

**MEMORIAL SERVICE FOR THE HONORABLE WILBUR F. PELL, JR.**

January 12, 2001

1:30 p.m.

Presiding Judge: Hon. Frank H. Easterbrook

**Hon. Frank H. Easterbrook:** The Court of Appeals is sitting *en banc* this afternoon in honor of our colleague, Wilbur F. Pell, Jr. We are here to share with you the memories he left behind. Almost all the members of this court are here.

Chief Judge Flaum was called away at the last minute because of a death in his own family. Judge Eschbach is not in good health and was not able to attend today. Judge Manion is away performing judicial business at a meeting of the Judicial Conference Committee. The entire rest of the court is here today.

There are many dignitaries in the audience, but one I especially want to recognize and I will hold off on the rest, is Geri Swygert, the widow of our colleague Luther M. Swygert. For the rest of the introductions of those who are here today, to introduce the family and speak on behalf of the family, I now turn to Judge Pell's son, Wilbur F. Pell III, known to all as Bill.

**Wilbur F. Pell III:** This is going to be difficult. Good afternoon, I am Wilbur F. Pell III, a member of the bar of this court. We have many *amicus curiae* with us this afternoon and I would like to start by recognizing just one of them – Marge Murphy. Marge has come in from retirement one more time. Marge was Dad's Administrative Assistant almost his entire tenure on the court and without her assistance I'm certain he would not have been the judge we are honoring today.

Also with me this afternoon are my wife, Carol Channell Pell, my son, Nathaniel Lane Pell, additionally my niece, Melissa Pell McQueen and her family, my brother, Charles Chase Pell and his wife of thirty one years, Evangeline Brady Pell.

It was just thirty one years ago, upon his return from Chuck and Vonnee's wedding that my father received the call that changed all our of lives. The call – totally unexpected and totally out of the blue – was to ask whether he would be willing to become nominated to become a member of this court. Thirty years ago we hadn't heard of nanoseconds, but I believe that would be an accurate representation of how long it took him for an affirmative reply.

Dad was fifty-four and in a small town Indiana practice. He had attended Harvard Law School and to his eternal disappointment – at a time when Law Review was purely determined by class standing – he just missed. Dad loved to write and he loved the law.

At fifty-four he had a statewide reputation as a trial attorney. He had been president of the Indiana State Bar Association and was a community leader and a past director of Rotary International. There was nothing more for him to accomplish in Shelbyville. This opportunity was presented to him. Dad thoroughly enjoyed and relished his service on the court and nothing saddened him more than when it came time for him to stop sitting. We appreciate this opportunity to be here today and the tribute to the jurist that he was.

**Hon. Frank H. Easterbrook:** Thank you very much. We'll hear now from Richard Darst, the President of the Seventh Circuit Bar Association.

**Mr. Richard L. Darst:** Thank you, Judge Easterbrook. Members of the court, family members, friends. Lawyers from Indiana, Illinois and Wisconsin remember Judge Pell for his intelligence and his friendliness, both qualities which we greatly appreciated. Judge Pell practiced, as Bill said, in Shelbyville, Indiana, and his practice grew from the county practice to the practice that covered cases from Indianapolis. Lawyers from Indianapolis would race to retain Judge Pell as their attorney in Shelbyville to try cases with them which were venued from Indianapolis to Shelbyville.

Judge Pell progressed through the Bar Association ranks to be President of the Indiana State Bar Association – which we lawyers are very proud of – and he was also a member of the American, Federal and Seventh Circuit Bar Associations, and the American Bar Foundation. He was past President of the Legal Club of Chicago, and the Law Club of Chicago. He also maintained contacts with Shelby County and served on many boards there. As Bill said, he was an active member in the Rotary and served both in Indiana and in Illinois, and at the international office.

I will read to you what one of the older lawyers in the bar wrote for me to read. I think it's fitting that I attribute it to him and to all the other lawyers who knew Judge Pell better than I did. Those lawyers have told me that, coming as he did from a practitioner bar, Judge Pell brought to the Court of Appeals an understanding of the role and of the efforts and the practical problems of the lawyers appearing before it. His courtesy and common sense approach contributed much to the orderly administration of justice at the appellate level. Judge Pell's genuine regard for his fellow jurists on the Court of Appeals was reciprocated in full measure by the other judges. His death on September 25, 2000, removed from the galaxy of the Court of Appeals for the Seventh Circuit one who brought fine ability and great credit to the court. He served it faithfully and well, and he will be remembered by the bench and the bar as a dedicated judge whose service was in keeping with the highest traditions of our judicial system.

