Summer
2013 Newsletter

EIGHTH CIRCUIT
BAR ASSOCIATION

Association of the Bar of the United States Court of Appeals for the Eighth Circuit

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PRESIDENT'S MESSAGE

This issue of our newsletter reflects the Association's wide range of activities and interests. Before discussing that in more detail, I would like to thank Scott M. Flaherty for agreeing to take on the job of editor. In this issue you will read about the very unusual situation where two Eighth Circuit panels reached opposite conclusions on the same day, setting up an en banc argument to resolve the conflict. You can also read about a pending case, likely to end up at the Supreme Court, about the 21st Amendment, which most of us stopped thinking about after our Constitutional Law exams. On a more serious note, you will read an appreciation of Judge Richard Dorr, who died recently, and a profile of the Hon. Jane Kelley, the Eighth Circuit's newest judge.

I mention these articles to illustrate the range and breadth of the Association's interests and activities. That range was also illustrated by the Association's CLE program in Kansas City earlier this year. We are planning more programs and looking ahead to next year's Judicial Conference. If you have suggestions for topics or programs, or would like to help plan or present a program, please let us know—we would love to hear from you.

One more item in this issue merits a special mention. You can now join the Association, or renew your membership, on line. I hope our members will take advantage of the convenience of on-line renewal I thank you for your continued support of the Association.

Sincerely,
Lawrence Friedman President
The Association of the Bar of the United States Court of Appeals for the Eighth Circuit

EIGHTH CIRCUIT PANELS ISSUE CONFLICTING DECISIONS—ON THE SAME DAY—AND GOES EN BANC TO SETTLE THE TIE.

By Ryan Koopmans

In what may be a first, last December two Eighth Circuit panels issued dueling opinions on the same issue, on the same day.

In *United States v. Bruguier* and *United States v. Rouillard*, the defendants were convicted of "knowingly . . . engaging in a sexual act with another person if that other person is–(A) incapable of apprising the nature of the conduct; or (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act." The issue is whether the "knowingly" requirement extends to both (A) and (B)—in other words, must the defendant have known that the person was mentally or physically incapacitated?

A majority of the *Bruguier* panel, Judge Diana Murphy writing, said no: "[T]he 'most natural grammatical reading' of the statute suggests that 'knowingly' only modifies the surrounding verb, which in this case is the phrase 'engages in a sexual act.'"

The *Rouillard* panel, Judge Shepherd writing, said yes: "Knowingly 'engag[ing] in a sexual act with another person' is not inherently criminal under federal law, barring some other attendant circumstance"—"we believe the statute is properly read as requiring defendant's knowledge that the other person was incapacitated."

That same-day filing is highly unusual (this may be the first time) but it's probably not a coincidence. To be sure, the cases were argued in different months by two completely different panels. And usually one panel doesn't know

what's going on with another. But the odds of something like this happening as a matter of course are slim to none. And here's a tell-tale sign that it wasn't an accident: When Bruguier initially came out, Judge Bright's dissent was missing—kind of. The decision noted that he was dissenting, but there was no written opinion—just a placeholder that read: "BRIGHT, Circuit Judge, dissenting with opinion to follow."

Normally, there wouldn't be any reason to file the decision until Judge Bright finished his dissent. Time was not an issue here, so the logical explanation is that Judge Murphy didn't want her opinion to be mooted by *Rouillard*. One Eighth Circuit panel cannot overrule another, so even if *Rouillard* came out one day before *Bruguier*, *Rouillard* would be the law of the land. Indeed, the Eighth Circuit made clear in *Mader v. United States* that if there is an intra-circuit conflict, the earlier decision trumps.

The timing of this could turn out well for the government. It takes six votes to grant en banc review, and even if a judge thinks a decision is wrong, that doesn't necessarily mean that he or she would be willing to rehear it. So if Rouillard had come out first, it's unlikely (as it always is) that the court would have voted to grant the government's petition for rehearing en banc (assuming it would have filed one). But because the decisions came out on the same day, neither was precedential. Thus, the judges almost had to vote to rehear both cases. And they did.

The full court heard oral argument on April 12 in St. Louis. There's no decision yet, but based on the panel decisions, the defendants have a head start on the vote count. Of the 12 judges who are on the en banc court, four judges (Riley, Smith, Shephed, and Bright) have already voted for the defendants' position, and two judges (Murphy and Colloton) have already voted in favor of the government's position. They can, of course, change their mind, but that's rare. So assuming the votes stay the same, that leaves six votes up for grabs.

