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An interview with the Chief Justice

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

When he started practicing law 52 years ago, Lloyd Karmeier never imagined being an appellate court judge, let alone a Supreme Court Justice. Later, he told me when, at age 46, someone suggested he run for the Circuit Court, he thought he was too young, but he ran and was elected.

Justice Karmeier was raised on a small farm near Covington in Washington County. On that farm were the ruins of the courthouse where the Illinois Supreme Court first held sessions soon after Illinois

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An interview with Justice Garman

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

Three years ago when she became Chief Justice, Justice Garman set out three main goals for her tenure: expand E-Filing; expand the use of cameras in the trial courtrooms; and, improve and expand the use of technology in the courtrooms. Now that her term as Chief Justice has ended, Justice Garman feels "very good at how the Illinois courts have moved forward" on her goals.

Justice Garman anticipates the Appellate Court will meet its E-filing deadline of July 1, 2017. She feels equally confident that the trial courts in Illinois' 24 Circuits will meet their deadline of having E-filing on line by January 1, 2018. She notes that the Supreme Court set a goal for E-filing back in 2002 and that the Court felt earlier this year that E-filing "needed to get done." The Court set the deadlines it felt were needed to move the Illinois courts forward.

Justice Garman recognizes the continuing challenges of available resources, especially in the smaller, rural counties and of integrating the different technologies used in the circuits that already have E-filing systems in place. However, she says the E-file manager the

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became a state in 1818. This was just one twist of history Justice Karmeier recalled as we talked on the eve of his installation as the 120th Chief Justice of the Illinois Supreme Court. He said he even took his law clerks to the site where they could still see in the soil some of the red powder left from the old courthouse bricks. In fact, he has a brick from that old courthouse in his chambers.

A lifelong resident of Washington County, Justice Karmeier attended a one-room grade school and was valedictorian of his graduating class from Okawville High School. He is also the second Illinois Chief Justice from Washington County – the first was Justice Byron House, for whom Justice Karmeier clerked for four years after graduating from the University of Illinois College of Law.

Justice Karmeier's goals for his term as Chief Justice center on advancing the Illinois Court system. To this end, he wants to continue the effort to bring E-filing to all levels of the courts in a timely and efficient manner and to ensure that the courts and legal services are universally available by continuing the Access to Justice Initiative. In addition, he wants to improve pretrial services to give judges who sit in bond courts all of the resources possible to make informed decisions on whether to set a bond and, if so, on what terms.

E-filing poses the challenge of melding into one compatible whole the different systems in the counties that already have E-filing and finding the resources to assist rural counties in establishing their own programs. The Court's goal is to allow lawyers from their desks to have not only the ability to file documents in any court in Illinois, but to also have full-text retrieval of filed documents and court orders.

Improving pretrial services is especially important to Justice Karmeier. He recognizes that there is a certain percentage of defendants who are unable to post any amount of bond. He also recognizes that after a few days of incarceration, a defendant may lose a job, housing, and a family support system – losses that make it difficult for the defendant to be able to return to society. The goal of the Court's effort to improve pretrial services, he says, is to give the bond court judges more evidence-based information so that they will be better able to determine an appropriate bond.

Justice Karmeier says his best preparation to become Chief Justice came from his more than 50 years practicing law and the lessons he learned at the start of his career from Justice House: to have a deep respect for the law and civility in the practice of law. Thereafter, he was also State's Attorney in Washington County and clerked for a Judge on the U.S. District Court. In 18 years as a trial court judge, Justice Karmeier presided over a wide range of criminal cases as well as the full gamut of civil matters that appear on the docket of a judge in a rural county. He also served on and chaired the Supreme Court's Committee on pattern jury instructions in criminal cases.

Justice Karmeier was elected to the Supreme Court in 2004 and retained in 2014. In his 12 years on the Supreme Court, recurring themes in the more than 100 opinions and dissents Justice Karmeier has authored are civility and judicial restraint. He provided a listing of cases he considered significant.

Justice Karmeier's opinions reflect a reverence for the courts and the Judicial process. In his opinion for a unanimous court in the pension reform litigation, he noted the State's financial challenges and said it is the Court's obligation at all times to make sure the law is followed. "It is especially important in times of crisis when, as this case demonstrates, even clear principles and long-standing precedent are threatened. Crisis is not an excuse to abandon the rule of law. It is a summons to defend it. How we respond is the measure of our commitment to the principles of justice we are sworn to uphold." In his dissent in a sharply-divided decision that barred a ballot initiative on redistricting

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legislative maps could not be on the ballot, he wrote: "If we do not permit this ballot initiative to go forward in accordance with the law, our authority over the redistricting process and, indeed, our status as an institution will forever be suspect."

Judicial restraint is a recurring theme in his opinions. In one case, he wrote it was "appropriate to caution courts of review – particularly when constitutional issues are involved – that they are not free rangers riding about the legal landscape looking for law to make." And, in another case Justice Karmeier wrote: "This court may not legislate, rewrite or extend legislation. If a statute, as enacted, seems to operate in certain cases unjustly or inappropriately, the appeal must be to the General Assembly, and not to this court."