Judge Pell was wise, he rendered justice, and he was a friend. We could not ask more from him. Thank you, Judge Pell. As for all of us, may our lives be enlightened by his life and our memory of him.

**Hon. Frank H. Easterbrook:** Thank you very much. Five of Judge Pell's colleagues now will offer their own memories on behalf of themselves and on behalf of the Court. You know them all so I won't introduce them, but in order they are Judge Fairchild, Judge Bauer, Judge Harlington Wood, Judge Cudahy and Judge Rovner. And without ado, Tom Fairchild.



**Hon. Thomas E. Fairchild:** I can go back a few years – February 1969 – our former Chief Judge John Hastings took senior status creating an Indiana vacancy. As is usual on those occasions, all the rest of us were very curious about a successor and were very much perturbed by reports that a man with more claim to partisan service than legal stature had the inside track. The vacancy continued for over a year. There was a great sigh of relief around here when we learned that someone with very solid credentials as a lawyer had won the appointment. He was Wilbur F. Pell, Jr., to whom this session is dedicated. He took his oath May 11, 1970.

Of course, we don't really ever think of Wilbur without remembering his wife Chasey, a name that is a derivative of her full name, Mary Elizabeth Chase. In conversation, Chasey often referred to Wilbur as "Pell." This nettled him at times and he would say, "Chasey, the name is Wilbur!"

Judge Hastings, who had moved to Chicago from his home in southern Indiana upon appointment, convinced Wilbur that frequent rail travel from southern Indiana was a bad idea. He said that it had probably shortened the life of Justice Sherman Minton, who had been a judge on this court. The Pells then moved to Evanston where they were excellent hosts to all of us many times over.

Wilbur was an enthusiastic member of Rotary and the move to Evanston brought him close to Rotary's Headquarters. He and Chasey traveled all over the world representing Rotary and there was a time when Wilbur considered becoming President of Rotary International. I know that he would have enjoyed that but realized that it would make too great an inroad on his work at the court. Chasey did not have court duties to impede her and she rendered great service to state and national mental health organizations.

One of their personal trips was a Caribbean cruise to Venezuela. One day at lunch we were discussing vacation plans – we happened to be going to the island of Saint Kitts. Wilbur and I figured out that their ship would be stopping for a day at Saint Kitts while we were there. Eleanor and I had the fun of meeting them at the dock in our rented car and giving them a tour of the Island. I hope I didn't scare them too often while driving on the left hand side.

Doubtless Wilbur's collections of many sorts of small items will be mentioned today. Best known to me were collections of stamps and pipes. He was an avid and excellent photographer. When he was a passenger in your car in a scenic area, it could be hazardous. He would say, "Stop! I want to get a picture of that!" I have a snapshot of him in the process of crawling through a guard rail at a state park. He had camera and one foot on the outside hoping to get a shot from a better angle.

For a long time, it was characteristic of a Pell opinion that he would use a word so unusual that it sent us all scurrying to special dictionaries. You would say to yourself, "He's at it again." In thirty years he heard a lot of oral arguments and wrote many high quality opinions.

He, Judge Walter Cummings, and I heard the appeals of the Chicago Seven cases. When a woman lawyer from the defense side rose to give a portion of the argument her name was called, and, as she approached the lectern, Wilbur said, "I didn't understand whether you are Miss or Mrs. Schwartz, or do you prefer to be called by that new term "Ms.?" She smiled back at Wilbur very sweetly and said, "Just call me counselor." That interchange produced a lot of laughter in the courtroom. Chasey and my wife Eleanor were sitting in the front row and I think Chasey was laughing the hardest of all. In that case, we reversed and granted a new trial. Real conservatives are often the stoutest defenders of individual rights. Although Wilbur agreed with Walter and me that there had been trial error, he would have reversed without remand. He felt the statute on which the Seven were prosecuted impaired First Amendment rights. He wrote an opinion saying so and he would have reversed for that reason – going farther than the majority. The newspaper stories, however, generally said that the court had overturned the verdicts and Judge Pell had dissented. Of course, there were many members of the public that disagreed with our decision and Wilbur immensely enjoyed a telegram he received from a friend applauding him for disagreeing with the judges who had decided in favor of the Chicago Seven.