The only judges who asked questions during oral argument, other than those listed above, were Judges Loken and Gruender, and both seemed to lean towards the government's position—which as Judge Loken noted, and Bruguier's attorney conceded, is the correct one based on a pure grammatical reading. (Based on an almost identically structured statute, Justice Scalia made that point in his dissent in *United States v. X-Citement Video, Inc.*, and he and Bryan Garner devote two pages to the same issue in their new book, *Reading Law*.)

So if we can predict votes from oral argument (which we all know is a big if), then the vote is 4 to 4 with Judges Wollman, Bye, Smith, and Benton as the wild cards.

The real twist would come if there was a tie. In both cases, the district court ruled that knowingly applies to the first element only (i.e., the government won). So if it's a 6 to 6 vote, then the defendants lose. Or, maybe, newly minted Judge Jane Kelly would step in. She hadn't been confirmed when oral argument took place, but presumably the court could "rehear" the case again—albeit without oral argument—so that Judge Kelly can participate. To be continued . . . .

COURT LAUNCHES NEW WEBPAGE

In April, the Eighth Circuit unveiled its new web page, http://www.ca8.uscourts.gov. The new page adds information for pro se filers and educators, and contains all of the information previously available, including electronic-filing access to, oral-argument recordings, forms, rules, calendars and opinion summaries.

THE *STANDARD* IS SET: *HERSHEY* STIPULATIONS TO MELT AWAY?

Kristy Boehler and Vince Chadick

In the years since *Bell v. Hershey Co.*, was decided by the Eighth Circuit Court of Appeals, a common practice among putative class action plaintiffs intending to resist removal from state court has been to include with the complaint a stipulation that damages in excess of the federal court jurisdictional minimum would not be sought.

This tactic – to offer with the complaint a so-called "binding stipulation" limiting damages – has, with the U.S. Supreme Court's March ruling in *Standard Fire Ins. Co. v. Knowles*, presumably met its demise. 133 S. Ct. 1345 (2013)

History

The Class Action Fairness Act of 2005 (CAFA) was enact-

ed, in primary part, "to open the federal courts to corporate defendants out of concern that the national economy risked damage from a proliferation of meritless class action suits". *Bell v. Hershey Co.*, 557 F.3d 953, 957 (8th Cir. 2009). The jurisdictional requirements of CAFA are minimal diversity, 100 or more class members, and at least $5 million amount in controversy. 28 U.S.C § 1332.

In *Bell v. Hershey Co.*, the putative class action plaintiff alleged that defendant manufacturers violated the Iowa Competition Law by conspiring to fix, raise, maintain and stabilize the price of chocolate, causing the plaintiff class to pay higher prices. *Bell* at 955. The suit was filed in state court; defendant manufacturers removed to federal court under CAFA; and, plaintiff moved to remand to state court.

In his remand motion, plaintiff – whose complaint "was 'clearly designed' to evade federal jurisdiction" – argued that the amount in controversy was $4.99 million, below the $5 million jurisdictional threshold of CAFA. *Id.* The U.S. district court agreed and ordered the matter be remanded to state court for lack of subject matter jurisdiction. On appeal by the defendant manufacturers, the Eighth Circuit Court of Appeals vacated the order and remanded the matter to the district court "with instructions to apply the preponderance of the evidence standard to the jurisdictional facts. If the [defendant] manufacturers prove by a preponderance of the evidence that the amount in controversy [for CAFA jurisdiction] is satisfied, remand is only appropriate if [plaintiff] can establish that it is legally impossible to recover in excess of the jurisdictional minimum." *Id.* at 959 (internal citations omitted).

Of resonant significance in the Bell decision was the Court of Appeals' observation that

> in order to ensure that any attempt to remove would have been unsuccessful, [plaintiff] *could have included a binding stipulation with his petition stating that he would not seek damages greater than the jurisdictional minimum upon remand*; it is too late to do so now. *De Aguilar*, 47 F.3d at 1412 ("[l]itigants who want to prevent removal must file a binding stipulation or affidavit with their complaints; once a defendant has removed the case, St. Paul makes later filings irrelevant.") (quoting *In re Shell Oil Co.*, 970 F.2d 355, 356 (7th Cir.1992) (per curiam)).

