



Member of the Board of Education, Evergreen Park School District 124, 2007 (lost)

**Principal business, educational, professional and civic activities of the past ten years.**

From April, 2007 to the present, I have served as an Associate Judge of the Circuit Court of Cook County. I am currently assigned to the Chancery Division, Mortgage Foreclosure/Mechanics Lien Section, and have been so assigned virtually my entire time on the bench.

From February, 1998 to April, 2007, I was an attorney with the law firm of Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd. I was a shareholder (equity partner) in the firm during the last few years of my tenure there, and served as head of the firm's Local Government Practice Group and the Technology Committee. Please see my attached resume for details.

**What subjects have you studied and what experience have you had which will be most helpful to you in the office you seek?**

As an attorney in private practice, I had the distinction of arguing six cases before the Illinois Supreme Court and over twenty in the various Illinois and federal appellate courts. As a sitting judge, I have authored over 100 written opinions and published them on Westlaw for reference by attorneys and litigants. My judicial experience handling complex commercial cases and my legal experience handling local government, election, school law and general civil cases provide an excellent background for a position on the appellate court.

My studies of political science, economics, and the law will assist me in dealing with issues which will come before me as an appellate court judge. Finally, my work in governmental administration, working hand-in-hand with community college presidents, city/village managers and others will assist me in handling the administrative tasks assigned to me as an appellate court judge.

**Please detail your prior political activity, if any. Give positions held, dates, organizational memberships, role you played in political campaigns.**

Since 2007, I have been a judge and therefore unable to participate actively in political campaigns other than through occasionally donating and attending fundraisers. I was an IVI-IPO member from 1979 to 2007, when I became a judge and determined that continuing my membership might technically violate ethics rules. I served as an alternate state board member during the mid 1980's and also briefly as the Mid-North Chapter Chair. Most of my grassroots campaign work was during the years before my election law practice blossomed. The list below is hardly all-inclusive. After that time, my involvement with the political process was largely devoted to providing legal counsel to candidates such as Toni Preckwinkle, Scott Waguespack, Rey Colon, and Joe Moore, and to various referendum groups.

1998, 2002, 2006 - Silverstein, State Senator  
 1992 - Kerrey, President  
 1991 - Rubin, Moore and others, Alderman  
 1990 - Orr, County Clerk; Quinn, Treasurer; Miceli, School Supt.  
 1989 - Bloom, Mayor  
 1988 - Silverstein, State Rep; Smith, Board of Appeals, Cousin, MSD;  
 Dukakis, President; Con Con for Court Reform  
 1987 - Washington, Mayor  
 1986 - Stevenson, Governor; Walker, State Rep; Mathewson, County  
 Board Pres; Quinn, Treasurer; Quinn, County Clerk; Maglaya,  
 State Rep; Smith/Goodman, State Central Committeeman; Slavsky,  
 MSD  
 1984 - Simon, Senator; Bloom, State's Attorney  
 1980 - Greiman, State Rep; Simon, Supreme Court; Committee for  
 Representative Government; Carey, State's Attorney

**Please state any evaluation ratings you have ever received for any judicial office by any bar association. List the office and the date of the election for which the evaluation was made. Please use the following format:**

<u>Date</u>	<u>Position</u>	<u>Bar Association</u>	<u>Rating</u>
2011	Appellate	CBA	Highly Qualified
2011	Appellate	ISBA	Highly Qualified
2011	Appellate	Hellenic Bar Assoc.	Recommended
2011	Appellate	Decalogue	Qualified
2011	Appellate	Cook County Bar	Recommended
2011	Appellate	Hispanic	Qualified
2011	Appellate	Women's Bar	Recommended
2011	Circuit Judge	CBA	Highly Qualified
2009	Appellate	CBA	Qualified
2009	Circuit Judge	CBA	Qualified
2007	Associate Judge	CBA	Qualified
2007	Associate Judge	CCL	Well Qualified
2007	Associate Judge	ISBA	Qualified
2007	Associate Judge	LGBA	Highly Recommended
2007	Associate Judge	Decalogue Society	Highly Recommended
2007	Associate Judge	Black Women Lawyers	Recommended
2007	Associate Judge	Cook County Bar	Recommended
2007	Associate Judge	Puerto Rican Bar Assoc.	Highly Recommended
2007	Associate Judge	Hellenic Bar Assoc.	Recommended
2007	Associate Judge	Asian American Bar	Qualified
1997	Associate Judge	CBA	Qualified

Note: I am still awaiting my 2011 appellate court evaluation results from many of the Bar Alliance members.

