

# A TRIBUTE TO JUDGE DAVID FRANK HAMILTON

KATHLEEN A. DELANEY\*

## INTRODUCTION

When Judge Hamilton announced that he would assume senior status upon the confirmation of his successor,<sup>1</sup> the Seventh Circuit bar knew that it would be losing one of its most brilliant minds, hardest workers, and kindest mentors. In tribute to Judge Hamilton's unparalleled legal career, this piece seeks to honor his legacy by presenting, in Part II, a few of the monumental decisions Judge Hamilton authored, and by reflecting on, in Part III, the impact his mentorship has had on those of us who have had the distinct pleasure of clerking for him during his storied career.

### I. JUDGE HAMILTON'S LASTING IMPACT ON AMERICAN JURISPRUDENCE—NOTABLE DECISIONS

Judge Hamilton is a prolific contributor to American jurisprudence, having authored more than 1,200 opinions.<sup>2</sup> Such a massive contribution makes choosing notable cases difficult, particularly because, as Judge Hamilton has consistently demonstrated, every case is important, and every litigant deserves to be heard. A worthy appreciation of Judge Hamilton's impact on the American legal system would take more time and space than is available for this piece. This Part will showcase a few recent examples of Judge Hamilton's unwavering pursuit of justice, unwillingness to back down from difficult issues, and prudent decision making.

#### *A. Supporting the Constitutional Rights of Detainees in Kingsley v. Hendrickson*

“Pretrial detainees” are individuals who have been arrested and are being held in custody, but whose criminal cases have not yet been decided.<sup>3</sup> These individuals “may often be held in jail with convicted offenders under conditions that seem indistinguishable from prison.”<sup>4</sup> When law enforcement used force against these individuals, their constitutional rights to be free from excessive

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\* Law Clerk #3 to the Honorable Judge David F. Hamilton, January 1996 through August 1997. Managing Partner, DeLaney & DeLaney LLC, January 2002 to present. The author thanks Alexander J. Pantos, Associate Attorney, DeLaney & DeLaney LLC for his invaluable help on this piece.

1. Madison Alder, *Seventh Circuit's David Hamilton to Step Down in 2022*, BLOOMBERG L. (Dec. 2, 2021, 5:43 PM), <https://news.bloomberglaw.com/us-law-week/seventh-circuits-david-hamilton-to-take-senior-status-in-2022> [https://perma.cc/7ZV2-EQ9P].

2. Table of Judge Hamilton Analytics (on file with authors).

3. See *Kingsley v. Hendrickson*, 744 F.3d 443, 456 (7th Cir. 2014) (Hamilton, J., dissenting), *rev'd*, 576 U.S. 389 (2015).

4. *Id.*

force fell into a constitutional grey area.<sup>5</sup> They were not exactly free persons who are protected by the Fourth Amendment from unreasonable force, but they also were not yet convicted offenders whose rights are protected by the Eighth Amendment only from “cruel and unusual punishment.”<sup>6</sup> Instead, these individuals were “protected from excessive force by the Due Process Clauses of the Fifth or Fourteenth Amendments because [they] may not be ‘punished’ until [they have] been adjudged guilty through due process of law.”<sup>7</sup> The result of this distinction is “that pretrial detainees receive more protection [to be free from excessive force] than convicted prisoners.”<sup>8</sup> The standard for this protection, however, was unclear.<sup>9</sup>

The Seventh Circuit addressed this issue in *Kingsley v. Hendrickson*, a case in which a pretrial detainee was tased during a forced cell transfer.<sup>10</sup> Mr. Kingsley challenged the jury’s verdict in favor of the defendants “contending that the jury received erroneous and confusing instructions. Specifically, Mr. Kingsley contend[ed] that the district court conflated the standards for excessive force under the Eighth and Fourteenth Amendments and, as a result, wrongly instructed the jury to consider the subjective intent of the defendants.”<sup>11</sup> The majority opinion affirmed the verdict, ruling that the jury instructions accurately reflected the law in the Seventh Circuit.<sup>12</sup>

