Justice McMorrow as "a woman I admired as a person, a woman who was regal, honest, and humane." Asked if being only the third woman among 121 chief justices meant it was time, she cited the career of Myra Bradwell who was denied the opportunity to become a lawyer because she was a married woman.

Despite her public life and career of public service, Justice Burke is a private person. She was sworn in as chief justice in a private ceremony in Springfield with only her fellow justice present, not even her family. "I do not want to be a spectacle," she told me. Her goal was "to be happy in what I was doing." She described the appellate court has the best job because "it did not carry administrative responsibilities." Yet, she is happy with her role as a justice on the supreme court and looks forward to the administrative challenge that go with being chief justice.

Her pleasure is the collegiality of the court. She is, as one of her colleagues explained, the "social director" of the court. She arranged an outing for the justices to attend a performance of Hamilton together. She also arranged a tour of Ireland four which four of her colleagues were able to join her. Justice Burke told me she organized similar outings for her team when she was a justice on the first district appellate court. She described one outing on the CTA for lunch to view an exhibition at the Garfield Park Conservatory and another to view the changing neighborhoods along the CTA's Orange Line to the southwest side.

Look for emphases on collegiality, civility, and fact-based gathering of information and data to improve the functioning of the Illinois judiciary to be focuses of the Anne Burke term as chief justice. ■

Deal or No Deal

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that plaintiff accepted the offer. Plaintiff's counsel followed up with a text message to defense counsel.

Approximately 15 minutes later and before the court was scheduled to reconvene, defense counsel returned plaintiff's counsel's test with a text of her own stating, "Sorry. Offer was withdrawn, we will proceed." Plaintiff's attorney demanded that the settlement agreement be honored, but defense counsel refused. (Notably, the settlement offer had no deadline for acceptance or withdrawal; nor was there any evidence that plaintiff's attorney had rejected the offer as made or countered with a change in its terms.)

Plaintiff's attorney then brought the settlement matter to the attention of the trial judge who stated:

So the defense is giving you two bites at the apple. So I can't do anything here. The method for you to do then after the trial, if you get a verdict less than the accepted offer, you file a breach of contract lawsuit

* * * *

So I encourage you to do what you need to do to protect your rights, the only thing for me to do is proceed with the trial. I am denying the Plaintiff any relief.

The trial proceeded and ultimately, the jury returned a verdict in favor of the plaintiff and against one of the defendants, but only in the amount of $332,425.00. The trial court entered judgment on that verdict.

Two days following the jury verdict, plaintiff issued a written demand on defendant to tender the full amount of $700,000 settlement agreement. To this, defense counsel responded:

We disagree with your representation and no settlement was effectuated. Our settlement offer was withdrawn…

Defendants then brought a motion before the trial judge to enforce a full satisfaction of this verdict tendering the full amount of the judgment of $332,425.00. Plaintiff's attorney accepted defendant's $332,425.00 check, reserving her right to seek the difference owed by the disputed settlement agreement.

Plaintiff brought a post-trial motion seeking an award of costs and sanctions against the defendants, but did NOT seek reconsideration of the court's denial of the motion to enforce the settlement agreement. Moreover, plaintiff did NOT file an appeal following a denial of the post-trial motion.

Instead, plaintiff listened to the trial court and filed a separate breach of contract action against the defendants from the slip and fall action, along with their attorney and their liability carrier, Auto Owners. Defendants filed a motion to dismiss pursuant to 735 ILCS 5/2-615 with a memorandum seeking dismissal under Section 2-619 of the court of Civil Procedure, arguing that the breach of contract claim was an improper collateral attack on the judgment entered on the verdict in the underlying case, and was further barred by *res judicata*, judicial estoppel, and accordant satisfaction. The trial judge agreed that the action was an impermissibe collateral attack on the order

in the underlying case. The trial judge denied Plaintiff's Motion to Enforce the Settlement Agreement and granted defendants' Section 2-619 motion to dismiss.