If you haven't realized it already, I think of Wilbur and Chasey as wonderful friends and Wilbur as a much respected colleague.

**Hon. William J. Bauer:** I guess I'm on. Wilbur and I arrived at the Federal Courthouse within two or three months of each other in 1970. I arrived as United States Attorney when he took the oath of office here. I was interested to hear that his appointment to this court came as a great surprise to him. I can't say the same for myself or any of the other appointees. I wasn't shocked at all. I actively sought the appointment. And it's nice to know that I knew a man who was struck with lightning by accident. I had to go out and look for the electricity – like Franklin when he was holding a kite. One of the other things I heard just now – Tom Fairchild was talking about the use of obscure words – I remember on one occasion Bob Sprecher came down the hall and stuck his head in my chambers and said, "I finally got him. He's used a word that doesn't exist." So we walked down together and he said to Wilbur, "This word doesn't exist!" Wilbur said, "You have not seen the new English Version of the Oxford Dictionary."

When I first went on the district court some three and a half years later after I had been U.S. Attorney, I received a phone call from Wilbur and he said that he sent a letter out. He was doing a learned article on the doctrine of abstention and he was polling the district judges to find out what their attitude was. I had been on the court just a short space of time. I had come from the state court, and I wrote back and told him that I had been raised in the parochial school education environment and I was terribly familiar with the doctrine of abstention. I was wholeheartedly in favor of it – abstention of meat on Fridays and holy fast days and other abstentions that I would not go into in detail about. He wrote back and told me I should stick to theology and stay away from law.



He did, by the way, throw magnificent parties. He and Chasey were the great host and hostess and you met everybody in the civilized world when you went to one of his big parties. But on one occasion Wilbur, Chasey, my wife, and I and a whole bunch of us were invited up to Lake Forest to a cocktail party in honor of another federal judge, and when we arrived we found out that the family throwing the party in this beautiful mansion were members, apparently, of the United Drys. The strongest liquor to be had was ginger ale in champagne glasses and Wilbur spent most of the afternoon complaining to Chasey that she hadn't let him have a drink on the grounds that there would be sufficient at the cocktail party. About two years later, we were invited to the same place for a different party. We went, but this time both of us were armed with our own bottles.

For those of you who do not know an awful lot about his ability to write and reason, he was one of the really good and humorous people I've ever met in my life. He wrote a book sometime ago and I have a copy of it. He sent it to me. It is entitled *Obstacles Overcome*, and I had the general impression that he was talking about his Senate hearing for confirmation. For those of you who have not seen the book I have it – *Obstacles Overcome* – and on the back is a great picture of Wilbur smoking a pipe. Off the bench I only saw him without a pipe in his mouth once and that was to remove it to take a drink. He had a magnificent collection of pipes and at one time when I quit smoking I urged that upon him, and he said his investments in pipes was far too great for him to back away – he couldn't afford to quit smoking. This book, by the way, *Obstacles Overcome*, is about his father. He practiced law with his father. His father, I didn't realize until I read the book, had lost a leg in an accident when he was fourteen years old, and through his entire professional life he had a false leg. With that he hunted, he fished, he practiced law, he raised a family, sent them to colleges. He did all of those good things and Wilbur obviously admired him immensely. Wilbur made very light on any obstacles he overcame, but he did. He was a very, very, brilliant guy and a very quiet and decent man. He contributed an enormous amount to this court.

When he first came aboard, I investigated his background, and nothing pleases the heart of a prosecutor more than that a former member of the Federal Bureau of Investigation has ascended the bench. I was wrong about one thing – he never let bias or prejudice interfere with anything he did. You can read all his opinions and you'd never know that he was anything except a brilliant lawyer, a great constitutional lawyer, and a man who believed in justice wholeheartedly. I miss him now and I've missed him a long time, and I'm sure we will all miss him for a long, long time to come. He was a great man.