**1. What do you believe are the major strengths and weaknesses of the Appellate Court? Would you change the manner in which the Appellate Court functions?**

Because the Illinois appellate court sits in panels of three judges, their collaboration, discussion and due consideration of the cases usually leads to the right result. The appellate court decision-making process benefits from informed deliberation which is often impossible to obtain in busy trial courts.

I see the need, however, for many changes in the appellate court. First and foremost, the court needs to be more transparent. If one compares the information available on-line for the appellate court with that available for the local federal appellate court, the Seventh Circuit Court of Appeals, the contrast is striking. In the federal system, litigant's briefs and docket entries are posted online, as well as non-final orders such as those setting briefing schedules and disposing of emergency motions. In the Illinois appellate court, no information regarding case status is available until the court issues a final opinion. As a trial judge, I often want to know about the status of a pending appellate case that may affect similar ones pending before me. For instance, if I knew that the appellate court had already heard final arguments on a particular case and that a ruling on it would be forthcoming, I might withhold ruling on a similar case until I received guidance from the higher court. Similarly, the federal appellate court has a host of resources on-line regarding how to properly prepare an appellate brief and prepare a case for hearing by the court. The Illinois appellate court also needs to take steps to facilitate the filing of briefs electronically.

In the downstate appellate courts, a case can be assigned to any random panel of three judges. In Chicago, however, a case is first assigned to a division of four judges, and then assigned to a random panel of three of those judges. This means that the same group of judges hears a docket of cases together for at least a year until the next rotation starts. This system creates some efficiencies of communication and scheduling, but it also can lead to stagnation. Interacting with more than just three other colleagues might widen a judge's horizons expose him to viewpoints other than those of his assigned group. I have an open mind regarding possible changes in this system.

Realizing that many appeals are easily resolved by reviewing the written briefs and records, I believe that the appellate court should schedule oral arguments more frequently. As a sitting trial court judge, I often have questions of the attorneys that are best resolved on a face-to-face basis.

**2. Please discuss the Appellate Court's practice of assigning each case prior to oral argument to one member of the panel to write the opinion.**

In a dissenting opinion he wrote in the case of *Reliable Fire Equip Co. v. Arredondo*, Justice Jack O'Malley criticized the Second District Appellate Court's practice of pre-assigning the authorship of opinions to a particular judge before the panel as a whole had made a decision on the case. The three judges on the panel in that case each adopted a different analysis and result. Two judges voted to affirm the lower court, but for different reasons. O'Malley noted that, in such a case, allowing a judge with a minority opinion to write the "majority" opinion created uncertainty and confusion in the law. It encourages the other two judges to "go along" with the writer and discourages full collaboration and participation by all three judges. He also noted that the American Bar Association "cautions against draft decisions written by a judge before conferencing with other members of the panel because the decision may not be a product of collegiality." I agree that the author of the court's opinion should not be selected until after the case has been argued and the three judges have met to discuss their respective viewpoints.

### **3. What would be the reasons for not publishing an opinion?**

Many attorneys and bar associations have criticized the court's practice of not publishing all of its decisions in print and not making all of them precedential. The latter are called "Rule 23" opinions. Some have expressed the fear that the court was using Rule 23 opinions to hide embarrassing reversals of certain trial court judges. Rule 23 opinions were only available by making a request from the court clerk for an individual copy or at the Chicago Bar Association library, which collected them in paper form. Through the leadership of Chief Justice Kilbride and the direction of the Supreme Court, the court now publishes all of its precedential opinions and Rule 23 opinions on the Internet. (I note that the same set of changes also eliminated the need for lawyers to buy costly books, because they can now cite cases in their written arguments by their Internet number.) While the Rule 23 opinions are not precedential, they are now readily available for all to read and use. Rule 23 does provide an option for litigants to ask that the court make a non-precedential opinion a precedential one, and lawyers should use that option more than they presently do. As a trial court judge, I often see Rule 23 opinions involving recurring issues presented in cases pending before me. While the analysis in the Rule 23 opinion may be helpful in resolving my case, I cannot cite it as precedent.