On appeal, Justice Rochford delivered the opinion of the court with Justices Hoffman and Hall concurring. In affirming the dismissal of the breach of contact action by the trial court, and relying upon *Malone vs. Cosentino* 99 Ill. 2d 29 (1983), the court affirmed the dismissal, finding that under the collateral attack doctrine, the final judgment rendered by the trial court a court in the underlying slip and fall action could only be challenged through direct appeal or procedure allowed by statute. It remained binding on the parties unless it was reversed through such a preceding, citing *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 IL. App. 3d 179 (2010). The court further cited to *Bonhomme v. St. James* (2012) Il. 112393 at 26, which stated, "A party should not be excused from following rules intended to preserve issues for review by relying on a trial court's erroneous belief that an issue was properly reserved for review." In relying on *Bonhomme*, the court found that plaintiff erred in relying on the trail court's erroneous direction to file a separate cause of action for breach of contract in order to collaterally attack the court's denial of her Motion to Enforce Settlement. Instead, she was required to follow well established Supreme and Appellate court precedent of filing a proper post trial motion.

Tielke is important and instructive for members of the bench and bar. The trial court issued an imprudent directive—to file a breach of contract action—and the plaintiff's attorney complied. Both were wrong. This issue that could have easily been preserved and possibly resolved through a post-trial motion and possibly an appeal in the underlying case.

Based on the available record, it appears that the offer of settlement was properly accepted before it was withdrawn, and that the trial judge erred in failing to conduct further proceedings regarding the circumstances behind the offer and acceptance, before denying plaintiff's motion to enforce. The judge compounded that error when he erroneously advised plaintiff's attorney to file a separate breach of contract claim.

According to the record, the offer, when made, did not contain a deadline for its acceptance; it was open-ended and it was never rejected or countered by plaintiff's attorney. Assuming this to be true, the elements of a contract were satisfied. *City of Burbank v. Illinois State Labor Relations Board*, 185 Il App. 3d 997, 1002-3 (1989); *CNA International v. Baer*, 2012 Il. App. (1st) 112174.

Plaintiff's attorney dropped the ball by not insisting that the court conduct a full hearing of the circumstances surrounding the purported settlement before the judge threw up his hands and said, "There's nothing I can do" and proceeding with the trial. By conducting an evidentiary hearing, the court would have been in a better position to determine if the offer was, in fact, accepted prior to being withdrawn before denying the motion outright. That would have provided a detailed and accurate record in the case of an appeal. Had the court done so and found, as I believe he should have, that a settlement had been reached, defendant could have appealed. Had the court denied the motion, and allowed the case to proceed to verdict, plaintiff could have easily appealed.

In light of the Appellate court's decision, by following the trial judge's erroneous directive to file the separate breach of contract claim, plaintiff's attorney is open to a potential malpractice claim. Unfortunately, neither the plaintiff's attorney nor his or her client had such a remedy against the trial judge for the bad advice.

In conclusion, this case is instructive for members of our judiciary and bar because of its unfortunate but preventable outcome. When in doubt, the trial judge could have and should have taken a short recess in the proceedings and gone down the hall and sought the advice of other trial judges as to how best to handle the situation knowing full well that if a settlement was effectuated, there would be no appeal and any errors occurring prior thereto would be of no moment.

A trial lawyer must follow his or her own instincts, not be intimidated by a trial judge, and insist on making a record, even if it is only an offer of proof instead of an evidentiary hearing. If in doubt as to how to proceed, the trial attorney should call appellate counsel, who should be on speed dial, to get advice as to how to proceed so that an appropriate record will be made for purposes of a potential appeal.

This case is a must read for all attorneys and judges who practice in this area.■

Caveat Venditor: Illinois Supreme Court Clarifies Revocation of Acceptance Rights, Remedies, and Obligations for Buyers and Sellers in Landmark Decision

BY ZOE WOLKOWITZ AND EDWARD CASMERE

On September 19, 2019, the Illinois Supreme Court issued a landmark ruling affording greater protection to buyers of substantially nonconforming goods under Illinois's adoption of the Uniform Commercial Code. In *Accettura v. Vacationland* (2019 IL 124285) the court faced a question of first impression: does subsection 2-608(1)(b) of the Illinois Commercial Code (the Code) require a buyer to give the seller an opportunity to cure a substantial nonconformity before revoking acceptance? The court held that, under the plan language of 810 ILCS 5/2-608(1)(b), a buyer does not. *Accettura* will likely have widespread application that significantly impacts future commercial transactions in Illinois.