Id. at 958 (emphasis supplied).

In the ensuing several months, would-be class action plaintiffs routinely filed with their complaint such "binding stipulations" – averring that damages greater than the jurisdictional minimum under CAFA would not be sought – in order to defeat in advance any effort to sustainably remove the matter to federal court.

Turning Point: SCOTUS and *Standard Fire*

In April 2011, Greg Knowles filed a proposed class action in Arkansas state court against Standard Fire Insurance Company (Standard). *Standard Fire Ins. v. Knowles*, 133 S.Ct. 1345 (March 19, 2013). Knowles alleged that when Standard made certain homeowner's insurance loss payments, it unlawfully failed to include a general contractor fee. Knowles sought to certify a class of "hundreds and possibly thousands" of similarly harmed Arkansas policyholders. In the complaint, Knowles averred that he and the class stipulate that they would seek to recover total aggregate damages of less than $5 million. Also, an affidavit was attached to the complaint stipulating that Knowles would not, at any time during the case, seek damages in excess of $5 million in the aggregate.

Standard removed the case to federal court under CAFA. Knowles argued for remand on the ground that the U.S. district court lacked jurisdiction, because the sum or value of the amount in controversy fell below the $5 million threshold of CAFA. Standard produced evidence which caused the district court to find that in the absence of the stipulation, the amount in controversy would have been slightly over the $5 million threshold. Yet, because of the stipulation, the district court remanded the case to state court.

Standard appealed from the remand order, and the Eighth Circuit declined to hear the appeal. Standard then petitioned for a writ of certiorari. In light of divergent views on this issue in the lower courts, the U.S. Supreme Court granted cert.

At issue before the Supreme Court was, most simply, whether the filing of a stipulation, prior to certification of the class, that the plaintiff and class will not seek damages in excess of $5 million can work to circumvent CAFA jurisdiction.

In answering this question, the Supreme Court concluded

that the entering of such a stipulation, prior to certification of the class, that the plaintiff and class will not seek damages in excess of $5 million is not a means to avoid jurisdiction under CAFA.

In its unanimous decision, the Supreme Court began by explaining that CAFA provides federal district courts with original jurisdiction to hear a class action if the class has more than 100 members, the parties are minimally diverse, and the amount in controversy exceeds the sum or value of $5 million. *Standard Fire Ins. v. Knowles*, 133 S.Ct. 1345, 1347. To determine if the amount in controversy exceeds $5 million, the claims of the individual class members shall be aggregated. Id.

The Supreme Court also noted that the stipulation Knowles filed with the complaint did not speak for the potential class members that he purports to represent. The Supreme Court reasoned that a plaintiff who files a proposed class action cannot legally bind members of the proposed class before the class is certified. Therefore, concluded the Supreme Court, "[b]ecause his precertification stipulation does not bind anyone but himself, Knowles has not reduced the value of the putative class members' claims." *Id.* at 1349. In other words, precertification, Knowles lacked the authority to concede the amount-in-controversy issue for the absent class members.

In making its ruling, the Supreme Court determined that the district court should have ignored the stipulation when determining if it had jurisdiction under CAFA. Therefore, the district court should have aggregated the claims of the individual class members and determined if the aggregate amount was over $5 million. Because the district court had, in fact, performed this analysis and found that the aggregate amount would be slightly over $5 million – and subsequently remanded the matter to state court based solely on the stipulation – the Supreme Court vacated the order and remanded the case to the U.S. district court for further proceedings.

Conclusion

The Standard Fire decision would appear to make clear that, because a proposed class representative plaintiff lacks authority to bind a contemplated class, CAFA jurisdiction cannot be defeated by filing with the complaint a stipulation limiting the damages sought to below $5 million.

NEW BANKRUPTCY JUDGE APPOINTED IN MINNESOTA

Chief Judge Riley recently announced the appointment of Minnesota attorney Katherine A. Constantine as a U.S. Bankruptcy Judge for the District of Minnesota. Judge Dennis O'Brien is set to retire. She will join Chief Judge Gregory Kishel and Judges Kathleen Hvaas Sanberg, Michael Ridgway, and Robert Kressel.