Judge Hamilton dissented.<sup>13</sup> After examining applicable precedent, reviewing the Seventh Circuit pattern jury instructions on this issue, and pointing out that the trial court had repeatedly included a subjective and confusing “recklessness” standard in its jury instructions, Judge Hamilton turned his attention to the practical reality underlying the constitutional protections at issue.<sup>14</sup> In the midst of a highly technical opinion, awash with close attention to conflicting precedents, Judge Hamilton’s explanation of the basis for his dissent breathed life and a sense of deep compassion into the decision. As Judge Hamilton explained,

[A] pretrial detainee may remain in jail for weeks or even months simply because he cannot afford the premium for the presumptive bond set in his case. For those many thousands of people in the criminal justice system, we should recognize that the intentional use of objectively unreasonable force against them amounts to punishment without due process of law and violates the Constitution. They are not and should not be required to

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5. *See id.* at 455-58.

6. *Id.* at 456.

7. *Id.* (citations omitted).

8. *Id.*

9. *Id.* (“Just what the excessive force standard for a pretrial detainee looks like in detail is not as clear.”).

10. *Id.* at 444 (majority opinion).

11. *Id.* at 445.

12. *Id.* at 453.

13. *Id.* at 455-62 (Hamilton, J., dissenting).

14. *Id.*

prove more in terms of reckless disregard for or intentional violation of their rights. The transition from arrest to pretrial detention does not give officers “greater ability to assault and batter” the detainees.<sup>15</sup>

The Supreme Court of the United States granted certiorari and reversed the Seventh Circuit’s majority opinion, tracking Judge Hamilton’s approach.<sup>16</sup>

### *B. Protecting Consumer Class Action Viability*

1. *Mullins v. Direct Digital, LLC*.—Class action lawsuits are difficult, not just for the lawyers litigating them, but for courts considering them. As litigators craft increasingly complex class action theories, the task of confining the Federal Rule 23 mechanism to those cases which meet its stringent requirements has become increasingly important. This issue often rears its head at the class certification stage, where courts can find themselves between a rock and a hard place—certify a potentially meritorious class despite doubts about the manageability of adjudicating the action or decline to certify a class that may be messy at the cost of denying class members what is likely their only real opportunity to assert their claims. This was the case in *Mullins*, where a class asserted consumer fraud claims against Direct Digital, LLC, alleging that the marketing of a joint pain relief treatment was misleading to the reasonable consumer.<sup>17</sup> The estimated value of each putative class member’s claim was, at the time of the Seventh Circuit’s decision, \$70.<sup>18</sup>

In an opinion authored by Judge Hamilton, the Seventh Circuit affirmed the District Court’s grant of class certification, rejecting Direct Digital’s argument that the class did not fulfill Federal Rule of Civil Procedure 23’s implied “ascertainability” requirement.<sup>19</sup> Direct Digital based its argument on then-emerging Third Circuit precedent, applying a “heightened ascertainability” requirement.<sup>20</sup>

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15. *Id.* at 460 (citing *Titran v. Ackman*, 893 F.2d 145, 147 (7th Cir. 1990)).

16. *See Kingsley v. Hendrickson*, 576 U.S. 389, 396-97 (2015) (“[W]e agree with the dissenting appeals court judge . . . and Kingsley, that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable.”).

17. *See generally Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015).

18. *Id.* at 667.

19. *Id.* at 657 (“We and other courts have long recognized an implicit requirement under Rule 23 that a class must be defined clearly and that membership be defined by objective criteria rather than by, for example, a class member’s state of mind. In addressing this requirement, courts have sometimes used the term ‘ascertainability.’ They have applied this requirement to all class actions . . . [and c]lass definitions have failed this requirement when they were too vague or subjective, or when class membership was defined in terms of success on the merits . . .”).

20. *Id.* at 661 (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012)); *see also Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 354-56 (3d Cir. 2013); *Carerra v. Bayer Corp.*, 727 F.3d 300, 305-12 (3d Cir. 2014); *Grandalski v. Quest Diagnostics Inc.*, 767 F.3d 175, 184-85 (3d Cir. 2014); *Shelton v. Bledsoe*, 775 F.3d 554, 559-63 (3d Cir. 2015); *Byrd v. Aaron’s Inc.*, 784 F.3d 154, 161-71 (3d Cir. 2015).