The facts in *Accettura* are straightforward, and relatively commonplace. Plaintiff/buyers purchased goods (a recreational vehicle "RV") from defendant/seller. Shortly after the purchase, buyers discovered a previously unknown defect (water leakage from the emergency exit window). Buyers brought the RV back to the seller for repair, which seller performed free of charge. The buyers retook possession of the RV. A month later water again leaked into the RV, this time causing extensive damage to the dinette area, walls, and electrical system. For a second time, buyers took the RV to the seller for repair. Both the seller and the RV manufacturer were unable to give buyers an estimate of how long the repairs would take. Frustrated with the inability to provide a timeline, the buyers verbally revoked their acceptance. Two days later the manufacturer picked up the RV from the seller to perform repairs. Several weeks passed before the seller called buyers to inform them that the RV was repaired. Buyer's responded with a letter from their attorney confirming the earlier revocation of acceptance.

Buyers thereafter filed a complaint seeking return of their purchase price. It was undisputed that the defect substantially impaired the RV's value to buyers. Nor was it disputed that buyers were unaware of the defect when the RV was purchased. Rather, seller argued that buyers were required to give it a reasonable opportunity to cure the defect before they could revoke acceptance, and they had not done so here. Finding this argument persuasive, the circuit court granted the seller's motion for summary judgment, and the appellate court affirmed. While buyers originally sought recovery under four theories, ultimately only the subsection 2-608(1)(b) was at issue before the Illinois Supreme Court.

Section 2-608(1) of the Code states that a buyer may revoke his acceptance of a commercial unit whose non-conformity substantially impairs its value to him if he has accepted it either (a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or (b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or the seller's assurances.

In deciding *Accettura*, the Illinois Supreme Court focused on statutory interpretation principles under *de novo* review. The court noted that its primary objective was to give effect to the legislative intent, the most reliable indicator of which, is the plain language of the statute itself citing to *Illinois Graphics Co. v. Nickum* and *Peoria Savings & Loan Ass's v. Jefferson Trust & Savings Bank of Peoria*. 159 Ill. 2d 469 (1994) and 81 Ill. 2d 461 (1980) respectively. "We do not" the court noted, "depart from the plain language of the statute by reading into it exceptions, limitations, or conditions that conflict with the expressed intent." *Accettura*, 2019 IL124285, at ¶11, citing to *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009).

Accordingly, the court found the statutory language here both plain and unambiguous. Most notably, while the language in subsection (1)(a) expressly mentions a cure, subsection (1)(b) does not. The court also found that the plain language of the statute evinces the General Assembly's intention to allow a buyer to revoke acceptance of a substantially impaired commercial unit under two separate and distinct circumstances. The first circumstance (subsection (1)(a)) exists when the buyer *knows* of the nonconformity, but accepts the unit with the expectations that the seller will cure it. If the seller then fails to cure, the buyer can revoke acceptance after reasonable opportunity to cure. However, the second circumstance (subsection (1)(b)) exists when a buyer accepts a presumably conforming unit *without* knowledge of the nonconformity that substantially impairs its value, but discovers the defect post-acceptance. Both situations contemplate a nonconformity that substantially impairs the unit's value to the buyer. The

difference, however, comes from the buyer's knowledge and expectation at the time of acceptance.

Thus, buyer argued, because subsection (1)(a) specifically mentions a cure, and subsection (1)(b) does not, the opportunity to cure is part of a (1)(a) contract, and not part of a contract formed under (1)(b). By the statute's plain language, the court agreed. Put simply, subsection (1)(a) applies to a buyer who purchased an RV that he knew leaked and agreed that the seller would seasonably cure the leak. Here, however, it is undisputed that the buyers were unaware of the defect in the RV at the time they accepted it making (1)(a) inapplicable, and because (1)(b) does not require an opportunity to cure, no such opportunity need be given.

The seller argued that this case involves more than statutory interpretation because before buyers revoked acceptance, sellers offered, and buyers accepted, repair as their remedy for the defect. Because buyers elected that remedy, seller asserted that buyers were obligated to allow it a reasonable time to cure. The seller had, after all, offered and fixed a defect once already. Shouldn't they be given a reasonable opportunity to fix a second defect?

Simple question. Simple answer . . . no.

The fact that buyers considered allowing seller to cure does not obligate them to accept an unreasonable cure, and nothing in the record indicated that buyers agreed to an open-ended repair timeline. Second, and most importantly, the court held that reasonable or not, previous attempts to cure or not, a buyer has no obligation to allow a seller an opportunity to cure under 2-608(1)(b). While the court noted that a situation could arise in which a buyer unreasonably revokes acceptance after requesting a seller cure a nonconformity, that was not the situation here.