Justice Karmeier greatly appreciates the collegiality among his colleagues and the friendships that have developed. Civility and collegiality are important as he wrote in one case where he called both the majority and dissenting appellate court justice 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 of appellate review itself."

One of Justice Karmeier's joys in being on the Supreme Court is "working with his staff and colleagues and helping to interpret the law as it should be and staying true to our calling." Another joy is "when finishing a case and feeling we have it right." He does not go back and second-guess his opinions.

Justice Karmeier told me his philosophy of judging "is to not be in a hurry, to listen and exercise patience and understanding." It is, he said, summed up in the phrase on the wall in the Supreme Court's courtroom facing the justices: "*Audi alteram partem*" – "Hear the other side." He encourages all judges to do just that. He particularly encourages trial court judges to explain their rulings – not just for the benefit of the parties and their counsel, but also to assist the reviewing courts.

A one-word description of Justice Karmeier from his colleagues is: "gentlemanly." Justice Robert Thomas told me he has observed Justice Karmeier as liaison to the ARDC, the MCLE board and the Committee on criminal jury instructions and believes the strengths Justice Karmeier has shown make him well-suited for the duties of Chief in administering the Court's business. Justice Mary Jane Theis agrees and told me that when Justice Karmeier asks a question during arguments, "everyone stops because his questions are always pointed and wise." She praised his respect for legal history and added: "Because his experiences [as a native of rural southern Illinois] are so different from mine, I always take what he says very seriously." Justice Thomas also referenced the down-home quality that Justice Karmeier displays – noting the garden plot Justice Karmeier tills adjacent to his office in Nashville. He said someone told him that plot is Justice Karmeier's hedge in case the State's budget crisis is never resolved. And, he added: "That's exactly who I want presiding over the judicial branch of this state." ■

An interview with Justice Garman

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Supreme Court has put in place will be able to have all of the systems speak to that integration. When the electronic systems are completed, she envisions lawyers in any part of the state will be able to file from their desks documents in any circuit court. Moreover, she envisions that lawyers will be able to access full text of documents from any case filed in any of the circuits right from their desks. She looks forward to the anticipated cost savings to attorneys and their clients when these systems are fully in place.

Extended media coverage of the trial courts is now permanent statewide, she says, with minimal problems. This media coverage availability is part of the Court's goal of improving public access and knowledge of the judicial system.

Justice Garman is also "very proud" of the Access to Justice program that started as a committee and is now a division within the Administrative Office of the Illinois Courts. That access work includes more than just the standardized forms to assist *pro se* litigants in representing themselves in a variety of case types.

Another positive she notes in the access initiative is the mostly positive responses (more than 12,000) to the Supreme Court's user survey of litigants and court personnel. Justice Garman notes that the results from younger people and members of minority groups were not as positive as the responses from older people – something she sees as a challenge for the courts to overcome. Another positive she notes is the Supreme Court's adoption of uniform standards of certifications for problem-solving courts throughout the State.

Justice Garman is also pleased with the Supreme Court's road trips – taking oral argument sessions to various parts of Illinois – which she says were "overwhelmingly well-received." Another initiative along this line is the Court's "Law School for Legislators," in which members of the Court will meet with new members of the General Assembly to familiarize them with the work and operation of the Illinois Courts.

A key initiative the Supreme Court recently announced is a review of pretrial services in the circuit courts based upon

the Court's commitment to evidence-based practices and programs to assist judges in evaluating defendants in the process of setting bonds. In addition to the statutory factors in setting bonds, Justice Garman and the Supreme Court want bond court judges to have as much information available as possible to make informed evaluations in determining which defendants could be released rather than incarcerated in the county jails. The goal, she told me, is to have the pretrial services program in place by the year 2020.

Justice Garman believes bond court judges throughout the State "do an admirable job and take seriously protecting the public." However, she wants judges to have the evidence-based tools available to assist them in exercising their discretion in determining the appropriate bond to set. Justice Garman stated firmly that "there is no question that judicial independence is critical," in enabling judges to do their jobs and to continue to do their jobs well.

Also pleasing to Justice Garman is the continuation during her term of the "great collegiality" on the Supreme Court among seven people from distinct backgrounds who all "get along well and like each other." That doesn't mean, she told me, that there are not vigorous discussions and disagreements on issues. But, what is important to Justice Garman is that those discussions are "never personal." That, she said, is what she was taught when she started practicing law 46 years ago: "Be a vigorous advocate, but there is no need to be disagreeable." ■

Video testimony: One-way, two-way, Skype, closed circuit: Let me count the ways….