Constantine is an attorney with Dorsey and Whitney in Minneapolis, where she is the chair of Dorsey's Bankruptcy and Financial Restructuring practice group. She has served on several boards including boards of non-profit organizations dedicated to serving needs of people with disabilities and on the Georgetown Law Alumni Board. She has also been active as a diversity mentor to new attorneys. Ms. Constantine is a 1977 magna cum laude graduate of the Georgetown University School of Foreign Service and a 1980 graduate of the Georgetown Law Center.

"Kathie Constantine is a preeminent bankruptcy lawyer with a national reputation," noted Ken Cutler, Managing Partner of Dorsey & Whitney. "We are very proud of her achievements and of this appointment. She will bring great energy and an incredible wealth of experience and insight to the bankruptcy bench."

THE TWENTY-FIRST AMENDMENT COMES TO THE EIGHTH CIRCUIT, EN ROUTE TO 1 FIRST STREET

Ryan Koopmans

In a case that may be Supreme Court bound, the Eighth Circuit will soon decide the meaning of the Twenty-first Amendment. It's not as easy as you might think.

The Twenty-first Amendment repealed prohibition (we all know that), but a lesser-known section of the Amendment gives the states power to regulate the distribution of alcohol. How far that power extends, and whether it trumps the dormant Commerce Clause, is currently at the center of a multi-million dollar battle between the nation's largest liquor distributor and Missouri.

Missouri exports a lot of alcohol—Anheuser-Busch alone is responsible for almost 50 percent of the country's beer sales—but the State wants its fair share of imports too. Alcohol that comes into Missouri cannot be sold directly to retailers; it must first pass through an in-state distributor. That process—known as the "three-tier system"—isn't abnormal, but Missouri's definition of an in-state distributor is. To qualify as a "resident corporation" for purposes of distributing liquor (or any beverage with an alcohol content above 5%), 100 percent of the corporation's officers and directors and at least 60 percent of the ownership must be Missouri residents, and they must have been Missouri residents for the last three years.

Miami-based Southern Wine & Spirits thinks that's unconstitutional. The company, which is the country's leading liquor distributor, wants to operate in Missouri (as it does in 35 other states) but Southern Wine cannot meet the durational residency requirements. So it sued Missouri in federal court. The district court (Judge Nanette Laughrey) dismissed the claim, concluding that the Twenty-first Amendment gives Missouri the right to do what it otherwise could not under the dormant Commerce Clause.

Southern Wine has now taken its cause to the Eighth Circuit. In April, the company's attorney, Hogan & Lovell's Neal Katyal, told Judges Colloton, Shepherd, and Rose (the recently confirmed district court judge from the Southern District of Iowa) that the residency requirements are nothing more than protectionism—that they have nothing to do with the goals of the Twenty-first Amendment (promotion of temperance and responsible consumption) and have everything to do with keeping Missouri's liquor distributors profitable. The proof? Well, the statute's sponsor basically said as much to a newspaper in 1947; he told a reporter that "an effort had been made to drive some Missouri firms out of business" and that the residency requirements were "intended to prevent a few big national distillers from monopolizing the wholesale business in Missouri."

But time changes things, and the statement of one legislator is not necessary the law. So Southern Wine has gone further. It says that in the 60 years since the statute's enactment, there has been no evidence to support the theory that residency requirements do anything for the regulation of alcohol. And there is a test case: The 1947 statute grandfathered in one out-of-state distributor, which then sold its interests to another out-of-stater. That distributor has operated in Missouri without incident and without meeting the residency requirements. If out-of-staters are such trouble makers, Southern Wine believes that Missouri would be able to point to at least one example where the system would have worked better if this out-of-state company had been owned and operated by Missouri residents. Missouri has no example; indeed, the deputy of Missouri's alcohol and tobacco agency testified that the elimination of the residency requirement would have no detrimental impact on Missouri's three-tier system. Ouch.

But Missouri doesn't think that matters. Neither does the Missouri Wine and Spirits Association (the in-staters) who participated as amicus curie. They argue that this case is governed by the Supreme Court's 2005 decision in Granholm v. Heald, 554 U.S. 460 (2005). There, Michigan and New York were allowing in-state wineries to sell wine directly to consumers but they were forbidding out-of-state wineries from doing the same. A majority of the Court, Justice Kennedy writing, ruled that the laws violated the Commerce Clause and were not saved by the Twenty-first Amendment. But in doing so, the Court made broad statements to the effect that states can structure the distribution of alcohol any way they like, as long as they do not discriminate against the out-of-state products (as opposed to out-of-state distributors).