The timing and sufficiency of the revocation notice were not at issue in *Accettura*. While the comments to the Code note that courts should consider attempts to cure when looking at whether the notice of revocation was timely and sufficiently notifies the seller of the nonconformity, such consideration is not relevant to whether the buyer is obligated to seek a cure before revoking. *See Accettura*, 2019 IL124285, at ¶22.

Seller next argued that because section 2-608(3) states that a "buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them," section 2-608(1) should be read in conjunction with section 2-508 which allows a seller to cure a *rejected* nonconforming delivery if the time for performance has not yet expired. The court rejected this argument, finding that it ignores the distinction between *rejection* and *revocation*. *Id*. at ¶24. A buyer's *rejection* may give a seller the right to cure, but in a buyer's *revocation* the seller loses the right to cure but gains the benefit of the higher substantial impairment standard for revocation. The "rights and duties" referred to in section 2-608(3), the court held, are found in sections 2-602, 2-603, and 2-604, and not section 2-508. *Id*.

Accettura significantly impacts the rights and remedies available to buyers and sellers under Illinois's version of the Uniform Commercial Code. Under 2-608(1)(b) a buyer has no obligation to give a seller an opportunity to cure a nonconformity that substantially impairs the value of the unit before revoking acceptance. Moreover, a buyer that allows a seller an opportunity to cure, does not waive their right to later revoke acceptance under 2-608(1)(b).■

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Restoring Civility: It's On Us

BY RACHEL GEWURZ

The Illinois Judges Foundation Annual Reception was held on September 25, 2019, at the ISBA offices in Chicago. This event attracted a mixture of lawyers and judges. Some judges, who also serve on the Foundation's Board, traveled across the state to be present. Judge Debra Walker, the Foundation's current President, began the ceremony by expressing gratitude to those who have contributed to the Foundation. This continuing generosity has allowed the Foundation to award law school scholarships as well as fund educational initiatives offered throughout Illinois schools.

The event focused on promoting civility and professionalism in the courtroom and legal community. True to theme, the Reception's three honorees—Illinois Supreme Court Justice Robert Thomas, Federal Judge Virginia Kendall, and Cook County Circuit Court Judge LaGuina Clay-Herron—have all meaningfully contributed to educating and inspiring professionalism-oriented lawyers and judges.

The evening's first honoree was Illinois Supreme Court Justice Robert Thomas. In addition to his outstanding legal and judicial career, he played in the National Football League for twelve years, including ten for the Chicago Bears, where he became the fourth leading scorer in Bears history. Justice Thomas opened his speech with a Bears story and seemed especially thrilled to share this special evening with former teammate Bruce Herron, the husband of honoree Judge Clay-Herron. In 2001, Justice Thomas created the Supreme Court Committee on Civility, and in 2005, he created the permanent Commission on Professionalism. Justice Thomas' speech focused on the importance for lawyers and judges to lead by example and exhibit professionalism

at all times. Justice Thomas has truly dedicated the past two decades of his career to improving professionalism and civility among lawyers and judges throughout Illinois.

The evening's second honoree was Federal Judge Virginia Kendall. Prior to Judge Kendall's judicial appointment in 2006, she was a federal prosecutor in Chicago serving both the Public Corruption Unit and as the Child Exploitation Coordinator. While a federal prosecutor, Judge Kendall was appointed to the U.S. Attorney General's Advisory Panel which reviewed all multi-jurisdictional child exploitation and trafficking cases. Judge Kendall has become a world-renowned educator and has dedicated her career to eradicating human trafficking. In fact, Judge Kendall accepted her award on behalf of all the survivors of human trafficking. In her speech, Judge Kendall recalled the strong emotions that overcame her as she sat across from a victim of human trafficking for the first time. This emotional experience has been the driving force behind Judge Kendall's work lecturing and educating lawyers, judges, and law enforcement officers. Domestically, Judge Kendall has created a human trafficking training module for task forces and judges that has been implemented throughout the United States. Internationally, she has led workshops and lectured in 30 countries. It is Judge Kendall's hope that her lectures raise awareness of the severity of human trafficking and give these professionals a greater understanding of how the law can respond. Every lawyer and judge should endeavor to act with as much passion and dedication as Judge Kendall has throughout her career.

