

*Circuit Conference Memorial for Terry Evans*

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This past year has been a difficult one for our court. Terry Evans's sudden death last summer hit us all very hard, and I know it must have come as a great shock to all of you as well. He was such a vital and vibrant member of our court—admired and loved by everyone who appeared before him, worked with him, or had the good fortune to be in his wide circle of friends. For sixteen years as a district judge in Milwaukee and another sixteen on the Seventh Circuit, Terry shared his wit, his wisdom, and his warmth, both on the bench and off. He was in fine form at our circuit conference in Milwaukee last year, introducing a panel discussion with his usual humor and quirky finesse—including, as you probably recall, sharing some amusing little factoid about every member of his panel. He saved his most irreverent introduction for last, describing Dick Posner as a true genius, but also quoting from a famous magazine article about Dick entitled, *"How did a judge with such subversive ideas become a leading influence on American legal opinion?"* The article said (and Terry quoted) that Judge Posner "seem[s] to hover rather than stand; he ha[s] about him the distant, omniscient, ectoplasmic air of the butler in a haunted house." It was vintage Terry Evans, and we loved it. We did not know then how sick he was; probably he didn't either. Within a few months he was gone, far too soon.

Terry was raised by his mother in a rented upper flat in Riverwest, a working-class

neighborhood in Milwaukee. He was a track star at Riverside High School and attended Marquette University on a track scholarship. He married his college sweetheart, Joan, and then taught history at North Division High School. He was pretty much an accidental law student; he took the entrance exam because Joan's brother was doing so. But he excelled at Marquette Law School and went on to clerk for a state supreme court justice. He returned to Milwaukee and joined the District Attorney's office. Three children followed—Kelly, Christine, and David—and he moved to private practice. In 1974, at just 34 years old, he was appointed to the Milwaukee County Circuit Court. Not quite six years later, he was confirmed to the federal bench in Eastern Wisconsin. Thus began a remarkable and inspiring judicial career that touched countless lives and made the law and our legal community better.

Most of you know Terry the appellate judge, but some of us were privileged to practice before him in the district court. He was a superb trial judge. We like to think of judging as dispassionate and detached, but in Terry's hands it was a decidedly human endeavor. He was genuinely interested in *the people* in his courtroom as well as their cases. He deeply understood Milwaukee and Wisconsin—the people, traditions, and institutions of our city and state, and (of course) our sports franchises. His pragmatic judgment and incisive wit made him a favorite of everyone who regularly appeared before him.

At some point while he was a district-court judge, Terry started the courthouse football pool, a tradition he continued after he went on the Seventh Circuit. He called

himself “The Commissioner,” and every Tuesday during the season, he issued a “Commissioner’s Memo.” In addition to the weekly standings, it contained hilarious little nuggets about that week’s winners and losers. He usually had some choice words about Bill Callahan, one of our wonderful magistrate judges who has the misfortune of being a Chicago Bears fan. Everybody anxiously awaited the arrival of the Commissioner’s Memo every Tuesday during the fall. As the Commissioner, Terry was the final authority—the court of last resort. At the beginning of the 2010 season, he explained the rules for the pool and how the championship round would work. He said: “All weekly winners, plus 6 discretionary picks by the Commissioner, will qualify to compete for the league championship. As usual, the 6 discretionary picks will be based on the subjective judgment of the Commissioner—but things like good manners, nice penmanship, and a willingness to suck up to him will be given strong consideration.”

Terry arrived at the Seventh Circuit in 1995 and brought with him his skill as a storyteller and his capacity for writing clear, pragmatic opinions. We all know how he loved to pepper his opinions with sports trivia, music lyrics, and movie references. He would get the legal job done, too, but he did it with such straightforward reasoning and vivid writing that he made the law accessible to everyone. One longtime newspaper columnist in Milwaukee described Terry’s opinions this way: They were “not at all pretentious. He didn’t try to solve all the world’s ills in one fell sentence. He got to the nub of things, and did it with rare intelligence and wit, . . . [and he] made them relevant to the

masses.”