Missouri and the Wine and Spirits Association also argue that this case doesn't come down to evidence of a legitimate purpose (or lack thereof); instead, and like so many cases, it comes down to the standard of review. At oral argument, Judge Colloton asked the Association's attorney, Kannon Shanmugam: "Do you think the record needs to include any affirmative evidence about how the state's interest are furthered by this, or do you think it's sort of any conceivable rational basis?" Shanmugam said the latter—that is, Missouri should have complete authority to structure the three-tier system as it sees fit (and to discriminate against out-of-state distributors to any degree it likes) so long as there is any conceivable (not actual) link between the residency requirements and the goals of the Twenty-first Amendment.

And there is such a rational basis, according Missouri and the Wine and Spirits Association. The residency requirements separate the real Missourians from the carpetbaggers. Real Missourians live in Missouri, they drive on Missouri streets, and thus the Association argues that they

will "support efforts to promote moderate consumption and to address the social ills of excessive consumption (such as alcoholism and homelessness)." In other words, real Missourians are inclined to sell less booze.

But if you think all Missouri wholesalers are fans of the residency requirements, you'd be wrong. Missouri Beverage Co.—MoBev, for short—submitted an amicus brief in support of the out-of-staters. Why? Well, in 2011 MoBev—a relative small timer in the Missouri wholesale market—went looking for buyers and didn't find a suitable one. The residency requirements scared away out-of-state prospects. And while some in-state wholesalers were interested, they only wanted MoBev's customers; they didn't intend to purchase the company as a going concern. So MoBev, feeling loyal to its employees, took down the for-sale sign and traded its M&A attorney for Supreme Court litigator and SCOTUSblog publisher Tom Goldstein.

All this may be uninteresting to most, but it's catnip for the con law junkies.

First, there's the standard—always the hot topic. If rational basis applies, it's a tough row to hoe for Southern Wine. But what of that strong protectionist admissions from the statute's sponsor (some 60 years ago) and the deputy of the alcohol and tobacco agency (who doesn't think these laws really do anything to regulate alcohol)? That kind of hard evidence is rare, but at the same time one statement from one legislature is just that. And can the admissions of one bureaucrat (who may not know the ins out and outs of every enforcement action in the last 60 years) really decide this constitutional issue? The Supreme Court has not answered these questions—at least not in this context.

Second, there's the uniqueness of the constitutional provision. The Twenty-first Amendment has been the subject of some Supreme Court decisions; but as you might expect, it's not the Equal Protection Clause. (By the way, Southern Wine says that the residency requirements violate that constitutional provision too.)

Third, there's the interplay between two constitutional provisions. Which one trumps and why? The residency requirements clearly violate the dormant Commerce Clause, but the dormant Commerce Clause is invisible (Justices Scalia and Thomas still haven't see it, though Justice Scalia now takes his colleagues word for it) and the Twenty-first Amendment is not—it's there in words. When a state like Missouri is straddling two amendments, does it matter that one of them is implied?

Fourth, the states take different views on this. The attorneys general of Arkansas, Delaware, Mississippi, Nebraska, South Dakota, Texas, and West Virginia submitted an amicus brief in support of Missouri. But the attorneys general of Indiana and Tennessee have declared that their states' residency requirements are unconstitutional.

Finally, this is not your average group of attorneys. Neal Katyal, Kannon Shanmugam, and Tom Goldstein are all-stars of the Supreme Court bar. Katyal and Shanmugam each had stints at the Solicitor General's office (Katyal was the Acting Solicitor General and Shanmugam was Assistant SG), and Katyal and Goldstein were both recently named two of the 40 most influential lawyers of the last decade by the National Law Journal. And Jim Layton, Missouri's Solicitor General, is no slouch either. So the arguments are good.

Here's what this all means: This case may not end at the Eighth Circuit. The court will likely issue its decision soon, but given confluence of factors, this case will probably find its way to 1 First Street. Constitutional scholars, Supreme Court junkies, liquor consumers: Stay tuned.