BY HON. E. KENNETH WRIGHT, JR., PRESIDING JUDGE, FIRST MUNICIPAL DISTRICT, CIRCUIT COURT OF COOK COUNTY

This article is the result of a New Mexico Supreme Court case involving the use of Skype in a criminal case. It will present a brief history of the use of video in criminal proceedings in Illinois and other states. We are mindful that video can be utilized in two different formats: live video, such as television or the internet using Skype; or, in a prerecorded form done with video-recording cameras. Prerecorded videos for use as evidence in place of live testimony are commonplace in civil litigation to preserve testimony.[1] Such video recordings are used where it is thought that a deponent may not be able or available to testify at a later trial. On occasion video testimony either prerecorded or live is utilized in criminal prosecutions, including trials, bond hearings and arraignments.

Technology is involved in virtually all phases of the law and, as they say, it is here to stay whether we like it or not. We love it, we hate it, we use it and we avoid it. From our offices to the courthouse to the prisons, technology is having a far-reaching effect. Technology, as it was initially introduced, ranged from word processing with floppy discs and dot matrix printers to fax machines with special paper, but at that time had all the magic of today's digital, full color transmission wizards.

Historically, it appears that video technology started in the early 1970s with a closed-circuit TV broadcast between a lockup and courtroom for both arraignments and bond hearings in Illinois. The use of electronic images in those proceedings was aimed at saving money in transporting prisoners between jail and the courthouse. The savings were immediate and today such video use is available in the federal system and throughout the states. Criminal trial testimony may be presented via video in certain instances and is used primarily when a witness is not available and/or able to testify.[2] Currently, no arraignments or bond hearings are conducted via video in Cook County.

The following discussion highlights the issues and notes some of the pitfalls and cautions to be considered when using technology, specifically video either for live transmission or prerecorded use. Let's look at one example: video bail hearings that were initiated in Illinois courts in 1972. This concept expanded to Philadelphia courts in 1974 where a closed-circuit television system was installed for preliminary arraignments.[3] Now, most states allow some phase of criminal proceedings to be conducted by video with the defendant at one location and the court at another.

Federal courts also experienced the expansion and application of technology with the passage of the Prison Litigation Reform Act of 1995[4] that required courts to seek to avoid moving prisoners between prisons and courthouses unless necessary, thFat is, for trials. Rule 10 of the Federal Rules of Criminal Procedure, effective December 1, 2002, allows videoconferencing for arraignments, and initial appearances; however, the defendant's consent is required.[5]

Federal courts even encourage use of video in certain complex cases and provide the specifications for using compatible video equipment, installing and answering questions with an AV specialist.[6] In certain types of litigation where specific local rules have been promulgated, namely patent litigation, there is a suggestion to use an instructional video in the opening phase of such a trial.[7]

The physical appearance of a prosecution witness at trial or otherwise

giving testimony in a deposition is a serious matter that involves a sixth amendment constitutional right that guarantees the accused an opportunity to confront witnesses against them.[8]

An interesting and perhaps significant scenario was recently addressed by the Supreme Court of the State of New Mexico on an appeal of a life sentence.[9] A defendant's "right to be confronted with the witnesses against him" provides a defendant with much more than the right to be in the room when the witness is testifying.

Thomas' murder trial started 22 months after his arrest and pretrial custody and 26 months after the murder. He was on trial based solely on his DNA found on the murder weapon, a brick, along with the victims. Thomas denied he ever met the victims. During the ensuing time before trial, a forensic analyst who examined the DNA and rendered an opinion on a match had moved out of state.

The prosecution proposed that the expert be permitted to testify at trial via two-way video, known as Skype, over the Internet. Defense counsel initially agreed, having interviewed the expert via Skype in preparation for trial; however, a week later counsel expressed hesitation during a hearing at the use of Skype. The defense had rethought their position and expressed concern that the use of Skype would violate the Confrontation Clause. The State countered that it had not issued a subpoena for the forensic expert based on the statement of defense counsel. The defense moved for a continuance; however, the judge held that the defendant had waived any objection to the use of the two-way video by defense counsel's initial informal agreement.[10] It is significant that the Supreme Court stated that "At no time did either the district court or defense counsel discuss any permanent waiver of confrontation rights with Defendant directly."[11]

Interestingly, while a speedy trial violation may appear obvious, there were many ameliorating factors that weakened the issue. First, the causes of the delays were, in part, due to a judicial vacancy and the absence of the forensic expert who had moved out of state. Also, the court found that the delays were not caused solely or to a large degree by the State, and, finally, defendant could not demonstrate any prejudice or damage caused by the delay that did not also prejudice or damage the State.[12]

During the two week trial, the DNA expert testified via Skype. Defendant was convicted of murder and aggravated kidnapping. The district court imposed consecutive sentences of life imprisonment for the murder and 18 years for the kidnapping.