Some have also taken the position that all rulings of the appellate court should be "published" and therefore precedential. I do not necessarily agree, as there is a large number of appeals that involve only stale issues resolved in hundreds of prior cases, or which are utterly lacking in merit. Lawyers and litigants rightly place trust in courts' adherence to precedent, and cluttering law books with such cases would only make the practice of law more expensive and uncertain. Courts with a discretionary docket, such as the United States Supreme Court and Illinois Supreme Court, pick the cases they want to hear. In so doing, they select only cases that warrant publication of a precedential opinion. Courts with mandatory dockets, such as the Illinois Appellate Court, must take every case that is filed regardless of whether it has merit or involves any important legal issues. Many of these are brought by self-represented parties who do not understand that the appellate court cannot, for instance, hear new evidence or retry the case they lost in the trial court. The appellate court should maintain the discretion to dispose of those cases

summarily and expeditiously.

**4. What is the role of dissent in an intermediate appellate court? Under what conditions would you write a dissenting or concurring opinion?**

Dissent has an important role in intermediate courts. A dissenting judge is sending a strong signal to the next higher court that reasonable minds differ regarding the case and that the higher court could consider accepting a further appeal. Every law student knows that pioneering dissents by pioneering United States Supreme Court judges, particularly in the field of civil rights, inspired future judges and established a framework for majority opinions later on. The dissenting opinion also vindicates the position of the losing lawyers and clients, who then know their arguments were heard and duly considered.

Appellate court judges have been criticized for not issuing dissents when they disagree with their colleagues. They do so, apparently, to ensure greater collegiality with their colleagues. Collegiality is important, but so is development of the law. Dissents are part of the appellate process and should be expected to occur with some frequency. A good judge can write them in a respectful tone to ensure the continued good working relationships with his colleagues. Concurring opinions are somewhat rarer, but the same principles apply. A judge might agree with the result, but do so for completely different reasons than a colleague. Just as is the case with dissents, a concurring opinion helps develop the law and signals a higher court that a different path might be warranted.

**5. What procedural changes, if any, do you think would be helpful to ensure that Appellate Court decisions in child custody disputes are made effectively and promptly?**

Illinois Supreme Court Rule 311, as amended in 2010, provides that appeals of child custody disputes must be expedited and resolved in no more than about five months. The amended rules make a final determination of custody appealable as a matter of right regardless of other issues that are remaining. They were a work product of the Supreme Court's Special Committee on Child Custody Issues and implemented by Chief Justice Fitzgerald shortly before he retired. The rules also state that these appeals must be flagged when they are filed so that the court can devote immediate attention to them. Because this procedure is relatively new, I would confer with my colleagues and affected interest groups regarding whether it is an effective solution before suggesting any further changes.

**6. The Lockstep Doctrine that the protections of the Illinois Constitution's Bill of Rights must be interpreted in lockstep with the U.S. Supreme Court's interpretation of parallel provisions of the Federal Bill of Rights. Please comment.**

The 1970 Illinois constitution was the product of a convention populated by some of Illinois' most distinguished political leaders. Its work has survived the test of time and has been a model which other jurisdictions have emulated. In particular, the Bill of Rights of the Illinois

constitution contains explicit rights not listed in the United States constitution, such as a right to privacy. In her leading treatise on the Illinois constitution, Professor Ann Lousin notes that Illinois courts have drifted toward a “limited lockstep” approach under which the Illinois courts will usually determine the federal issue first. This approach is most often used when the two constitutions contain identical provisions. If the litigant prevails on the federal claim, the court does not address the state claim. However, if the litigant loses the federal claim, the court will examine the state constitution to determine if applying it creates a different result. She explains that some believe Illinois courts should do the opposite – apply the presumably more expansive state constitutional protections first. Under the Illinois Supreme Court *Caballes* case, when an Illinois court construes a provision unique to the to the Illinois constitution, it does not follow the lockstep approach. The *Caballes* court noted: “It is clear that it is an overstatement to describe our approach as being in strict lockstep with the Supreme Court.”

