A Memoir by Stephen L. Spomer

Illinois Supreme Court Historic Preservation Commission

Stephen L. Spomer, a graduate of Tulane Law School, served on the bench in Illinois for thirty-six years, 1978-2014. He began his legal career as a Public Defender in Johnson and Massac counties and in 1976 was elected as Massac County State's Attorney. His time as a judge started in 1978 when he was elected circuit judge for Alexander County. He served as a trial judge for almost twenty-six years. In 1992 he was selected as Chief Judge for the First Circuit and this lasted until 1998. He was appointed to the Fifth District Appellate Court in 2005. He retired from the bench in 2014.

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Stephen L. Spomer

Biographical:
Stephen L. Spomer was born in Urbana, Illinois, on April 14th, 1949, and grew up in Cairo, Illinois. He graduated from Tulane University in 1971 and Tulane Law School in 1974. After school, Spomer worked as a public defender and then a State's Attorney of Massac County (1976-1978). Spomer was elected a Circuit Court Judge in 1978 in the First Judicial Circuit and served in that position until 2005, he ran as a Republican. In 1992 he was elected as a Chief Judge for the First Circuit which lasted until 1998. In 2005 he was appointed to the Fifth District Appellate Court and he retired from the bench in 2014. He has a wife, Debra, and a daughter, Amy.

Topics Covered:
Spomer's parent's law careers; Spomer reflects on Cairo, Illinois, in the 1950s and 1960s; reflections on school and sports; becoming friends with U.S. Senator Bill Bradley at basketball camp in the early 1960s; reflections on his band "Perfect Squares"; attending Tulane University and Tulane Law School in New Orleans; Vietnam draft; graduation from college; work during law school years; comparison between Cairo and New Orleans; civil rights riots in Cairo; reduction in population of Cairo, Illinois, today; working for father's law firm and Johnson and Massac counties' Public Defender; being Massac County State's Attorney; case involving a murder, *People v. Greer*; Illinois Supreme Court's response to *People v. Greer*; there are quotes from the Court; circuit judge of Alexander County; election drama in *Thurston v. State Board of Elections*; years as a trial judge; appointment to the Fifth District Appellate Court; moving his chambers to Marion, Illinois; list of law clerks who served under him; issues in case *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*; issues in case *Klaine v. Southern Illinois Hospital Services*; reflections on serving on the bench.

Note:
Readers should note that this is a memoir that was typed by Justice Spomer. Most oral histories in our collection are edited and typed/transcribed by oral historians and transcriptionists. Normally, the interviewer, interviewee, and editors attempt to preserve the informal, conversational style that is inherent in such historical sources while also editing for clarity and elaboration. The Illinois Supreme Court Historic Preservation Commission is not responsible for the factual accuracy of the oral history, nor for the views expressed therein.

Justice Stephen L. Spomer: A Brief History Project (Memoir)

I was born in Urbana, IL on April 14, 1949. My grandfather, Asa Wilbourn, my mother, Dorothy, and my father, W.C., all graduated from the University of Illinois Law School.

My dad was of German descent living with his family in Lincoln, Nebraska. After he enlisted in the Army in 1941, he was sent to the University of Illinois to study with a German professor for about six weeks. (He later served with General Patton's division as an interpreter in France and Germany.) During that time, he met my mother. She was a student at U of I law school and graduated in 1941. After the war, my father went to the U of I law school and graduated the same year I was born. My grandfather was an attorney and Alexander County judge 1940-1950. My father was an attorney and State's Attorney of Alexander County 1972-1976. My mother, Dorothy, was a lawyer and judge. She was elected Alexander County judge 1950-1964, Circuit Judge 1964-1977, and Appellate Court Justice 1979-1980. My parents then went on to practice law together until 1992.

I remember in the 50's and early 60's as a young kid that Cairo was like the town Mayberry in the Andy Griffith television show. We had about 10,000-15,000 people at that time. Life was simple. I went to public schools in Cairo, and played baseball, basketball, and football. Neither I nor my friends had a racial problem. Many of the blacks and whites played on the same team. In high school everyone got along. In the early 1960's, I went to a basketball camp in St. Louis. Bill Bradley was one of the counselors and we became friends. At that time, he went to Princeton University, then the NBA New York Knicks, and then a U.S. Senator. I still have letters from him. On the high school baseball team, we had to play the state tournament against a school from Chicago…they won. At that time, there was only one class in the state. High school was fun, but the best were myself and four others in a band, Perfect

Squares. I played the guitar and harmonica. We were not quite as good as the Beatles or the Rolling Stones, but two of our group are still professional musicians.