In reversing[13] and granting a new trial on the murder charge, the New Mexico Supreme Court found that defendant had not knowingly waived his right to confrontation even though his attorney had initially agreed then changed his mind only to have the trial judge view such tactic as a request for a continuance of the trial. The Supreme Court found that at no time did the court or defense counsel discuss any permanent waiver of confrontation rights with defendant directly. Similarly, the Court was unimpressed with the State's argument that defense counsel had permanently waived his client's confrontation rights when the State relied upon defense counsel's statement waiving the out of state witnesses' physical presence at trial that caused her unavailability. The Court noted that there was nothing in the record that during the one week between the discussion of waiver and defense counsel's reconsideration and objection had any connection with the witness's absence. The Court stated additionally that nothing in the record indicated that the State was engaged in the complex and time-consuming procedures in the courts of two states required by the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. NMSA 1978 Secs 31-8-1 to 6. The court observed that the State apparently never initiated any procedures under the Uniform Act to trigger any waiver by estoppel theory.[14]

In ruling, the court stated:

> The DNA profiles were offered as the sole evidence that implicated Defendant in this crime, clearly influencing the verdict. Therefore, "face-to-face confrontation" should have happened, *per* Thomas' constitutional rights.[15]

This holding appears to establish a virtual *per se* rule requiring face-to-face confrontation (in the absence of a waiver) where the missing witness is critical or the sole direct proof of guilt. However, the court gave several reasons for its ruling that could suggest that if these defects were not present the teleconferenced testimony would be allowed.[16]

In reversing, the Supreme Court held that presentation of Skype testimony violated Defendant's confrontation rights. The court's analysis of the law addressed a long-standing dilemma with respect to testimonial evidence delivered from outside the courtroom. The process pits two apparently conflicting U.S. Supreme court opinions dealing with the confrontation clause against each other. One opinion – *Maryland v. Craig* allows the omission of confrontation and cross-examination if the testimony is necessary to further an important public policy and deemed reliable. The second opinion – *Crawford v. Washington* demands cross-examination regardless of the perceived reliability of the testimony.

The 1990 ruling by the U.S. Supreme Court in *Maryland v. Craig*[17] allowed a child victim of sexual abuse to testify through a pre-recorded video, due to her emotional trauma of being within sight of her tormentor. The victim was in a room separate from the judge, jury and defendant, who all could hear and see the testimony. The court held that the face-to-face confrontation requirement is not absolute, but also not easily dispensed with. Thus, the right to confront an accusatory witness may be satisfied absent a face-to-face confrontation at trial only where denial of such is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.

Fourteen years later, the 2004 decision in *Crawford v. Washington*[18] involved an adult defendant accused of attempted sexual assault as part of a larger felony case. There, the court shifted its stance and instead set the standard that abandoned

the "reliability of the testimony" test and adopted a fundamentally new interpretation of the confrontation right by limiting the admissibility of testimonial statements of witnesses not present for trial to only those instances where the defendant had an opportunity to cross-examine. The potential for cross-examination had to be present when prior testimony or remote testimony is to be admitted into evidence.

In light of this, the *Thomas* court also noted that:

> The United States Supreme Court has never adopted a specific standard, for two-way video testimony, but we doubt it would find any virtual testimony an adequate substitute for face-to-face confrontation without at least the showing of necessity that *Craig* requires[19] [*i.e.* a sensitive, minor victim and a sensitive subject matter].

Two seemingly unrelated but important confrontation cases from Illinois, one before the U.S. Supreme Court *Williams v. Illinois,*[20] and a recent case decided by the Illinois Supreme Court, *People v. Terry Hood,*[21] give some very succinct guidelines on the admission of prior or remote testimony at trial. In *Hood*, the severely beaten victim, Mr. Bishop, gave his evidence deposition and was subject to cross-examination prior to trial. At time of trial he was found to be physically and mentally unable to testify. The defendant objected to the state using the victim's video evidence deposition. However, the court allowed the use, citing the victim's unavailability to testify and the safeguards afforded defendant at the deposition where defendant had the right to be present and the witness (victim) was cross-examined by defendant's attorney. In *Williams*, a DNA expert relied on a DNA profile in a report of an outside laboratory that matched a sample of defendant's blood with a sample from the crime scene. In a 5-4 majority opinion, the Supreme Court considered defendant's argument that the expert "went astray" when she testified the DNA profile was found on swabs from the victim's vagina. The swabs were labeled as such in the samples from the testing lab. The expert testified to identify the swabs that were tested. Defendant contended that verbal statement was hearsay and crossed the line between allowable and prohibited testimony because the expert in identifying the source of the sample was affirming the source of the samples. Needless to say, in a rape case the source of the sample was critical.

The dissent[22] in *Williams* would require the person conducting the initial test on the sample to testify and authenticate the test, and, be subject to cross examination. Otherwise, the test was to be considered hearsay, admitted to prove the truth of label on the sample submitted with the earlier report.

As we recall from the New Mexico Supreme Court's holding in *Thomas*, the guidelines (requirements) for confrontation and cross examination are strictly enforced if the questioned testimony is the only testimony against the defendant. Currently, the test for remote testimony is that it must be subject to cross examination and must be reliable. The reliable test is not quite as concrete as subjecting proffered testimony to cross-examination.