As a sitting judge, I cannot comment on how I would resolve a particular case involving both federal and state constitutional protections, other than to say the court has an obligation to review both. The Illinois constitutional provision may well provide greater protections than its federal counterpart even though the wording is the same. The scope of the Illinois constitution’s Bill of Rights has been a topic of particular interest to me. As an attorney, I won the IVI-IPO “Legal Eagle” award for, in part, writing a *pro bono amicus* brief in the case of *People v. DiGuida*, a case involving the right to circulate petitions in a shopping mall, in which I argued that the Illinois Supreme Court should not be bound by the lockstep doctrine. I also argued on behalf of voters in *Small v. Kusper*, another *pro bono* case, that the Illinois constitution’s explicit right to privacy guaranteed their ability to vote in primary elections without publicly declaring their political party affiliation.

**7. What is the appropriate role of economic analysis, and particularly cost benefit analysis, in appellate jurisprudence?**

The primary role of an Illinois appellate court judge is to apply state, local or federal statutory law and the precedents established by other courts to the facts of the pending case. Because Illinois has been a state for almost 200 years, precedents have been established in virtually every field of law and any cases of first impression involve interpretation of a new statute rather than establishment of a “rule of law” governing, say, contracts or torts. Federal appellate courts have the opportunity to apply economic theories in fields such as securities law which seldom come before the Illinois appellate court. In so doing, the judges use economic analysis to predict the effects of alternative legal rules, and then determine their ruling based on that analysis. This methodology has a very limited application to the types of cases the Illinois appellate court hears, and it may not sufficiently address the primary concerns of implementing legislative intent, civil rights, and the overall need for a just result.

**8. What are the pros and cons of an elected, an appointed, or a hybrid system for the judiciary? How might the Illinois courts benefit or suffer from a change?**

Illinois appellate court judges do not rule on how judges are selected. The Illinois constitution provides that most judges in Illinois are elected. Both elected and appointed systems leave open the possibility that unqualified persons can become judges. Because Cook County is so large and has over 400 judges, it is impossible for voters to become familiar with the records and qualifications of the judges on the ballot. This results in some unqualified candidates winning elections. In downstate areas, the opposite might be true because most persons know who the few local judges are. Appointed systems will necessarily adopt some sort of criteria to screen out the least-qualified candidates. As a sitting judge, I have been favorably impressed with the dedication, skill, and knowledge of my colleagues, whether they were elected or appointed.

**9. How has mandatory sentencing affected the criminal justice system in Illinois?**

My service in criminal courts was somewhat limited, so I cannot comment on how mandatory sentencing particularly affects Illinois as opposed to states in general. Mandatory sentencing has been around, in one form or another, for much longer than its current prominence in legal discussions would have one believe. For centuries, legislatures have established the punishments for particular crimes. In recent years, there has been a trend for legislatures to increase the minimum punishments for certain offenses, which limits judges' authority to use remedial procedures such as supervision, probation, and rehabilitation. Legislators enacted these laws, in part, because they perceived that judges trivialized certain crimes. Whether mandatory sentencing deters crime is a matter of debate. When a mandatory sentence is seen as disproportionate (even sometimes by prosecutors), there can be a tendency to charge an offender with additional charges to pressure him into pleading guilty to a lesser offense and avoid the peril of the mandatory sentence on the more serious offense. This practice does not necessarily help prevent crime, protect the innocent, or punish the offenders.

**10. How has automatic transfer of juveniles affected the criminal justice system in Illinois? How has it affected the recidivism rate of juveniles?**

Since I have not served in Juvenile Court, I have no direct experience regarding this question. In researching the issue to prepare my answer, I found a recent report by the Illinois Department of Human Services which found that community-based services for juvenile offenders are less costly and more effective than institutional care in correctional facilities. This result is not surprising, particularly given the recent criticism of the operation of the Cook County Juvenile Detention Center. The new Presiding Judge of the Juvenile Justice Division, Judge Michael Toomin, recently said that the primary role of his court is to "pursue the least restrictive setting without compromising public safety" and that "detention is the least preferable treatment" for most juveniles. I agree.