**Hon. Harlington Wood, Jr.:** When I arrived on this court in 1976, Wilbur had already been here a little while and I became one his colleagues. He and I seemed to hit it off because he took me under his wing to try to teach me how to be a new appellate judge. Judge Bauer was here and I'd known him a long time, but he didn't help at all. But during that time Wilbur was patient with me and showed me how to get along up here, I discovered that he had a very warm smile

and a sense of humor. For me that was a very soothing thing in this very serious atmosphere where we work. So it wasn't long before he became more of a personal respected friend than just a colleague, although we're all friends.

Wilbur and I were on a panel together and I forget who the other judge was, but it was an immigration case where the petitioner was objecting to being deported to somewhere over in Europe. We heard their oral arguments and when we got back in the conference room, we realized there wasn't any merit to this case at all and we would have to affirm the Immigration people. Wilbur volunteered to write the *per curiam* opinion. And so we left. You know, we had other things to do, too. It took him a little while to get that *per curiam* opinion ready. In the meantime, our petitioner – almost on a daily basis – was sending letters individually to the members of the panel. I would get them, Wilbur would get them, and the other member would get them. They all were marked “Hand Delivered.” And since he couldn't get into our chambers all the time, he would take them to the clerk to bring down. Wilbur got one right after the opinion was issued, right after it was made public, and he went immediately to see Chief Judge Bauer and told him about the letter.

Judge Bauer for some reason called me right away. He said, “Your colleague on that panel got this letter that didn't begin with the usual salutation of “Dear Judge Pell.” It was sort of like Chasey, it just began “Pell” and it said, “You can't hide behind that *per curiam* stuff. I know who wrote this opinion. You did. You're the one that ought to be deported, not me, and you haven't heard the last of it!” Well, Wilbur apparently took that as an implied threat. Judge Bauer said to me, “There are only two people on this court who would pull a stunt like that and I didn't do it.” Then he said, “You better rush up and see Wilbur right away because he's going to the FBI with that letter.” I wasted no time going up to see him. I walked in and totally confessed, even without the benefit of Miranda. Instead of being mad about it, he looked relieved, then he broke into a big laugh. He enjoyed it a lot more than I did because I had gotten concerned. I didn't want to be in the middle of that FBI investigation.

We all were very fond of Wilbur as a colleague and as a personal friend, and we will all miss him.

**Hon. Richard D. Cudahy:** When I was first appointed to the Seventh Circuit, even before I was sworn in, I was asked by a local Chicago law school to give a talk on a subject which is now lost to history, as is the name of the law school. I can't remember either one of them. In any event, I definitely showed up to give the talk and I still was not sworn in, and there must have been at least half a dozen people in the audience to hear this very momentous oration. And much to my surprise two of those people turned out to be Wilbur Pell and his wife, Chasey, whom I barely knew at the time. As I did get to know Wilbur better, I found out how typical this gesture of interest in a new colleague and solidarity with his efforts was of this extraordinary person and judge.



Wilbur's scholarly and innovative contributions to the law were matched by his friendly interest in the work of his fellows and the things of significance that were going on in their lives. Even in the last years of his life when he was severely disabled he insisted – in the face of cautionary admonitions to the contrary – on coming to the judges' periodic dinners. And just a year or so ago when we all thought that he wasn't up to it, he drove with me to a judge's seminar at Notre Dame. I remember that trip because the breeze kept me from falling asleep when he would periodically open the car window to puff on his pipe. Apropos of Judge Bauer's comment, that was one occasion when he didn't take the pipe out of his mouth.

Wilbur Pell's scholarly attainments are impressive. He graduated *magna cum laude* from the Harvard Law School, and left his indelible mark on the jurisprudence of the Seventh Circuit. One of his stronger interests was in patent law, which he had little opportunity to master in the Shelbyville practice, but which he found fascinating during the years when this court still heard patent appeals. He wrote the *en banc* opinion in *Dual Manufacturing v. Burriss Industries*, which is a landmark case, where the court, as opposed to the jury, determined the obviousness and therefore the invalidity, of a patent. The patent in play there was for a reclining chair called the "Wallaway" which would go into a reclining position without striking the wall behind it. The case denied on obviousness grounds the infringement claim of the Wallaway's maker against the manufacturer of a similar chair called the "Wall Hugger." Wilbur later wrote an article on the use of juries and patent cases in related issues for the Journal of the American Patent Law Association which he titled A Retrospective View From A Lame Swan Appellate Judge. The "lame swan" reference was to the prospective loss by this and the other regional Courts of Appeals of jurisdiction over patent appeals to a new court in Washington. Judge Pell discussed his own choice of title for the article saying he could write as a lame duck or sing his swan song as a patent judge. But he said he "elected to leave the quacking duck to the legislative branch and settled on the lame swan for himself."