Now, what is required in Illinois? Do we follow *Craig* (no waiver required in unusual circumstances) or do we follow *Crawford* and allow emote testimony as long as there is cross examination of the witness. What if defendant refuses to waive his right to confront the witness and refuses to appear at the deposition? The Illinois Supreme Court recently dealt with a case that had all three of these issues. In *People v. Terry Hood*, cited earlier, defendant was charged with attempted murder, home invasion, aggravated battery of a senior and unlawful restraint for severely beating Robert Bishop, 69 years old with a hammer.[23] The State filed a motion to take Bishop's video evidence deposition pursuant to Supreme Court Rule 414 that allows such procedure if there is a substantial possibility the witness will not be able to testify. The State argued that since Bishop had suffered severe head injuries, his condition was likely to deteriorate, and he may not have been available to testify at trial, the deposition was allowable. The request for the deposition stated that defendant would be provided the opportunity for confrontation and meaningful cross-examination.

Defendant's attorneys objected to the motion contending that due to Bishop's severe injuries he was only able to communicate by shaking his head and therefore no meaningful cross examination could occur. However, the court granted the motion with the *caveat* that if Bishop could only shake his head, the deposition would be inadmissible. Over defendant's objection, the order also directed the Sheriff of Cook County to transport defendant Terry Hood to the deposition.[24] An Assistant State's Attorney and two assistant Public defenders attended the deposition. Defendant did not attend.

During the deposition Bishop testified about the attack, identified a photograph of the hammer defendant used to strike him two times, and described the attack before he passed out from his injuries. Bishop was cross-examined by defendant's attorney.

Because the witness was unavailable at trial and his deposition testimony had been subject to cross-examination, the State asked that the video evidence deposition be admitted under Illinois Rule of Evidence 804(b)(1) as an exception to the hearsay rule. Defense objected, claiming Bishop's injuries were not so severe and that he was available to testify. At a hearing on the motion, Bishop's attending physician testified that his mental condition rendered him unavailable to testify.[25] The court found that defendant had the opportunity to confront and cross-examine the witness. The court also stated that since there were no objections raised on those questions, the deposition was entered into evidence and published to the jury.

It is important to note that, unlike in the New Mexico case (Thomas[26]) where the key testimony was given two-way via Skype video, additional evidence was presented by the State and the proofs did not rely exclusively upon the video deposition.[27] Neighbors testified they heard arguing between defendant and Bishop before the attack; another witness testified that defendant had admitted to the crime; and, DNA evidence tended to implicate

defendant. The jury found defendant guilty of aggravated battery of a senior citizen causing great bodily harm. Defendant was sentenced to 22 years in prison.[28]

The Appellate Court reversed the admission of the deposition because defendant had not signed a waiver of his right to be present at the victim's deposition. The court decided the appeal on the validity of defendant's waiver through his attorneys. In rejecting such a waiver the court held that the requirements of a valid waiver of a constitutional right were not satisfied and that defendant did not waive his confrontation rights pursuant to Illinois Supreme Court Rule 414. Ill. S. Ct. R. 414(e) (eff. Oct. 1, 1971). HN6 Rule 414 provides that defendant and defense counsel may waive defendant's confrontation rights at a deposition conducted under Rule 414 in a written filing.[29] Ill. S. Ct. R. 414(e) (eff. Oct. 1, 1971).

In a vigorous and compelling dissent, Justice Connors stated that defendant's absence from the victim's deposition did not amount to second-prong plain error that must be so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.[30] The dissenting Justice added that defendant could not be allowed to benefit from his wrongdoing:

Moreover, the only reason why the victim was not subsequently in the courtroom at trial was due to defendant's own wrongdoing. See *People v. Stechly*, 225 Ill. 2d 246, 331, (2007) (Thomas, C.J., dissenting, joined by Karmeier, J.) (defendant forfeited his confrontation rights because the witness' unavailability at trial was caused by defendant's intentional criminal act). For the foregoing reasons, I would find that defendant's claim did not rise to the level of second-prong plain error and affirm the trial court's decision.[31]

The Illinois Supreme Court began its opinion reversing the Appellate Court with a grim reminder of the havoc defendant had visited on his victim who was unable to testify at the trial due to the injuries defendant had inflicted. The court applied the two prong test for reversible plain error that requires the error to be so serious that it affected the fairness of defendant's trial and that it challenged the integrity of the judicial process.[32] The court found no reversible error since defendant had adequate notice of the victim's deposition, had the right to be present, and had attorneys present who cross-examined the victim.