The evening's final honoree was Cook County Circuit Court Judge LaGuina Clay-Herron. Judge Clay-Herron sits in the County Division. Prior to joining the bench and as a sole practitioner, Judge Clay-Herron unselfishly volunteered 7 years of pro bono service for The Center for Disability and Elder Law, and 3 years pro bono for First Defense Legal Aid. Additionally, she served as a Commissioner of the Illinois Court of Claims for seven years. Judge Clay-Herron taught full-time in Chicago Public Schools for a number of years before attending John Marshall Law School in the evenings. Even after she set up her own law practice, she continued to teach. When Judge Clay-Herron made the decision to fully give up teaching for law, she was afraid that she would lose her first love. However, as a judge, she has found the opposite to be true. Shortly after her appointment, Chief Judge Evans asked Judge Clay-Herron to train and educate new judges. In addition, she has worked tirelessly to teach judges in the Illinois Judges Association how to best present educational trainings in classrooms, most notably "Your Future ~ Your Choice." Judge Clay-Herron is the ultimate educator and continues to be a role model for judges and attorneys throughout Illinois.

The ceremony concluded with Judge Janet Brosnahan—the Foundation's Harold Sullivan Scholarship Chair—introducing the 2019 scholarship winners and the Deans of their respective law schools. The Harold Sullivan scholarship, established in the name of, and to honor, Judge Harold W. Sullivan, is awarded annually to one or more students attending an Illinois law school. The Scholarship was established as a permanent way of transmitting ethical values to new generations of law students. One scholarship was presented by Dean Jennifer Rosato Perea, Dean of DePaul University College of Law, to third year law student Nike Roman. Nike is a member of the DePaul Public Interest Law Association and also serves as a mentor to 1L students. Nike has spent her time in law school volunteering with organizations that provide services to marginalized communities in Chicago, including Chicago Volunteer Legal Services, Life Span, the Domestic Violence Legal Clinic, and Erie Neighborhood House on their DACA Renewal Project. Another scholarship was presented by Dean Virginia Vermillion, the Dean of Students at the University of Illinois College of Law, to second year law student Brian Smith. Brian is extremely involved in global health and is interested in how neuroscience intersects with law and policy. Brian is the Senior Associate for the Antibiotic Resistance Project, and plans to apply his biomedical research and policy analysis background towards creating laws and policies that can lead to healthier communities. The law student scholarship winners are truly admirable for all they have already accomplished in their communities.

The Reception's honorees have dedicated their careers to furthering civility and professionalism through education. As a third year law student, it was inspiring to meet each honoree and learn about their strong commitment to the Illinois bench and bar.■

Rachel Gewurz is a judicial extern for Judge Debra Walker. She is currently a 3L at Washington University in St. Louis.

Justice Stevens: The Great Contrarian

BY JUSTICE MICHAEL B. HYMAN

What Justice Benjamin Cardozo said of Justice Oliver Wendell Holmes, Jr. on Holmes's 90th birthday equally applies to the jurisprudence of Justice John Paul Stevens: "One cannot read [his] opinions without seeing honor and courage written down on every page." During his nearly 40 years as a jurist, Justice John Paul Stevens quickly emerged as a measured voice with a reputation for offering his own nuanced perspective.

Justice Stevens refused to quietly join a majority opinion whenever he harbored even the slightest disagreement. This explains the impetus for his over 1,000 concurrences and dissents as a judge on the Seventh Circuit Court of Appeals and the Supreme Court – a prodigious number.

But his motivation to publish his views does not explain his motivation to be a freethinker. I believe history will portray Justice Stevens as the Court's "Great Contrarian" in the same manner we remember Justice Oliver Wendell Holmes as the Court's "Great Dissenter." I am using the word "contrarian" in the narrow sense, someone who questions conventional thinking, who is not easily swayed by others, and who welcomes the examination of possibilities that others might disregard. Contrarians keep an inquisitive mind and are self-assured. They go against the herd, preferring to follow their own instincts. By challenging the majority stance, they breathe penetrating insights into a discussion.

In his first year on the Supreme Court, Justice Stevens set the record for lone dissents by a new Justice. And his independence never waned. For instance, for the 10 years ending in the 2004 term, one study concluded that Justice Stevens voted with the majority the least of any of the Justices (69.5 average), with the next lowest average belonging to Justice Antonin Scalia (77.2). In addition, Stevens refused to participate with the other Justices in the pooling of law clerks on incoming certiorari petitions.