As a brilliant lawyer and scholar, Wilbur always had that special need to find just exactly the right word. You've heard just a little bit about this from the other judges. He added a bit of whimsy to his erudition by including in each of his opinions a word that could not be found in the dictionary. Where he found those words, I'll never know. To this day I've never been able to find any of them. I don't think he made them up.

When all is said and done, the word – and it is in the dictionary – that says it all about Wilbur is "indomitable." I saw quite a lot of him in the years after Chasey's death when he was all alone in the big house in Evanston with the red door – which he insisted on staying in. He also insisted in driving down to the courthouse until his son, Bill, took his car away from him – literally. His body almost failed him completely and his mind seemed to be following reluctantly but his spirit was totally intact. There was a complete absence of self pity, a wonderful optimism and a will to keep doing all the things that he'd always done. And above all, to be with the people that meant something to him.

I always thought of Wilbur and Chasey as a unit. They were such a great pair, reinforcing each other at every turn and totally together in their love and concern for the people they worked with and cared about. When Chasey died quite unexpectedly, I was amazed at Wilbur's ability to carry on – to keep smoking his beloved pipe and to maintain all his contacts with the outside world. Her loss was a terrible shock but he managed to keep going as if he were fifty years younger and life's possibilities were still opening up before him.

Now he and Chasey can be together again and it's hard to imagine how they could ever have been apart. They both were "indomitable" and we will miss them a lot.

**Hon. Ilana D. Rovner:** When the wonderful Christmas card arrived this year, I had such mixed feelings. The first was one of happiness. There was the wonderful Pell annual Christmas Card. The one with the photograph of all the family – the children, the grandchildren, the pets. It was such a warm and loving card. It showed a family bound together by affection and respect. And then I realized, even before I read the words, that this would be the last such card; and indeed that is what the greeting said. Quote: "In honor of the passing of Judge Pell, we, his children, thought a last card would be appropriate."

There were three photographs this year: one, a good photograph with Wilbur in the middle, surrounded by love. The second a photograph of his first grandchild to be married leaving on her honeymoon and the third was a photograph of his loyal four-legged friend, Portia, who now lives in Denver with four cats. And in a way, this last testament to a truly fine human being carried with it the realization that, indeed, a life well lived is over.

We who worked and admired Wilbur think about him when we walk the halls that he once walked, and, when we hear argument, we look up at his portrait in the courtroom and see him. My goodness but he was handsome. And we think of him – above all we think of him arm and arm with Chasey. Chasey, who truly was the perfect wife. What welcoming people they were. How wanted we felt when we entered the red door of their home. What gracious hosts they were. They made their guests feel as if they were surely the most special and desirable of guests.

Wilbur was such an agreeable person to work with—so civil, so nice and so pleased to be a judge. I think he truly understood how blessed those of us who have been given this opportunity, are. He never was arrogant or unkind or harsh, he had quiet dignity and quiet strength. He was a gentleman and that is a great compliment in this day and age. How I hope that Chasey and Pell, a fellow she bet she could get a date with, and with whom she got a date for life, are together again. It is something I would take a bet on.

And so, I would like to say "thank you" to Wilbur's family. Thank you for sending out that last holiday letter. It was a marvelous and thoughtful thing to do. We who loved your father and grandfather are all grateful for that gift.



**Hon. Frank Easterbrook:** Collins Fitzpatrick, the Circuit Executive, will now speak.

**Collins Fitzpatrick:** Judges, members of Judge Pell's family, and friends of Judge Pell. I met Judge Pell early on after I arrived here as a law clerk. I worked with him on motions and cases submitted with argument. In those workings he was always very thoughtful, very thorough, and very humorous, as has been mentioned by almost everyone. I noted that his smoking of his pipe always seemed to give him a little bit more time to think about what he was about to say, and also, he used to like to emphasize his words as he waived that pipe in the air.