The Supreme Court then stated that the deposition was evidence that must pass *Crawford* tests to be admitted: that defendant the right to be present and to cross-examine the deponent/witness who will not be available for trial.[33] The Supreme Court noted that the Appellate court majority opinion not only did not conduct these *Crawford* tests but did not mention *Crawford* in its opinion.[34]

The court agreed with defendant that is was error not to obtain a written waiver of his attendance at the deposition as required by Supreme Court Rule 414. However, the court noted that the written waiver is not a Constitutional requirement but one required to insure defendant is informed of the deposition and his ability to attend. It was clear from the record that defendant had been informed of his rights.[35]

One additional issue for review is the examination of when and where a defendant must be moved to attend a deposition. Such an instance arose in *United States v. West,* involving depositions of witnesses in Afghanistan for a case pending in District Court for the Northern District of Illinois.[36] Neither the Federal Rules of Criminal Procedure nor the Confrontation Clause requires defendant be transported out of the United States to confront and cross examine witnesses against them. The solution was to conduct a two-way video conference to allow cross examination of the witnesses and allow defendant to observe.

Conclusion: The question of use and application of video testimony and/or evidence in a criminal trial is about confrontation and cross examination rights as provided by the Sixth amendment. The more serious the case, i.e. possible punishment, more observance and steps must be taken to avoid reversible error. First, it is important that defendant be afforded an opportunity to attend or in the alternative provide a written waiver (not just the attorney) to allow a witness to testify via videoconferencing in defendant's absence. An ability to cross examine the witness must be available and in most cases would be required. In cases where evidence is tested or profiled by several steps, such as with DNA, the recent (2012) 5-4 decision from the U.S. Supreme Court suggests that it may be advisable to bring an expert from all testing labs evaluate a sample to authenticate the testing. Additionally, in a live testimony situation for a trial, the cameras and screens must be arranged to resemble a courtroom experience where the witness can see the attorneys, judge and jury, and, be seen by each.

Perhaps more important than the look-a-like set up of the technology, arrangement for confrontation and cross examination, the real question for me is: If I were to be accused, would I like the complaining witness, victim, police officer, lab technician, eye witness against me, as a defendant to testify via Skype? Probably not. ■

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1. Ill. Sup. Ct., R 241

2. Understandably, the use of video-recorded testimony must be stipulated, agreed and otherwise tested depending on the court rules and nature of the testimony.

3. Shari Seidman Diamond, et al.,, *Centennial Symposium: A Century of Criminal Justice: II. "Justice" in Action: Efficiency and Cost: the Impact of Videoconference Hearings on Bail Decisions*, 100 J. Crim. L. & Criminology 869 (2010).

4. 42 U.S.C.S. §1997e(a).

5. USCS Fed Rules Crim Proc R 10(c).

6. United States District Court Northern District of Illinois, *Courtroom Technology*, bttp://www.ilnd.uscourts.gov/Pages.aspx?Wsrh8mVweBtkCWu8DlGm87wN9Fs7aMC44dxh+5XRIzg= (last visited Oct. 14, 2016).

7. N.D. Ill., R LR 16.1.1 Local Patent Rules, Appendix A §7(f).

8. Amendment VI, U.S. Constitution states as follows:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

9. *State v. Thomas*, 2016-NMSC-024, ¶ 1. (New

Mexico Rules of Court provide that the Supreme Court has mandatory appellate jurisdiction over criminal matters in which the sentence imposed is life in prison or the death penalty. N.M. Const., art VI, §2 and Rule 12-102(A)(1) NMRA).

10.*Thomas*, 2016-NMSC-024, ¶ 5.

11. *Id*. at ¶ 19.

12. *Id*. at ¶ 10.

13. The New Mexico Supreme court summarily dismissed the kidnapping charge as not supported by the evidence.

14. *Thomas*, 2016-NMSC-024, ¶21.

15. *Id*. at ¶34.

16. *Id*. at ¶29.

17. *Maryland v. Craig*, 497 U.S. 836, 846 (1990).

18. *Crawford v. Washington*, 541 U.S. 36, 61-65 (2004).

19. *Thomas*, 2016-NMSC-024, ¶ 27.

20. *Williams v. Illinois*, 132 S. Ct. 2221, 2232 (2012)

21. *People v. Hood*, 2016 IL 118581.

22. Interestingly, the dissenters Kagan, Sotomayor, Ginsburg were joined by Scalia (since deceased) in a rare combination of traditional court liberals and a consistent conservative.

23. *Hood*, 2016 IL 118581, ¶4.

24. *Hood*, 2016 IL 118581, ¶6.

25. *Id*. at ¶11.

26. *Thomas*, 2016-NMSC-024, ¶ 27.

27. *Hood*, 2016 IL 118581, ¶11.

28. *Id*. at ¶13.

29. *People v. Hood*, 2014 IL App (1st) 113534, ¶26.

30. Citing, *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

31. *Hood*, 2016 IL 118581, ¶30.

32. *Id*. at ¶18.

33. *Id*. at ¶34.

34. *Hood*, 2016 IL 118581, ¶21.

35.*Id*. at ¶ 34.

36.*United States v. West*, 2010 U.S. Dist. LEXIS 85832, at ¶15 (N.D. Ill. Aug 18, 2010).

Read any good books lately?