Justice Stevens' opinions drew heavily on his own homework and brainwork. He prepared an initial draft himself, and then handed it over to a law clerk because, he said, it sharpens his understanding of the appeal. His opinions eschew a political ideology or a dominant mindset. Little wonder that former New York Times Supreme Court reporter Linda Greenhouse once used these words to describe the Justice--"enigmatic, unpredictable, maverick, a wild card, a loner."

This fondness for expressing his positions emerged from his experience as counsel to a special 1969 committee that investigated corruption charges against two Illinois Supreme Court Justices. As Justice Stevens told it, "There were two dissenting opinions in the Illinois Supreme Court that were never published, out of a concern for collegiality. I have often thought that if I do not agree with the majority's rationale in a given case, I should let the public know about it."

Bow Tie and All

Justice Stevens's extreme number of concurrences and dissents has left a robust trail that attests to his determination to be his own person. He would not hesitate to stick his neck out—bow tie (another sign of a contrarian) and all. Indeed, rather than go along with the majority without a peep of protest, with Justice Stevens, you knew exactly where he stood, and why.

His gumption to disagree served to crystallize his thoughts and concentrate his concerns. As a modern-day philosopher put it, "The beginning of thought is in disagreement – not only with others but also with ourselves." The essence of Justice John Paul Stevens's approach to the art of judging is his ability to disagree, and through disagreement to think critically about the merits of opposing arguments and the soundness of his own perspective.

Therein lies his honor and courage as well.■

Justice Michael B. Hyman, a member of the ISBA Bench and Bar Section Council, serves on the Illinois Court of Appeals, First Circuit. *This article is reprinted with permission from the CBA Record, September/October 2019 issue.*

Justice Karmeier Retires

BY HON. ALFRED M. SWANSON, JR. (RET.)

Just four days after completing his term as chief justice, Justice Lloyd Karmeier announced his intention to retire effective December 6, 2020.

Three years ago, Justice Karmeier set several goals he wanted to achieve during his term as chief justice. He wanted to accomplish e-filing at all levels of the court system; he wanted to improve access to justice; and, he wanted to improve the delivery of pretrial services.

E-filing is now the norm at the trial and appellate levels. The supreme court has approved standardized forms in many sections of the circuit courts, a process that continues. Evidence-based initiatives are being used to provide judges who sit in bond courts all of the resources and information possible so they can make informed decisions on whether to set a bond and, if so, on what terms. But, of the initiatives Justice Karmeier told me recently may help determine his legacy as chief justice are two things. One that may have a long-term effect is the strategic plan for the court system that the supreme court announced this fall. The second, which he hopes is not short-lived, is greater funding for pretrial services. That portion of the supreme court's budget has received many millions more dollars this fiscal year than past budgets. This, Justice Karmeier told me, will enable the court to more adequately reimburse the counties for the probation and other pretrial services they provide. In the past, the fixed nature of most of the court's expenditures has resulted in less than full reimbursement to the counties for those services as the court balanced its budget. Justice Karmeier hopes that funding can continue.

Other accomplishments Justice Karmeier points to include a reconstituted and streamlined Judicial conference with fewer members and more committees to implement, among other things, a broader education component for all portions of the court system. This includes judges, clerks, staff, and other participants in the administration of the judicial system.

At his retirement next year, Justice Karmeier will have practiced law for 56 years, 22 as an attorney and 34 as a judge. His first job after law school was clerking for supreme court Justice Byron House, also from Washington County where Justice Karmeier was born and lived his entire life. He also clerked for a federal judge, served as states attorney and was engaged in the private practice of law during the 22 years before he was elected a circuit judge in 1986 in Washington County. He was a trial court judge for 18 years hearing the wide variety of criminal and civil cases that a judge in a rural downstate county sees on the docket. Judge Karmeier told me he believes he tried the first capital murder case in St. Clair County early in his career as a trial judge. As a supreme court justice, he wrote several key decisions, among them the one that reaffirmed the principal that the upheld the rights of government employees to not have their pension benefits diminished. He also dissented from the supreme court's decision to remove a proposed legislative redistricting amendment from the ballot.

In 2004, Judge Karmeier was elected to the supreme court in what was then the most expensive judicial election in Illinois history. Justice Karmeier told me the surprise came in the well-funded, last minute opposition in his retention race in 2014. He narrowly survived that challenge to keep his seat on the supreme court a result that enabled him to become chief justice in 2016.