As it [stood then], the Third Circuit’s test for ascertainability ha[d] two prongs: (1) the class must be “defined with reference to objective criteria” . . . and (2) there must be “a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.”<sup>21</sup>

As the opinion explains, while the “second requirement sounds sensible at first glance. . . . some courts have used this requirement to erect a nearly insurmountable hurdle at the class certification stage in situations where a class action is the only viable way to pursue valid but small individual claims.”<sup>22</sup> The opinion then masterfully dissects the four public policy justifications for the heightened ascertainability requirement, rejecting each in turn.<sup>23</sup> While the decision is procedurally focused, it was and remains a victory for consumer rights. As the court stated:

The heightened ascertainability requirement upsets [Rule 23’s] balance. In effect, it gives one factor in the balance absolute priority, with the effect of barring class actions where class treatment is often most needed: in cases involving relatively low-cost goods or services, where consumers are unlikely to have documentary proof of purchase. These are cases where the class device is often essential to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.<sup>24</sup>

2. *Pearson v. Target Corp.*—The complexities of class action lawsuits do not end with class certification—gamesmanship abounds even after the parties have agreed to settle the class claims. As Judge Hamilton wrote in *Pearson v. Target Corp.*, one such strategy is known as “objector blackmail.”<sup>25</sup> As the opinion explains:

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21. *Id.* at 662 (citations omitted).

22. *Id.*

23. *See id.* at 662-65 (explaining that administrative convenience is not properly considered in the context of Rule 23’s implied ascertainability requirement but instead should be balanced against other reasonable alternatives as directed in Rule 23(b)(3)(C)-(D)); *id.* at 665-66 (disposing of argument that the heightened ascertainability requirement protects absent class members and explaining that “[w]hen it comes to protecting the interests of absent class members, courts should not let the perfect become the enemy of the good”); *id.* at 666-69 (addressing argument that fraudulent claims could abound in classes with inherent ascertainability issues and stating, “[g]iven the significant harm caused by immunizing corporate misconduct, we believe a district judge has discretion to allow class members to identify themselves with their own testimony and to establish mechanisms to test those affidavits as needed”); *id.* at 669-72 (rejecting argument that defendants’ due process concerns regarding asserting individualized defenses as a result of ascertainability concerns is a proper basis to deny class certification).

24. *Id.* at 658 (internal quotations omitted).

25. 968 F.3d 827, 829 (7th Cir. 2020).

The scenario is familiar to class-action litigators on both offense and defense. A plaintiff class and a defendant submit a proposed settlement for approval by the district court. A few class members object to the settlement but the court approves it as fair, reasonable, and adequate under Federal Rule of Civil Procedure 23(e)(2). The objectors then file appeals. As it turns out, though, they are willing to abandon their appeals in return for sizeable side payments that do not benefit the plaintiff class: a figurative “blackmail” by selfish holdouts threatening to disrupt collective action unless they are paid off.<sup>26</sup>

The court, through Judge Hamilton, found a creative solution to this issue—the imposition of fiduciary duties.<sup>27</sup> Relying on the ancient equitable principles of unjust enrichment and constructive fraud and seventy-seven-year-old Supreme Court precedent,<sup>28</sup> the decision deftly sidestepped the vexing procedural issues surrounding objector blackmail and cut straight to the bad actors themselves.<sup>29</sup> As the court explained:

As in *Young*, the objectors here had a duty to object only in “good faith,” that is, not for an improper purpose. . . . We thus read *Young* to impose a limited representative or fiduciary duty on the class-based objector who, by appealing the denial of his objection on behalf of the class, temporarily takes “control of the common rights of all” the class members and thereby assumes “a duty fairly to represent those common rights.”<sup>30</sup>

By imposing these duties on class objectors, the court not only placed a “good faith” barrier in the way of bad faith objectors—it implemented important protections on the recoveries of successful consumer class members. This decision, in conjunction with *Mullins*,<sup>31</sup> will likely help maintain the continued viability of consumer class action lawsuits and the effectiveness of the consumer class action mechanism as a check on corporate malfeasance.