TWO CERT. PETITIONS ISSUED TO THE EIGHTH CIRCUIT

By Scott M. Flaherty

Sprint Communications Company, L.P. v. Elizabeth S. Jacobs, et al., No. 12-815

The petitioner presents its question as follows: "Whether the Eighth Circuit erred by concluding, in conflict with decisions of nine other circuits and this Court, that Younger abstention is warranted not only when there is a related state proceeding that is "coercive" but also when there is a related state proceeding that is, instead, "remedial.

This petition stems from a dispute between Sprint and Iowa Telecom over "access charges," a form payment made between telephone companies depending on each's role in connecting a call: Carriers whose customers originate calls are sometimes required to pay access charges to the carriers that terminate those calls to their customers. A complex statutory and regulatory landscape governs access charges.

The issue, however, is *Younger* abstention. Sprint argues that the Eighth Circuit erred in allowing *Younger* abstention in this case, following *Hudson v. Campbell*, 663 F.3d 985 (8th Cir. 2011), a case decided while Sprint's case was still pending.

The petitioner's merits brief is due at the end of June, and respondent's merits brief is due at the end of August.

Marcus Andrew Burrage v. United States, No. 12-7515

Cert. was granted on two of the petitioner's three questions: "1. Whether the crime of distribution of drugs causing death under 21 U.S.C. § 841 is a strict liability crime, without a foreseeability or proximate cause requirement. 2. Whether a person can be convicted for distribution of heroin causing death utilizing jury instructions which allow a conviction when the heroin that was distributed 'contributed to,' death by 'mixed drug intoxication,' but was not the so le cause of death of a person."

The petition argues that there is a circuit split regarding whether the use of a "contributing cause" jury instruction is consistent with § 841(b)(1)'s "results from" requirement. At trial, the petitioner submitted jury instructions requiring a foreseeability element, requesting a "proximate cause" instruction and objected to the use of "contributing cause" instruction, which would have allowed the jury to find guilt without proximate causation. The district court used the "contributing cause" instruction, and the Eighth Circuit affirmed.

The petition asserts that the Seventh Circuit in *United States v. Hatfield*, 591 F.3d 945 (7th Cir. 2010) and other circuits differ with the Eighth Circuit as a matter of theory, practice, or both on whether § 841(b)(1)'s "results from" language requires a proximate-cause instruction, or whether that section creates a strict-liability test.

The case will be heard during the Supreme Court's October Term 2013.

EIGHTH CIRCUIT'S NEWEST JUDGE: JANE KELLEY

By Hon. Mary Vasaly

There is no doubt that the appointment of Judge Jane Kelly as our newest Eighth Circuit judge adds a judge of intellect, integrity and courage to the bench. But her appointment does more than that: it enhances the court's diversity in several notable respects. First, as a female jurist, the 48-year old Judge Kelly becomes only the second woman to sit on the Eighth Circuit in the 122-year history of the Court. Second, Judge Kelly is the only judge who has spent her career serving the community as a public defender. Iowa Senator Tom Harkin, in recommending Kelly to replace retiring Judge Michael Melloy noted that she would be the first career public defender on the circuit, bringing "a critically important perspective." Some say that she is well-suited for appointment to the United States Supreme Court someday.

Judge Kelly is not only unique in terms of her background, she can also boast of a uniquely speedy appointment process for an Obama nominee. After she was nominated by President Obama on January 31, 2013, the Senate confirmed her appointment less than three months later by a vote of 96-0. In this era of extraordinarily lengthy lag times between nomination and appointment, the speed of Judge Kelly's approval was truly remarkable. Chuck Grassley, Iowa's other senator, is credited with helping push her confirmation through quickly.

Kelly grew up in Indiana, graduating with a BA, summa cum laude, from Duke University, in 1987. The recipient of a Fulbright scholarship, she studied briefly in New Zealand before enrolling at Harvard Law School, where her classmates included President Obama. She graduated from Harvard Law in 1991, cum laude.

After graduating, she served as a law clerk for several years. She first worked with Judge Donald J. Porter, a federal district judge for the District of South Dakota. She then served as a law clerk for Eighth Circuit Judge David R. Hansen. Judge Hansen was favorably impressed. In recommending her for the appointment to the court, he gave her high praise: "She is a forthright woman of high integrity and honest

character" who has an "exceptionally keen intellect."

After teaching for one year at University of Illinois College of Law, she returned to Iowa in 1994 to serve in the newly formed public defender's Cedar Rapids office for the Northern District of Iowa. She became the office's supervising attorney in 1999. She spent the rest of her career as an attorney representing low-income criminal defendants. She is known for her zealous defense of all criminal defendants and her smart, and thorough defense strategies.