Justice Karmeier said he has already begun to enjoy the quieter pace of no longer being the chief justice. He told me that when he became Chief, he was surprised at the number daily calls with the Administrative Office. He said there are already fewer emails and communications coming into his office. It is not that Justice Karmeier did not enjoy the responsibility and additional work being chief justice entailed; he did. He told me after he retires from being a supreme court justice next year, he will miss the collegiality of the court and the interactions with his colleagues. Civility and collegiality are important as he wrote in one case where he called both the majority and dissenting appellate court justices to task: "the tone taken by the dissenting appellate justice in this case adds nothing to his analysis. Unfortunately, that tone invited a footnote in the majority opinion which, again added nothing to its analysis but merely highlighted the tone of the dissent in this and other cases. While forceful argument in support of a position is to be expected … disparaging exchanges on a personal level contribute nothing to that process. Sound reasoning stands on its own. Personal disparagement diminishes the force of the argument, the stature of the author and the process for appellate review itself." Justice Karmeier said that in his 15 years on the supreme court while there have been strong disagreements on interpretation of cases, none of those disagreements has been on a personal level.

Justice Karmeier told me the key things he learned from his clerkship with Justice House early in his career was to be thorough, do his own research, and maintain a strong notion of fairness. One of the principals that has guided his judicial career, he said. was the desire "to do what is right."

For the future, after retirement, Justice Karmeier wants to spend more time with family. He has a daughter and three grandchildren in Colorado that he wants to spend more time seeing. He and his wife, Mary, want to travel. And, he told me they want to spend more time at their home in Florida. Justice Karmeier told me he has worked full time in the law for 56 years. He said that pulling the trigger and setting a retirement date was a difficult decision, but, he said, "I have no regrets." He told me he wanted to leave the bench while he is still in good health and "at the top of my game." ■

Recent Appointments and Retirements

1. Pursuant to its Constitutional authority, the supreme court has appointed the following to be circuit judge:

- Drew T. Erwin, 8th Circuit, September 6, 2019
- Monique O'Toole, 18th Circuit, October 7, 2019
- Hon. Elizabeth Flood, 16th Circuit, October 15, 2019
- Christopher R. Doscotch, 10th Circuit, October 28, 2019

2. The circuit judges have appointed the following to be Associate Judges:

- David P. Bradley. 16th Circuit, September 3, 2019
- Dwayne A. Gab, 7th Circuit, September 6, 2019
- Daniel Cordis, 10th Circuit, September 9, 2019
- Ryan Swift, 17th Circuit, September 9, 2019
- Jennifer L. Johnson, 22nd Circuit, September 23, 2019
- Sonja L. Ligon. 2nd Circuit, October 7, 2019
- Matthew Klahn, 15th Circuit, October 21, 2019

3. The following judges have retired:

- Hon. Jodi M. Hoos, 10th Circuit, September 1, 2019
- Hon. Robert B. Spence, 16th Circuit assigned to 2d District, September 12, 2019
- Hon. Charles T. Beckman, Associate Judge, 15th Circuit, September 17, 2019
- Hon. Colleen F. Sheehan, Cook County Circuit. September 30, 2019
- Hon. Kim L. Kelley, Associate Judge, 10th Circuit, October 1, 2019
- Hon. Brigid MaryMcGrath, Associate Judge, Cook County Circuit, October 2, 2019
- Hon. Leon Wool, Associate Judge Cook County Circuit, October 3, 2019
- Hon. Robert J. Anderson, 18th Circuit, October 4, 2019
- Hon. John J. Hynes, Associate Judge, Cook County Circuit, October 8, 2019
- Hon. James M. McGing, Cook County Circuit, 10th Subcircuit, October 21, 2019
- Hon. Thaddeus S. Machnik. Associate Judge, Cook County Circuit, October 31, 2019

4. Pursuant to its Constitutional authority, the supreme court has recalled the following judge and assigned him to the appellate court:

- Hon. George Bridges, 2nd District, September 16, 2019

5. The following judge has resigned:

- Hon. Patrick J. O'Shea, 18th Circuit, September 30, 2019

6. The following judge is deceased:

- Hon. Thomas M. Schippers, 19th Circuit, 3rd Subcircuit, September 6, 2019 ■