*C. Blocking Anticompetitive Merger of Chicago Area Hospitals in  
FTC v. Advocate Health Care Network*

If class actions are difficult, antitrust cases are nearly impossible. The mind-boggling intersection of economic theory, law, and practical reality can be difficult to approach even for the most experienced litigator or member of the judiciary. Antitrust cases can span decades, involve millions of relevant

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26. *Id.* (citing Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 VAND. L. REV. 1623, 1624 (2009)).

27. *See id.* at 834.

28. *See generally* *Young v. Higbee Co.*, 324 U.S. 204 (1945).

29. *See generally* *Pearson*, 968 F.3d 827.

30. *Id.* at 833-34 (citations omitted) (quoting *Young*, 324 U.S. at 212).

31. *See supra* Section I.B.1.

documents, and almost always require judges to dissect differences of opinion between experts—many of whom have spent the entirety of their professional careers studying antitrust economic theory—all while balancing the rest of their docket.

Judge Hamilton, however, fearlessly addressed these complex issues in *FTC v. Advocate Health Care Network*, a case in which the Federal Trade Commission (“FTC”) sought a preliminary injunction of a merger between Advocate Health Care Network and NorthShore University HealthSystem, both of which “operate[d] hospital networks in Chicago’s northern suburbs.”<sup>32</sup> The Seventh Circuit reversed the District Court’s denial of a preliminary injunction, and along the way clarified the sometimes inscrutable interaction between emerging economic theory, law, and the reality of everyday life.<sup>33</sup>

First, the opinion takes care to walk, step-by-step, through the reality of the proposed merger.<sup>34</sup> The court explains that the relevant inquiry must take into account two important elements of buying hospital care: first, negotiations between insurance companies and hospitals, and second, hospitals attempting to induce patients to purchase those services.<sup>35</sup> After describing the relevant factual and procedural history, the opinion explains the contours of the “hypothetical monopolist test” utilized by the FTC’s expert and the considerations relevant to that analysis.<sup>36</sup> What follows is a testament to Judge Hamilton’s mastery of legal writing—a thorough, in-depth discussion of each step in the FTC’s highly technical economic analysis of the merger, which somehow manages to present a compelling and easily understood story.<sup>37</sup> This kind of clear guidance to an overburdened district court judiciary, the antitrust bar, and law students approaching the daunting subject of antitrust law is more than impactful—it is necessary to ensure the United States’ antitrust jurisprudence continues to provide protection to the American public.

Equally importantly, the Seventh Circuit aided an untold number of citizens in Chicago’s northern suburbs in obtaining access to more affordable medical care in an era of ever-increasing healthcare spending.<sup>38</sup> Outside of this vacuum, Judge Hamilton’s carefully penned opinion continues to guide the district court judiciary to fairly and efficiently approach complex antitrust issues—a substantial and necessary protection for the American population.

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32. 841 F.3d 460, 464 (7th Cir. 2016).

33. *See generally id.*

34. *See id.* at 465-73.

35. *Id.* at 465.

36. *Id.* at 465-66.

37. *See id.* at 467-73.

38. *See, e.g., Trends in Health Care Spending*, AM. MED. ASS’N, <https://www.ama-assn.org/about/research/trends-health-care-spending#:~:text=Health%20spending%20in%20the%20U.S.,the%20unprecedented%20COVID%2D19%20pandemic> [https://perma.cc/7LEW-LX7P] (last visited Nov. 4, 2022) (“Health spending in the U.S. increased by 9.7% in 2020 to \$4.1 trillion or \$12,530 per capita.”).

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These cases are a mere snapshot of the lasting impact Judge Hamilton's work has on American jurisprudence. Even this small collection of cases provided protection to millions of Americans seeking to be made whole, to curb corporate malfeasance, and to be treated with dignity and respect even when housed in a correctional facility.

## II. JUDGE HAMILTON THE MENTOR AND FRIEND

Judge Hamilton's contribution to the legal community does not end with the opinions he penned. His guidance, mentorship, exemplary work ethic, and dedication to his craft have had an extraordinary impact on those fortunate enough to have worked for him. When I reached out to my fellow former law clerks, who span the nation, to ask for their input, the fondness with which they spoke about their experiences with Judge Hamilton rang true to my own.