Now, many have talked about Judge Pell, but I thought he would enjoy getting in the last word. So I have taken three excerpts from his 1994 oral history that I thought you would enjoy. These are the words of Judge Pell on his collections of various items.

"I think the first items that I seriously collected were matchboxes. Of course, there were more smokers in those days and my friend and I collected matchboxes. We did not really see as many matchbooks as we have today, which the people pass out, so we collected what was called the penny matchboxes. I do not think you can buy them for a penny anymore. My close friend at that age in high school was the Methodist minister's son and when we would go to Indianapolis we would walk along the street looking for matchboxes in the gutter. I do not think our mothers knew what we were looking for. It was amazing how many different covers there were at that time. The Swedish Match Company had a lot of different covers and the Diamond Match Company had a few but there were a great many foreign covers such as from Finland and Sweden. My father, who had collected stamps as a boy, said, "Well, I think that is a good hobby because they are things you can find and people will give them to you and they are not like collecting stamps which I collected as a boy but which I could not keep up because it was so expensive."

Back to Judge Pell,

"I did get into stamps later on then . . . Of course, over the years I collected books, pictures and steins. . . Oh, yes, I have a couple of hundred pipes. Those are for utility purposes. Those with very long stems have been smoked. I have a few water pipes upstairs, (Collins interjected, "The FBI didn't know about that!") but my problem with collecting now is what my family is going to do with them. There are markets for collectors. Whether there are for mine is the troubling problem, but my problem with collecting now is what my family is going to do with them. There are markets for collectors. Whether there are for mine is a troubling problem."

Judge Pell was a joiner. At Indiana University he was in a lot of activities. He mentioned, in his words,

“I participated in several plays in the drama department my first year. I never went out for debating. Interestingly enough, and I have a picture upstairs in the hall, the first play I participated in, I played the part of Judge Fish. I had a beard. The play was ‘Ladies of the Jury.’ The first act takes place in the courtroom where I and the attorneys are the chief source of interest and the last two acts take place in the jury room when the women gradually influence the result. Then I played in another play. I think I lost favor with one of the men in the drama department because I stepped out of line one time in the play. I was supposed to be a hillbilly fellow and my line was pointing to a person and saying, ‘My granddaughter’s feller goes out with her.’ This play was put on at a convocation for the students, so I gave the line, ‘My granddaughter’s feller got his pin on her.’ Well of course it brought the house down, it also brought the drama professor down. He was just furious. He said, ‘You have destroyed the illusionary distance. You create a distance of illusion that you are actually watching this occur, and all of a sudden you bring it back to the Indiana University campus.’ I do not think I participated in anymore plays that year. . . .”

And finally, as a Harvard Law student, and Judge Rovner has already mentioned about the bet and Bill Pell has mentioned his disappointment of finishing eighteenth in the class as a freshman so he didn’t qualify – the cut off I think was at fifteenth or sixteenth for the Law Review, Bob Price was a friend of his and Bob Price’s fiancée lived with Chasey. Bob and his fiancée decided that this pipe-smoking tweedy guy from the Midwest might be able to handle Chasey. Of course, Judge Pell had not been able to, but he thought he might be able to do so. He said:

“It seems that she had a 25 cent bet that she could get a date with me and I thought I might be worth a little more than that. We had a cocktail party and I wondered who this woman was that kept tripping me every time I went across the room to get a drink for somebody so finally I stopped and struck up a conversation with her. I called her the following week. I wasn’t as serious a student in my third year as I had been in my first two years.”

We all will miss Judge Pell, but the people of this country and we in the judiciary are indebted for his great service and accomplishments and also his great friendship. Thank you.

**Hon. Frank Easterbrook:** Thank you Collins. These proceedings have reached a conclusion, but our memories of Judge Pell will linger long and remain warm. Thank you all for coming.



# Seventh Circuit Bar Association



## 50th Anniversary

**Joint Annual Meeting  
Seventh Circuit Bar Association  
Seventh Circuit Judicial Conference  
May 20-22, 2001  
Westin Hotel  
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