After I graduated from high school in 1967, I attended Tulane University and Tulane Law School in New Orleans from 1967-1974. Other than the studies, I played football (1 year) and lacrosse (3 years). In 1969 at college, I remember going to a basketball game on campus. That was the same time that the federal government had the draft for the Vietnam War. During the game, they announced the draft numbers over the loudspeaker. Mine was approximately 225. The cutoff for the draft was number 105. After the game, half of the male students were drinking beer at the taverns because they were happy, and the other half were drinking because they were upset.

I graduated from college in 1971, and decided to stay in New Orleans for law school. More than half of the law students were from outside Louisiana and many of the courses were not about the Napoleon code (French/Louisiana law). During law school, I helped at a local attorney's office in criminal cases. Today, most of Louisiana cases and law are the same as in the other states.

The best part of quintessential New Orleans were the college friends, the great food, and the music. The university provided an excellent learning environment, as did the entire culture in New Orleans. The town of Cairo was just a smaller version of New Orleans. Both are rich in history, both are situated on the Mississippi River, and the racial makeup is the same. During the time I was in New Orleans, campus riots about the Vietnam War were taking place. In Cairo, civil rights riots were held. Since that time, Cairo has been slipping down economically. From 10,000 people in the sixties, it now has approximately 2,000 residents. New Orleans is vibrant; Cairo is not.

After law school, I came back to southern Illinois and went to work for my father's law firm. Shortly after, I went to work as Johnson and Massac counties' Public Defender. In 1976, I was elected as Massac County State's Attorney. During this time, my office (myself, investigator, and secretary) filed and charged a defendant, Alan Greer, in separate counts with the murders of his girlfriend and her 8 ½ month old fetus, seeking the death penalty. See *People v. Greer,* 79 Ill. 2d 103 (1980). The defendant Greer was found guilty of both murders by a jury. The sentencing judge then concluded that I had proved beyond a reasonable doubt that he had taken two lives with the intent to kill and imposed the death sentence. Greer appealed directly to the Illinois Supreme Court, resulting in a case of first impression as to whether the killing of an unborn fetus may constitute murder. Characterizing the issue of the legal status of an unborn child as one of the most debated questions of the time, the Supreme Court found that the General Assembly did not intend to afford an unborn fetus the legal status of a person under the homicide statute unless the fetus is born alive and subsequently expires as a result of the injuries inflicted. Accordingly, the Court vacated Greer's sentence of death, remanding to the circuit court for resentencing. Two justices dissented separately as to the Court's decision to vacate Greer's conviction as to the murder of the fetus, both stating that they would find that the circuit court was correct in convicting the defendant for the murder of a fully viable fetus:

> Mr. Justice Clark, "I concur in affirming the conviction for the murder of Sharon Moss, but I must dissent for the reversal of the conviction for the murder of the fetus…. [W]hat I find to be particularly puzzling is that the majority discusses at length the persuasive arguments of the State as to why this fetus should be considered to be a human being, concedes that there is "considerable

merit" to these arguments, but then rejects the conclusion to be drawn from them."

Mr. Justice Moran, "With clear expression that a fetus is an individual, then, one who kills a fetus, without lawful justification and outside the exception of the abortion statute, can be charged with and found guilty of murder. This is particularly true in the circumstances of the instant case where the viability of the 8 ½-month-old fetus was unquestioned and where the evidence, in fact, showed Baby Girl Moss to be alive at the time defendant attacked Sharon Moss. I would therefore affirm the defendant's conviction for the murder of Baby Girl Moss."

In 1978, I ran for circuit judge of Alexander County. I won the election by 200-300 votes, and left my office of State's Attorney of Massac County. After the election, the defeated candidate filed a case in Springfield to overturn the election. I had been nominated by the Alexander County Republican Central Committee after the primary, and because the Republican Party had not nominated a candidate for the position prior to the primary election, the Democratic precinct committeeman, Oris Vick, and the Democratic candidate who opposed me in the general election, Robert Lansden, brought an action in the circuit court of Sangamon County to enjoin my certification as the winner in the general election. See *Thurston v. State Board of Elections,* 76 Ill.2d 385 (1979). The circuit court of Sangamon County issued a permanent injunction against the State Board of Elections prohibiting my certification. On direct appeal to the Illinois Supreme Court, the decision of the circuit court of Sangamon County was reversed. It was unusual that appellees Lansden and Vick both died after the trial order but