President Bill Clinton nominated Judge Hamilton to be a District Court Judge for the Southern District of Indiana on June 8, 1994.<sup>39</sup> The U.S. Senate confirmed Judge Hamilton on October 7, 1994.<sup>40</sup> Judge Hamilton was the last federal judge confirmed before the mid-term election on November 8, 1994 changed political control of Congress.<sup>41</sup>

Shortly after the Senate confirmed him, Judge Hamilton called to offer me a judicial clerkship. I was a third-year law student at Indiana University Maurer School of Law, and I was delighted to have the opportunity to launch my legal career working with Judge Hamilton. Both of my parents had worked with Judge Hamilton and had extolled his many virtues.<sup>42</sup> I immediately accepted the offer and planned to start around Labor Day of 1995 following graduation in May and bar examination in July. Before my clerkship even commenced, Judge Hamilton's kindness and mentorship kicked into action.

In the spring of 1995, I called to notify Judge Hamilton that I was pregnant and due to give birth to the first of what would become my three children in September 1995—just a few weeks after my planned start date. Judge Hamilton

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39. *Hamilton, David Frank*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/hamilton-david-frank> [<https://perma.cc/GXW9-JEHE>] (last visited Nov. 4, 2022).

40. *Id.*

41. *See Rare Combination of Forces Makes '94 Vote Historic*, CQ PRESS, <https://library.cqpress.com/cqalmanac/document.php?id=cqal94-1102765> [<https://perma.cc/7U68-BAJW>] (last visited Nov. 4, 2022).

42. My father, Edward O. DeLaney, had practiced law with Judge Hamilton at Barnes Hickam Pantzer & Boyd, now Barnes & Thornburg LLP. They collaborated on the infamous "School No. 5" case where Historic Landmarks of Indiana sued to try to preserve a school that was being demolished. Judge Hamilton took his first deposition as a lawyer under my father's "supervision." According to my father, Judge Hamilton instinctually knew how to ask questions and gather evidence effectively from the beginning. The façade of that school is now installed in the Indiana State Museum. My mother, Ann M. DeLaney, had worked with Judge Hamilton in Governor Evan Bayh's administration. Judge Hamilton was Counsel to the Governor, my mother was Legislative Director.

unhesitatingly moved to accommodate me by asking A. Scott Chinn,<sup>43</sup> Law Clerk #1, to extend his clerkship to allow me a pre-hire “maternity leave.” Scott willingly extended his clerkship term, and I was able to have time at home with my daughter, without having either school or work to distract me from learning how to succeed at first-time parenting.<sup>44</sup> This was a gift for which I will be eternally grateful.

Kirsten Solberg,<sup>45</sup> Law Clerk #2, who worked with Judge Hamilton in his first couple of years on the bench, recalls his fearlessness in the face of difficult cases, even early in his tenure in the judiciary:

All the more impressive in hindsight, in his first year or two as a judge, some of the cases he was assigned drew particular public attention. Before I even started as law clerk #2, Judge Hamilton (aided by Law Clerk #1 Scott Chinn) received a First Amendment case, *Grossbaum*, about religious displays on public property.

In my era also came one of the first national tests of the Casey “undue burden” abortion standard, in *A Woman’s Choice*. That now seems quaint given *Dobbs*, but in 1995ish, Judge Hamilton was at the forefront of a new line of abortion cases . . . .

Perhaps needless to say to those who know him, Judge Hamilton was cool and unflappable in handling the cases, while also professionally warm in handling the litigants and especially jurors. As a law clerk fresh out of school, I took his poise for granted. But now almost two decades older than the Judge was at the time of his appointment, I marvel at his performance under such scrutiny right from the very start.<sup>46</sup>

Wendy Lowengrub, Law Clerk #5, who also worked with Judge Hamilton early in his career, recalls Judge Hamilton’s creativity and unique approach to legal reasoning:

Judge Hamilton is by far the most intelligent and insightful attorney with whom I have ever worked and probably ever will work. And to this day,

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43. *A. Scott Chinn, Partner*, FAEGRE DRINKER, <https://www.faegredrinker.com/en/professionals/c/chinn-scott#tab-Overview> [<https://perma.cc/684V-KEPA>] (last visited Nov. 4, 2022).