BY JUSTICE MICHAEL B. HYMAN, CHAIR

I asked the members of the Bench and Bar Section Council to choose one book with a legal bent that they would recommend every lawyer read. Among the suggestions are classics, novels, unknown gems, biographies, and plays. All of the books, though, will make you think, and perhaps re-think.

You might have read some of them, but that means there are many that you have not yet read or even heard of. I hope you will decide to pick up and try a few of these recommendations. As Henry David Thoreau wrote, "Read the best books first or you may not have a chance to read them at all."

Here are the responses:

- *A Civil Action* by Jonathan Harr (Law)
- *Alexander Hamilton* by Ron Chernow (Biography)
- *A Man for All Seasons* by Robert Bolt (Play)
- *Anatomy of a Murder* by Robert Traver (Mystery)
- *A Walk in the Woods* by Bill Bryson (Travel)
- *Breaking Through Bias: Communication Techniques for Women to Succeed at Work* by Andrea S. Kramer and Alton B. Harris (Business)
- *How to Win Friends and Influence People* by Dale Carnegie (Self-help)
- Illinois Code of Professional Responsibility (Law)
- *Just Mercy* by Bryan Stevenson (Memoir)
- *Kick-Ass* by Mark Millar and John Romita (Series of Graphic Novels)
- *May It Please the Court: The Most Significant Oral Arguments Made Before the Supreme Court Since 1955* by Peter H. Irons and Stephanie Guitton (Law)
- *Parting the Waters: America in the King Years 1954-63* by Taylor Branch (History)
- *Presumed Innocent* by Scott Turow (Novel)
- *Prosser on Torts* by William Lloyd Prosser (Law)
- *Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality* by Richard Kluger (History)
- *The Art of Racing in the Rain* by Garth Stein (Novel)
- *The Black Banners: The Inside Story of 9/11 and the War Against al-Qaeda* by Ali Soufan (History)
- *The Catcher in the Rye* by J. D. Salinger (Novel)
- *The Diversity Training Activity Book: 50 Activities for Promoting Communication and Understanding at Work* by Jonamay Lambert and Selma Myers (Business)
- *The Foreign Correspondent*, by Alan Furst (Mystery)
- *The Future of the Professions: How Technology Will Transform the Work of Human Experts* by Richard Susskind and Daniel Susskind (Business)
- *The Great Debate: Edmund Burke, Thomas Paine, and the Birth of the Right and Left*, Yuval Levin (Politics)
- *Thinking, Fast and Slow* by Daniel Kahneman (Psychology)
- *To Kill a Mockingbird* by Harper Lee (Novel)
- *Tuesdays with Morrie* by Mitch Albom (Biography)
- *Twelve Angry Men* by Reginald Rose (Play)
- *Unbroken: A World War II Story of Survival, Resilience, and Redemption* by Laura Hillenbrand (Biography)

Now go and get some rewarding reading done! ■

Recent appointments and retirements

1. Pursuant to its Constitutional authority, the Supreme Court has appointed the following to be Circuit Judge:
   - Randall B. Rosenbaum, 6th Circuit, October 3, 2016
   - Hon. Diana L. Embil, Cook County Circuit, 15th Subcircuit, October 13, 2016
   - Bruce C. Beal, 9th Circuit, October 17, 2016

2. The Circuit Judges have appointed the following to be Associate Judge:
   - Clayton L. Lindsey, 15th Circuit, October 3, 2016

3. The following judges have retired:
   - Hon. Mark J. Ballard, Associate Judge, Cook County Circuit, October 2, 2016
   - Hon. Eileen Mary Brewer, Cook County Circuit, October 11, 2016
   - Hon. Daniel J. Bute, Associate Judge, 13th Circuit, October 28, 2016 ■

It's Campaign Season for the 2017 Election

Run for ISBA Office—

Positions Available:
- **3rd VP**
- **BOG:**
  - **Cook (2)**
  - Under Age 37 Cook County (2)
  - Under Age 37 Outside Cook County (1)
- **Assembly:**
  - **Cook (21)**

The 2017 ISBA Notice of Election (http://tinyurl.com/jabs3xk) is now available. Find out more at www.isba.org/elections.

Candidate filing begins January 3, 2017 and ends January 31, 2017.

Upcoming CLE programs

TO REGISTER, GO TO WWW.ISBA.ORG/CLE OR CALL THE ISBA REGISTRAR AT 800-252-8908 OR 217-525-1760.

December

Thursday, 12-01-2016- Webinar— Using a Blawg to Build and Enhance Your Professional Profile and Your Practice. Presented by LOME. 12:00-1:00 p.m.

Thursday, 12-01-2016—Webcast— Written Discovery: Knowing What to Ask for and How to Get It—Part 1. Presented by Labor and Employment. 1:00 p.m. – 3:00 p.m.

Friday, 12-02-2016—Chicago, ISBA Regional Office and Live Webcast—Decedent's Trust and Estate Administration. Presented by Trusts and Estates. 9:00 a.m. – 5:00 p.m.