Judge Kelly's personal courage was made abundantly clear in 2004, when she became the victim of a vicious assault. A long-distance runner, she was out for a morning run on a Cedar Rapids trail when she was attacked and beaten and left for dead by an unknown assailant. She was hospitalized for weeks, and spent months recovering at home. Yet, she not only returned to her public defender position, she resumed running along the same trail.

Kelly has long been active in her local bar and is a valued participant in judicial committees. Most recently, she has served on the Criminal Justice Act Panel Selection Committee and the Facilities Security Committee of the district court. She received the John Adams Award in 2004 from the Iowa Association of Criminal Defense Lawyers and Drake University Law School. The award recognizes individuals who show a commitment to the constitutional rights of criminal defendants.

We are indeed fortunate that Judge Jane Kelly was appointed to the Eighth Circuit bench and look forward to working with her during what we hope will be a long tenure on the bench.

IN MEMORIAM, JUDGE DORR

Clayton Gillette

On April 24, 2013, the United States District Court for the Western District of Missouri lost a great man in Judge Richard Dorr.

Born in Jefferson City, Missouri, in 1943, Dorr excelled in both academics and athletics, ultimately attending the University of Illinois at Champaign on a football scholarship. Before receiving his Bachelor's in Marketing in 1965, Dorr would play in the 1964 Rose Bowl (Illinois won 17-7 over Washington). Dorr married Barbie Wilson before attending law school at the University of Missouri in Columbia.

After receiving his J.D., Dorr remained a paragon of public service for his entire career, dedicating his life to his country, state, and community. Dorr briefly served as an Assistant Attorney General in 1968 before serving in the U.S. Air Force, JAG Corps from 1968 to 1973. Though Dorr went into private practice in 1973, he remained a reservist in the U.S. Air Force Reserve, JAG Corps until 1990. Dorr rose to a rank of lieutenant colonel before his retirement.

In private practice, Dorr was active in the Springfield Metropolitan Bar Association (SMBA) and was "one of Springfield's best attorneys and most prominent community leaders" according to Senator Kit Bond. Dorr would become the managing partner of the Springfield office of Blackwell Sanders Peper Martin (now Husch Blackwell) before Senator Bond recommended Dorr for judicial appointment. Dorr was nominated to the Western District by George W. Bush on March 21, 2002, and confirmed by the Senate on August 1, 2002.

As a federal judge, Dorr continued to forge his reputation for thoughtfulness, work ethic, legal acumen, and humility, often crediting his chambers staff (Jeannine Rankin, Kerry Schroeppel, and Karen Siegert) and law clerks for his reputation for efficient and orderly disposition of cases. Dorr remained active in the SMBA, offering a presentation of tips and tactics for a successful law career to new lawyers in Springfield, Missouri, in his courtroom. Dorr would also receive several awards from the SMBA for his advocacy and involvement in the legal community.

Dorr also developed a reputation for a great sense of humor among his colleagues at the Western District and continued to enjoy the simple pleasures of mid-Missouri, including golf, hunting, fishing, and occasionally whiling away an afternoon watching NASCAR. He was also known to spoil the family dog, a West Highland Terrier named Sadie.

On April 24, 2013, Judge Dorr was at the MD Anderson Cancer Center in Houston, Texas, receiving treatment for pancreatic cancer. Above all, Dorr loved his family, friends,

and community, and remained a leader and example for others in life and in his battle with cancer. At 69, Dorr was surrounded by friends and family at the time of his passing. He will be missed by those whose lives he touched at the Western District, in Springfield, and in his other journeys.

Judge Richard Everett Dorr is survived by his wife of forty-seven years, Barbie, son Scott (wife Tracy), grandchildren Kaleah, Elijah, and Jordan, brother Robert Dorr (wife Barbara), his beloved dog, Sadie.

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ONLINE MEMBERSHIP REGISTRATION ANNOUNCEMENT

The Eighth Circuit Bar Association has joined the cyber world, and members can now register and pay online through your PayPal account! Payment by check is still available.

Go to http://www.eighthcircuitbar.com/registration.php then: (1) Fill out registration information, and (2) choose to pay through PayPal or by check, either by completing PayPal payment, or by print form and mail check.