44. My daughter, Emma DeLaney Strenski, completed her undergraduate studies at the University of Wisconsin-Madison. Emma is the first third generation female graduate of the Indiana University Maurer School of Law in the Class of 2022. Her grandmother, Ann M. DeLaney, graduated in the Class of 1977, and I graduated in the Class of 1995. Emma will join Faegre Drinker Biddle & Reath LLP in 2023.

45. *Advisers, Kirsten Solberg, Director of Judicial Clerkships*, HARV. L. SCH., <https://hls.harvard.edu/ocs/about-ocs/ocs-staff-directory/#ksolberg> [<https://perma.cc/2SJY-8DY8>] (last visited Nov. 4, 2022).

46. E-mail from Kirsten Solberg, Dir. of Jud. Clerkships, Harv. L. Sch., to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 25, 2022, 08:45 ET) (on file with author).



whenever I see him, I always ask him about a legal issue that I am trying to understand and figure out a solution.

I also remember him saying to Mark Chasteen (co-clerk and Law Clerk #6) and me in our Thursday meeting that “case law only limits the imagination . . . .” I’m sure that I’ve long since taken that line out of context, but it has definitely stuck with me. I also feel privileged that when we were working with him, he was still trying to figure out who he was as a judge from a jurisprudence perspective.<sup>47</sup>

While Judge Hamilton’s analytical brilliance and poise helped clerks learn to approach tough legal issues, he led by example to teach them how to approach their duties as future attorneys. As Joseph Dugan, who clerked for Judge Hamilton from 2016-2017, recalls:

[T]he first thought that occurred to me when I read your email was how tirelessly Judge Hamilton attended to his responsibilities as a judge, scholar, and mentor. He showed up to work every day in a business suit, even though chambers at the Maurer campus was far from any other court activity. He was often the last to leave chambers, and was frequently around on the weekends (in business casual). Judge Hamilton set a terrific example of what it means to be a committed lawyer and a very hard worker, and that example has informed how I think about my role as an attorney today.<sup>48</sup>

President Barack Obama nominated Judge Hamilton to the Seventh Circuit on March 17, 2009, as his first judicial nominee.<sup>49</sup> On November 19, 2009, the U.S. Senate confirmed Circuit Judge Hamilton.<sup>50</sup> Judge Hamilton located his Circuit Court chambers in Bloomington, Indiana.<sup>51</sup> Marisa Van Saanen, one of Judge Hamilton’s law clerks at the time, shared her memory of traveling with Judge Hamilton to Chicago from Bloomington:

One of the most surprising parts of the job was sharing some of the driving from Indiana to Chicago! That was a hoot. If my memory is correct, the Judge was generally focused and mostly all-work on the way

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47. E-mail from Wendy Lowengrub, Managing Couns. & Glob. Lead Coun., DGG at Agilent Techs., to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 23, 2022, 05:43 ET) (on file with author). “When asked, Judge Hamilton confirmed the ‘imagination’ quotation but said he has always used the line tongue in cheek!” *Id.*

48. E-mail from Joseph Dugan, Assoc. Att’y, Gallagher Evelius & Jones LLP, to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 14, 2022, 08:52 ET) (on file with author).

49. *See Hamilton, supra* note 39.

50. *Id.*

51. *See Contact Information, Hon. David F. Hamilton*, U.S. CT. APPEALS, SEVENTH CIR., <https://www.ca7.uscourts.gov/contact-information/contact-information.htm> [<https://perma.cc/P4FD-F6YG>] (last visited Nov. 4, 2022).

up, and then after oral argument would share wonderful stories from his life and career and would be curious about us as well. It felt like a gift of time with a wonderful boss and mentor and a sage person. Sharing meals with the Judge in Chicago was also special and memorable.<sup>52</sup>

Judge Hamilton's personal, approachable demeanor did not begin and end in the car. He was always warm and professional to those he worked with, and he reminded his clerks that we are all human—even federal judges. Henry Weaver, who clerked for Judge Hamilton during his time in Bloomington, shared his memory of some of Judge Hamilton's decorating choices:

Judge's fridge in chambers is covered with memorabilia and pearls of wisdom. A decent portion concerned writing, reflecting Judge's close attention to his craft . . . . I can reproduce one quotation from that refrigerator exactly because I have a photo of it: "[I]n reality the idea of a captive reader is a myth. It is a myth because readers, like all people everywhere, yearn for freedom and rebel against captivity. They do this by taking revenge and tuning it out, by failing to get the writer's message."<sup>53</sup> This quotation on the refrigerator grabbed my attention and stayed in my memory because it teaches something about not only writing but also Judge Hamilton. Probably few writers have a greater claim to a captive audience than Article III judges. Their words are law, and parties must conform their conduct to those words. Nevertheless, Judge picked this quote for his law clerks to see every day as they rounded the corner to his office—an expression of humility in his judicial role. It is a democratic sentiment, that judicial opinions belong to the public and should be comprehensible to the public. So, despite his long and illustrious career, Judge Hamilton has never lost the ethic of a public servant or his respect for everyone who came before his court.<sup>54</sup>

But above all, Judge Hamilton taught his clerks to respect the law and the litigants who look to it for redress. Meredith Aska McBride, who clerked for Judge Hamilton from 2019-2020, has a fresh memory of Judge Hamilton's dedication and commitment to his role as a federal judge:

Working for Judge Hamilton allowed me to see firsthand how he combined a deep respect for the law and its procedures with an equally profound sense of empathy and justice . . . . I recall a case with a sympathetic plaintiff who (taking all allegations as true at the motion to dismiss stage) had been grievously wronged. However, her attorney had

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52. E-mail from Marisa Van Saanen, Senior Legis. Aid, Councilmember Will Jawando's Off., Montgomery Cnty. (MD) Council, to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 25, 2022, 08:26 ET) (on file with author).

53. ERNST JACOBI, WRITING AT WORK: DOS, DON'TS, AND HOW TOS 11 (1976).

54. E-mail from R. Henry Weaver, Assistant Att'y Gen., Ill. Att'y Gen.'s Off., to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 16, 2022, 04:28 ET) (on file with author).

bungled her case in the district court, leaving very few paths available on appeal. The easy decision was to affirm the judgment of the district court without much further consideration or comment. However, Judge Hamilton assigned me to research and present the best arguments in the plaintiff's favor, as if I were her lawyer on appeal. We debated those arguments back and forth until he felt he was able to reach the best decision possible balancing considerations of procedural norms and justice for this plaintiff and those like her.<sup>55</sup>

Judge Hamilton thoughtfully and deliberately maintains relationships with his law clerks after they leave chambers and enter the legal profession. For example, he helped me secure positions on the Local Rules Advisory and Magistrate Judge Selection Committees in the Southern District of Indiana. He invited me to present at continuing education seminars. He called me on my first day back to work following the birth of my second child.<sup>56</sup> When I confessed that the transition back to work from maternity leave was harder than I expected, he invited me to rejoin his chambers as a career clerk. It was a very tempting offer, but I knew that I wanted to be a litigator and try cases. When I launched my law firm just over four years after my clerkship ended, he continued to help me build my legal resume, which was instrumental in my efforts to build a new client base and referral network.<sup>57</sup>

### III. CONCLUSION

Judge Hamilton has served our country and its judiciary with distinction unwaveringly since 1994. His dedication to the rule of law and the principles of fairness, equity, and non-discrimination have been witnessed and emulated by the seventy-two law clerks who have worked with him over the years. We wish you all the best as you transition to senior status and hope you have more time to travel and spend time with your family.

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55. E-mail from Meredith Aska McBride, Litig. Assoc., Sidley Austin LLP, to Kathleen DeLaney, Managing Partner, DeLaney & DeLaney LLC (Sept. 27, 2022, 06:07 ET) (on file with author).

56. Kevin DeLaney Strenski was born in 1998. He recently graduated from Middlebury College and now works as an analyst in Washington, D.C.

57. I do not have an anecdote connecting my youngest child to Judge Hamilton. But John DeLaney Strenski, born in 2000, recently celebrated his fifth anniversary as a summer and school break intern at DeLaney & DeLaney LLC. John will graduate from Trinity College in 2023 with a major in history, and double minors in philosophy and religious studies.