Friday, 12-09-16- Chicago, Sheraton—Midyear Meeting—Protecting Our Courts: Why Privacy and Security are Important to Our System of Jurisprudence. Presented by the ISBA and the Illinois Judges Association (IJA). 9:00-10:15 a.m.

Friday, 12-09-16- Chicago, Sheraton— Midyear Meeting. Invisible Bias Creating Racial Disparities. Presented by the ISBA and the Illinois Judges Association (IJA). 10:30-11:45 a.m.

Friday, 12-09-16- Chicago, Sheraton— Midyear Meeting. History on Trial: The Alton School Cases (Tentative Title). Presented by the ISBA; co-sponsored by the Illinois Supreme Court Historical Preservation Commission. 1:15-2:45 p.m.

Friday, 12-09-16- Chicago, Sheraton—Midyear Meeting—Lessons in Professional Responsibility: From the Law Practice of Abraham Lincoln (Tentative Title). Presented by the ISBA. 3:00 p.m. - 4:30 p.m.

Tuesday, 12-13-16- Webinar—Practice Toolbox Series. Microsoft Word Power Hour. 12:00 – 1:00 p.m.

Wednesday, 12-14-16- Webcast- HOT TOPIC—Traffic Case Law and Legislative Update 2016 – Changes Which Affect Your Practice and Clients. Presented by Traffic Law. 12:00 p.m. – 1:00 p.m.

Thursday, 12-15-16- Webcast—Senate Bill 100: Sweeping Changes to Student Discipline in Illinois in 2016. Presented by Education Law. 10 a.m. - 12 p.m.

January

Tuesday, 01-10-17- Webinar— Technology and Business Planning for a Law Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Thursday, 01-12-17- Live Webcast— Immigration Law Update Spring 2017—Changes which Affect Your Practice and Clients. Presented by International and Immigration. 12:00- 1:30 p.m.

Friday, 01-13-17- Chicago, ISBA Regional Office—Implicit Bias in the Criminal Justice System. Presented by Criminal Justice. 9:00 a.m. – 4:45 p.m.

Wednesday, 01-18-17- Live Webcast— The Nuts and Bolts of Drafting Non-Disclosure Agreements: Tips for the Practicing Lawyer. Presented by Business & Securities. 10:00 a.m. – 11:00 a.m.

Wednesday, 01-18-17—Live Webcast—TITLE TBD. Presented by Labor and Employment. 12:00 p.m. – 1:30 p.m.

Tuesday, 01-24-17- Webinar—How to Stop the 8 Things Killing Your Law Firm. Practice Toolbox Series. 12:00 -1:00 p.m.

Wednesday, 01-25-17- Live Webcast— Helping Immigrant Children- Special Immigrant Juveniles. Presented by International and Immigration; co-sponsored by Bench and Bar. 11:00 a.m. – 12:00 p.m.

Thursday, 01-26-17—Chicago, ISBA Regional Office—Family Law Table Clinic Series—Session 3. Presented by Family Law.

Friday, 01-27-17- Chicago, ISBA Regional Office & Live Webcast—Recent Developments in State and Local Tax—Spring 2017. Presented by SALT. 8:30 a.m. – 12:45 p.m.

February

Wednesday, 02-01-17—Chicago, ISBA Regional Office—Cybersecurity: Protecting Your Clients and Your Firm. Presented by Business Advice and Financial Planning; co-sponsored by IP (tentative). 9:00 a.m. – 5:00 p.m. Lunch: on your own.

Friday, 02-03-17- Springfield, Illinois Department of Agriculture—Hot Topics in Agricultural Law- 2017. Sponsored by Ag Law. All Day.

Monday, 02-13 to Friday, 03-17—Chicago, ISBA Regional Office—40 Hour Mediation/Arbitration Training. Master Series, presented by the ISBA—WILL NOT BE ARCHIVED. 8:30 -5:45 daily.

Tuesday, 02-14-17- Webinar— Hardware & Software: You Bought It, You've Got It… Now Use It! Practice Toolbox Series. 12:00 -1:00 p.m.

Monday, 02-20-2017- Chicago, ISBA Regional Office & Fairview Heights—Workers' Compensation Update – Spring 2017. Presented by Workers' Compensation. 9:00 a.m. – 4:00 p.m.

Friday, 02-24-2017- Chicago, ISBA Regional Office— Wrongful Death, Survival, and Catastrophic Injury Cases. Presented by Tort Law. 8:45 a.m. – 1:00 p.m. ■

ISBA's *New* Website for

NEW LAWYERS

With Content & Video Curated for Lawyers in Their First 5 Years of Practice

- ✓ Articles distilled into 5 quick takeaways
- ✓ Job listings from across the state
- ✓ YLD news, photos and events
- ✓ Tool to determine MCLE compliance deadlines
- ✓ Short videos covering tech tips and practice points
- ✓ And more!

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