

## In Memoriam: Judge Terence T. Evans

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## TRIBUTE

### IN MEMORIAM: JUDGE TERENCE T. EVANS

The *Marquette Sports Law Review* and National Sports Law Institute (NSLI) of Marquette University Law School would like to pay tribute to the life and significant contributions of Judge Terence T. Evans, Marquette University Law School Alumnus (1967) and sports law enthusiast, who passed away on August 10, 2011. Judge Evans grew up in Milwaukee, attended Riverside High School, and earned an athletic scholarship to Marquette University, where he was a member of the track team. After clerking for Justice Horace Wilkie on the Wisconsin State Supreme Court, serving as an assistant district attorney, and working in private practice, Judge Evans was appointed to the Milwaukee County Circuit Court in 1974. Five years later, President Jimmy Carter appointed him to the U.S. District Court for the Eastern District of Wisconsin. In 1995, President Bill Clinton appointed Judge Evans to the United States Court of Appeals for the Seventh Circuit. After more than thirty years of service as a federal judge, he earned senior status in 2010.

Judge Evans had an enthusiasm for sports unmatched by most judges. He was well-known for using sports metaphors in his written opinions throughout his time on the bench, without taking anything away from their cogent legal analysis. For example, in a 1992 case, *United States v. Van Engel*, Judge Evans proclaimed that if this were a football game, the Government's laundry list of indictment charges against the defendant (originally eighty-nine, but narrowed down to ten at the time of this trial) would amount to a fifteen yard penalty for "piling on."<sup>1</sup>

Two years later, in *Hunt's Generator Committee v. Babcock & Wilcox Co.*, a case in which the plaintiff was suing the defendants for contribution to

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1. *United States v. Van Engel*, 809 F. Supp. 1360, 1374 (E.D. Wis. 1992).

the cost of a landfill's cleanup, Judge Evans lamented about the cancellation of the 1994 World Series.<sup>2</sup> He began his opinion by stating, "a few months ago, I thought I would, at this time, be getting ready to watch the World Series. As a baseball lover, that was a warm thought indeed. But alas, the World Series is not, this year, meant to be. So my attention is not on baseball today . . . please excuse me if, while discussing this case, my mind wanders a bit to things that might have been."<sup>3</sup> When Defendant Mid-America moved for summary judgment on the ground that it was not a successor company of the co-defendant, Judge Evans compared its argument to the Seattle Pilots baseball team's move to Milwaukee, stating, "It is not unlike the situation in 1970 when the Milwaukee Brewers wanted nothing to do with the debts of their predecessor, the Seattle Pilots."<sup>4</sup> Granting the defendant's motion for summary judgment and dismissing it from the case, he proclaimed, "Mid-America should be yanked out of this game and sent to the showers."<sup>5</sup>

Judge Evans's fervor for sports continued throughout his tenure on the Seventh Circuit bench as well. In *Rothe v. Revco D.S., Inc.*, Judge Evans reflected on the time "when baseball was good." After noting that the dispute arose out of a lease dating back to 1958, which was a "a simple time," he stated that 1958 was a era when baseball had "no artificial turf, free agency, designated hitters, slick agents, .235-hitting second basement with multimillion-dollar guaranteed contracts, or domed stadiums, and all seven World Series games (pitting, as it also did in 1957, the New York Yankees against the Milwaukee Braves) played on natural grass under natural light."<sup>6</sup>

As another illustrative example, in *Karrakher v. Rent-A-Center, Inc.*, Judge Evans used the NFL's Wunderlic test and disgruntled sports fans as an analogy in a case in which the plaintiff employees sued their employer for violating the Americans with Disabilities Act by requiring them to take the Minnesota Multiphasic Personality Inventory (MMPI) test.<sup>7</sup> The MMPI measured personality traits and diagnosed certain psychiatric disorders, which the employer used for purposes of granting promotions to employees.<sup>8</sup> Judge Evans described MMPI as "battery of nonphysical tests similar to some of those given by NFL teams, though the employees here applied for less

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2. *Hunt's Generator Comm. v. Babcock & Wilcox Co.*, 863 F. Supp. 879, 881 (E.D. Wis. 1994).

3. *Id.*

4. *Id.*

5. *Id.* at 884.

6. *Rothe v. Revco D.S., Inc.*, 148 F.3d 672, 673 (7th Cir. 1998).

7. *Karrakher v. Rent-A-Center, Inc.*, 411 F.3d 831, 833 (7th Cir. 2005).

8. *Id.* at 833-34

glamorous, and far less well-paying, positions.”<sup>9</sup> In his opinion, he stated that Rent-A-Center

argues in its brief that the MMPI does not test whether an applicant is clinically depressed, only “the extent to which the test subject is experiencing the kinds of feelings of ‘depression’ that everyone feels from time to time (e.g., when their favorite team loses the World Series).” Although that particular example seems odd to us (can an Illinois chain really fill its management positions if it won’t promote disgruntled Cubs fans?), the logic behind it doesn’t seem to add up, either.<sup>10</sup>

Judge Evans also relished the opportunity to resolve sports-related cases, and visited Marquette Law School in 2001 to discuss his sports law jurisprudence with students. One case he discussed was *Knapp v. Northwestern University*.<sup>11</sup> Nicholas Knapp, who had previously accepted a basketball scholarship, was ruled medically ineligible to play on the Northwestern men’s team by the university’s team physician because he had suffered cardiac arrest while playing pickup basketball prior to enrolling at the university.<sup>12</sup> After being declared ineligible, Knapp filed suit asserting a violation of the Rehabilitation Act of 1973, a federal law that prohibits discrimination against individuals with disabilities.<sup>13</sup> The district court ruled in Knapp’s favor, although physicians were divided in their opinions regarding whether Knapp’s medical condition exposed him to a significant risk of cardiac arrest while playing college basketball.<sup>14</sup> The court entered a permanent injunction that prohibited Northwestern from excluding Knapp from playing on its basketball team based on his cardiovascular condition.<sup>15</sup>

On appeal, the Judge Evans wrote the opinion for a unanimous panel, which reversed the district court.<sup>16</sup> The Seventh Circuit ruled that Knapp was not protected by the Rehabilitation Act because “[p]laying intercollegiate basketball obviously is not in and of itself a major life activity, as it is not a

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9. *Id.* at 833.