before the case was overturned by the Illinois Supreme Court. Lansden's law partner, Clinton Thurston, then took the case as appellee. The Illinois Supreme Court declined to address the issue of whether the method of my nomination complied with applicable election laws, finding that by failing to object to my nomination prior to the general election, my opponents were prevented from contesting the validity of my nomination under the doctrine of laches. The Court found that my opponents knew of my nomination shortly after the primary but failed to assert their objections until after the general election, to the detriment of myself, those who promoted my candidacy, and those who voted for me. Also, even the defeated candidate congratulated me after the election through an advertisement in our newspaper.

At a full courtroom in August, 1979, Chief Judge Robert Chase of the First Circuit swore me in at the Cairo courthouse. I served as a trial judge almost 26 years. From 1992-1998 I was elected as Chief Judge for the First Circuit. In 2005, Justice Karmeier and the IL Supreme Court appointed me to the Fifth District Appellate Court.

I moved my chambers to Marion, and needed to find law clerks in my office. Luckily, I hired attorneys Adam Stone, Jennifer Whiteford, and Donna LaFramboise. All three stayed the entire tenure. They were smart and talented; but best of all, nice. I retired in December, 2014.

On the Appellate Court, a couple of noteworthy cases stand out. In 2009, I authored a dissent in *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District*, 393 Ill.App.3d 1016 (2010). The issue in the case was whether the Bi-State Development Agency, which was created by a congressionally approved interstate compact between Illinois

and Missouri to provide bus transportation to residents of the greater St. Louis area, including the Illinois suburbs, was a "local public entity" as defined by the Local Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 *et. seq*.(West 2006), and thereby subject to its one-year statute of limitations. The majority opinion found that Bi-State should not be considered a "local public entity" subject to the one-year statute of limitations, and found that the circuit court erred in granting Bi-State's motion to dismiss as time-barred the plaintiff's negligence complaint for personal injuries arising from an accident involving one of Bi-State's buses. In my dissent, I disagreed with the majority's analysis and set forth a detailed analysis regarding the nature of interstate compacts and explaining that there was nothing therein that would prevent Bi-State from meeting the criterion for characterization as a "local public entity." Upon a grant of a certificate of importance by the 5th District Court of Appeals, the Illinois Supreme Court agreed with me, citing my dissent in numerous places in its opinion reversing the majority's opinion. *Hubble v. Bi-State Development Agency of the Illinois-Missouri Metropolitan District,* 238 Ill.2d 262 (2010).

In one of my last opinions as an appellate court justice prior to my retirement I authored an opinion in *Klaine v. Southern Illinois Hospital Services,* 2014 IL App (5th) 130356, resolving a multitude of discovery issues in a medical malpractice lawsuit against a physician and hospital based on negligent credentialing. Several statutes setting forth various privileges and their application to a physician's applications for staff privileges and related credentialing materials were at issue in *Klaine*, including the Medical Studies Act (735 ILCS 5/8-2102 (West 2012)), the Health Care Professionals Credentials Data Collection Act (410 ILCS 517/1 *et.seq.* (West 2012)), The Health Care Quality Improvement Act (42 U.S.C. 11137 (2012), and the Health

Insurance Portability and Accountability Act. 42 U.S.C. 1320d *et.seq.* (2012). The applicability of these statutes to information kept by hospitals in the course of credentialing and peer reviewing a physician accused of medical malpractice included a few questions of first impression. My opinion contained a detailed application of these statutes to each of the materials claimed to be privileged, and affirmed the circuit court with a few modifications for entries it found to be privileged. On appeal to the Illinois Supreme Court, the Illinois State Medical Society, the Illinois Hospital Association, the Illinois Academy of Physicians Assistants, the Illinois Podiatric Medical Association, and the Illinois Association of Orthopaedic Surgeons were permitted to file a joint *amicus curiae* brief in support of the hospital's claims of privilege. The Illinois Supreme Court affirmed my decision in its entirety after a *de novo* review, *Klaine v. Southern Illinois Hospital Services,* 2016 IL 118217.

After serving thirty-six years on the bench, over numerous trials and cases, I still recall many good judges, lawyers, and clerks. The friendships remain. I can still hear, "Laissez les bon temps roulez", let the good times roll.