I don’t have time here to talk about Terry’s greatest hits, but one opinion deserves special mention. *Olinger v. United States Golf Association* is a Terry Evans classic that involved a claim by a disabled professional golfer for a golf-cart accommodation under the ADA. After canvassing the facts and the law in the style of a *Sports Illustrated* column, Terry came down on the side of the USGA and rejected the golfer’s claim. Here is his conclusion:

The focus of our opinion has been on one question: *Must* the USGA allow Ford Olinger to compete while riding in a golf cart? The answer is ‘no.’ The question we have not addressed is whether the USGA *should* give seriously disabled, but otherwise qualified, golfers a chance to compete. Compared to most people who play golf, Olinger’s skill level is beyond comprehension. And without question, most players would prefer to walk while playing competitive, championship-caliber golf. Surely a player like Olinger would gladly trade in his cart if he could walk a golf course without pain. But the decision on whether the rules of the game should be adjusted to accommodate him is best left to those who hold the future of golf in trust.

The Supreme Court would later disagree in the more famous *Casey Martin* case, affirming a decision of the Ninth Circuit that was issued at about the same time as Terry’s but had come out the other way. Before the Court granted cert in the *Martin* case, a friend of Terry’s wrote to him suggesting that the conflict between the circuits could be worked out in a game of golf, 36 holes, one circuit’s judges riding and one circuit’s judges walking. Terry wrote back and nixed the idea:

I think your idea of a match between the Ninth and the Seventh Circuits would be a disaster. We have 11 judges on the Seventh Circuit. Of the 11, only 2 play golf and I’m better than the other guy, so you can see our team would sink. So I’m afraid, without even knowing anything about the abilities of the judges on the Ninth Circuit, they would wax us in a tournament.

The newspaper columnist was right: Terry's opinions were notable for their clarity, clean writing, attention to factual detail, and often their humor. He was always generous in his praise for trial judges when he thought they had done a good job and was never harsh when reversing and remanding. As he had been in the trial court, he was generous with the lawyers, too. If something was lacking, he would say so, but with such reasonableness and civility that it made the medicine easier to take. Terry's opinions are his lasting legacy to the bench and bar.

He has a tremendous human legacy as well. First and foremost, his family; his life was very much centered around them. He had many good friends; they shared his love of golf, the Green Bay Packers, and much else, too. He nurtured 46 law clerks; I was blessed to be one of them. Terry's practical wisdom and occasional irreverence were uplifting and infectious, and made an enormous contribution to consensus and collegiality on our court. I know those qualities endeared him to all of you in the federal court family as well. And he loved you right back.

After Terry died, I came into possession of a couple of files of his papers. In them I found some notes from a series of speeches he gave a year or two after he was elevated to the Seventh Circuit. The notes are pure Terry: It's a gleeful, free-association riff, but with a story to tell and a point to make. I'd like to close by sharing just a few of his notes with you because they illustrate how much he enjoyed his work on the bench and how much he loved working with all of you. He begins by describing his transition to the court of appeals

and the differences between his life as an appellate judge compared to the trial bench. One of the differences, he noted, was that as a trial judge, he had daily contact with lawyers—time to chitchat and get to know them—but on the appellate court, there was not much contact with lawyers. Here’s the next passage in his notes: He said, “This might be confessing to a character flaw, but I *really* like lawyers.” His next notation is this: “I MISS [the] daily contact with lawyers.” The word “miss” is in all capital letters to make sure he emphasized it in his speech.

On the next page, he goes on to describe his new job on the court of appeals, and this too is in all caps: His notes say, “I ABSOLUTELY LOVE IT.” He describes his new colleagues as an “an extraordinary group of judges.” He then has some fun at their expense. He says that Dick Posner is “absolutely brilliant,” but asks “why is he writing a book about sex from an economic point of view?” He suggests that Dick would do well to drive a cab or tend bar for a year. He thinks that being a law clerk to Frank Easterbrook “must be like being a Maytag repairman . . . you have nothing to do. The guy must have 5,000 cases in cold storage in his brain.” He calls Bill Bauer “the Sage of DuPage” and says he “can cut through the bull faster than any judge I know.” He says that Joel Flaum has been his “best Chicago judge friend since 1979,” but of course “I’ve got to respect Joel because knows more about baseball than I do,” so “in addition to his considerable judicial skills, he would be a great commissioner of baseball.” He describes Mike Kanne as “a great common-sense judge.” And he says this about Ilana Rovner: “I doubt there’s another judge

in America who works harder or has more compassion for the people involved in her cases.” There’s more, but you get the idea.

Terry Evans filled the lives of his family and friends with joy. He filled our courthouse and this legal community with a sense of shared purpose. He filled our court with his practical wisdom and wit. And he filled the casebooks with lucid opinions, memorably written. Terry’s buoyant approach to life and his humane approach to the law inspired so many in our community. His legal and human legacies will endure. He is very deeply missed.