10. *Id.* at 835.

11. 101 F.3d 473 (7th Cir. 1996).

12. *Id.* at 476–77.

13. *Id.* at 476.

14. *Id.* at 477–78.

15. *Id.* at 477.

16. *Id.* at 486.

basic function of life on the same level as walking, breathing, and speaking,”<sup>17</sup> which must be substantially limited to satisfy the Rehabilitation Act’s definition of a person with a disability.<sup>18</sup>

Recognizing that an educational institution may establish legitimate physical qualifications to participate in a sport and that a “significant risk of personal physical injury” may medically disqualify a student-athlete from participation, he explained:

We disagree with the district court’s legal determination that such decisions are to be made by the courts and believe instead that medical determinations of this sort are best left to team doctors and universities as long as they are made with reason and rationality and with full regard to possible and reasonable accommodations. In cases such as ours, where Northwestern has examined both Knapp and his medical records, has considered his medical history and the relation between his prior sudden cardiac death and the possibility of future occurrences, has considered the severity of the potential injury, and has rationally and reasonably reviewed consensus medical opinions or recommendations in the pertinent field—regardless whether conflicting medical opinions exist—the university has the right to determine that an individual is not otherwise medically qualified to play without violating the Rehabilitation Act. The place of the court in such cases is to make sure that the decision-maker has reasonably considered and relied upon sufficient evidence specific to the individual and the potential injury, not to determine on its own which evidence it believes is more persuasive.<sup>19</sup>

Professor Matt Mitten, the Director of the NSLI, who filed an amicus brief on behalf of two national sports medicine physician organizations in the Seventh Circuit appeal, characterizes *Knapp* as one of the landmark cases applying the federal disability discrimination laws to sports. Because this case is the leading authority on the important issue of when an athlete may be medically disqualified from participation in a sport to prevent harm to one’s self, it is a principal case in his coauthored sports law text as well as other

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17. *Id.* at 480.

18. *Id.* at 479.

19. *Id.* at 484.

leading texts.<sup>20</sup>

Another significant opinion written by Judge Evans involving sports is *Olinger v. United States Golf Association*.<sup>21</sup> Ford Olinger, a professional golfer, suffered from bilateral avascular necrosis, which significantly impaired his ability to walk.<sup>22</sup> After the United States Golf Association refused to permit him to use a golf cart during the U.S. Open, he claimed that its refusal to do violated the Americans with Disabilities Act (ADA).<sup>23</sup> Since 1955, the United States Golf Association required all players to walk the course during its tournament.<sup>24</sup> The stated purpose for such a requirement was that endurance and stamina were vital parts to the competition.<sup>25</sup> Under the ADA, reasonable accommodations must be made to enable otherwise qualified athletes to participate in sports competitions, but modifications that would fundamentally alter the game are not required.<sup>26</sup>

Writing for the Seventh Circuit, Judge Evans, an avid golfer, affirmed the district court's ruling that the USGA is not required to allow Olinger to use a cart because doing so would fundamentally alter the nature of competition between professional golfers.<sup>27</sup> He was particularly influenced by testimony from Ken Venturi, the winner of the 1964 Masters golf tournament, who stated that it was over 100 degrees during this tournament and that, if a golfer had been permitted to use a cart, he would have had a tremendous advantage over the other players.<sup>28</sup> Judge Evans' opinion Although the Supreme Court effectively overruled Judge Evans's opinion in a subsequent case, *PGA Tour, Inc. v. Martin*,<sup>29</sup> it is clear that Judge Evans firmly believed, as a jurist and golf enthusiast, that walking is a fundamental part of the game of golf.

Judge Evans was a kind, respectful, and engaged jurist. Justice Janine Geske, Distinguished Professor of Law at Marquette University Law School, described him as "a model judge in his care for people who appeared before him regardless of their backgrounds. He was truly an excellent judge and we all will deeply miss him." Judge Evans was admired by everyone who had the

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20. See MATTHEW MITTEN ET AL., *SPORTS LAW AND REGULATION: CASES, MATERIALS, AND PROBLEMS* 421 (2d ed. 2009).

21. 205 F.3d 1001 (7th Cir. 2000). This case was heard while Casey Martin's case was pending with the U.S. Supreme Court.

22. *Id.*

23. *Id.*

24. *Id.* at 1003.

25. *Id.*

26. *Id.* at 1005.

27. *Id.*

28. *Id.* at 1006–07.

29. 532 U.S. 661 (2001).

honor of meeting him. If there were an award recognizing a judge who devoted his service on the bench to being a sensible and practical jurist, it would be “game, set, and match” to Judge Evans.<sup>30</sup>

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30. *Brennan v. Connors*, 644 F.3d 559, 563 (7th Cir. 2011).