The Cook County Public Defender recently noted that the legislature has increased the circumstances under which minors can be prosecuted as adults. These include more serious crimes such as murder or those involving use of a weapon. Depending on the circumstances, the juvenile court judge makes a crucial decision on whether to send the juvenile to adult court. In so

doing, the judge considers the minor's history of delinquency, school records, psychological evaluations, level of participation in the offense, and testimony of those who know the juvenile. This decision has a significant impact on sentencing and the juvenile's impending life as an adult in society. Some commentators believe that moving juveniles into the adult prison environment increases their chance of committing additional crimes once released.

**11. Do you think the juvenile justice system should focus on rehabilitation or punishment? Why?**

See my answer to the above question. Sentencing of juveniles is almost exclusively the province of the trial court judges, rather than the appellate court. In a recent *Chicago Tribune* op-ed piece, Laura Nirider, co-director of the Center on Wrongful Convictions of Youth at Northwestern University School of Law, noted that due to their lack of maturity, juveniles are less able to assist in their defense than adults and are much more likely to be pressured into signing forced confessions. She also argued that when DNA evidence is available, it should be tested before transferring a juvenile to adult court. Juvenile judges must, where appropriate, use alternative sentencing such as home confinement, intensive probation, counseling and therapy.

**12. How do you account for the disproportionate number of minorities prosecuted and incarcerated? What can the courts do to correct the disparity?**

This tragic statistic is undoubtedly the product of a number of socio-economic factors which society has been too slow in addressing. Criminal courts are tasked with hearing the cases brought before them by police departments and elected prosecutors. The trial court judge's role in determining which cases should be filed is quite limited. For instance, judges determine whether is probable cause under the Fourth Amendment to detain an arrestee, and they have some role in the grand jury process. Judges in those positions must be cognizant of the constitutional protections that apply and enforce them whenever necessary and appropriate.

**13. What do you consider the important aspects of a judge's decision in handling a petition by a minor for a waiver of parental notice with the intent to have an abortion?**

The Parental Notice of Abortion Act of 1995 and its implementing Illinois Supreme Court Rule 303A have been, and still are, the subject of considerable litigation. Accordingly, I cannot comment on whether the law or rule are constitutional. The law itself requires judges considering whether to permit a judicial bypass to appoint a guardian *ad litem* to represent the pregnant minor, to advise her of her right to counsel, and to appoint counsel to represent her on request. The law requires the court to rule within 48 hours. The law permits courts to waive parental notice if the court finds by a preponderance of the evidence either: (1) that the minor or incompetent person is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, or (2) that notification would not be in the best interests of the minor or incompetent person. Both of these interests are equally and critically important. The law also requires the court to make written and specific factual findings and legal conclusions supporting

its decision. Obviously, a court faced with a parental notice waiver case must devote its immediate and full attention to the case. The court should appoint extremely well-qualified attorneys and guardians who can respond immediately, devote their full attention to the case, and promptly advise the court if the petitioner is in danger for her own personal safety, or may be a victim of abuse.

**14. What options available to a judge under Illinois law do you consider most effective in sentencing perpetrators of hate crimes? Please explain your choices.**

Under the Illinois Criminal Code, a judge sentencing a hate crime defendant shall order restitution paid to the victim, or impose a fine up to \$1,000. In addition, any order of probation or conditional discharge entered following a conviction or an adjudication of delinquency shall include a condition that the offender perform public or community service of no less than 200 hours. The law allows the court to impose any other condition of probation or conditional discharge. Where the hate crime involves damage to property, restitution helps make the victim whole and may be more effective than fining the defendant. As of January 1, 2012, the law requires the court to require offenders who caused damage to religious property to enroll in an educational program discouraging hate crimes. In cases involving non-religious hate crimes, a judge could require the offender to enroll in a similar educational program and/or treatment aimed at ensuring that his animus toward the affected group is remediated.